

surveillance procedures are adequate to monitor the trading of options on this volatility index. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

The Commission also believes the CBOE's trading rules and other product specifications are appropriate, including the minimum tick size and strike price intervals for each product. In addition, the Commission notes that IUG and RUG are disseminated through OPRA.

The Commission also notes CBOE's representation that it possesses the necessary systems capacity to support new series that will result from the introduction CBOE S&P 500 three-month realized variance options and CBOE S&P 500 three-month realized volatility options.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-2008-31) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-16759 Filed 7-22-08; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58176; File No. SR-FINRA-2008-021]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto, Relating to the Adoption of NASD Rules 4000 Through 10000 Series and the 12000 Through 14000 Series as FINRA Rules in the New Consolidated FINRA Rulebook

July 16, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("SEA" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 23, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. On

July 11, 2008, FINRA filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt the following NASD rules (which are part of the existing FINRA rulebook)<sup>3</sup> as FINRA rules in the new consolidated FINRA rulebook: the 4000 through 10000 Series and the 12000 through 14000 Series. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and <http://www.finra.org>.

#### 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

On July 30, 2007, NASD and NYSE consolidated their member firm regulation operations into a combined organization, FINRA.<sup>4</sup> As part of the transaction, FINRA incorporated into its existing rulebook NYSE rules related to member firm conduct ("Incorporated NYSE Rules"). Thus, the current FINRA rulebook consists of two sets of rules: (1) NASD rules; and (2) the Incorporated NYSE Rules (together referred to as the "Transitional Rulebook").<sup>5</sup> The

<sup>3</sup> As further discussed herein, the FINRA rulebook currently consists of the NASD rules and certain incorporated NYSE rules.

<sup>4</sup> See Securities Exchange Act Release No. 56145 (July 26, 2007); 72 FR 42169 (August 1, 2007) (Order Approving SR-NASD-2007-023 ("Release No. 34-56145")).

<sup>5</sup> Pursuant to Rule 17d-2 under the Act, 17 CFR 240.17d-2, NASD, NYSE and NYSE Regulation entered into an agreement to reduce regulatory duplication for firms that are members of both FINRA and the NYSE ("Dual Members") by allocating regulatory responsibilities for the Incorporated NYSE Rules to FINRA. FINRA has assumed examination, enforcement and

Incorporated NYSE Rules apply only to Dual Members.<sup>6</sup> The new consolidated rulebook ("Consolidated FINRA Rulebook") will consist only of FINRA rules and will apply to all FINRA members, unless such rules have a more limited application by their terms.

The proposed rule change represents the first phase of the rulebook consolidation process.<sup>7</sup> During this process, FINRA members will be subject to both the Consolidated FINRA Rulebook, as it becomes populated with rules filed with and approved by the Commission, and the Transitional Rulebook. (The NYSE Incorporated Rules in the Transitional Rulebook will continue to apply only to Dual Members.) As the Consolidated FINRA Rulebook expands with SEC-approved final FINRA rules, the Transitional Rulebook will be reduced by the elimination of those rules, or sections thereof, that address the same subject matter of regulation. As a result, when the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.

The proposed rule change would transfer from the Transitional Rulebook to the Consolidated FINRA Rulebook the NASD Rule 4000 through 14000 Series, with the exception of the Rule 11000 Series (Uniform Practice Code). As described in more detail below, the NASD Rule 4000 through 7000 Series generally involve regulatory requirements and fees for quoting, trading, reporting, clearing and comparing over-the-counter transactions. The NASD Rule 8000 Series involves investigations and sanctions. The NASD Rule 9000 Series involves disciplinary procedures. The NASD Rule 10000, 12000, 13000 and 14000 Series involve Dispute Resolution (arbitration and mediation) procedures. The proposed rule change would adopt these rule series in their entirety as FINRA rules as part of the Consolidated FINRA Rulebook, with certain non-material changes.

surveillance responsibilities under the agreement relating to compliance by Dual Members to the extent such responsibilities involve member firm regulation. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4-544).

