

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2008 - 022

Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐Exhibit 3 Sent As Paper Document ☐**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to amend NASD IM-1013-1 to address the applicability of the consolidated FINRA rules to firms that became FINRA members pursuant to IM-1013-1

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By
(Name)

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

☐

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

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Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add

Remove

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to NASD Interpretive Material 1013-1 (“IM-1013-1”) to address the applicability of the consolidated FINRA rules to member firms of the New York Stock Exchange (“NYSE”) that became members of FINRA pursuant to the membership waive-in process set forth in IM-1013-1.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

IM-1013-1. Membership Waive-In Process for Certain New York Stock Exchange Member Organizations

This Interpretive Material sets forth a membership waive-in process for certain New York Stock Exchange (“NYSE”) member organizations to become members of FINRA as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (“NYSE Regulation”). It applies to firms that, as of July 25, 2007, (1) are approved NYSE member organizations or (2) have submitted an application to become an NYSE member organization and are subsequently approved for NYSE

¹ 15 U.S.C. 78s(b)(1).

membership (together “NYSE-only member organizations”), provided that such firms were not also NASD members as of July 30, 2007. Such firms are eligible to automatically become FINRA members and to automatically register all associated persons whose registrations are approved with NYSE in registration categories recognized by FINRA upon submission to FINRA’s Member Regulation Department (“the Department”) of a signed waive-in membership application (“Waive-In Application”) with the following information:

(1) through (6) No Change.

The Department shall review the Waive-In Application within three (3) business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement shall become effective on the date of such notification letter.

Firms admitted pursuant to this Interpretive Material shall be subject to [the NYSE rules incorporated by FINRA,] the FINRA[’s] By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA rules and the NYSE rules incorporated by FINRA [and the NASD Rule 8000 and Rule 9000 Series], provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 (“permitted floor activities”). If an NYSE-only member organization admitted pursuant to this Interpretive Material seeks to expand its business operations to include any activities other than the permitted floor activities, such firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017. Upon

approval of such business expansion, the firm shall be subject to all NASD rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.

Pursuant to IM-Section 4(b)(1) and (e) to Schedule A of the FINRA [NASD] By-Laws, a firm applying to waive in for membership pursuant to this Interpretive Material shall not be assessed certain registration and application fees set forth in Sections 4(b)(1) and (e) to Schedule A of the FINRA [NASD] By-Laws.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change has been approved by the General Counsel of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

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

(a) Purpose

Background

On July 30, 2007, NASD and NYSE consolidated their member firm regulation operations into a combined organization, FINRA. To achieve the transaction's goal to eliminate duplicative member firm regulation and enable FINRA to meet its new regulatory responsibilities, the NYSE amended NYSE Rule 2(b) to require FINRA

membership as a condition of being an NYSE member organization (“Mandatory FINRA Membership filing”).²

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 herein as the “Transitional Rulebook”).³ The Incorporated NYSE Rules apply only to Dual Members.⁴

In furtherance of the consolidation, FINRA adopted NASD IM-1013-1 to enable eligible NYSE member organizations to become FINRA members through an expedited process.⁵ Under the process outlined in IM-1013-1, certain NYSE firms were eligible to

² See Securities Exchange Act Release No. 56654 (Oct. 12, 2007), 72 FR 59129 (Oct. 18, 2007) (File No. SR-NYSE-2007-67); Securities Exchange Act Release No. 56953 (Dec. 12, 2007), 72 FR 71990 (Dec. 19, 2007) (extending grace period for NYSE-only member organizations to apply for and be approved as FINRA members to June 30, 2008). See also Securities Exchange Act Release No. 56751 (Nov. 6, 2007), 72 FR 64098 (Nov. 14, 2007) (File No. SR-FINRA-2007-19).

³ Pursuant to Rule 17d-2 under the Act, 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 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).

⁴ 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.

