SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59771; File No. SR–FINRA–2009–016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, 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

April 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that 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 (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. On April 14, 2009, FINRA filed Amendment No. 1 to the proposed rule change.[3] 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 (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 Incorporated 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.

Amendment No. 1 to SR–FINRA–2009–016 makes minor changes to the original filing filed on March 25, 2009. The proposed rule change replaces and supercedes the proposed rule change filed on March 25, 2009 in its entirety.

The text of the proposed rule change is available on FINRA's Web site at *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

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[4] FINRA is proposing to (1) adopt FINRA Rules 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System), 2310 (Direct Participation Programs) and 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook; and (2) adopt FINRA Rule 2266 (SIPC Information) in the consolidated FINRA rulebook and delete the corresponding provisions in Incorporated NYSE Rule 409A.

a. Proposed FINRA Rule 2080

FINRA is proposing to adopt NASD Rule 2130 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2080. NASD Rule 2130 addresses the expungement of customer dispute information from the Central Registration Depository (''CRD®'') system. The CRD system is an online registration and licensing system that is used by the securities industry, State and Federal regulators and self-regulatory organizations. It contains information regarding members and registered persons, specifically administrative information (*e.g.,* personal, educational and employment history) and disclosure information (*e.g.,* criminal matters, regulatory and disciplinary actions, civil judicial actions and information relating to customer disputes). Although public investors do not have access to the CRD system, much of the information in that system is available to investors through FINRA BrokerCheck and individual State disclosure programs.[5] FINRA recognizes that accurate and complete reporting in the CRD system is an important component of investor protection.

FINRA operates the CRD system pursuant to policies developed jointly with the North American Securities Administrators Association (''NASAA''). FINRA works with the SEC, NASAA, other members of the regulatory community and member firms to establish policies and procedures reasonably designed to ensure that information submitted to and maintained in the CRD system is accurate and complete. These procedures, among other things, cover expungement of information from the CRD system.

In January 1999, after consultation with NASAA, FINRA imposed a moratorium on arbitrator-ordered expungement of customer dispute information from the CRD system.[6] Under the moratorium, FINRA would expunge such information from the CRD system only when a court of competent jurisdiction confirmed an arbitrator's directive to expunge customer dispute information. During this moratorium, however, FINRA continued to expunge information from the CRD system based

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superceded the original filing.

[4] 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* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] FINRA BrokerCheck is a free online tool to help investors check the background of current and former FINRA-registered securities firms and brokers.

[6] *See Notice to Members* 99–09 (February 1999) and *Notice to Members* 99–54 (July 1999).

on expungement directives in arbitration awards rendered in disputes between firms and current or former registered persons, in which arbitrators awarded such relief based on the defamatory nature of the information.

After imposing the moratorium, FINRA began considering how to craft an approach to expungement that would allow FINRA effectively to challenge expungement directives that might diminish or impair the integrity of the CRD system and to ensure the maintenance of essential information for regulators and investors. In December 2003, the SEC approved NASD Rule 2130,[7] which contains additional standards and procedures for expungement of customer dispute information [8] from the CRD system. Rule 2130 continues the requirement started with the 1999 moratorium that a court of competent jurisdiction must order or confirm all expungement directives before FINRA will expunge customer dispute information from the CRD system.[9] It also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award containing an order of expungement.

Upon request, however, FINRA may waive the requirement to be named as a party if it determines that the expungement relief is based on an affirmative judicial or arbitral finding that: (1) The claim, allegation or information is factually impossible or clearly erroneous; (2) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (3) the claim, allegation or information is false. If the expungement relief is based on judicial or arbitral findings other than those enumerated immediately above, FINRA also may waive the requirement to be named as a party if FINRA determines, in its sole discretion and under extraordinary circumstances, that the expungement relief and accompanying findings on which it is based are meritorious and the expungement relief would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

Upon receipt of a waiver request, FINRA staff will notify the States (directly or through NASAA) where the individual is registered or seeking registration of the expungement notice/waiver request. FINRA staff will then examine the basis on which the fact finder ordered expungement to determine whether the expungement was based on one or more of the standards in Rule 2130.[10] If FINRA staff determines that the expungement was not based on one or more of the standards in Rule 2130, it will advise the parties that FINRA will not waive the requirement to be named as a party in the court confirmation process. The parties would then name FINRA as a party, and FINRA would have the opportunity to oppose the expungement in the court proceeding.