<sup>6</sup> The Incorporated NYSE Rules continue to apply to persons affiliated with Dual Members to the same extent and in the same manner as they did before the consolidation. In applying the Incorporated NYSE Rules to Dual Members and such affiliated persons, FINRA has incorporated the related interpretative positions set forth in the NYSE Rule Interpretations Handbook and NYSE Information Memos.

<sup>7</sup> FINRA issued an *Information Notice* on March 12, 2008 that describes the rulebook consolidation process in greater detail.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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

The rules proposed to be transferred as part of the proposed rule change would occupy the Rule 6000 through 10000 Series and the Rule 12000 through 14000 Series in the Consolidated FINRA Rulebook as set forth in a Table of Contents attached as Exhibit 2 to the proposed rule change. The proposed rule change would reserve Rule Series 0100 through 5000 for future transfers and amendments to member conduct rules involving, among others, member application processes and associated person registration, transactions with customers, supervision, communications and disclosures, and financial responsibility.

Additionally, and with the exception of the Arbitration Code, the Consolidated FINRA Rulebook will no longer contain Interpretive Materials ("IMs"); rather, the IMs either will become stand alone rules or will be integrated into existing rule text or moved to a "Supplementary Material" section at the end of a rule. The "Supplementary Material" will set forth the same type of legally binding guidance and additional information that IMs provide today and will be filed with the Commission.

#### Rules To Be Transferred

The proposed rule change would adopt in their entirety the following NASD rules as FINRA rules in the Consolidated FINRA Rulebook, save minor changes, including: Replacing references to NASD or the Association with FINRA; certain renumbering to effectuate a new organizational framework for the rulebook that groups and categorizes rules into more logical and related subject matter areas; and certain conforming changes to rule references, *e.g.*, the Exchange Act, SEA rules, the Securities Act of 1933 ("Securities Act") and Securities Act rules.

#### Marketplace Rules

The NASD Rule 4000 through 7000 Series (Marketplace Rules) generally set forth the regulatory requirements and fees for quoting, trading, reporting, clearing and comparing, as applicable, over-the-counter transactions in NMS stocks, as defined in SEC Rule 600(b)(47) of Regulation NMS under the Act, OTC Equity Securities<sup>8</sup> and certain eligible debt securities. These rules would occupy the Rule 6000 Series (Quotation and Transaction Reporting Facilities) and Rule 7000 Series (Clearing, Transaction and Order Data

Requirements, and Facility Charges) in the Consolidated FINRA Rulebook.

The following rule series to be transferred cover reporting, clearing and comparison, as applicable, of transactions in NMS stocks effected otherwise than on an exchange through FINRA's Trade Reporting Facilities ("TRFs"):<sup>9</sup> the NASD Rule 4000 and 6100 Series (relating to the FINRA/Nasdaq TRF), renumbered as the Rule 6300A and 7200A Series, respectively; the NASD Rule 4000C and 6000C Series (relating to the FINRA/NSX TRF), renumbered as the Rule 6300B and 7200B Series, respectively; and the NASD Rule 4000E and 6000E Series (relating to the FINRA/NYSE TRF), renumbered as the Rule 6300C and 7200C Series, respectively. For the most part, these rule series are identical, with relatively minor differences reflecting distinctions in TRF functionality. Each TRF rule set currently contains two definition sections: NASD Rules 4200 and 4631 (relating to the FINRA/Nasdaq TRF), NASD Rules 4200C and 4631C (relating to the FINRA/NSX TRF) and NASD Rules 4200E and 4631E (relating to the FINRA/NYSE TRF). These definition sections would be combined for each TRF in Rules 6320A, 6320B, and 6320C, respectively, of the Consolidated FINRA Rulebook.