⁵ See Securities Exchange Act Release No. 56653 (Oct. 12, 2007); 72 FR 59127 (Oct. 18, 2007) (File No. SR-NASD-2007-056).

automatically become FINRA members and to register all associated persons whose registrations were approved with NYSE in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department of a signed waive-in membership application. As provided in IM-1013-1, the NYSE firms admitted pursuant to IM-1013-1 (the "Waive-in Firms") currently are subject to the Incorporated NYSE Rules, FINRA's By-Laws and Schedules to By-Laws, including Schedule A (Assessments and Fees), and the NASD Rule 8000 (Investigations and Sanctions) and Rule 9000 (Code of Procedure) Series, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 ("permitted floor activities").⁶ If a Waive-In Firm seeks to expand its business operations beyond the permitted floor activities, the firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations). Upon approval of such business expansion, the firm would become subject to all NASD rules, in addition to the Incorporated NYSE Rules.

FINRA has established a process to develop a new consolidated rulebook ("Consolidated FINRA Rulebook"), which will consist only of FINRA Rules and will

⁶ For purposes of IM-1013-1, activities that are ancillary to a Floor broker's core business include (i) routing orders in NYSE-traded securities to an away market for any reason relating to their ongoing Floor activity, including regulatory compliance or meeting best-execution obligations, or (ii) provided that the majority of transactions effected by the firm are effected on the NYSE, sending to other markets orders in NYSE-traded or non-NYSE-traded securities and/or futures if such orders relate to hedging positions in NYSE-traded securities, or are part of arbitrage or program trade strategies that include NYSE-traded securities.

apply to all FINRA members, unless such rules have a more limited application by their terms.⁷ With limited exceptions specified in the Act, the SEC must approve the FINRA Rules prior to their becoming effective in the new Consolidated FINRA Rulebook. FINRA intends to obtain those approvals through a series of rule filings with the SEC. As the SEC approves new rules for inclusion in the Consolidated FINRA Rulebook and they become effective, FINRA members will become subject to those rules. Members also will remain subject to the rules remaining in the Transitional Rulebook. (The Incorporated NYSE 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. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.

The proposed rule change would amend IM-1013-1 to address the applicability of consolidated FINRA rules to the Waive-In Firms. FINRA believes that the Waive-In Firms should be subject to all consolidated FINRA Rules, unless the rules have more limited application by their terms. In addition, this amendment is essential because all of the existing Incorporated NYSE Rules currently applicable to the Waive-in Firms are scheduled to be eliminated from the Transitional Rulebook as the consolidated FINRA Rules are adopted and implemented (although it may be the case concepts or parts of Incorporated NYSE Rules will become adopted as part of the consolidated FINRA rules).

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

Absent the proposed rule change, the elimination of the those legacy rules in the Transitional Rulebook applicable to the Waive-In Firms would result in a gap in regulation for such firms.

Accordingly, the proposed rule change would amend IM-1013-1 to specify that the Waive-In Firms will be subject to FINRA's By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA rules and the Incorporated NYSE Rules, provided that their securities business is limited to the permitted floor activities. If a Waive-In Firm seeks to expand its business operations to include any activities other than the permitted floor activities, the firm must continue to apply for and receive approval pursuant to NASD Rule 1017. Upon approval of such expansion, the firm would be subject to all NASD rules, in addition to the consolidated FINRA rules and the Incorporated NYSE Rules (as is the case with the Incorporated NYSE Rules, when the consolidated FINRA rulebook is completed all NASD rules would be eliminated; although it may be the case concepts or parts of NASD rules will become adopted as part of the consolidated FINRA rules). FINRA is proposing to continue to require the Waive-In Firms to comply with the Incorporated NYSE Rules and NASD Rule 1017 until such time as these rules are eliminated as part of the adoption of the Consolidated FINRA Rulebook.⁸

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

⁸ FINRA notes that the Waive-In Firms will continue to be subject to the content of the NASD Rule 8000 and 9000 Series, insofar as FINRA has filed a rule change to transfer these two rule series, without substantive change, to the Consolidated FINRA Rulebook. See SR-FINRA-2008-021.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(6) of the Act,⁸ in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest. The proposed rule change will ensure that members eligible for the waive-in process continue to meet appropriate regulatory standards, resulting in effective and efficient regulation of brokers and dealers, thereby enhancing investor protection.