FINRA recommends that NASD Rule 2130 be transferred without material change into the Consolidated FINRA Rulebook. NASD Rule 2130 was the product of notice and comment rulemaking. FINRA solicited comment on proposed approaches regarding expungement of information in *Notices to Members* issued in July 1999 and October 2001.[11] FINRA staff drafted the proposed rule taking into account the comments received and following discussions with NASAA. Subsequently, the SEC published the proposal for comment in the **Federal Register** in March 2003, and the final rule reflects additional changes based on the comments received by the SEC. NASD Rule 2130 serves to enhance the integrity of information in the CRD system and to further ensure that investor protection is not compromised when arbitrators order expungement of information from a CRD record. Moreover, the new procedures that arbitrators must follow when considering requests for expungement will add transparency and procedural safeguards designed to ensure that the extraordinary relief of expungement is granted only under appropriate circumstances.

b. Proposed FINRA Rule 2310

FINRA is proposing to adopt NASD Rule 2810 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310. NASD Rule 2810 addresses underwriting terms and arrangements in public offerings of direct participation programs (''DPPs'') and unlisted real estate investment trusts (''REITs'') (collectively, ''Investment Programs''). A DPP is a business venture designed to let investors participate directly in the cash flow and tax benefits of an underlying investment. REITs are investment vehicles for income-generating real estate that benefit from the tax advantages of a trust if they satisfy certain criteria in the Internal Revenue Code. Rule 2810 requires that members participating in a public offering of an Investment Program meet certain requirements regarding underwriting compensation, fees and expenses, perform due diligence on the Investment Program, follow specific guidelines on suitability, and adhere to limits on non-cash compensation.

NASD Rule 2810 requires that, prior to participating in a public offering of an Investment Program, a member or a participating firm on its behalf must file information regarding the offering with the FINRA Corporate Financing Department and receive an opinion from the Department that it has no objections to the proposed underwriting terms and arrangements (a ''no objections'' opinion). Among the terms and arrangements that are reviewed by FINRA staff are the level of organization and offering expenses (''O&O expenses''). Rule 2810 limits the amount of O&O expenses for an Investment Program (which includes issuer expenses, underwriting compensation and due diligence expenses) to 15 percent of the gross proceeds of the offering. The rule also requires a member to perform due diligence about an Investment Program prior to participating in a public offering. The member must have reasonable grounds to believe, based on information in the prospectus, that all material facts, including those regarding compensation, physical properties, tax, financial stability and experience of the sponsor, and conflicts, are adequately

[7] *See* Securities Exchange Act Release No. 48933 (December 16, 2003), 68 FR 74667 (December 24, 2003). FINRA Rule 2080, as with NASD Rule 2130, would apply to any request made to a court of competent jurisdiction to expunge customer dispute information from the CRD system that has its basis in an arbitration or civil lawsuit filed on or after April 12, 2004. *See Notice to Members* 04–16 (March 2004).

[8] For purposes of Rule 2130, ''customer dispute information'' includes customer complaints, arbitration claims and court filings made by customers, and the arbitration awards or court judgments that may result from those claims or filings. *See Notice to Members* 04–16 (March 2004).

[9] Under Rule 2130, FINRA may continue to expunge information from the CRD system—without the need for judicial intervention—for expungement directives contained in intra-industry arbitration awards that involve registered persons and firms based on the defamatory nature of the information ordered expunged.

[10] In October 2008, the SEC approved a FINRA rule change (File No. SR–FINRA–2008–10), which became effective January 26, 2009, establishing new procedures that arbitrators must follow when considering requests for expungement relief, including requiring arbitrators to: (1) Consider the terms of a settlement agreement in settled matters; (2) hold a recorded hearing regarding the appropriateness of expungement; and (3) provide a brief written explanation of the reason(s) for ordering expungement. *See* Securities Exchange Act Release No. 58886 (October 30, 2008), 73 FR 66086 (November 6, 2008). *See also Regulatory Notice* 08–79 (December 2008).