The NASD Rule 4000A and 6100A Series, renumbered as the Rule 6200 and 7100 Series, respectively, cover quoting, reporting, clearing and comparison of transactions in NMS stocks effected otherwise than on an exchange through FINRA's Alternative Display Facility ("ADF"), which is both a trade reporting and quotation display and collection facility.

The NASD Rule 5000 Series relates to trading in NMS stocks effected otherwise than on an exchange and applies uniformly to transactions reported to the TRFs and ADF. This series would be transferred to the Consolidated FINRA Rulebook and renumbered as the Rule 6100 Series and renamed "Quoting and Trading in NMS Stocks," and certain rules relating to the TRFs and ADF would be combined and relocated to the Rule 6100 Series. Specifically, NASD Rules 4633, 4120A, 4633C, and 4633E relating to halts in over-the-counter trading in NMS stocks would be combined to form Rule 6120 (Trading Halts). In addition, NASD IM-4632, IM-4632C, and IM-4632E relating

to timely transaction reporting would be combined to form Rule 6181 (Timely Transaction Reporting). Finally, NASD IM-6130, IM-6130C, and IM-6130E relating to the reporting of short sales would be combined to form Rule 6182 (Trade Reporting of Short Sales).

NASD Rule 5000, renumbered as Rule 6110 (Trading Otherwise Than On An Exchange), requires members to report transactions in NMS stocks effected otherwise than on or through a national securities exchange to FINRA. This series also includes rules relating to initial public offering transactions (NASD Rule 5110, renumbered as Rule 6130), members' obligations to provide information to FINRA upon request (NASD Rule 5130, renumbered as Rule 6150), the use of multiple Market Participant Symbols (MPIDs) for TRF participants (NASD Rule 5140 and IM-5140, renumbered as Rule 6160 and Supplementary Material thereunder), and FINRA's authority to provide exemptive relief from certain Regulation NMS-related trade reporting requirements (NASD Rule 5150, renumbered as Rule 6183). In addition, NASD Rule 5120 relating to prohibited trading practices would be renumbered as Rule 6140 and paragraph (i) of that rule would be amended to define "Stop Stock Transaction" and "Stop Stock Price." (Currently, NASD Rule 5120 cross-references those definitions in NASD Rule 4200.) Finally, NASD Rule 4613A(b) and IM-4613A-1 relating to the ADF would be relocated to this series as Rule 6170 (Primary and Additional MPIDs for Alternative Display Facility Participants) and Supplementary Material thereunder.

The NASD Rule 6000 Series comprises a number of more specific rule series, as described herein. As noted above, the NASD Rule 6100 Series covers reporting, clearing and comparison of over-the-counter transactions in NMS stocks through the FINRA/Nasdaq TRF. This rule series also covers reporting, clearing and comparison of transactions in OTC Equity Securities through FINRA's OTC Reporting Facility ("ORF"). A single rule series would no longer apply to these two facilities. Rather, the NASD Rule 6100 Series would be amended, as necessary, to form the Rule 7200A Series, applicable only to the FINRA/Nasdaq TRF (*i.e.*, the references to the ORF, OTC Equity Securities and Direct Participation Program ("DPP") securities would be deleted). The NASD Rule 6100 Series also would be amended, as necessary, to form the Rule 7300 Series, applicable only to the ORF (*i.e.*, the references to the FINRA/Nasdaq TRF and "designated

<sup>8</sup> "OTC Equity Security" is defined in NASD Rule 6610 and generally encompasses those securities not traded on an exchange, including OTC Bulletin Board and Pink Sheets securities.

<sup>9</sup> The three TRFs are: the FINRA/Nasdaq TRF, the FINRA/NSX TRF and the FINRA/NYSE TRF. The relevant formation documents have been amended to change the name of each TRF from "NASD" to "FINRA," where necessary. The proposed rule change would reflect the name changes in the Consolidated FINRA Rulebook.

securities,” as well as the provisions relating to the transaction fee transfer mechanism, which is only supported by the FINRA/Nasdaq TRF, would be deleted). Finally, the references to NASD Rule 6410 and the ITS/CAES System would be deleted, as those references inadvertently were not deleted from NASD Rule 6110 as part of a prior rule filing approved by the Commission.<sup>10</sup>

The NASD Rule 6200 Series, renumbered as the Rule 6700 Series, covers the reporting and dissemination, as applicable, of over-the-counter secondary market transactions in eligible debt securities to FINRA’s Trade Reporting and Compliance Engine (“TRACE”).

