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

File No. SR - 2008 - 027
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)
☑	☐	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Rule

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 Relating to the Adoption of FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and FINRA Rule 2070 (Transactions Involving FINRA Employees) in the Consolidated FINRA Rulebook

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: Adam   Last Name: Arkel

Title: Assistant General Counsel

E-mail: adam.arkel@finra.org

Telephone: (202) 728-6961   Fax: (202) 728-8264

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: 07/18/2008

By: Gary Goldsholle
(Name)

Vice President and Associate General Counsel
(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.

Gary Goldsholle,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information Add Remove View	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 Remove View	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 Remove View Exhibit Sent As Paper Document ☐	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 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	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 4 - Marked Copies Add Remove View	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 View	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 Remove View	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 adopt without material change NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) as FINRA rules in the consolidated FINRA rulebook and to delete the corresponding provisions in Incorporated NYSE Rules 350, 350.10, 407(a), 407.10 and NYSE Rule Interpretations 350/01 through 350/03. The proposed rule change would renumber NASD Rule 3060 as FINRA Rule 3220 and NASD Rule 3090 as FINRA Rule 2070 in the consolidated FINRA rulebook. The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

(b) Upon Commission approval and implementation of the proposed rule change, the corresponding NASD rules and Incorporated NYSE rules, or sections thereof, will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on April 17, 2008, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change. FINRA will announce the implementation date

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

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

As part of the process of developing the new consolidated rulebook ("Consolidated FINRA Rulebook"),[2] FINRA is proposing to adopt Proposed FINRA Rules 3220 (Influencing or Rewarding Employees of Others) and 2070 (Transactions Involving FINRA Employees) as FINRA Rules in the new Consolidated FINRA Rulebook and delete the corresponding provisions in NYSE Rules 350, 350.10, 407(a), 407.10 and NYSE Rule Interpretations 350/01 through 350/03.

As noted above, 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.

A. Proposed FINRA Rule 3220

1. Background

NASD Rule 3060 (Influencing or Rewarding Employees of Others) currently states that no member or associated person shall give gifts or gratuities to an agent or

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[2] The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules (hereinafter, "NYSE Rules") apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

employee of another person in excess of $100 per year where the gift or gratuity is in relation to the business of the employer of the recipient. The Rule, which protects against improprieties that may arise when members or their associated persons give gifts or gratuities to employees of a customer, has been in effect in its current form since 1969, with changes only to the dollar amounts, rising from $25 to $50 to $100.[3] The Rule requires each member to maintain a separate record of all gifts or gratuities. The Rule also contains an express exclusion for payments made pursuant to *bona fide*, written employment contracts.

NYSE Rule 350 (Compensation or Gratuities to Employees of Others) reaches similar conduct in prohibiting, absent prior written consent of the recipient's employer, any member or member organization from giving any gratuity in excess of $100 per person per year to any principal, officer, or employee of another member or member organization, financial institution, news or financial information media, or non–member broker or dealer in securities, commodities or money instruments.[4] NYSE Rule 350

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[3] See NASD Notice to Members 93-8 (February 1993) (SEC Approval of Amendment Relating to the Payment of Gratuities or Anything of Value by Members to Others); see also Securities Exchange Act Release No. 21074 (June 20, 1984), 49 FR 26330 (June 27, 1984) (Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Payment of Gratuities or Anything of Value by Members to Others; File No. SR-NASD-84-8).

[4] In addition, NYSE Rule 350(a)(1) prohibits any member from employing or compensating any person for services rendered except with the prior consent of that person's employer. FINRA proposes to delete this provision, even though it does not pertain to gifts, because a substantively identical provision exists in NYSE Rule 346(b). FINRA intends to review NYSE Rule 346(b) as part of a later phase of the rulebook consolidation process.

has specific provisions addressing compensation to operations employees of members (*e.g.*, NYSE Floor personnel). In addition, NYSE Rule 350 requires that records of all such gratuities and compensation be retained for at least three years.

2. Proposal

FINRA proposes that NASD Rule 3060 be adopted as part of the Consolidated FINRA Rulebook without material change and renumbered as FINRA Rule 3220. One of the virtues of the existing regulatory standard is the clarity of the Rule's application – it prevents gifts in excess of a fixed amount, currently $100. Both the NASD and NYSE Rules have a $100 limitation on gifts.

