

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60012; File No. SR-FINRA-2008-062)

May 29, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt FINRA Rule 2267 (Investor Education and Protection) in the Consolidated FINRA Rulebook

I. Introduction

On December 11, 2008, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a the National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to require member firms, with certain exceptions, to provide customers with FINRA’s Web site address and information regarding FINRA’s BrokerCheck program at least once every calendar year. The proposed rule change was published for comment in the Federal Register on January 2, 2009.³ The Commission received two comment letters regarding the proposal.⁴ On April 28, 2009, FINRA responded to comments,⁵ and on April 29, 2009, FINRA filed Amendment No. 1

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59160 (December 23, 2008), 74 FR 152 (“Notice”).

⁴ See letter to the Commission from Richard Sacks, Investors Recovery Service, dated January 6, 2009 (“IRS Letter”), and letter to Florence E. Harmon, Acting Secretary, Commission, from John S. Watts, Senior Vice President & Chief Counsel, PFS Investments Inc., dated January 26, 2009 (“PFS Letter”).

⁵ See letter to Elizabeth M. Murphy, Secretary, Commission, from Erika L. Lazar, Senior Attorney, FINRA, Office of General Counsel, dated April 28, 2009 (“Response to Comments”).

to the proposal. This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

FINRA proposed to adopt a rule based on NASD Rule 2280 (Investor Education and Protection), which requires member firms, with certain exceptions, to provide customers with FINRA's Web site address and information regarding FINRA's BrokerCheck program at least once every calendar year.

NASD Rule 2280 currently applies to member firms that carry customer accounts and hold customer funds or securities and requires each member firm to provide its customers with the following information in writing not less than once every calendar year: (1) the "Public Disclosure Program" hotline number; (2) the NASD Regulation Web site address; and (3) a statement regarding the availability of an investor brochure that includes information describing the "Public Disclosure Program."

As initially proposed, FINRA Rule 2267 would have applied to all member firms, with two general exceptions: a firm that does not have customers, and an introducing firm that is party to a carrying agreement where the carrying member firm complies with the rule. FINRA stated that FINRA Rule 2267 would be broader in scope than NASD Rule 2280 and would apply to member firms that conduct a limited business with customers, such as mutual fund distributors and member firms that deal solely with direct participation programs ("DPPs").⁶ In Amendment No. 1, FINRA modified its proposal in response to the comments to permit a member whose contact with customers is limited to introducing customer accounts that will be held at an entity

⁶ These member firms would be required to comply with the rule and provide the disclosures at least once every calendar year. To the extent such firms are parties to a carrying agreement and the member firm that carries the accounts complies on their behalf, these firms would be excepted from the requirements of the proposed rule.

other than a FINRA member, and thereafter does not carry customer accounts or hold customer funds or securities,⁷ to furnish a customer with the information required by the rule at or before the time of the customer's initial purchase, in lieu of once every calendar year.⁸

FINRA stated in the Notice that it would announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than ninety days following Commission approval.

III. Summary of Comments and Amendment No. 1

The Commission received two comment letters on the proposed rule change.⁹ One commenter expressed concern that, without the inclusion of additional disclosure noting that information in BrokerCheck may have been dismissed or expunged, customers may be misled into believing a broker or other financial professional has not been involved in customer complaints.¹⁰ FINRA responded that it believed this comment was outside the scope of the proposal, and also noted that its Web site describes the contents of a BrokerCheck report and the type of information that is not disclosed through BrokerCheck.¹¹

Another commenter stated that the proposed FINRA rule would place a significant burden on member firms, such as itself, that conduct a limited business where customer accounts are introduced to a non-FINRA member product issuer and have no direct contact with the

⁷ E.g., does not provide account statements or trade confirmations.

⁸ In addition, the proposed rule would include references to "BrokerCheck" rather than the "Public Disclosure Program;" reference the FINRA Web site address rather than the NASD Regulation Web site address; and clarify that the information required under the rule may be provided electronically to customers.

⁹ See supra, note 4.

¹⁰ See IRS Letter.

¹¹ See Response to Comments at 2.

customers after the initial transaction.¹² The commenter stated that these firms do not carry customer accounts or hold customer funds or securities after the initial transaction. The commenter argued that because these firms do not send statements or trade confirmations, they do not have an easy method to provide information to customers, and a special annual mailing for the purposes of complying with the rule as initially proposed could be burdensome and substantial.¹³

FINRA responded that it would amend the proposal to clarify the application of Rule 2267.¹⁴ Specifically, FINRA stated it would codify the interpretive guidance regarding current NASD Rule 2280, which requires these firms to provide the requisite disclosures to customers only at the time of the initial transaction.¹⁵

IV. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA's response to comments, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁷ which requires, among other things, that FINRA

¹² See PFS Letter, supra, note 4.

¹³ Id.

¹⁴ See Response to Comments at 2.

¹⁵ See Response to Comments at 2, citing the NASD Regulation, Inc. Regulatory and Compliance Alert (Summer 1999) at 24. See Amendment No. 1 which also made non-substantive changes to the rule.

¹⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78o-3(b)(6).

rules 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.

Requiring broker-dealers that carry customer accounts to provide customers at least once each calendar year, or, for certain broker-dealers that are introducing firms as described in the proposed rule, once at the time of initial purchase, with written information regarding the BrokerCheck hotline number, FINRA's Web site address, and a statement regarding the availability of an investor brochure describing BrokerCheck, publicizes the availability of information that helps investors determine whether to conduct, or to continue to conduct, business with a FINRA member or associated person of the member. In addition, the Commission has found NASD Rule 2280, on which the proposed rule is based, to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹⁸

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁹ for approving the proposal, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 1 in the Federal Register.²⁰ Amendment No. 1 responded to the comments by tailoring the requirement for firms whose contact with customers is limited to introducing customer accounts to be held directly at an entity other than a

¹⁸ See Securities Exchange Act Release No. 39043 (September 10, 1997), 62 FR 48689 (September 16, 1997)(Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Distribution of Information Concerning the Availability of the NASD's Public Disclosure Program).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ Pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

FINRA member and thereafter do not carry customer accounts or hold customer funds but that the customer, at the outset, still receives the information. In addition, the firms afforded the exception proposed in Amendment No. 1 do not have any obligation under current NASD Rule 2280, so customers will still be receiving more information than they do presently. Therefore, the Commission believes that it is in the public interest to approve the proposal, as modified by Amendment No. 1, on an expedited basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as modified by Amendment No. 1, 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 No. SR-FINRA-2008-062 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FINRA-2008-062. 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 a.m. and 3 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-2008-062 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-FINRA-2008-062), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).