

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59987; File No. SR-FINRA-2009-016)

May 27, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change as Amended, Relating to the Adoption of FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), FINRA Rule 2310 (Direct Participation Programs), FINRA Rule 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) and FINRA Rule 2266 (SIPC Information) in the Consolidated FINRA Rulebook

I. Introduction

On March 25, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to (1) adopt NASD Rules 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), 2810 (Direct Participation Programs) and 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook without material change; and (2) adopt NASD Rule 2342 (SIPC Information) in the consolidated FINRA rulebook without material change and to delete NYSE Rule 409A (SIPC Disclosures). The proposed rule change would renumber NASD Rule 2130 as FINRA Rule 2080, NASD Rule 2810 as FINRA Rule 2310, NASD Rule 3115 as FINRA Rule 4551 and NASD Rule 2342 as FINRA Rule 2266 in the consolidated FINRA rulebook. On April 14, 2009, FINRA filed

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Amendment No. 1 to the proposed Rule Change.<sup>3</sup> The proposed rule change was published for comment in the Federal Register on April 15, 2009.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change as amended.

## II. Description of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2130 without material change in the Consolidated FINRA Rulebook as FINRA Rule 2080. NASD Rule 2130 addresses the expungement of customer dispute information from the Central Registration Depository system.

FINRA is proposing to adopt NASD Rule 2810 without material change in the Consolidated FINRA Rulebook as FINRA Rule 2310. NASD Rule 2810 addresses underwriting terms and arrangements in public offerings of direct participation programs and unlisted real estate investment trusts.

FINRA is proposing to adopt NASD Rule 3115 without material change in the Consolidated FINRA Rulebook as FINRA Rule 4551. NASD Rule 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) requires alternative trading systems (“ATs”)<sup>5</sup> that accept orders for security futures<sup>6</sup> to record and report to FINRA certain information regarding those orders, including the date and time the order was received, the security future product name and symbol, the details of

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<sup>3</sup> Amendment No. 1 replaced and superseded the original filing.

<sup>4</sup> See Securities Exchange Act Release No. 59771 (April 15, 2009), 74 FR 18411.

<sup>5</sup> ATs generally are registered broker-dealers that provide or maintain a marketplace for bringing together purchasers and sellers of securities or otherwise perform the functions commonly performed by a securities exchange but do not perform self-regulatory functions.

<sup>6</sup> A security future is a contract of sale for future delivery of a single security or of a narrow-based security index. Security futures are defined as “securities” under the Act; consequently, the federal securities laws are generally applicable to security futures. See 15 U.S.C. 78c(a)(10).

the order, and the date and time that the order was executed. The rule provides FINRA with an audit trail of orders for security futures placed on an ATS.

FINRA is proposing to adopt NASD Rule 2342 without material change in the Consolidated FINRA Rulebook as FINRA Rule 2266 and to delete comparable Incorporated NYSE Rule 409A. NASD Rule 2342 and Incorporated NYSE Rule 409A were adopted in response to a May 2001 report issued by the Government Accountability Office (“GAO”), entitled “Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors.”<sup>7</sup>

### III. Discussion and Findings

After careful review, 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.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that FINRA 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.

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<sup>7</sup> See U.S. Government Accountability Office, “Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors,” Publication GAO-01-653 (May 25, 2001).

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78q-3(b)(6).

The Commission believes that that transferring NASD Rule 2130 into the Consolidated FINRA Rulebook will ensure that its standards and procedures regarding expungement of customer dispute information from the CRD continue to be reasonably designed to ensure that information submitted to and maintained in the CRD is accurate and complete. The Commission believes that transferring NASD Rule 2810 into the Consolidated FINRA Rulebook will ensure that policies and procedures regarding FINRA's members' participation in public offerings of Investment Programs continue to meet statutory mandates. The Commission believes that transferring NASD Rule 3115 into the Consolidated FINRA Rulebook will continue to allow ATSS to provide trading facilities for security futures while also ensuring that FINRA will receive sufficient information to maintain an audit trail regarding the trading of security futures on ATSS. Finally, the Commission believes that transferring NASD Rule 2342 into the Consolidated FINRA Rulebook will continue to ensure that SIPC information is provided to customers effectively. The proposed rule change makes non-material changes to rules that have proven effective in meeting the statutory mandates.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-FINRA-2009-016), as amended, be, and hereby is, approved.

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

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).