FINRA believes that NASD Rule 3060 generally is well understood by members. FINRA recently issued additional guidance on NASD Rule 3060 in Notice to Members 06-69.[5] Among the issues addressed in that Notice was the fact that NASD Rule 3060 does not apply to gifts of *de minimis* value, or to promotional items of nominal value displaying a firm's logo. The Notice stated that NASD Rule 3060 does not prohibit customary Lucite tombstones, plaques or other similar solely decorative items commemorating a business transaction or event. The Notice also stated that gifts should be valued at the higher of cost or market value and tickets should be valued at the higher of cost or face value. In addition, FINRA staff has used its interpretive authority to address unintended consequences of the Rule, such as unreasonable limitations on giving a bereavement or sympathy gift.[6]

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5 See NASD Notice to Members 06-69 (December 2006) (Gifts and Gratuities).

6 See Interpretive Letter dated December 17, 2007 to Amal Aly, SIFMA from Gary L. Goldsholle, FINRA, available at: <http://www.finra.org/RulesRegulation/PublicationsGuidance/InterpretiveLetters/ConductRules/P037695>.

FINRA would eliminate the provision in NYSE Rule 350 permitting member firms to obtain prior written consent of the recipient's employer for any gift over $100. FINRA believes that the gift rule should establish a fixed amount and does not see any business need to justify giving gifts in amounts greater than the limits specified in the rule. FINRA also would eliminate the provisions in NYSE Rule 350 and NYSE Rule Interpretation 350/02 addressing compensation to operations/Floor employees of NYSE as they are not relevant for FINRA.[7] For similar reasons, provisions in NYSE Rule 350.10 pertaining to employment of or gratuities to personnel working the Floor of other exchanges would be deleted.[8] Finally, FINRA would eliminate the provisions of NYSE Rule 350 relating to record retention as NASD Rule 3060(c) addresses the same issue.

FINRA would eliminate NYSE Rule Interpretation 350/01, and provisions in NYSE Rule 350.10 pertaining to gifts among close relatives, because the concepts contained in both are adequately addressed by Proposed FINRA Rule 3220 and existing

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7 NYSE Rule Interpretation 350/02 would be deleted in its entirety. Note that NYSE Rule 350 also contains provisions that address gifts and gratuities to employees of the NYSE. These provisions are addressed in connection with FINRA's proposal to adopt FINRA Rule 2070. See Section B under this Item. FINRA's proposals with respect to FINRA Rules 3220 and 2070 would, in combination, delete NYSE Rule 350 in its entirety.

8 NYSE Rule 350.10 also contains provisions that address employment or compensation of NYSE employees by members or member organizations. These provisions are addressed in connection with FINRA's proposal to adopt FINRA Rule 2070. See Section B under this Item. Because Proposed FINRA Rules 3220 and 2070 would address the substance of NYSE Rule 350.10, FINRA proposes to delete NYSE Rule 350.10 in its entirety.

guidance. Lastly, FINRA would eliminate NYSE Rule Interpretation 350/03 because FINRA has proposed a separate rule that addresses business entertainment.[9]

B. Proposed FINRA Rule 2070

1. Background

Both NASD and NYSE rules address conflicts of interest involving FINRA and NYSE employees.

NASD Rule 3090 addresses this issue in three ways. First, NASD Rule 3090(a) requires a member, when it has actual notice that an NASD employee has a financial interest or controls trading in an account, to promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the member to NASD. Second, NASD Rule 3090(b) prohibits a member from making any loan of money or securities to an NASD employee. (This prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.) Third, NASD Rule 3090(c) prohibits any member from directly or indirectly giving, or permitting to be given, anything of more than nominal value to any NASD employee who has responsibility for a regulatory matter involving the member. This applies regardless of the $100 per individual per year limitation set forth in NASD Rule 3060(a). (The term "regulatory matter" is defined to include, without limitation, examinations, disciplinary

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9 See Securities Exchange Act Release No. 55765 (May 15, 2007), 72 FR 28743 (May 22, 2007) (Notice of Filing of Proposed Rule Change; File No. SR-NASD-2006-044); see also Amendment No. 3 to File No. SR-NASD-2006-044 (January 2, 2008).

proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the member.)