The NASD Rule 6500 Series covers the operation and use of FINRA’s OTC Bulletin Board (“OTCBB”) service, which is an electronic quotation medium for members to display quotations in OTCBB-eligible securities. This series will remain as the Rule 6500 Series in the Consolidated FINRA Rulebook.

The NASD Rule 6600 Series, renumbered as the Rule 6400 Series and renamed “Quoting and Trading in OTC Equity Securities,” sets forth the recording and reporting requirements applicable to certain quotations and unpriced indications of interest displayed on inter-dealer quotation systems and the requirements applicable to reporting transactions in OTC Equity Securities to the ORF.

NASD Rule 6620, which sets forth the reporting requirements applicable to transactions in OTC Equity Securities, would be renumbered as Rule 6622 and included in a separate series, the Rule 6600 Series (OTC Reporting Facility). The Rule 6600 Series would comprise all rules applicable to trade reporting to the ORF, including the NASD Rule 6700 and 6900 Series, discussed below. New Rule 6610 would explain that members that report transactions in OTC Equity Securities and DPP securities to the ORF also must comply with the 7300 Series, as well as all other applicable rules and regulations. Additionally, new Rule 6621 would cross-reference the definitions set forth in Rule 6420, which are applicable to trading and quoting in OTC Equity Securities. NASD IM-4632, which is cross-referenced in NASD Rule 6620, would form Rule 6623 (Timely Transaction Reporting), and NASD IM-6130 would form Rule 6624 (Trade Reporting of Short Sales).

The NASD Rule 6700 Series, renumbered as the Rule 6630 Series, covers trade reporting to the ORF of debt and equity transactions in PORTAL securities, which are foreign and domestic securities that are eligible for resale under Securities Act Rule 144A. NASD Rule 6732, renumbered as Rule 6633, would be amended to delete from paragraph (a)(1) the reference to “paragraph (d).” That reference inadvertently was not deleted as part of a prior rule filing approved by the Commission.<sup>11</sup>

The NASD Rule 6900 Series, renumbered as the Rule 6640 Series, covers trade reporting to the ORF of secondary market transactions in DPP securities other than transactions executed on a national securities exchange. The definition of “OTC Reporting Facility” in Rule 6642 would be amended to clarify that the comparison function is not available for DPPs that are not eligible for clearance and settlement through the National Securities Clearing Corporation (which mirrors this term’s definition in NASD Rule 6610(k)).

The NASD Rule 6950 Series, renumbered as the Rule 7400 Series, sets forth member obligations to record and report to FINRA’s Order Audit Trail System certain information with respect to orders in equity securities listed on the Nasdaq Stock Market and OTC equity securities. NASD Rule 6957 (Effective Date) would be deleted, as all requirements of the Order Audit Trail System are now effective.

The NASD Rule 7000 Series, renumbered as the Rule 7700 Series, covers applicable fees for use of the ORF, OTCBB and TRACE services. The Rule 7000A Series, renumbered as the Rule 7500 Series, covers charges for ADF services and equipment. The following rule series cover fees and market data revenue rebates for trade reporting, clearing and comparison, as applicable, through the TRFs: The NASD Rule 7000B Series, renumbered as the Rule 7600A Series (relating to the FINRA/Nasdaq TRF); the NASD Rule 7000C Series, renumbered as the Rule 7600B Series (relating to the FINRA/NSX TRF); and the NASD Rule 7000E Series, renumbered as the Rule 7600C Series (relating to the FINRA/NYSE TRF).

