

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. Please include File Number SR-BATS-2010-021 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-BATS-2010-021. 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 Web site viewing and printing 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 the Exchange. 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 publicly available. All submissions should refer to File Number SR-BATS-2010-021 and should be submitted on or before September 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62702; File No. SR-FINRA-2010-026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving the Proposed Rule Change To Adopt FINRA Rule 5121 (Public Offerings of Securities With Conflicts of Interest) in the Consolidated FINRA Rulebook

August 12, 2010.

I. Introduction

The 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") on May 20, 2010, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to adopt FINRA Rule 5121 (Public Offerings of Securities With Conflicts of Interest) ("Rule") in the Consolidated FINRA Rulebook. This

proposal was published for comment in the **Federal Register** on June 4, 2010.³ The Commission received one comment on the proposal,⁴ and a letter from FINRA responding to the comment letter.⁵ This order approves this proposed rule change.

II. Description of the Proposed Rule Change

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),⁶ FINRA proposed to adopt NASD Rule 2720 (Public Offerings of Securities With Conflicts of Interest) without material change as FINRA Rule 5121 in the Consolidated FINRA Rulebook.

NASD Rule 2720 governs public offerings of securities in which a member with a conflict of interest participates. The rule generally prohibits a member with a "conflict of interest," as defined in the rule,⁷ from participating in a public offering, unless certain other requirements are met.⁸

³ Exchange Act Release No. 62199 (June 1, 2010), 75 FR 31825 (June 4, 2010) (SR-FINRA-2010-026).

⁴ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Jeffrey W. Rubin, Chair, Committee on Federal Regulation of Securities, American Bar Association dated June 22, 2010 ("ABA letter").

⁵ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Stan Macel, Assistant General Counsel, FINRA, dated July 23, 2010 ("FINRA Response Letter").

⁶ 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).

⁷ As defined in NASD Rule 2720(f)(5), a conflict of interest exists, if at the time of a member's participation in an entity's public offering, any of the following four conditions applies: (1) The securities are to be issued by the member; (2) the issuer controls, is controlled by or is under common control with the member or the member's associated persons; (3) at least five percent of the net offering proceeds, not including underwriting compensation, are intended to be (i) used to reduce or retire the balance of a loan or credit facility extended by the member, its affiliates and its associated persons, in the aggregate; or (ii) otherwise directed to the member, its affiliates and associated persons, in the aggregate; or (4) if, as a result of the public offering and any transactions contemplated at the time of the public offering (i) the member will be an affiliate of the issuer; (ii) the member will become publicly owned; or (iii) the issuer will become a member or form a broker-dealer subsidiary. NASD Rule 2720 defines several terms for purposes of the rule, including "entity," "control," and "common control."

⁸ The rule requires prominent disclosure of the nature of the conflict, and in certain circumstances,

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¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

There is no comparable Incorporated NYSE Rule.

On June 15, 2009, the SEC approved a proposed rule change to modernize NASD Rule 2720 (the "2009 Rule Change").⁹ The 2009 Rule Change became effective on September 14, 2009.¹⁰

The proposed rule change would adopt NASD Rule 2720 without material change as FINRA Rule 5121 in the Consolidated FINRA Rulebook. The proposal would make minor changes to the Rule to reflect the new terminology conventions of the Consolidated FINRA Rulebook.

III. Comment Letters

The Commission received one comment letter in response to the proposed rule change.¹¹ The Commission also received FINRA's response to comments.¹² While the commenter had no objection to the proposal itself to move NASD Rule 2720 without material change into the Consolidated FINRA Rulebook, the commenter did offer a number of comments about the substance of the Rule. The specific comments from this letter, as well as FINRA's response, are discussed in detail below.

The commenter suggested that FINRA clarify what "participation in a public offering" means for purposes of the Rule and suggested an alternative definition. FINRA responded that "participation in a public offering" for purposes of the Rule are already widely understood and that the alternative definition suggested by the commenter would be an inappropriate narrowing of the Rule.

The commenter also suggested that FINRA clarify what "primarily responsible for managing the public offering" means for purposes of the Rule and suggested an alternative for the term. FINRA asserted that the commenter's alternative would inappropriately narrow the application of the Rule and that the Rule as written provided FINRA flexibility to keep pace with developments in the underwriting process while also acknowledging the varied roles its members play currently.

the participation of a qualified independent underwriter. Members also must comply with certain net capital, discretionary accounts and filing requirements, as applicable.

⁹ See Securities Exchange Act Release No. 60113 (June 15, 2009), 74 FR 29255 (June 19, 2009) (File No. SR-FINRA-2007-009).

¹⁰ See *Regulatory Notice* 09-49 (SEC Approves Amendments to Modernize and Simplify NASD Rule 2720 Relating to Public Offerings in Which a Member Firm With a Conflict of Interest Participates) (August 2009).

¹¹ See ABA Letter.

¹² See FINRA Response Letter.

The commenter also offered an alternative to the experience standard necessary to qualify as a "qualified independent underwriter" under the Rule. FINRA recognized the issue raised by the commenter and stated their intention to take a more comprehensive review of the matter. FINRA also pointed out that they have exemptive authority in extreme circumstances where the standard may unnecessarily limit the availability of a qualified independent underwriter.

The commenter also suggested that FINRA clarify that the definition of "affiliate" used in the Rule only applies to the Rule. FINRA did not agree with this change and stated the thrust of this comment was directed at rules beyond the rule proposal.

Lastly, the commenter suggested that FINRA amend the definition of "entity" used in the Rule to except financing instrument-backed securities from being considered an "entity" for purposes of the Rule. FINRA points out that these securities were purposefully not included in the exceptions to the definition of "entity."

IV. Discussion and Findings

After careful review of the proposed rule change, the comment, and FINRA's response to the comment, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.¹³ In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the Rule continues regulation that protects investors in offerings where the member has a conflict of interest. The Commission also notes that FINRA is adopting NASD Rule 2720 into the Consolidated FINRA Rulebook as FINRA Rule 5121 without material change.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (File No. SR-

¹³ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ 15 U.S.C. 78s(b)(2).

FINRA-2010-026) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-20365 Filed 8-17-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-9133; 34-62699; File No. 4-607]

Notice of Solicitation of Public Comment on Consideration of Incorporating IFRS Into the Financial Reporting System for U.S. Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Securities and Exchange Commission is requesting public comment on behalf of the staff on three topics related to its ongoing consideration of incorporating International Financial Reporting Standards ("IFRS") into the financial reporting system for U.S. issuers. These three topics, derived from the staff's work plan on consideration of the incorporation of IFRS, involve the impact of such incorporation on: U.S. investors' current knowledge of IFRS and preparedness for incorporation of IFRS into the financial reporting system for U.S. issuers; how investors educate themselves on changes in accounting standards and the timeliness of such education; and the extent of, logistics for, and estimated time necessary to undertake changes to improve investor understanding of IFRS and the related education process to ensure investors have a sufficient understanding of IFRS prior to potential incorporation.

DATES: Comments should be received on or before October 18, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>);
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-607 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

¹⁶ 17 CFR 200.30-3(a)(12).