The NYSE Rules governing conflicts of interest involving NYSE employees differ from the NASD approach in two ways. First, rather than applying the duplicate statement approach to NYSE employees (which applies to NASD employees under NASD Rule 3090(a)), NYSE Rule 407(a) prohibits a member or membership organization, without the prior written consent of the NYSE, from opening a securities or commodities account or executing any transaction in which an employee of the NYSE is directly or indirectly interested.[10] NYSE Rule 401.10 states that an employee of the NYSE or any of its affiliated companies who wishes to open a securities or commodities account should apply for permission from the NYSE's Ethics Officer. Second, the NYSE Rules differ from the nominal value approach set forth in NASD Rule 3090(c) by instead setting procedures for outside compensation and placing a dollar limit on gifts. Specifically, with respect to outside compensation, NYSE Rule 350(a)(1) prohibits any member, allied member, member organization or employee thereof from employing or compensating any person for services rendered without the prior consent of the person's employer (*i.e.*, the NYSE with respect to NYSE employees).[11] With respect to gifts,

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[10] NYSE Rule 407(a) requires duplicate confirmations and account statements with respect to accounts or transactions of members, allied members and employees associated with another member or member organization.

[11] NYSE Rule 350.10 provides that requests for NYSE consent under Rule 350(a)(1) should be sent to the NYSE's Human Resources Department at least 10 days in advance of the proposed date of employment. NYSE Rule 350.10 states that approval to employ an NYSE employee outside the hours of regular employment by the NYSE will be limited to employment of a routine or clerical nature. NYSE Rule 350.10 further states that when the NYSE has granted permission for part-time employment of a NYSE employee, no approval is

NYSE Rule 350(a)(2) prohibits giving any gift or gratuity in excess of $50 per person per year to any principal, officer, or employee of the NYSE or its subsidiaries without the prior written consent of the NYSE. (This rule is written without regard to whether the NYSE employee has responsibility for regulatory matters affecting the member.)

2. Proposal

FINRA proposes that NASD Rule 3090 be transferred into the Consolidated FINRA Rulebook without material change,[12] and that the corresponding provisions in NYSE Rules 350(a)(1), 350(a)(2), 350.10, 407(a) and 407.10 be eliminated.[13] Rather than requiring the member to obtain FINRA's consent to open a securities or commodities account or execute a trade (as set forth under NYSE Rules 407(a) and 407.10), FINRA believes that it is sufficient, as set forth under NASD Rule 3090(a), to continue to require the member to obtain and implement an instruction from the FINRA employee directing the member to provide duplicate statements to FINRA. The proposed rule change would, as set forth in NASD Rule 3090(b), continue to prohibit members from making any loan of money or securities to a FINRA employee, subject to the exceptions set forth in that Rule. Lastly, the proposed rule change would, as set forth in

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required for a subsequent gratuity or bonus to such person provided it is in proportion to gratuities given to full-time employees of the employing organization.

12 The proposal includes stylistic edits to NASD Rule 3090 for purposes of clarity and readability.

13 With respect to NYSE Rule 407(a), the only change to the Rule at this stage in the rulebook consolidation would be to delete language pertaining to employees of the NYSE. See Exhibit 5. NYSE Rule 407.10 would be deleted in its entirety. With respect to NYSE Rules 350(a)(1), 350(a)(2) and 350.10, see supra notes 7 and 8.

NASD Rule 3090(c), continue to prohibit members from directly or indirectly giving, or permitting to be given, anything above nominal value to any FINRA employee who has responsibility for a "regulatory matter" involving the member. FINRA does not believe that its employees should be permitted to receive gifts of up to $50 per year when such employees have responsibility for a regulatory matter. In addition, FINRA proposes not to adopt the $50 limit in NYSE Rule 350(a)(2) to maintain consistency with the FINRA Code of Conduct, which, like NASD Rule 3060(a) (and proposed FINRA Rule 3220(a)), establishes a $100 limit. Rule 3090(c) need not be amended to address the employment and compensation issues as to NYSE employees in NYSE Rules 350(a)(1) and 350.10 because the FINRA Code of Conduct addresses these issues by virtue of its provisions on Outside Activities or Employment.

