

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61332; File No. SR-FINRA-2009-080)

January 12, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Adopt FINRA Rule 4570 (Custodian of Books and Records) in the Consolidated FINRA Rulebook

On November 17, 2009, the Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 adopt FINRA Rule 4570 (Custodian of Books and Records) in the Consolidated FINRA Rulebook. The proposed rule change was published for comment in the Federal Register on December 11, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

Rule 17a-4 of the Act requires members to retain their books and records for specified retention periods.⁴ Pursuant to Rule 17a-4(g), a member that ceases doing business as a registered broker-dealer has a continuing obligation to retain its required books and records for the remainder of the specified retention periods.⁵

To that end, Form BDW (Uniform Request for Broker-Dealer Withdrawal) requires that the member identify and provide the contact information of the person who will have custody of the firm’s books and records after the firm has discontinued its business operations. The form

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61116 (December 4, 2009), 74 FR 65817.

⁴ 17 CFR 240.17a-4.

⁵ 17 CFR 240.17a-4(g).

also requires that the firm provide the address where the books and records will be located, if different than the custodian's address. In addition, Form BDW provides that the firm and the person signing the form on behalf of the firm must certify that the firm's books and records will be preserved and made available for inspection.

NASD Rule 3121 requires a member to designate as the custodian of its required books and records on Form BDW a person who is associated with the firm at the time Form BDW is filed. The rule, which was approved by the Commission in 2000,⁶ is intended to enhance FINRA's ability to obtain required books and records from firms that are no longer conducting business and to ensure that the custodian of the books and records has been subject to certain background checks.⁷ There is no comparable Incorporated NYSE Rule. Therefore, FINRA proposed to adopt NASD Rule 3121 as FINRA Rule 4570 in the Consolidated FINRA Rulebook, with only minor technical changes. Specifically, NASD Rule 3121 currently states that a member must designate an associated person "as the custodian of the record"; the revised rule text will reflect that the associated person is designated "as the custodian of the member's books and records," which is consistent with the terminology used in Form BDW.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁸ In particular, the Commission finds that the proposal is consistent with Section

⁶ See Securities Exchange Act Release No. 43102 (August 1, 2000), 65 FR 48266 (August 7, 2000) (Order Approving File No. SR-NASD-99-76).

⁷ For example, associated persons who have custody of a member's original books and records relating to securities or funds are subject to the fingerprinting requirements of SEA Rule 17f-2 for purposes of a criminal background check.

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

15A(b)(6) of the Act,⁹ which requires, among other things, that FINRA's 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. The Commission believes that the proposed rule change will further the purposes of the Act by, among other things, enhancing FINRA's ability to obtain required books and records from member firms that are no longer conducting business. The Commission therefore believes that it is appropriate and consistent with the Act for the Exchange to include adopt the Custodian of Books and Records rule.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-FINRA-2009-080) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).