#### Investigations and Sanctions Rules

The NASD Rule 8000 Series generally covers investigations and sanctions and would be transferred substantively

unchanged to the Consolidated FINRA Rulebook. It comprises several more specific rule series, as described herein. The NASD Rule 8100 Series has a definitional section and requirements regarding the availability of the manual.<sup>12</sup> The NASD Rule 8200 Series permits FINRA to inspect members’ books and records and requires members to provide information in connection with FINRA investigations, examinations or proceedings. The NASD Rule 8200 Series also provides for automated submission of certain trading data. The NASD Rule 8300 Series provides FINRA with authority to sanction members and their associated persons for violations of FINRA’s rules, federal securities laws, and Municipal Securities Rulemaking Board’s rules. NASD IM-8310-1 addresses the effect of a bar or suspension, revocation or cancellation of a person’s registration. In addition, NASD IM-8310-2 and IM-8310-3 govern FINRA’s release of certain information regarding members and their associated persons through FINRA BrokerCheck, as well as FINRA’s release of certain disciplinary complaints, decisions and other information. These IMs would be renumbered in the Consolidated FINRA Rulebook as Rules 8311, 8312 and 8313.

#### Code of Procedure

The NASD Rule 9000 Series generally provides procedures for initiating and adjudicating various types of actions, including disciplinary, eligibility, expedited, and cease and desist proceedings. The NASD Rule 9100 Series, for instance, sets forth rules of general applicability to disciplinary and other proceedings that FINRA initiates against members and their associated persons. This rule series includes a definitional section, provisions for service, filing and notice of papers, rules relating to the conduct of parties, counsel and adjudicators, and the allowance of motions practice.<sup>13</sup> The

<sup>12</sup> NASD Rule 8110 currently requires that members keep and maintain a copy of the manual in a readily accessible place and make it available to customers upon request. The proposed rule change would further clarify that members may comply with Rule 8110 by maintaining electronic access to the manual and providing customers with such access upon request. *See also* Securities Exchange Act Release No. 39470 (December 19, 1997), 62 FR 67927 (December 30, 1997) (Order Approving File No. SR-NASD-97-81) (seeking to, among other things, simplify NASD Rule 8110 to allow members to maintain an electronic version of the NASD manual as their required copy of the manual).

<sup>13</sup> NASD Rule 9144(b) (Separation of Adjudicators) would be amended to conform to changes made to the FINRA By-Laws as a result of the consolidation transaction to reflect that the Chair of the National Adjudicatory Council will no

<sup>10</sup> *See* Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (Order Approving File No. SR-NASD-2006-091).

<sup>11</sup> *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (Order Approving File No. SR-NASD-2005-087).

NASD Rule 9200 Series delineates specific procedures for disciplinary proceedings. It includes provisions for filing complaints and answers, requesting and holding hearings, settlement procedures and issuing decisions. NASD IM-9216 sets forth violations eligible for disposition under the Minor Rule Violation Plan ("MRVP") and would be renumbered as Rule 9217 in the Consolidated FINRA Rulebook—the only rule to be renumbered in the Rule 9000 Series.<sup>14</sup> The NASD Rule 9300 Series sets forth the procedures for disciplinary matters that are appealed to or called for review by the National Adjudicatory Council or called for review by the Board of Governors. The NASD Rule 9520 Series covers eligibility proceedings.<sup>15</sup> The proposed rule change would delete the NASD Rule 9530 Series—a change that should have been effectuated in a previous rule filing.<sup>16</sup> The NASD Rule 9550 Series sets forth standards and procedures for expedited proceedings, which cover various situations, ranging from members' failing to pay arbitration awards to members' experiencing financial or operations difficulties.<sup>17</sup>

longer automatically occupy a seat on the Board of Governors. See Release No. 34-56145, *supra* note 4.