FINRA proposes to delete listing and delisting proceedings as potential "regulatory matters" under NASD Rule 3090(c) in light of FINRA's separation from NASDAQ and Amex.

(b) Statutory Basis

FINRA 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 must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act because, as part of the FINRA rulebook consolidation process, the proposed rule change will streamline and reorganize existing rules that govern influencing or rewarding

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[14] 15 U.S.C. 78o–3(b)(6).

the employees of others and transactions involving FINRA employees. Further, the proposed rule change will provide greater regulatory clarity with respect to these issues.

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.

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.[15]

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

Not applicable.

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 5. Text of proposed rule change.

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15 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-   ; File No. SR-FINRA-2008-027)

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Adoption of FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and FINRA Rule 2070 (Transactions Involving FINRA Employees) in the Consolidated FINRA Rulebook

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. <u>Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change</u>

FINRA is proposing to adopt without material change NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) as FINRA rules in the consolidated FINRA rulebook and to delete the corresponding provisions in Incorporated NYSE Rules 350, 350.10, 407(a), 407.10 and NYSE Rule Interpretations 350/01 through 350/03. The proposed rule change would renumber NASD Rule 3060 as FINRA Rule

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

2 17 CFR 240.19b-4.

3220 and NASD Rule 3090 as FINRA Rule 2070 in the consolidated FINRA rulebook. The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

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 the new consolidated rulebook ("Consolidated FINRA Rulebook"),[3] FINRA is proposing to adopt Proposed FINRA Rules 3220 (Influencing or Rewarding Employees of Others) and 2070 (Transactions Involving FINRA Employees) as FINRA Rules in the new Consolidated FINRA Rulebook and delete the corresponding provisions in NYSE Rules 350, 350.10, 407(a), 407.10 and NYSE Rule Interpretations 350/01 through 350/03.

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.

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[3] The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules (hereinafter, "NYSE Rules") apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

(A) Proposed FINRA Rule 3220

(1) Background

NASD Rule 3060 (Influencing or Rewarding Employees of Others) currently states that no member or associated person shall give gifts or gratuities to an agent or employee of another person in excess of $100 per year where the gift or gratuity is in relation to the business of the employer of the recipient. The Rule, which protects against improprieties that may arise when members or their associated persons give gifts or gratuities to employees of a customer, has been in effect in its current form since 1969, with changes only to the dollar amounts, rising from $25 to $50 to $100.[4] The Rule requires each member to maintain a separate record of all gifts or gratuities. The Rule also contains an express exclusion for payments made pursuant to *bona fide*, written employment contracts.

NYSE Rule 350 (Compensation or Gratuities to Employees of Others) reaches similar conduct in prohibiting, absent prior written consent of the recipient's employer, any member or member organization from giving any gratuity in excess of $100 per person per year to any principal, officer, or employee of another member or member organization, financial institution, news or financial information media, or non–member broker or dealer in securities, commodities or money instruments.[5] NYSE Rule 350 has

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[4] See NASD Notice to Members 93-8 (February 1993) (SEC Approval of Amendment Relating to the Payment of Gratuities or Anything of Value by Members to Others); see also Securities Exchange Act Release No. 21074 (June 20, 1984), 49 FR 26330 (June 27, 1984) (Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Payment of Gratuities or Anything of Value by Members to Others; File No. SR-NASD-84-8).

[5] In addition, NYSE Rule 350(a)(1) prohibits any member from employing or compensating any person for services rendered except with the prior consent of

specific provisions addressing compensation to operations employees of members (*e.g.*, NYSE Floor personnel). In addition, NYSE Rule 350 requires that records of all such gratuities and compensation be retained for at least three years.

(2) Proposal

FINRA proposes that NASD Rule 3060 be adopted as part of the Consolidated FINRA Rulebook without material change and renumbered as FINRA Rule 3220. One of the virtues of the existing regulatory standard is the clarity of the Rule's application – it prevents gifts in excess of a fixed amount, currently $100. Both the NASD and NYSE Rules have a $100 limitation on gifts.