[11] *See Notice to Members* 99–54 (July 1999) and *Notice to Members* 01–65 (October 2001).

and accurately disclosed and provide a basis for evaluating the Investment Program.

In addition, NASD Rule 2810 contains an exception from the disclosure requirements for offerings of certain Investment Programs that are listed, or approved for listing, on a national securities exchange. This exception, currently in paragraph (b)(1), would be relocated to paragraph (b)(3)(D) of the new rule, the section of the rule addressing disclosures. In this regard, the proposed rule change would return the exception to its original location in the rule. Prior to 2008, the exception was located in paragraph (b)(3)(D) of the rule; however, as part of a larger effort to streamline the rule in SR–NASD–2005–114, it was moved to paragraph (b)(1).[12] The proposed rule change would enhance the clarity of the rule by re-locating the exception to the section addressing disclosures at paragraph (b)(3)(D).

The rule also imposes specific suitability standards on recommended transactions to take account of the risks and lack of liquidity of Investment Programs. Further, it requires members and associated persons to ensure, prior to participating in a public offering of an Investment Program, that all material facts are adequately and accurately disclosed, including pertinent facts relating to the liquidity and marketability of the Investment Program. In addition, under Rule 2810, members cannot accept or make non-cash gifts in connection with the sale or distribution of an Investment Program in excess of $100 per year, nor can any non-cash entertainment (such as an occasional meal) raise any question of propriety or be conditioned on the achievement of a sales target. Finally, the non-cash provisions of the rule prohibit payments for an associated person to attend training or educational meetings unless the associated person obtains the member's prior approval and such training and entertainment is not based upon the associated person achieving a sales target. Collectively, these non-cash provisions are aimed at preventing Investment Program sponsors from using non-cash compensation as a means to circumvent the limits on underwriting compensation.

NASD Rule 2810 was adopted in 1980 to address issues arising from members' participation in oil and gas programs and real estate syndications in the 1970s.[13] It has been amended periodically to include additional programs and procedures,[14] including greater limitations on sales incentive compensation and members' participation in limited partnership rollup transactions.[15] These amendments were adopted to address new developments regarding members' participation in Investment Programs, and were the product of extensive notice and comment rulemaking over a period of several years.[16] The most recent amendments to the rule, which became effective on August 6, 2008, address O&O expenses and enhanced investor disclosures regarding the liquidity of Investment Programs.[17]

FINRA believes that the rule as currently drafted is well-understood by the sponsors of Investment Programs and the broker-dealers that sell them, and is providing significant investor protections. As a result, FINRA recommends that NASD Rule 2810 be transferred without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310.

c. Proposed FINRA Rule 4551

FINRA is proposing to adopt NASD Rule 3115 without material change into 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 (''ATSs'')[18] that accept orders for security futures[19] 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 the order, and the date and time that the order was executed. The rule thus provides FINRA with an audit trail of orders for security futures placed on an ATS.

NASD Rule 3115 was adopted in 2003 following the amendments to the Act included in the Commodity Futures Modernization Act of 2000.[20] Section 6(h)(5) of the Act, which was added as part of those amendments, prohibits a person other than a national securities association or national securities exchange from maintaining or providing a marketplace or facilities for bringing together purchasers and sellers of security futures products unless it is a member of a national securities association or national securities exchange that has: (1) Procedures for coordinated surveillance; (2) rules to require an audit trail necessary or appropriate to facilitate coordinated surveillance; and (3) rules to require such person to coordinate trading halts with markets trading the securities underlying the security futures products and other markets trading related securities.[21] FINRA adopted NASD Rule 3115 as part of a package of rules to meet these requirements and thus allow ATSs that are FINRA members to provide a marketplace for security futures. Specifically, NASD Rule 3115 satisfies the requirement that a national securities association have ''rules to require an audit trail necessary or appropriate to facilitate coordinated surveillance.''[22]

Because NASD Rule 3115 is necessary to allow ATSs to provide trading facilities for security futures, the proposed rule change would transfer NASD Rule 3115 into the Consolidated FINRA Rulebook as FINRA Rule 4551

[12] *See* Securities Exchange Act Release No. 57803 (May 8, 2008), 73 FR 27869 (May 14, 2008).