<sup>14</sup> NASD IM-9216 also would be amended to reflect that FINRA members may now be subject to a minor rule violation for a violation of a FINRA rule, in addition to addressing violations of the FINRA By-Laws, Schedules to the By-Laws, NASD rules, Incorporated NYSE Rules, SEA Rules and Municipal Securities Rulemaking Board ("MSRB") rules. In this regard, FINRA notes that it is filing a separate rule change addressing the application of the FINRA rules to those members subject to NASD IM-1013 (Membership Waive-In Process for Certain NYSE Member Organizations) (commonly referred to as the "waive-in firms"). The proposed rule change also would reorganize IM-9216 to group by type the provisions and rules specified therein (*i.e.*, By-Law provisions, FINRA rules, NASD rules, SEA rules, MSRB rules and Incorporated NYSE Rules), and to present them in numerical order within each group. The proposed rule change would not add new substantive rules to the MRVP.

<sup>15</sup> NASD Rule 9526(d) (Call for Review) would be amended to conform to changes made to the FINRA By-Laws as a result of the consolidation transaction by eliminating reference to the Non-Industry classification of Governor. See Release No. 34-56145, *supra* note 4.

<sup>16</sup> As part of a 2004 rule proposal approved by the Commission, FINRA moved the hearing provisions of the NASD Rule 9530 Series to NASD Rule 9559 and the remaining provisions to NASD Rule 9553. See Securities Exchange Act Release No. 49380 (March 9, 2004), 69 FR 12386 (March 16, 2004) (Order Approving File No. SR-NASD-2003-110). However, the corresponding rule text inadvertently was not deleted as part of that filing and remained in the NASD Manual. FINRA is thus proposing to delete the NASD Rule 9530 Series.

<sup>17</sup> As part of the rulebook consolidation process, FINRA is considering changes relating to FINRA's rules governing financial responsibility, including NASD Rules 9557 and 9559, which provide the notice and procedural framework applicable when a member is experiencing financial or operational difficulties. See *Regulatory Notice* 08-23 (May 14,

The NASD Rule 9600 Series provides procedures for exemptions, while the NASD Rule 9700 Series sets forth procedures for grievances concerning automated systems. The Rule NASD 9800 Series governs temporary cease and desist orders.

FINRA is amending Rules 8313(b)(1) and (c)(1), 9556(a), 9558(a), 9810(a) and 9860, respectively, to change references from "NASD Chairman and CEO" or "President of NASD Regulatory Policy and Oversight" to "FINRA's Chief Executive Officer" to reflect FINRA's new organizational structure. Mary L. Schapiro now serves as FINRA's Chief Executive Officer. The proposed rule change also would permit FINRA's Chief Executive Officer to delegate his or her authority to such other senior officers as he or she may designate. Certain rules previously granted alternative authority to NASD's Senior Executive Vice President for Regulatory Policy and Programs. In light of FINRA's new organizational structure, FINRA believes it appropriate to permit the CEO to delegate his or her authority to other senior officers of FINRA.

#### Code of Arbitration Procedure

The NASD Rule 10000 Series sets forth the Code of Arbitration Procedure, including rules governing arbitration and mediation matters filed prior to April 16, 2007. This Code continues to be relevant to those matters, until they are closed by award, settlement or otherwise.

The NASD Rule 12000 through 14000 Series contains the revised Code of Arbitration Procedure, which is organized into three sections: the Customer, Industry and Mediation Codes. These three Codes apply to matters filed on or after April 16, 2007. The Rule 12000 Series contains the Code of Arbitration Procedure for Customer Disputes. The Rule 13000 Series contains the Code of Arbitration Procedure for Industry Disputes. The Rule 14000 Series contains the Code of Mediation Procedure.

#### Rules of General Applicability

FINRA notes that certain rules in the Transitional Rulebook have general application to the entirety of rules that govern FINRA members. For example, NASD Rule 0115 states that all rules apply to both members and their

associated persons and that associated persons have the same duties and obligations as the member. And the definitions in NASD Rule 0120 apply to all rules, unless the context otherwise requires. Those rules of general applicability would apply equally to both the Transitional Rulebook and the Consolidated FINRA Rulebook.