4. **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.⁹

5. **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.

6. **Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.¹⁰

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78a.

¹⁰ 15 U.S.C. 78s(b)(2).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-022)

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Membership Waive-In Process for Certain New York Stock Exchange Members

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 , 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 amend IM-1013-1, to address the applicability of the consolidated FINRA rules to member firms of the New York Stock Exchange (“NYSE”) that became members of FINRA pursuant to the membership waive-in process set forth in IM-1013-1. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

IM-1013-1. Membership Waive-In Process for Certain New York Stock Exchange Member Organizations

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

This Interpretive Material sets forth a membership waive-in process for certain New York Stock Exchange (“NYSE”) member organizations to become members of FINRA as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (“NYSE Regulation”). It applies to firms that, as of July 25, 2007, (1) are approved NYSE member organizations or (2) have submitted an application to become an NYSE member organization and are subsequently approved for NYSE membership (together “NYSE-only member organizations”), provided that such firms were not also NASD members as of July 30, 2007. Such firms are eligible to automatically become FINRA members and to automatically register all associated persons whose registrations are approved with NYSE in registration categories recognized by FINRA upon submission to FINRA’s Member Regulation Department (“the Department”) of a signed waive-in membership application (“Waive-In Application”) with the following information:

(1) through (6) No Change.

The Department shall review the Waive-In Application within three (3) business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement shall become effective on the date of such notification letter.

Firms admitted pursuant to this Interpretive Material shall be subject to [the NYSE rules incorporated by FINRA,] the FINRA[’s] By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA rules and the NYSE rules incorporated by FINRA [and the NASD Rule 8000 and Rule 9000 Series], provided that their securities business is limited to floor brokerage on the NYSE, or routing away to

other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 (“permitted floor activities”). If an NYSE-only member organization admitted pursuant to this Interpretive Material seeks to expand its business operations to include any activities other than the permitted floor activities, such firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017. Upon approval of such business expansion, the firm shall be subject to all NASD rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.

Pursuant to IM-Section 4(b)(1) and (e) to Schedule A of the FINRA [NASD] By-Laws, a firm applying to waive in for membership pursuant to this Interpretive Material shall not be assessed certain registration and application fees set forth in Sections 4(b)(1) and (e) to Schedule A of the FINRA [NASD] By-Laws.

* * * * *

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. To achieve the transaction’s goal to

eliminate duplicative member firm regulation and enable FINRA to meet its new regulatory responsibilities, the NYSE amended NYSE Rule 2(b) to require FINRA membership as a condition of being an NYSE member organization (“Mandatory FINRA Membership filing”).³

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 herein as the “Transitional Rulebook”).⁴ The Incorporated NYSE Rules apply only to Dual Members.⁵

In furtherance of the consolidation, FINRA adopted NASD IM-1013-1 to enable eligible NYSE member organizations to become FINRA members through an expedited

³ See Securities Exchange Act Release No. 56654 (Oct. 12, 2007), 72 FR 59129 (Oct. 18, 2007) (File No. SR-NYSE-2007-67); Securities Exchange Act Release No. 56953 (Dec. 12, 2007), 72 FR 71990 (Dec. 19, 2007) (extending grace period for NYSE-only member organizations to apply for and be approved as FINRA members to June 30, 2008). See also Securities Exchange Act Release No. 56751 (Nov. 6, 2007), 72 FR 64098 (Nov. 14, 2007) (File No. SR-FINRA-2007-19).

⁴ Pursuant to Rule 17d-2 under the Act, 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 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).

⁵ 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.

process.⁶ Under the process outlined in IM-1013-1, certain NYSE firms were eligible to automatically become FINRA members and to register all associated persons whose registrations were approved with NYSE in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department of a signed waive-in membership application. As provided in IM-1013-1, the NYSE firms admitted pursuant to IM-1013-1 (the "Waive-in Firms") currently are subject to the Incorporated NYSE Rules, FINRA's By-Laws and Schedules to By-Laws, including Schedule A (Assessments and Fees), and the NASD Rule 8000 (Investigations and Sanctions) and Rule 9000 (Code of Procedure) Series, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 ("permitted floor activities").⁷ If a Waive-In Firm seeks to expand its business operations beyond the permitted floor activities, the firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations). Upon approval of such business expansion, the firm would become subject to all NASD rules, in addition to the Incorporated NYSE Rules.