FINRA believes that NASD Rule 3060 generally is well understood by members. FINRA recently issued additional guidance on NASD Rule 3060 in Notice to Members 06-69.[6] Among the issues addressed in that Notice was the fact that NASD Rule 3060 does not apply to gifts of *de minimis* value, or to promotional items of nominal value displaying a firm's logo. The Notice stated that NASD Rule 3060 does not prohibit customary Lucite tombstones, plaques or other similar solely decorative items commemorating a business transaction or event. The Notice also stated that gifts should be valued at the higher of cost or market value and tickets should be valued at the higher of cost or face value. In addition, FINRA staff has used its interpretive authority to

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that person's employer. FINRA proposes to delete this provision, even though it does not pertain to gifts, because a substantively identical provision exists in NYSE Rule 346(b). FINRA intends to review NYSE Rule 346(b) as part of a later phase of the rulebook consolidation process.

6 See NASD Notice to Members 06-69 (December 2006) (Gifts and Gratuities).

address unintended consequences of the Rule, such as unreasonable limitations on giving a bereavement or sympathy gift.[7]

FINRA would eliminate the provision in NYSE Rule 350 permitting member firms to obtain prior written consent of the recipient's employer for any gift over $100. FINRA believes that the gift rule should establish a fixed amount and does not see any business need to justify giving gifts in amounts greater than the limits specified in the rule. FINRA also would eliminate the provisions in NYSE Rule 350 and NYSE Rule Interpretation 350/02 addressing compensation to operations/Floor employees of NYSE as they are not relevant for FINRA.[8] For similar reasons, provisions in NYSE Rule 350.10 pertaining to employment of or gratuities to personnel working the Floor of other exchanges would be deleted.[9] Finally, FINRA would eliminate the provisions of NYSE Rule 350 relating to record retention as NASD Rule 3060(c) addresses the same issue.

FINRA would eliminate NYSE Rule Interpretation 350/01, and provisions in NYSE Rule 350.10 pertaining to gifts among close relatives, because the concepts

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[7] See Interpretive Letter dated December 17, 2007 to Amal Aly, SIFMA from Gary L. Goldsholle, FINRA, available at: <http://www.finra.org/RulesRegulation/PublicationsGuidance/InterpretiveLetters/ConductRules/P037695>.

[8] NYSE Rule Interpretation 350/02 would be deleted in its entirety. Note that NYSE Rule 350 also contains provisions that address gifts and gratuities to employees of the NYSE. These provisions are addressed in connection with FINRA's proposal to adopt FINRA Rule 2070. See Section (B) under Item II.A.1. FINRA's proposals with respect to FINRA Rules 3220 and 2070 would, in combination, delete NYSE Rule 350 in its entirety.

[9] NYSE Rule 350.10 also contains provisions that address employment or compensation of NYSE employees by members or member organizations. These provisions are addressed in connection with FINRA's proposal to adopt FINRA Rule 2070. See Section (B) under Item II.A.1. Because Proposed FINRA Rules 3220 and 2070 would address the substance of NYSE Rule 350.10, FINRA proposes to delete NYSE Rule 350.10 in its entirety.

contained in both are adequately addressed by Proposed FINRA Rule 3220 and existing guidance. Lastly, FINRA would eliminate NYSE Rule Interpretation 350/03 because FINRA has proposed a separate rule that addresses business entertainment.[10]

(B) Proposed FINRA Rule 2070

(1) Background

Both NASD and NYSE rules address conflicts of interest involving FINRA and NYSE employees.

NASD Rule 3090 addresses this issue in three ways. First, NASD Rule 3090(a) requires a member, when it has actual notice that an NASD employee has a financial interest or controls trading in an account, to promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the member to NASD. Second, NASD Rule 3090(b) prohibits a member from making any loan of money or securities to an NASD employee. (This prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.) Third, NASD Rule 3090(c) prohibits any member from directly or indirectly giving, or permitting to be given, anything of more than nominal value to any NASD employee who has responsibility for a regulatory matter involving the member. This applies regardless of the $100 per individual per year limitation set forth in NASD Rule 3060(a). (The term "regulatory matter" is defined to include, without limitation, examinations, disciplinary

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10 See Securities Exchange Act Release No. 55765 (May 15, 2007), 72 FR 28743 (May 22, 2007) (Notice of Filing of Proposed Rule Change; File No. SR-NASD-2006-044); see also Amendment No. 3 to File No. SR-NASD-2006-044 (January 2, 2008).

proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the member.)

