

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58118; File No. SR-FINRA-2008-030)

July 8, 2008

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes) in the Consolidated FINRA Rulebook

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 June 18, 2008, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. 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

FINRA is proposing to adopt NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM-3013 (Annual Compliance and Supervision Certification) as a FINRA rule in the consolidated FINRA rulebook without material change and to delete the corresponding provisions in Incorporated NYSE Rule 342.30 and NYSE Rule Interpretations 311(b)(5)/04 through /05 and 342.30(d)/01 through (e)/01.³ The proposed rule change would renumber NASD Rule 3013 and IM-3013 as FINRA Rule 3130 in the consolidated FINRA rulebook. The text of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See infra note 4 regarding “Incorporated NYSE Rules.”

proposed rule change is at FINRA's Web site at www.finra.org, at FINRA's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, FINRA 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. FINRA 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

As part of the process of developing the new consolidated rulebook (the "Consolidated FINRA Rulebook"),⁴ FINRA is proposing to adopt NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM-3013-1 (Annual Compliance and Supervision Certification) as a FINRA Rule in the Consolidated FINRA Rulebook.

NASD Rule 3013 and Incorporated NYSE Rule 342 require each member to designate one or more principals to serve as a chief compliance officer ("CCO"). These Rules further require that the chief executive officer(s) ("CEO") certify annually that the

⁴ The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, see [FINRA Information Notice](#), March 12, 2008 (Rulebook Consolidation Process).

member has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable NASD (or NYSE) rules and federal securities laws and regulations. The certification includes not only a statement that the member has in place certain compliance processes, but also that the CEO(s) has conducted one or more meetings with the CCO(s) in the preceding 12 months to discuss the processes. Incorporated NYSE Rule 342 and NASD IM-3013 explain that the mandated meetings between the CEO(s) and CCO(s) must include a discussion of the member's compliance efforts to date and identify and address significant compliance problems and plans for emerging business areas. NASD IM-3013 contains additional guidance, including setting forth the expertise that is expected of a CCO. The same expertise requirements are also found in Incorporated NYSE Rule Interpretation 342.30.

There currently are four differences in the rules. First, NASD IM-3013 requires that the member provide to its board of directors and audit committees (or equivalent bodies) the report that evidences the processes to which the CEO(s) certifies either prior to execution of the certification or at the earlier of their next scheduled meetings or within 45 days of certification. The Incorporated NYSE rules require submission of the report to those bodies prior to certification. FINRA does not intend to require the board of directors or audit committee to review or consider the report as a condition to the CEO executing the certification; rather, FINRA intends the provision to ensure that those governing bodies remain informed of this aspect of the member's compliance system in the context of their overall responsibility for governance and internal controls of the

member for which they serve. Accordingly, the proposed rule change would maintain the NASD rule requirements.

Second, the current rules differ in the certification deadline. Incorporated NYSE Rule 342.30 requires certification as part of the submission of a member's annual compliance report, which is due by April 1 of each year. NASD Rule 3013 requires certification not later than the anniversary of the prior year's certification. And while NASD allowed members to execute their first certification no later than April 1, 2006, to accommodate Dual Members, many FINRA-only firms executed their first certification earlier than that and thus have differing anniversary dates. Moreover, new members are required to execute their first certification within a year of approval for membership; therefore some firms necessarily are on a cycle that does not correspond to April 1. The proposed rule change would maintain the NASD rule deadline to provide firms the flexibility to certify on a schedule that meets with their organizational structure and procedures. Firms that have certified on April 1 of each year could continue to do so on that date.

Third, Incorporated NYSE Rule 342.30 requires that the member submit its certification to the Exchange, whereas the NASD rule requires only that the certification be maintained for inspection. FINRA believes the submission of the certification creates an unnecessary – albeit small – additional burden on members with no attendant benefits to FINRA's examination program. Therefore, the proposed rule change would retain the NASD requirement that the certifications be kept for inspection by members.

Finally, while both rules permit designation of multiple CCOs subject to certain conditions, Incorporated NYSE Rule Interpretation 311(b)(5) requires Exchange approval

of the allocation of supervisory responsibilities between those CCOs. By comparison, the NASD rules rely on the business judgment of the member and require only that the member define and document the areas of responsibility allocated to each CCO. FINRA believes the NASD approach is more appropriate, and therefore the proposed rule change would not adopt the approval requirement into the new rule in the Consolidated FINRA Rulebook.

The proposed rule change would replace NASD Rule 3013 and IM-3013 with a single rule that integrates the substance of the IM either as provisions in the new rule or as supplementary material.

As noted above, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The rules being adopted as part of the Consolidated FINRA Rulebook previously have been found to meet the statutory requirements, and FINRA believes those rules have since proven effective in achieving the statutory mandates.

⁵ 15 U.S.C. 78o-3(b)(6).

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

FINRA 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 self-regulatory organization 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:

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-FINRA-2008-030 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2008-030. 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 a.m. and 3:00 p.m. 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-FINRA-2008-030 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon
Acting Secretary

⁶ 17 CFR 200.30-3(a)(12).