⁶ See Securities Exchange Act Release No. 56653 (Oct. 12, 2007); 72 FR 59127 (Oct. 18, 2007) (File No. SR-NASD-2007-056).

⁷ For purposes of IM-1013-1, activities that are ancillary to a Floor broker's core business include (i) routing orders in NYSE-traded securities to an away market for any reason relating to their ongoing Floor activity, including regulatory compliance or meeting best-execution obligations, or (ii) provided that the majority of transactions effected by the firm are effected on the NYSE, sending to other markets orders in NYSE-traded or non-NYSE-traded securities and/or futures if such orders relate to hedging positions in NYSE-traded securities, or are part of arbitrage or program trade strategies that include NYSE-traded securities.

FINRA has established a process to develop a new consolidated rulebook (“Consolidated FINRA Rulebook”), which will consist only of FINRA Rules and will apply to all FINRA members, unless such rules have a more limited application by their terms.⁸ With limited exceptions specified in the Act, the SEC must approve the FINRA Rules prior to their becoming effective in the new Consolidated FINRA Rulebook. FINRA intends to obtain those approvals through a series of rule filings with the SEC. As the SEC approves new rules for inclusion in the Consolidated FINRA Rulebook and they become effective, FINRA members will become subject to those rules. Members also will remain subject to the rules remaining in the Transitional Rulebook. (The Incorporated NYSE 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. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.

The proposed rule change would amend IM-1013-1 to address the applicability of consolidated FINRA rules to the Waive-In Firms. FINRA believes that the Waive-In Firms should be subject to all consolidated FINRA Rules, unless the rules have a more limited application by their terms. In addition, this amendment is essential because all of the existing Incorporated NYSE Rules currently applicable to the Waive-in Firms are scheduled to be eliminated from the Transitional Rulebook as the consolidated FINRA Rules are adopted and implemented (although it may be the case concepts or parts of

⁸ FINRA issued an Information Notice on March 12, 2008 that describes the rulebook consolidation process in greater detail.

Incorporated NYSE Rules will become adopted as part of the consolidated FINRA rules). Absent the proposed rule change, the elimination of the those legacy rules in the Transitional Rulebook applicable to the Waive-In Firms would result in a gap in regulation for such firms.

Accordingly, the proposed rule change would amend IM-1013-1 to specify that the Waive-In Firms will be subject to FINRA's By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA rules and the Incorporated NYSE Rules, provided that their securities business is limited to the permitted floor activities. If a Waive-In Firm seeks to expand its business operations to include any activities other than the permitted floor activities, the firm must continue to apply for and receive approval pursuant to NASD Rule 1017. Upon approval of such expansion, the firm would be subject to all NASD rules, in addition to the consolidated FINRA rules and the Incorporated NYSE Rules (as is the case with the Incorporated NYSE Rules, when the consolidated FINRA rulebook is completed all NASD rules would be eliminated; although it may be the case concepts or parts of NASD rules will become adopted as part of the consolidated FINRA rules). FINRA is proposing to continue to require the Waive-In Firms to comply with the Incorporated NYSE Rules and NASD Rule 1017 until such time as these rules are eliminated as part of the adoption of the Consolidated FINRA Rulebook.⁸

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

⁸ FINRA notes that the Waive-In Firms will continue to be subject to the content of the NASD Rule 8000 and 9000 Series, insofar as FINRA has filed a rule change to transfer these two rule series, without substantive change, to the Consolidated FINRA Rulebook. See SR-FINRA-2008-021.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(6) of the Act,⁹ in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest. The proposed rule change will ensure that members eligible for the waive-in process continue to meet appropriate regulatory standards, resulting in effective.

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.¹⁰

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

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78a.

(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-2008-022 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2008-022. 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. 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-2008-022 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris

Secretary

¹¹ 17 CFR 200.30-3(a)(12).