[13] *See* Securities Exchange Act Release No. 16967 (July 8, 1980), 45 FR 47294 (July 14, 1980).

[14] For example, some significant amendments to Rule 2810 include the following: in 1982, amendments to include suitability, due diligence and disclosure requirements; *see* Securities Exchange Act Release No. 19054 (September 16, 1982), 47 FR 42226 (September 24, 1982); in 1984, to require that sales incentives be in cash; *see* Securities Exchange Act Release No. 20844 (April 11, 1984), 49 FR 15041 (April 16, 1984); in 1986, to exempt certain secondary offerings; *see* Securities Exchange Act Release No. 23619 (September 15, 1986), 51 FR 33968 (September 24, 1986); in 1994, to apply to limited partnership rollup transactions; *see* Securities Exchange Act Release No. 34533 (August 15, 1994), 59 FR 43147 (August 22, 1994); and in 2003, to modify the non-cash compensation provisions; *see* Securities Exchange Act Release No. 47697 (April 18, 2003), 68 FR 20191 (April 24, 2003).

[15] A limited partnership rollup transaction either reorganizes an existing limited partnership or combines multiple limited partnerships into a new entity to take advantage of larger asset pools and economies of scale.

[16] *See supra* note 14.

[17] *See* Securities Exchange Act Release No. 57803 (May 8, 2008), 73 FR 27869 (May 14, 2008).

[18] ATSs 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.

[19] 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).

[20] *See* Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003).

[21] 15 U.S.C. 78f(h)(5).

[22] In the same rule filing adopting NASD Rule 3115, FINRA also amended NASD Rule 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) to satisfy the requirement that a national securities association have ''rules to require such person to coordinate trading halts with markets trading the securities underlying the security futures products and other markets trading related securities.'' *See* Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003). The proposed rule change does not address NASD Rule 3340.

without material change. This would allow ATSs to continue to provide trading facilities for security futures and would ensure FINRA receives information to maintain an audit trail regarding the trading of security futures.

d. Proposed FINRA Rule 2266

FINRA is proposing to adopt NASD Rule 2342 without material change into 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.'' [23] In that report, the GAO made recommendations to the SEC and the Securities Investor Protection Corporation (''SIPC'') about ways to improve the information available to the public about SIPC and the Securities Investor Protection Act of 1970 (''SIPA''). Among other things, the GAO recommended that self-regulatory organizations explore ways to encourage broader dissemination of the SIPC brochure to customers so that they can become more aware of the scope of coverage of SIPA.

In May 2007, the SEC approved NASD Rule 2342 setting forth requirements for providing SIPC information to customers. Rule 2342 requires all FINRA members, except those members (1) that are excluded from membership in SIPC and are not SIPC members; or (2) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, to advise all new customers that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Such members also must provide SIPC's Web site address and telephone number. Members must provide this disclosure to new customers, in writing, at the opening of an account and also must provide customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

Incorporated NYSE Rule 409A is substantially similar to NASD Rule 2342; however, the Incorporated NYSE rule does not contain the exclusions set forth in NASD Rule 2342 because NYSE member organizations generally would not qualify for those exclusions.

FINRA believes that the approach in NASD Rule 2342, which excludes non-SIPC members and members that sell exclusively non-SIPC eligible securities from the rule's requirements, is the more appropriate rule for the FINRA membership. Accordingly, the proposed rule change would transfer NASD Rule 2342 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2266 and delete Incorporated NYSE Rule 409A.

As noted above, 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,[24] 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 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 system continue to be reasonably designed to ensure that information submitted to and maintained in the CRD system is accurate and complete. FINRA believes that transferring NASD Rule 2810 into the Consolidated FINRA Rulebook will ensure that policies and procedures regarding members' participation in public offerings of Investment Programs continue to meet statutory mandates. FINRA 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, FINRA 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.