The NYSE Rules governing conflicts of interest involving NYSE employees differ from the NASD approach in two ways. First, rather than applying the duplicate statement approach to NYSE employees (which applies to NASD employees under NASD Rule 3090(a)), NYSE Rule 407(a) prohibits a member or membership organization, without the prior written consent of the NYSE, from opening a securities or commodities account or executing any transaction in which an employee of the NYSE is directly or indirectly interested.[11] NYSE Rule 401.10 states that an employee of the NYSE or any of its affiliated companies who wishes to open a securities or commodities account should apply for permission from the NYSE's Ethics Officer. Second, the NYSE Rules differ from the nominal value approach set forth in NASD Rule 3090(c) by instead setting procedures for outside compensation and placing a dollar limit on gifts. Specifically, with respect to outside compensation, NYSE Rule 350(a)(1) prohibits any member, allied member, member organization or employee thereof from employing or compensating any person for services rendered without the prior consent of the person's employer (*i.e.*, the NYSE with respect to NYSE employees).[12] With respect to gifts,

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[11] NYSE Rule 407(a) requires duplicate confirmations and account statements with respect to accounts or transactions of members, allied members and employees associated with another member or member organization.

[12] NYSE Rule 350.10 provides that requests for NYSE consent under Rule 350(a)(1) should be sent to the NYSE's Human Resources Department at least 10 days in advance of the proposed date of employment. NYSE Rule 350.10 states that approval to employ an NYSE employee outside the hours of regular employment by the NYSE will be limited to employment of a routine or clerical nature. NYSE Rule 350.10 further states that when the NYSE has granted permission for part-time employment of a NYSE employee, no approval is required for a subsequent

NYSE Rule 350(a)(2) prohibits giving any gift or gratuity in excess of $50 per person per year to any principal, officer, or employee of the NYSE or its subsidiaries without the prior written consent of the NYSE. (This rule is written without regard to whether the NYSE employee has responsibility for regulatory matters affecting the member.)

(2) Proposal

FINRA proposes that NASD Rule 3090 be transferred into the Consolidated FINRA Rulebook without material change,[13] and that the corresponding provisions in NYSE Rules 350(a)(1), 350(a)(2), 350.10, 407(a) and 407.10 be eliminated.[14] Rather than requiring the member to obtain FINRA's consent to open a securities or commodities account or execute a trade (as set forth under NYSE Rules 407(a) and 407.10), FINRA believes that it is sufficient, as set forth under NASD Rule 3090(a), to continue to require the member to obtain and implement an instruction from the FINRA employee directing the member to provide duplicate statements to FINRA. The proposed rule change would, as set forth in NASD Rule 3090(b), continue to prohibit members from making any loan of money or securities to a FINRA employee, subject to the exceptions set forth in that Rule. Lastly, the proposed rule change would, as set forth in NASD Rule 3090(c), continue to prohibit members from directly or indirectly giving, or

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gratuity or bonus to such person provided it is in proportion to gratuities given to full-time employees of the employing organization.

13 The proposal includes stylistic edits to NASD Rule 3090 for purposes of clarity and readability.

14 With respect to NYSE Rule 407(a), the only change to the Rule at this stage in the rulebook consolidation would be to delete language pertaining to employees of the NYSE. See Exhibit 5. NYSE Rule 407.10 would be deleted in its entirety. With respect to NYSE Rules 350(a)(1), 350(a)(2) and 350.10, see supra notes 8 and 9.

permitting to be given, anything above nominal value to any FINRA employee who has responsibility for a "regulatory matter" involving the member. FINRA does not believe that its employees should be permitted to receive gifts of up to $50 per year when such employees have responsibility for a regulatory matter. In addition, FINRA proposes not to adopt the $50 limit in NYSE Rule 350(a)(2) to maintain consistency with the FINRA Code of Conduct, which, like NASD Rule 3060(a) (and proposed FINRA Rule 3220(a)), establishes a $100 limit. Rule 3090(c) need not be amended to address the employment and compensation issues as to NYSE employees in NYSE Rules 350(a)(1) and 350.10 because the FINRA Code of Conduct addresses these issues by virtue of its provisions on Outside Activities or Employment.