#### Rule References

Because the Consolidated FINRA Rulebook will be populated over the course of multiple rule filings, certain remaining rules in the Transitional Rulebook will refer to NASD rules or Incorporated NYSE Rules that have been transferred to, or otherwise incorporated into, the Consolidated FINRA Rulebook under the proposed rule change or future filings. In those instances, FINRA intends for the reference to NASD rules or Incorporated NYSE Rules to be treated as a reference to the corresponding rules in the Consolidated FINRA Rulebook. Thus, for example, NASD IM-1013-1 states that firms admitted to FINRA membership pursuant to the IM are subject to, among others, the NASD Rule 8000 and 9000 Series. Upon Commission approval and effectiveness of the proposed rule change, those members would remain subject to the 8000 and 9000 Series in the Consolidated FINRA Rulebook.<sup>18</sup> In the event that the referenced NASD Rule has been renumbered in the Consolidated FINRA Rulebook, members need to be cognizant of the rule's new number to ensure they are cross-referencing the correct rule in the Consolidated FINRA Rulebook. FINRA will be preparing a conversion chart that will map the eliminated legacy NASD and Incorporated NYSE Rules to the final FINRA rules.

Similarly, certain rules that would be transferred to the Consolidated FINRA Rulebook under the proposed rule change refer to remaining rules in the Transitional Rulebook. For the time being, the remaining rules in the Transitional Rulebook will be identified as "NASD Rules" or "NYSE Rules," as the case may be, in the Consolidated FINRA Rulebook and references to Consolidated FINRA Rulebook rules will not be qualified. Thus, for example, rules in the Consolidated FINRA Rulebook that refer to NASD Rule 2110 will specifically identify that rule as "NASD" Rule 2110 until such time as that rule is transferred to the Consolidated FINRA Rulebook.

As noted in Item 2 of this filing, FINRA will announce the

2008) (Proposed Consolidated FINRA Rules Governing Financial Responsibility). For administrative ease, the proposed rule change transfers NASD Rules 9557 and 9559 without substantive change to the Consolidated FINRA Rulebook. However, FINRA anticipates proposing changes to Rules 9557 and 9559 as part of a future filing governing the financial responsibility rules.

<sup>18</sup> See also *supra* note 14 discussing application of the FINRA rules to the waive-in firms.

implementation date(s) of the proposed rule change in a *Regulatory Notice* to be published no later than 60 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,<sup>19</sup> 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; and Section 15A(b)(5) of the Act,<sup>20</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. The proposed rule change makes non-material changes to rules that have proven effective in meeting statutory mandates.

### 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 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 FINRA 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2008-021 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-FINRA-2008-021. 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 the 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-2008-021 and should be submitted on or before August 13, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-16826 Filed 7-22-08; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58182; File No. SR-NASDAQ-2008-062]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Clarify the Application of Nasdaq Rules When a Listed Company Combines With a non-Nasdaq Entity

July 17, 2008.

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> notice is hereby given that on July 10, 2008, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to clarify the application of Nasdaq rules when a listed company combines with a non-Nasdaq entity. Nasdaq will implement the proposed rule upon approval. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.<sup>3</sup>

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#### 4340. Application for Re-Listing by Listed Issuers

(a) [Reverse Mergers] *Business Combinations With non-Nasdaq Entities Resulting in a Change of Control*. An issuer must apply for initial listing in connection with a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing [(for purposes of this rule, such a transaction is referred to as a "Reverse Merger")]. In determining whether a [Reverse Merger] *change of control* has occurred, Nasdaq shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq shall also consider the nature of the businesses

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

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

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://www.complinet.com/nasdaq>.

<sup>19</sup> 15 U.S.C. 78o-3(b)(6).

<sup>20</sup> 15 U.S.C. 78o-3(b)(5).

<sup>21</sup> 17 CFR 200.30-3(a)(12).