

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65313; File No. SR-FINRA-2011-043)

September 12, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 0160 (Definitions in FINRA By-Laws)

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 August 31, 2011, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a 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 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 amend FINRA Rule 0160 (Definitions in FINRA By-Laws). The proposed rule change would transfer certain defined terms from NASD Rule 0120 (Definitions) to FINRA Rule 0160, subject to certain amendments, as well as add new defined terms to reflect the conventions of the consolidated FINRA rulebook. The proposed rule change also would eliminate as unnecessary or duplicative certain definitions contained in NASD Rule 0120.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA, at the Commission’s Public Reference Room, and at the Commission’s website at <http://www.sec.gov>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Background

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),³ the proposed rule change would amend FINRA Rule 0160 (Definitions in FINRA By-Laws). FINRA Rule 0160 provides that a term defined in the FINRA By-Laws shall have the meaning provided in the By-Laws when used in the rules, unless the term is defined differently in a rule, or unless the context of the term within a rule requires a different meaning. NASD Rule 0120 (Definitions) sets forth additional defined terms that apply generally

³ The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

throughout the rules unless the context otherwise requires. Certain rules throughout the FINRA rulebook include defined terms that apply specifically for the purposes of a particular rule.

As further described below, the proposed rule change would transfer certain defined terms from NASD Rule 0120 to FINRA Rule 0160, subject to certain amendments, as well as add new defined terms to reflect the conventions of the Consolidated FINRA Rulebook.⁴ The proposed rule change also would eliminate as unnecessary or duplicative certain definitions contained in NASD Rule 0120. Upon Commission approval and implementation by FINRA of the proposed rule change, NASD Rule 0120 will be eliminated from the current FINRA rulebook.⁵

FINRA notes that NYSE Rules 1 through 12 (with the exception of NYSE Rules 2A, 2B and 11)⁶ set forth defined terms generally applicable throughout the NYSE rules. NYSE Rule 11 provides that unless the context requires otherwise, the terms defined in NYSE rules shall, for all purposes of the NYSE rules, have the meanings therein specified. FINRA will address NYSE Rules 1 (“The Exchange”), 2 (“Member,” “Membership,” “Member Firm,” etc.), 3 (“Security”),

⁴ FINRA Rule 0160 would be reorganized so that the defined terms are arranged alphabetically, as amended.

⁵ Notwithstanding the proposed transfer of certain defined terms from NASD Rule 0120 to FINRA Rule 0160 in the Consolidated FINRA Rulebook, the defined terms in FINRA Rule 0160 would continue to apply equally to both the Transitional Rulebook and the Consolidated FINRA Rulebook, as applicable. See also Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR-FINRA-2008-021), discussing “Rules of General Applicability.”

⁶ As part of the process of developing a Consolidated FINRA Rulebook, FINRA repealed NYSE Rule 2B (No Affiliation between Exchange and any Member Organization) (see Securities Exchange Act Release No. 61473 (February 2, 2010), 75 FR 6422 (February 9, 2010) (Order Approving File No. SR-FINRA-2009-087)). FINRA will address NYSE Rule 2A (Jurisdiction) as part of a separate rule proposal. Also, FINRA is proposing to delete NYSE Rule 10 (“Registered Representative”) as part of the proposed changes to the consolidated FINRA rules addressing registration requirements. See Regulatory Notice 09-70 (December 2009).

4 (“Stock”), 5 (“Bond”), 6 (“Floor”), 8 (“Delivery”), 9 (“Branch Office Manager”), 11 (Effect of Definitions) and 12 (“Business Day”) as part of a separate phase of the rulebook consolidation process.

Defined Terms Transferring Without Substantive Change To FINRA Rule 0160

The proposed rule change would transfer the following defined terms from NASD Rule 0120 to FINRA Rule 0160 without substantive change because they are achieving their intended purpose and are appropriate in their application to the consolidated FINRA rules. The proposed rule change would make non-substantive changes, where needed, to reflect FINRA’s corporate name, as reflected below in the proposed definitions:

- “Code of Procedure”: The term “Code of Procedure” means the procedural rules contained in the Rule 9000 Series. (proposed FINRA Rule 0160(b)(2))
- “Customer”: The term “customer” shall not include a broker or dealer. (proposed FINRA Rule 0160(b)(4))
- “Member”: The term “member” means any individual, partnership, corporation or other legal entity admitted to membership in FINRA under the provisions of Articles III and IV of the FINRA By-Laws. (proposed FINRA Rule 0160(b)(9))
- “Person”: The term “person” shall include any natural person, partnership, corporation, association or other legal entity. (proposed FINRA Rule 0160(b)(10))
- “Selling Group”: The term “selling group” means any group formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through members of such selling group, under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may elect to do so. (proposed FINRA Rule 0160(b)(13))

- “Selling Syndicate”: The term “selling syndicate” means any syndicate formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through participants in such syndicate under an agreement which imposes a financial commitment upon participants in such syndicate to purchase any such securities. (proposed FINRA Rule 0160(b)(14))

Defined Terms Transferring With Minor Changes To FINRA Rule 0160

The term “Act” is defined in NASD Rule 0120(a) to mean the Securities Exchange Act of 1934, as amended. The proposed rule change would modify this term to “Exchange Act” or “SEA” in proposed FINRA Rule 0160(b)(5) to reflect the conventions of the Consolidated FINRA Rulebook.

The term “By-Laws” is defined in NASD Rule 0120(c) to mean the By-Laws of the Corporation.⁷ The proposed rule change would add to this definition in proposed FINRA Rule 0160(b)(1) the language “or the FINRA By-Laws” to clarify that the By-Laws are commonly referred to as either the By-Laws of the Corporation or the FINRA By-Laws.

The term “Commission” is defined in NASD Rule 0120(e) to mean the Securities and Exchange Commission (SEC), established pursuant to the Act. The proposed rule change would amend this provision in proposed FINRA Rule 0160(b)(11) to define the term “SEC” to mean the Securities and Exchange Commission, which reflects the conventions of the Consolidated FINRA Rulebook.

The term “completion of the transaction” is defined in NASD Rule 0120(f)(1) through (f)(4). The proposed rule change would transfer NASD Rule 0120(f)(1) unchanged to proposed

⁷ In Article I (i) of the FINRA By-Laws, the term “Corporation” is defined to mean “the National Association of Securities Dealers, Inc. or any future name of this entity” (i.e., FINRA).

FINRA Rule 0160(b)(3)(A) to provide that in the case of a customer who purchases a security through or from a member, except as provided in proposed subparagraph (B), the transaction is complete at the time when such customer pays the member any part of the purchase price, or, if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the member for any part of the purchase price.

The proposed rule change would make minor changes to NASD Rule 0120(f)(2) and (f)(3) to clarify these provisions. The proposed rule change would amend NASD Rule 0120(f)(2) in proposed FINRA Rule 0160(b)(3)(B) to provide that in the case of a customer who purchases a security through or from a member and who makes payment therefore prior to the time when payment is requested or notification is given that payment is due, the transaction is complete at the time when such member delivers, or credits such delivery of, the security to or into the account of such customer. Additionally, the proposed rule change would amend NASD Rule 0120(f)(3) in proposed FINRA Rule 0160(b)(3)(C) to provide that in the case of a customer who sells a security through or to a member, except as provided in proposed subparagraph (D), if any security is not in the custody of the member at the time of sale, the transaction is complete at the time when the security is delivered to the member, and if the security is in the custody of the member at the time of the sale, the transaction is complete the earlier of when the member transfers the security from the account of such customer or the closing date of the transaction.

NASD Rule 0120(f)(4) would transfer unchanged into proposed FINRA Rule 0160(b)(3)(D) to provide that in the case of a customer who sells a security through or to a member and who delivers such security to such member prior to the time when delivery is requested or notification is given that delivery is due, the transaction is complete at the time when such member makes payment to or into the account of such customer.

Defined Terms To Be Added To FINRA Rule 0160

The proposed rule change would add the following defined terms to FINRA Rule 0160 because the terms are used throughout the Consolidated FINRA Rulebook:

- “FINRA” would be defined in proposed FINRA Rule 0160(b)(6) to mean, collectively, FINRA, Inc., FINRA Regulation, Inc. and FINRA Dispute Resolution, Inc.
- “Investment Advisers Act” would be defined in proposed FINRA Rule 0160(b)(7) to mean the Investment Advisers Act of 1940, as amended.
- “Investment Company Act” would be defined in proposed FINRA Rule 0160(b)(8) to mean the Investment Company Act of 1940, as amended.
- “Securities Act” would be defined in proposed FINRA Rule 0160(b)(12) to mean the Securities Act of 1933, as amended.
- “State” would be defined in proposed FINRA Rule 0160(b)(15) to mean any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.⁸

Defined Terms Not Transferring To FINRA Rule 0160

The proposed rule change would not incorporate certain defined terms in NASD Rule 0120; however, it would not eliminate any substantive FINRA requirements.

