

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56175; File No. SR-NASD-2007-055)

July 31, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Proposed Rule Change Relating to Interpretative Material 9216, Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 24, 2007, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASD.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Interpretative Material 9216 (Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)) (“IM-9216”) to expand the list of violations eligible for disposition under NASD’s Minor Rule Violation Plan (“MRVP”). The proposed rule change also would delete from IM-9216 references to NASD rules that have been rescinded. The text of the proposed rule change is available at NASD, the Commission’s Public Reference Room, and <http://www.finra.org>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 28, 2006, NASD and the NYSE Group, Inc. (“NYSE Group”) announced a plan to consolidate their member regulation operations into a combined organization (the “Transaction”) that will be the sole U.S. private-sector provider of member firm regulation for securities firms that do business with the public.⁴ This consolidation will streamline the broker-dealer regulatory system, combine technologies, permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection.

The combined organization, FINRA,⁵ will work expeditiously to consolidate the rules that apply to its member firms, reducing to one the two sets of rules currently applicable to

⁴ On July 26, 2007, the Commission approved amendments to NASD’s By-Laws to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56145 (July 26, 2007).

⁵ See supra note 3. The Commission notes that the Transaction closed on July 30, 2007. See telephone conference between Nancy Burke-Sanow, Assistant Director, Commission, and Patrice Gliniecki, Senior Vice President and Deputy General Counsel, FINRA, on July 31, 2007.

members of both the NASD and NYSE (“Dual Members”). During an interim period, however, until the adoption of a consolidated rulebook, NASD has proposed to incorporate into FINRA’s rulebook certain NYSE Rules that pertain to the regulation of member firm conduct (the “Incorporated NYSE Rules”).⁶ The Incorporated NYSE Rules will apply solely to Dual Members until such time as FINRA adopts, subject to Commission approval, consolidated rules applicable to all of its members.

As discussed in SR-NASD-2007-054, NASD is not proposing to incorporate, among other rules, the NYSE Disciplinary Rules or related interpretations, including NYSE’s MRVP as set forth in NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules).⁷ However, the instant proposed rule change would amend NASD’s MRVP to include those Incorporated NYSE Rules currently enumerated in NYSE’s MRVP. This would permit FINRA, during the interim period until the adoption of a consolidated rulebook, to impose a fine for minor rule violations by a Dual Member of the Incorporated NYSE Rules in lieu of commencing disciplinary proceedings.

The proposed amendments to IM-9216 also would specify the applicability of the rules listed therein to various members of FINRA. Specifically, any Dual Member (including any persons affiliated with such member) may be subject to a fine under Rule 9216(b) with respect to any rule listed in IM-9216 that applies to such member or person; provided, however, that any

⁶ See Securities Exchange Act Release No. 56147 (July 26, 2007) (SR-NASD-2007-054, Exhibit 5) (incorporating certain NYSE Rules relating to member firm conduct into FINRA’s rulebook).

⁷ NASD is not proposing to incorporate NYSE’s MRVP (NYSE Rule 476A), because NYSE Rule 476A contains procedures that would conflict with the finding of a minor rule violation by FINRA. For example, NYSE Rule 476A permits a person against whom a fine is imposed to contest the NYSE’s fine determination by, among other things, appealing to the NYSE board of directors.

Dual Member that was not also a member of NASD as of the date of closing of the Transaction and that does not engage in any activities that would have required it to be an NASD member (and its affiliated persons that are not otherwise subject to NASD rules) would only be subject to a fine under Rule 9216(b) with respect to the following rules listed in IM-9216: any NYSE rule, SEC Exchange Act rule, NASD By-Law or Schedule to By-Laws, or the NASD Rule 8000 Series. In addition, any member of FINRA that is not also a member of the NYSE (and its associated persons that are not otherwise subject to NYSE rules) may be subject to a fine under Rule 9216(b) with respect to any rule listed in IM-9216, with the exception of the NYSE rules.

NASD is not proposing to adopt the provision in NYSE's MRVP that establishes a \$5,000 maximum fine that may be imposed under NYSE's MRVP for minor violations of NYSE rules. Rather, FINRA would continue to apply the \$2,500 maximum fine level under NASD's MRVP in determining fine levels for minor violations of either an NASD or NYSE rule included in NASD's MRVP. Among other things, such an approach helps to ensure greater consistency in the administration of the disciplinary process for FINRA and its members, as well as in the related reporting obligations for minor violations of rules.⁸

⁸ Rule 19d-1(c)(2) under the Act provides that any disciplinary action taken by a self-regulatory organization ("SRO") against any person of a rule of the SRO that has been designated as a minor rule violation pursuant to a plan is not considered "final" for purposes of Rule 19d-1(c)(1) if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the SRO with respect to the matter. SROs are permitted to report such minor rule violations (where the fine does not exceed \$2,500) to the SEC on a periodic, rather than immediate, basis. In addition, members are not required to report "minor rule violations" on the Forms BD, U4 or U5 (as such term is defined on the forms). These forms provide that a rule violation may be designated as "minor" under a plan approved by the SEC if, among other things, the sanction imposed consists of a fine of \$2,500 or less. See also Securities Exchange Act Release No. 40193 (July 10, 1998), 63 FR 39338 (July 22, 1998) (Order Granting Approval to Proposed Rule Change Relating to Fines for Disruptive Action on the Options Floor) (SR-PCX-98-

Finally, the proposed rule change would delete from IM-9216 references to NASD rules that have been rescinded. On June 30, 2006, the Commission approved SR-NASD-2005-087, which, among other things, deleted NASD Rules 4619, 4642, 4652, 5430, 6720, and 8212 from the NASD Manual.⁹ On September 28, 2006, the Commission approved SR-NASD-2006-091, which, among other things, deleted NASD Rule 6420.¹⁰

The proposed rule change will become effective upon the later of the closing of the Transaction or the Commission's approval of the proposed rule change.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹¹ including Section 15A(b)(2) of the Act,¹² in that it will permit FINRA to carry out the purposes of the Act, to comply with the Act and to enforce compliance by FINRA members and persons associated with members with the Act, the rules and regulations thereunder and FINRA rules. The proposed rule change also is consistent with Section 15A(b)(7) of the Act,¹³ in that it will provide that FINRA members and their associated persons are appropriately disciplined for violations of FINRA rules. The proposed rule change also is consistent with

21) (stating in the context of amendments to the Pacific Exchange's (now NYSE Arca) MRVP that, as noted in PCX's MRVP, pursuant to Securities Exchange Act Release No. 30958, any person or organization found in violation of a minor rule under the MRVP is not required to report such violation on Form BD, provided that, among other things, the sanction imposed consists of a fine not exceeding \$2,500).

⁹ Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (Order Approving SR-NASD-2005-087).

¹⁰ Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (Order Approving SR-NASD-2006-091).

¹¹ 15 U.S.C. 78o-3.

¹² 15 U.S.C. 78o-3(b)(2).

¹³ 15 U.S.C. 78o-3(b)(7).

Section 15A(b)(8) of the Act¹⁴ in that it furthers the statutory goals of providing a fair procedure for disciplining members and their associated persons. The addition of these violations to NASD's MRVP will provide FINRA staff with the ability to impose minor rule violations for the Incorporated NYSE Rules that are currently enumerated in NYSE's MRVP.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁴ 15 U.S.C. 78o-3(b)(8).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2007-055 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-055. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information

that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2007-055 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).