

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61116; File No. SR-FINRA-2009-080)

December 4, 2009

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “SEA”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 17, 2009, 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 adopt NASD Rule 3121 (Custodian of the Record) as FINRA Rule 4570 (Custodian of Books and Records) in the consolidated FINRA rulebook with minor changes.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets:

4500. BOOKS, RECORDS AND REPORTS

* * * * *

[3121]4570. Custodian of [the] Books and Records

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A member who files a [Securities and Exchange Commission] Form BDW shall designate on the Form BDW, as the custodian of the member's books and records, a person associated with the member at the time that the Form BDW is filed.

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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 a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt NASD Rule 3121 as FINRA Rule 4570 in the Consolidated FINRA Rulebook with minor changes as described below.

Background

SEA Rule 17a-4 requires members to retain their books and records for specified retention periods.⁴ Pursuant to SEA Rule 17a-4(g), a member that ceases doing business as a

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).

⁴ 17 CFR 240.17a-4.

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 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.

⁵ 17 CFR 240.17a-4(g).

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.

Proposal

FINRA proposes to adopt NASD Rule 3121 as FINRA Rule 4570 in the Consolidated FINRA Rulebook, with only minor changes. Specifically, NASD Rule 3121 currently states that a member must designate an associated person “as the custodian of the record”; FINRA proposes to revise the text of the rule to 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. For similar reasons, FINRA proposes to change the title of the rule from “Custodian of the Record” to “Custodian of Books and Records.”

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.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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 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.

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

⁸ 15 U.S.C. 78q-3(b)(6).

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-2009-080 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-2009-080. 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-2009-080 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.⁹

Florence E. Harmon

Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).