FINRA proposes to delete listing and delisting proceedings as potential "regulatory matters" under NASD Rule 3090(c) in light of FINRA's separation from NASDAQ and Amex.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act because, as part of the FINRA rulebook consolidation process, the proposed rule change will streamline and reorganize existing rules that govern influencing or rewarding

[15] 15 U.S.C. 78o–3(b)(6).

the employees of others and transactions involving FINRA employees. Further, the proposed rule change will provide greater regulatory clarity with respect to these issues.

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-2008-027 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2008-027. 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-2008-027 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon

Acting Secretary

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[16] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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Text of Proposed New FINRA Rules
(marked to show changes from NASD Rules 3060 and 3090; NASD Rules 3060 and 3090 to be deleted in their entirety from the Transitional Rulebook)

[3060.] 3220. Influencing or Rewarding Employees of Others

(a) through (b) No Change.

(c) A separate record of all payments or gratuities in any amount known to the member, the employment agreement referred to in paragraph (b) and any employment compensation paid as a result thereof shall be retained by the member for the period specified by SEA[C] Rule 17a-4.

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[3090.] 2070. Transactions Involving [Association] FINRA [and American Stock Exchange] Employees

(a) When a member has actual notice that a[n Association or American Stock Exchange] FINRA employee has a financial interest in, or controls trading in, an account, the member shall promptly obtain and implement an instruction from the employee directing [that] the member to provide duplicate account statements [be provided by the member to the Association] to FINRA.

(b) [No m]Members shall not directly or indirectly make any loan of money or securities to any [Association or American Stock Exchange] FINRA employee. [Provided, h]However, [that] this prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.

(c) Notwithstanding the annual dollar limitation set forth in [Conduct] Rule [3060(a)] 3220(a), [no] members shall not directly or indirectly give, or permit to be given, anything [of more than] above nominal value to any [Association or American Stock Exchange] FINRA employee who has responsibility for a regulatory matter [that] involv[es]ing the member. For purposes of this [subsection] paragraph, the term "regulatory matter" includes, but is not limited to, examinations, disciplinary proceedings, membership applications[, listing applications, delisting proceedings,] and dispute-resolution proceedings [that involve the member].

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Text of Incorporated NYSE Rules To Remain In the Transitional Rulebook

Incorporated NYSE Rules

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Rule 407. Transactions - Employees of Members, Member Organizations and the Exchange

(a) No member or member organization shall, without the prior written consent of the employer, open a securities or commodities account or execute any transaction in which a member, allied member or employee associated with another member or member organization [or an employee of the Exchange] is directly or indirectly interested.

In connection with accounts or transactions of members, allied members and employees associated with another member or member organization, duplicate confirmations and account statements shall be sent promptly to the employer.

(b) No Change.

• • • ***Supplementary Material:*** ------------------

.10 **<u>Reserved.</u>** [**Employees of Exchange.—**An employee of the Exchange or any of its affiliated companies, *i.e.*, any corporation of which the Exchange owns the majority of the capital stock and which does not administer a corporate employee securities account disclosure program, who wishes to open a securities or commodities account should apply for permission from the Exchange's Ethics Officer. A form of application can be obtained from the Human Resources Division.]

.11 through **.13** No Change.

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Text of Incorporated NYSE Rules and Rule Interpretations To Be Deleted In Their Entirety From the Transitional Rulebook

Incorporated NYSE Rules

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[Rule 350. Compensation or Gratuities to Employees of Others]

Entire text deleted.

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NYSE RULE INTERPRETATION

[Rule 350 COMPENSATION OR GRATUITIES TO EMPLOYEES OF OTHERS]

[/01 Application]

Entire text deleted.

[/02 Conflicts of Interest]

Entire text deleted.

[/03 Entertainment]

Entire text deleted.

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