The term “Association” is defined in NASD Rule 0120(b) to mean, collectively, the NASD, NASD Regulation, and NASD Dispute Resolution. The proposed rule change would

⁸ The proposed definition of “State” mirrors the definition for the term “State” in Section 3(a)(16) of the Exchange Act, as well as in NYSE Rule 2(g).

delete this term as unnecessary due to the change in NASD's corporate name to FINRA. The term "Association" is not used in the consolidated FINRA rules.⁹

The term "NASD" is defined in NASD Rule 0120(j) to mean, collectively, NASD Inc., NASD Regulation, and NASD Dispute Resolution. The proposed rule change would delete this term because it is outdated in light of the change in NASD's corporate name to FINRA.¹⁰

The term "Nasdaq" is defined in NASD Rule 0120(k) to mean The Nasdaq Stock Market, Inc. This term was appropriate for inclusion in the FINRA rulebook when Nasdaq was an affiliate of FINRA. Since FINRA is no longer affiliated with Nasdaq, the proposed rule change would delete this term from the FINRA rulebook.¹¹

The term "NASD Regulation" is defined in NASD Rule 0120(l) to mean NASD Regulation, Inc. The proposed rule change would delete this term as duplicative because it is defined in the FINRA By-Laws.¹² In Article I (II) of the FINRA By-Laws, "NASD Regulation" is defined to mean NASD Regulation, Inc. or any future name of this entity. The definition in the By-Laws reflects the change in NASD's corporate name to FINRA with the language "or any future name of this entity."

The term "National Adjudicatory Council" ("NAC") is defined in NASD Rule 0120(m) to mean the committee of NASD Regulation which may be authorized and directed to act for the Board of Directors of NASD Regulation in a manner consistent with the By-Laws of NASD

⁹ Notwithstanding the proposed elimination of this defined term from the FINRA rulebook, the term would continue to have the meaning stated in NASD Rule 0120 for purposes of the remaining NASD rules.

¹⁰ See supra note 9.

¹¹ See supra note 9.

¹² As noted above, pursuant to FINRA Rule 0160, a term defined in the FINRA By-Laws shall have the meaning provided in the By-Laws when used in the rules, unless the term is defined differently in a rule, or unless the context of the term within a rule requires a different meaning.

Regulation, the Rules of the Association, and the Delegation Plan with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; and (6) such other proceedings or actions authorized by the Rules of the Association. The proposed rule change would delete this term as duplicative because it is defined in Article I (nn) of the FINRA By-Laws.¹³ The By-Laws definition provides that the NAC means a body appointed pursuant to Article V of the FINRA Regulation By-Laws. Article V of the FINRA Regulation By-Laws sets forth in detail the scope of the NAC’s authority and includes language that is identical to NASD Rule 0120(m). Article V also sets forth NAC member qualification requirements and meetings specifications, among other things.

The terms “Rules” or “Rules of the Association” are defined in NASD Rule 0120(o) to mean the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the Board of Governors of the NASD pursuant to the By-Laws of the NASD, as hereafter amended or supplemented. The proposed rule change would delete this provision because Article I (vv) of the FINRA By-Laws includes an identical definition for the terms “Rules of the Corporation” or “Rules.”¹⁴

As noted above, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval. The effective date will be no later than 150 days following Commission approval.

¹³ See supra note 12.

¹⁴ See supra note 12.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁵ 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. FINRA believes that the proposed rule change will provide clarity with respect to the defined terms for the Consolidated FINRA Rulebook by transferring certain defined terms from NASD Rule 0120 to FINRA Rule 0160 (subject to certain amendments), adding new defined terms to FINRA Rule 0160 to reflect the conventions of the Consolidated FINRA Rulebook and eliminating as unnecessary or duplicative certain definitions contained in NASD Rule 0120.

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 45 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 FINRA consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

¹⁵ 15 U.S.C. 78o-3(b)(6).

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-2011-043 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-2011-043. 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 website (<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 website viewing and printing 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 publicly available. All submissions should refer to File Number SR-FINRA-2011-043 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.¹⁶

Elizabeth M. Murphy
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).