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 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–2009–016 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–2009–016. 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

[23] *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).

[24] 15 U.S.C. 78*o*–3(b)(6).

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–2009–016 and should be submitted on or before May 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9157 Filed 4–21–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59774; File No. SR–DTC–2009–08]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Settlement Service Guide and Settlement Progress Payments

April 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 3, 2009, the Depository Trust Company (''DTC'') 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 primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with 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

The proposed rule change will (i) amend DTC's Settlement Service Guide's instructions regarding withdrawals of intraday principal and income payments for non-money market instrument issues and (ii) update certain aspects of DTC's Settlement Progress Payments (''SPP'') procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

DTC is amending the procedures governing a participant's withdraw of principal and income (''P&I'') payments for non-money market instrument issues that DTC has received from paying agents and allocated to a participant's settlement account. The changes include the address and fax number to which a participant must send the wire instruction form to and the information that must be included in that form as well as a clarification that the funds must be wired to the participant's DTC settlement bank.[4]

DTC is also amending its SPP procedures. As background, an SPP is a payment sent from a DTC participant to DTC through Fedwire when a DTC participant has insufficient collateral[5] or is at its net debit cap.[6] The SPP creates a credit to the participant's settlement account thereby reducing their net debit and allowing the participant to continue to receive deliveries into their participant account.

Under this rule change, DTC will implement a new automated SPP return functionality that will permit participants to request that DTC return all or a portion of an SPP and to have these payments wired to the participant's settlement bank account[7] intraday and before the settlement period. DTC states that these changes should simplify the SPP return process and should allow participants to maximize the early return of available liquidity.[8]

Prior to this rule change, DTC would return only the full amount of a SPP provided that returning the SPP would not result in a negative collateral monitor[9] or cause the participant's net settlement debit to exceed its net debit cap.[10] DTC would debit the full amount of the SPP from the participant's settlement account and return the funds through Fedwire to the participant's original sending bank. If a participant only had sufficient collateral or debit cap to return a portion of the SPP, DTC would not process the request until the full amount of the SPP could be returned. Furthermore, return requests required manual approval from DTC's Settlement Operations.

The changes to DTC's SPP function also include new wire instructions and parameters for using the new automated SPP Return function.[11]

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder applicable to DTC. The proposed rule change will not affect the

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The rule change does not change the option for a participant to submit P&I withdrawal requests electronically.

[5] ''Collateral'' is defined in DTC's rules as the sum of (i) the participant's Actual Fund Deposit, (ii) the participant's Actual Preferred Stock Investment, (iii) the participant's Net Additions, and (iv) any SPPs wired by the participant to DTC's account at the Federal Reserve Bank of New York.

[6] A net debit cap helps ensure that DTC can complete settlement, even if a participant fails to settle.

[7] Under DTC's rules, a settling bank is a participant that is a bank or trust company subject to supervision or regulation pursuant to Federal or State banking laws and a party to an effective ''Settling Bank Agreement.''

[8] The upcoming reduction in debit caps for ''families'' will likely cause increased volume in SPPs. *See* Securities Exchange Act Release No. 59148 (Dec. 23, 2008), 73 FR 80481 (Dec. 31, 2008).

[9] DTC tracks collateral in a participant's account through the Collateral Monitor (''CM''). The CM reflects the amount that the collateral in the account exceeds the net debit in the account. When processing a transaction, DTC verifies that the participant's CM would not become negative when the transaction completes. If the transaction would cause the participant to have a negative CM, the transaction will recycle until the participant has sufficient collateral to complete.

[10] Withdrawals that are blocked as a result of insufficient collateral or net debit cap will recycle until enough collateral or settlement credits are generated to satisfy the collateral or net debit cap deficiency or until the end of the recycle period when transactions that have not successfully completed are dropped by the system.

[11] The updated wire instructions are attached as Exhibit 5 to DTC's rule filing.

[12] 15 U.S.C. 78q–1.