

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end fund or a mutual fund. The Prospectus will prominently disclose that ETS are not individually redeemable shares and will disclose that the owners of the ETS may acquire those ETS from the Trust and tender those ETS for redemption to the Trust in Creation Unit Aggregations only. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that ETS are not individually redeemable and that owners of ETS may acquire those ETS from the Trust and tender those ETS for redemption to the Trust in Creation Unit Aggregations only.

4. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per ETS basis, for each Fund: (a) The prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or the life of the Fund, if shorter).

5. The Prospectus and annual report for each Fund will also include: (a) The information listed in condition 4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for the immediately preceding five years (or the life of the Fund, if shorter); and (b) the following data, calculated on a per ETS basis for one, five and ten year periods (or life of the Fund, if shorter), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-9056 Filed 4-20-09; 8:45 am]  
BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that

the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, April 21, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, April 21, 2009 will be:

- Formal order of investigation;
- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings of an enforcement nature;
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

*For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:* The Office of the Secretary at (202) 551-5400.

Dated: April 16, 2009.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. E9-9179 Filed 4-17-09; 11:15 am]

BILLING CODE:P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59757; File No. SR-FINRA-2009-006]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to a New Limited Representative Registration Category for Investment Banking Professionals

April 13, 2009.

#### I. Introduction

On February 17, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association

of Securities Dealers, Inc. ("NASD")), filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt NASD Rule 1032(i), which defines a new limited registration category for investment banking professionals, and sets forth the registration requirements for principals who supervise investment banking activities. The proposed rule change was published for comment in the **Federal Register** on March 10, 2009.<sup>3</sup> The Commission received six comment letters regarding the proposal.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

Any person associated with a member firm who is engaged in the securities business of the firm must register with FINRA. As part of the registration process, securities professionals must pass a qualification examination to determine competence in each area in which they intend to work. FINRA has developed examinations and administers examinations developed by other self-regulatory organizations that are designed to establish that persons associated with FINRA members have attained specified levels of competence and knowledge.

Pursuant to NASD Rule 1032, a person who functions as a registered representative must pass the General Securities Representative (Series 7) examination or certain equivalent examinations, unless the person's activities are so limited as to qualify him for a limited representative category which has an examination associated with it. The proposed rule, NASD Rule 1032(i), creates a new limited representative category—Limited

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59484 (March 27, 2009); 74 FR 10317 ("Notice").

<sup>4</sup> See letters from Gregory M. LeNeave, Anderson LeNeave Co., dated March 12, 2009 ("Anderson LeNeave Letter"); Bryan Emerson, Managing Member, Starlight Investments, LLC, dated March 17, 2009 ("Starlight Investments Letter"); Michael B. Ribet, Member of the Board of Directors, Midwest Business Brokers and Intermediaries Association, to Elizabeth M. Murphy, Secretary, Commission, dated March 27, 2009 ("MBBI Letter"); Michael Adhikari, Advisory Board President, Alliance of Merger & Acquisitions Advisors, to Elizabeth M. Murphy, Secretary, Commission, dated March 30, 2009 ("AM&AA Letter"); Brian A. Wendler, President, Institute of Certified Business Counselors, to Elizabeth M. Murphy, Secretary, Commission, dated March 31, 2009 ("ICBC Letter"); and Daniel E. Hall, Chairman, The M&A Source, to Elizabeth M. Murphy, Secretary, Commission, dated March 31, 2009 ("M&A Source Letter").

Representative-Investment Banking—which will have an examination tailored for associated persons whose activities are limited to investment banking.<sup>5</sup> The proposed rule change also sets forth the registration requirements for principals who supervise investment banking activities.

### III. Summary of Comments

The Commission received letters from six commenters in response to the proposed rule change.<sup>6</sup> All of the commenters supported the proposal.<sup>7</sup> The commenters commended FINRA's acknowledgment of the specialized obligations of investment banking professionals. One commenter noted that this new category of limited registration will allow investment banking employees to become better trained in the rules and regulations applicable to the profession.<sup>8</sup>

### IV. Discussion and Commission's Findings

After careful consideration of the proposal and the comments submitted, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(g)(3) of the Act,<sup>10</sup> which requires FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. The Commission believes that the proposal is consistent with the provisions of the Act noted above because it allows FINRA members to more efficiently allocate resources in order to better train their specialized personnel, which should result in

<sup>5</sup> FINRA is in the process of developing an accompanying qualification examination that will provide a more targeted assessment of the job functions performed by the individuals that would fall within the proposed registration category. The examination itself, including the content outline and test specifications, and fees associated with it will be the subject of a separate proposed rule change.

<sup>6</sup> *Supra* note 4.

<sup>7</sup> Four of the six commenters raised the issue of a proposal previously made to the Division of Trading & Markets (the "Division") that would create a Federal registration exemption and simplified system of regulation for merger and acquisition intermediaries. See AM&AA Letter; ICBC Letter; M&A Source Letter; MBBI Letter. The proposal is not germane to this proposed rule change and is being considered separately by the Division.

<sup>8</sup> See Starlight Investments Letter.

<sup>9</sup> 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).

<sup>10</sup> 15 U.S.C. 78o-3(g)(3).

improved compliance by principals and the employees they supervise.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-FINRA-2009-006) be, and hereby is, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-9057 Filed 4-20-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59762; File No. SR-FINRA-2009-023]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 2320 in the Consolidated FINRA Rulebook

April 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 31, 2009, 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to adopt NASD Rule 2820 (Variable Contracts of an Insurance Company) as a FINRA rule in the consolidated FINRA rulebook with minor changes. The proposed rule change would renumber NASD Rule 2820 as FINRA Rule 2320 in the consolidated FINRA rulebook.

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.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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.

#### 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"),<sup>3</sup> FINRA is proposing to adopt NASD Rule 2820 into the Consolidated FINRA Rulebook with minor changes discussed below. The proposed rule change would renumber NASD Rule 2820 as FINRA Rule 2320.

NASD Rule 2820 regulates members in connection with the sale and distribution of variable life insurance and variable annuity contracts (together, "variable contracts"). It prohibits members from participating in the offer or sale of a variable contract unless certain conditions are met. Members may not participate in the offering or sale of a variable contract on any basis other than at a value to be determined following receipt of payment in accordance with the provisions of the contract, the prospectus and the Investment Company Act. Members must promptly transmit to the issuing insurance company all contract applications and at least the portion of the purchase payment required to be credited to the contract. NASD Rule 2820 also requires selling agreements between principal underwriters of variable contracts and selling broker-dealers. Such agreements must provide that the sales commission will be

<sup>3</sup> 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).