

OMB APPROVAL

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

File No. SR - 2008 - 052

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 Relating to the Adoption of FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) 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 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 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

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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 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

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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 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 Interpretive Material 2110-7 (IM-2110-7) (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) as a FINRA rule in the consolidated FINRA rulebook. The proposed rule change would renumber NASD IM-2110-7 as FINRA Rule 2140 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 Interpretive Material will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 16, 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 of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

¹ 15 U.S.C. 78s(b)(1).

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 without material change NASD Interpretive Material 2110-7 (IM-2110-7) (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) as a FINRA rule in the Consolidated FINRA Rulebook. The proposed rule change would renumber NASD IM-2110-7 as FINRA Rule 2140 in the Consolidated FINRA Rulebook.

A. Background

NASD IM-2110-7 provides that it shall be inconsistent with just and equitable principles of trade for a member or person associated with a member³ to interfere with a customer’s request to transfer his or her account in connection with the change in employment of the customer’s registered representative, provided that the account is not subject to any lien for monies owed by the customer or other *bona fide* claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would

² The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) 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”). For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

³ The term “person associated with a member” includes, among others, registered representatives. See FINRA By-Laws, Article I, Paragraph (rr).

bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account.⁴

FINRA adopted IM-2110-7 to address the practice of delaying customer account transfers.⁵ In adopting IM-2110-7, FINRA noted that, when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may decide to continue their relationship with the registered representative by transferring their accounts to the registered representative's new firm. FINRA expressed concern that the registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new firm, or soliciting clients to transfer their accounts to the new firm, sometimes would seek a court order to prevent the transfer of accounts. FINRA noted that, in a prior Notice to Members, it had already alerted members that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable

⁴ IM-2110-7 further states that nothing in the Interpretation shall affect the operation of NASD Rule 11870 (Customer Account Transfer Contracts). Generally, Rule 11870 addresses the transfer of securities account assets from one member to another member in connection with a customer request. (FINRA intends to review NASD Rule 11870 and related interpretive materials as part of a later phase in the rulebook consolidation process. Note that the Commission has approved FINRA's proposed rule change to rescind, as duplicative of Rule 11870, Incorporated NYSE Rule 412 and its Interpretation. See Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving Proposed Rule Change Relating to Incorporated NYSE Rules; File No. SR-FINRA-2008-036).

⁵ See NASD Notice to Members 02-07 (January 2002) (Interfering With Customer Account Transfers); see also Securities Exchange Act Release No. 45239 (January 4, 2002), 67 FR 1790 (January 14, 2002) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-NASD-2001-95).

principles of trade.⁶ FINRA stated that obtaining court orders to prevent customers from following a registered representative to a different firm is similar to the unfair practice of delaying transfers that the earlier Notice had warned about.

In adopting IM-2110-7, FINRA further stated that the Interpretive Material does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Members are not prevented from pursuing other remedies they may have arising from employment disputes with former registered representatives. Rather, IM-2110-7 is limited to restricting a member from interfering with a customer's right to transfer his or her account, once the customer has asked the firm to move the account.

B. Proposal

FINRA believes that NASD IM-2110-7 is consistent with the goal of investor protection and serves the public interest. FINRA proposes to transfer NASD IM-2110-7 with only minor changes into the Consolidated FINRA Rulebook. Specifically, IM-2110-7 would be re-codified, with conforming revisions, as a stand-alone FINRA rule rather than as interpretive material to NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade).⁷

⁶ See NASD Notice to Members 79-7 (February 1979) (Fair Treatment of Customer Accounts); see also Securities Exchange Act Release No. 15194 (September 28, 1978) (Notice to Broker-Dealers Concerning Fair Treatment of Customer Accounts).

⁷ See Exhibit 5. Note that FINRA has transferred NASD Rule 2110 to the Consolidated FINRA Rulebook without change as FINRA Rule 2010. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-028).

As noted above, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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 would further the purposes of the Act because, as part of the Consolidated FINRA Rulebook, the proposed rule change will protect investors and the public interest by addressing interference with the transfer of customer accounts in the context of employment disputes.

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

⁸ 15 U.S.C. 78o-3(b)(6).

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.⁹

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 the proposed rule change.

⁹ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-052)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Adoption of FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) 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. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt without material change NASD Interpretive Material 2110-7 (IM-2110-7) (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) as a FINRA rule in the consolidated FINRA rulebook. The proposed rule change would renumber NASD IM-2110-7 as FINRA Rule 2140 in the consolidated FINRA rulebook.

