

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-FINRA-2008-032), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

Florence E. Harmon,

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58937; File No. SR-FINRA-2008-056]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Information Sharing Agreements With Domestic Federal Agencies, or Subdivisions Thereof, and Foreign Regulators

November 13, 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 November 6, 2008, 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 and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 8210 to expressly permit FINRA to enter into information-sharing agreements with domestic federal

agencies, or subdivisions thereof, and foreign regulators.<sup>4</sup>

The text of the proposed rule change is available at FINRA's Web site at [www.finra.org](http://www.finra.org), at the principal office of FINRA and at the Commission's Public Reference Room.

### 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

FINRA Rule 8210 confers on FINRA staff the authority to compel a member and persons associated with a member to provide documents and testimony, or allow inspection and copying of a member's books and records, in connection with an investigation, complaint, examination or adjudicatory proceeding. The rule additionally permits FINRA staff to exercise such authority in furtherance of an investigation, complaint, examination or proceeding conducted by another domestic or foreign regulator with which FINRA has entered into an agreement providing for the exchange of

information and other forms of material assistance for regulatory purposes.

FINRA's Restated Certificate of Incorporation allows it to do all acts permissible under Delaware state law.<sup>5</sup> Delaware Corporation Law allows FINRA to contract generally.<sup>6</sup> FINRA considers the exchanging of information with certain other regulators, pursuant to agreements, to be an important part of its regulatory program.

The proposed rule change would make explicit the authority to enter into agreements with domestic federal agencies, or subdivisions thereof, and foreign regulators and to share information with them, irrespective of whether the information was obtained in furtherance of an existing investigation or other regulatory action by another regulator. Instead, the proposal would expressly allow FINRA to share any information in its possession for any regulatory purpose set forth in the agreement.

The proposal would require that any such agreements entered into by FINRA include a provision obligating the other regulator, in accordance with the terms of the agreement, to treat any shared information confidentially and to assert such confidentiality and other applicable privileges in response to any requests for such information from third parties. In addition, the proposal would impose two further conditions on agreements with a foreign regulator. First, an agreement could only be consummated with a foreign regulator that has jurisdiction over common regulatory matters; *i.e.*, those involving investor protection or market integrity. Second, the agreement would require reciprocity from the other regulator to share information of regulatory interest and concern to FINRA. FINRA believes it important to expressly evidence in the rule and related filing its intent that the disclosure of non-public information pursuant to a memorandum of understanding not be viewed in any manner as a waiver of FINRA's right to protect the information, as appropriate, from further disclosure. The proposed rule change would not impose the additional conditions on information sharing agreements with domestic federal agencies or subdivisions thereof.<sup>7</sup>

<sup>5</sup> See Article III of the Restated Certificate of Incorporation of National Association of Securities Dealers, Inc., available at <http://finra.complanet.com>.

<sup>6</sup> See generally, Del. Code Ann. tit. 8, §§ 122, 122(13) (2008).

<sup>7</sup> FINRA notes that it is obligated under the Act to provide the Commission records upon request. 15 U.S.C. 78q(a)(1).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</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.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> On September 25, 2008, the SEC approved proposed rule change SR-FINRA-2008-021, in which FINRA proposed, among other things, to adopt the NASD 8000 Series as the FINRA Rule 8000 Series (Investigations and Sanctions) in the Consolidated FINRA Rulebook. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029). As part of that proposed rule change, FINRA adopted the provisions of NASD Rule 8210 as new FINRA Rule 8210 with certain non-material changes. FINRA has set December 15, 2008 as the implementation date of SR-FINRA-2008-021, see FINRA Regulatory Notice 08-57 (October 16, 2008) (FINRA Announces SEC Approval and Effective Date for New Consolidated FINRA Rules).

Because FINRA Rule 8210 has not yet been implemented and the corresponding NASD Rule 8210 remains operative until December 15, 2008, the proposed rule change would amend both NASD Rule 8210 and FINRA Rule 8210. On December 15, 2008, NASD Rule 8210, as amended pursuant to this proposed rule change, will be deleted in accordance with SR-FINRA-2008-021, without a further filing.

FINRA believes that such agreements will become increasingly necessary as the financial markets continue to globalize and require cross-market regulation. Furthermore, FINRA believes information sharing may become a more critical component to domestic regulation of the securities industry. Accordingly, FINRA believes it would be beneficial to expressly state in the rule FINRA's authority to enter into such agreements and set forth certain minimum prerequisites to ensure mutual benefits and confidentiality protections. The proposed rule change further would serve as notice to the membership of FINRA's intention to reach memoranda of understanding with other regulators to share confidential information.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</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. FINRA believes that the proposed rule change will further the public interest by evidencing FINRA's authority and intent to share important regulatory information with other regulators responsible for investor protection and market oversight.

### *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

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. FINRA has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay<sup>11</sup> is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule change merely makes explicit and codifies FINRA's authority to enter into information sharing agreements that may advance investor protection.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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-2008-056 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2008-056. 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-2008-056 and should be submitted on or before December 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58903A; File No. SR-FINRA-2008-011]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Amend the Trade Reporting Structure and Require Submission of Non-Tape Reports that Identify Other Members Who Participated in Agency and Riskless Principal Transactions as Modified by Amendments No. 1 and 2**

November 13, 2008.

## Correction

*Footnote 6 is revised to read:*

In Amendment No. 2, FINRA clarified the implementation date for this proposed rule change. The Commission

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA fulfilled this requirement.

<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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