The text of the proposed rule change is attached as Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 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 the new consolidated rulebook (“Consolidated FINRA Rulebook”),³ FINRA is proposing to adopt without material change NASD Interpretive Material 2110-7 (IM-2110-7) (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) as a FINRA rule in the Consolidated FINRA Rulebook. The proposed rule change would renumber NASD IM-2110-7 as FINRA Rule 2140 in the Consolidated FINRA Rulebook.

³ The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) 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”). For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

(A) Background

NASD IM-2110-7 provides that it shall be inconsistent with just and equitable principles of trade for a member or person associated with a member⁴ to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other *bona fide* claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account.⁵

FINRA adopted IM-2110-7 to address the practice of delaying customer account transfers.⁶ In adopting IM-2110-7, FINRA noted that, when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may decide to continue their relationship with the registered representative

⁴ The term "person associated with a member" includes, among others, registered representatives. See FINRA By-Laws, Article I, Paragraph (rr).

⁵ IM-2110-7 further states that nothing in the Interpretation shall affect the operation of NASD Rule 11870 (Customer Account Transfer Contracts). Generally, Rule 11870 addresses the transfer of securities account assets from one member to another member in connection with a customer request. (FINRA intends to review NASD Rule 11870 and related interpretive materials as part of a later phase in the rulebook consolidation process. Note that the Commission has approved FINRA's proposed rule change to rescind, as duplicative of Rule 11870, Incorporated NYSE Rule 412 and its Interpretation. See Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving Proposed Rule Change Relating to Incorporated NYSE Rules; File No. SR-FINRA-2008-036).

⁶ See NASD Notice to Members 02-07 (January 2002) (Interfering With Customer Account Transfers); see also Securities Exchange Act Release No. 45239 (January 4, 2002), 67 FR 1790 (January 14, 2002) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-NASD-2001-95).

by transferring their accounts to the registered representative's new firm. FINRA expressed concern that the registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new firm, or soliciting clients to transfer their accounts to the new firm, sometimes would seek a court order to prevent the transfer of accounts. FINRA noted that, in a prior Notice to Members, it had already alerted members that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade.⁷ FINRA stated that obtaining court orders to prevent customers from following a registered representative to a different firm is similar to the unfair practice of delaying transfers that the earlier Notice had warned about.

In adopting IM-2110-7, FINRA further stated that the Interpretive Material does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Members are not prevented from pursuing other remedies they may have arising from employment disputes with former registered representatives. Rather, IM-2110-7 is limited to restricting a member from interfering with a customer's right to transfer his or her account, once the customer has asked the firm to move the account.

(B) Proposal

FINRA believes that NASD IM-2110-7 is consistent with the goal of investor protection and serves the public interest. FINRA proposes to transfer NASD IM-2110-7

⁷ See NASD Notice to Members 79-7 (February 1979) (Fair Treatment of Customer Accounts); see also Securities Exchange Act Release No. 15194 (September 28, 1978) (Notice to Broker-Dealers Concerning Fair Treatment of Customer Accounts).

with only minor changes into the Consolidated FINRA Rulebook. Specifically, IM-2110-7 would be re-codified, with conforming revisions, as a stand-alone FINRA rule rather than as interpretive material to NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade).⁸

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ 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 would further the purposes of the Act because, as part of the Consolidated FINRA Rulebook, the proposed rule change will protect investors and the public interest by addressing interference with the transfer of customer accounts in the context of employment disputes.

⁸ See Exhibit 5. Note that FINRA has transferred NASD Rule 2110 to the Consolidated FINRA Rulebook without change as FINRA Rule 2010. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-028).

⁹ 15 U.S.C. 78o-3(b)(6).

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-2008-052 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-2008-052. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2008-052 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.¹⁰

Florence E. Harmon

Acting Secretary

¹⁰ 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.

* * * * *

**Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD IM-2110-7; NASD IM-2110-7 to be Deleted
in its Entirety from the Transitional Rulebook)**

* * * * *

2000. DUTIES AND CONFLICTS

* * * * *

2100. TRANSACTIONS WITH CUSTOMERS [GENERAL STANDARDS]

* * * * *

**[IM-2110-7]2140. Interfering With the Transfer of Customer Accounts in the
Context of Employment Disputes**

[It shall be inconsistent with just and equitable principles of trade for a] No
member or person associated with a member shall [to] interfere with a customer's request
to transfer his or her account in connection with the change in employment of the
customer's registered representative[, provided that] where the account is not subject to
any lien for monies owed by the customer or other bona fide claim. Prohibited
interference includes, but is not limited to, seeking a judicial order or decree that would
bar or restrict the submission, delivery or acceptance of a written request from a customer
to transfer his or her account. Nothing in this [interpretation] Rule shall affect the
operation of NASD Rule 11870.

* * * * *