

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56285; File No. SR-NASD-2007-049]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NASD Rule 3013 and Accompanying Interpretive Material 3013

August 17, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 16, 2007, the National Association of Securities Dealers, Inc. (“NASD”), n/k/a Financial Industry Regulatory Authority, Inc. (“FINRA”), 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 substantially prepared by FINRA.<sup>3</sup> FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 NASD Rule 3013 and accompanying Interpretive Material 3013 to permit members to designate co-chief executive officers and multiple chief compliance officers to discharge the requirements of

those rules. The text of the proposed rule change is available on FINRA’s Web site (<http://www.finra.org>), at FINRA, and at the Commission’s Public Reference Room.

#### 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

NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) is intended to bolster attention to members’ compliance programs by requiring substantial and purposeful interaction between business and compliance officers throughout the member firm. To that end, Rule 3013(a) requires each member to designate and specifically identify on Schedule A of the Uniform Application for Broker-Dealer Registration (“Form BD”) a principal to serve as chief compliance officer (“CCO”). Rule 3013(b) requires that the chief executive officer (“CEO”) certify annually that the member has in place processes to establish, maintain, review, test and modify written policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations.

The certification language and additional guidance are set forth in Interpretive Material (“IM”) 3013. The certification includes not only a statement that the member has in place certain compliance processes, but also that the CEO has conducted one or more meetings with the CCO in the preceding 12 months to discuss those processes. The interpretive material explains that the mandated meetings between the CEO and CCO must include a discussion of the member’s compliance efforts to date and identify and address significant compliance problems and plans for emerging business areas. The IM further sets forth the expertise that is expected of a CCO, including the

process of gaining an understanding of a member’s products, services and line functions that need to be the subject of compliance policies and written supervisory procedures.

FINRA recognizes that such expertise may reside in more than one individual in firms with distinct business segments. In those circumstances, FINRA believes the purposes of the rule can be achieved with equal effect by dividing the responsibility of advising the member on its compliance scheme among those compliance experts within each distinct business unit. Accordingly, the proposed rule change would permit a member to designate multiple chief compliance officers on Schedule A of Form BD, provided that (1) each designated CCO is a principal of the firm; (2) the member precisely defines and documents the areas of primary compliance responsibility assigned to each designated CCO and makes specific provisions for which of the designated CCOs has primary compliance responsibility in areas that can reasonably be expected to overlap; (3) each designated CCO satisfies all of the requirements of Rule 3013 and IM-3013 with respect to his or her defined area of primary compliance responsibility as if that individual was the member’s only CCO; and (4) collectively, the designated CCOs have the responsibilities and expertise that enable them to consult with the CEO on the totality of the subject matters required to be addressed in the certification by the CEO under Rule 3013.

Thus, for example, IM-3013 explains that member must conduct one or more meetings annually between the CEO and CCO to (1) discuss and review the matters that are the subject of the certification; (2) discuss and review the member’s compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plans for emerging business areas. A member that chooses to have multiple CCOs under the proposed rule change would be required to conduct one or more meetings annually between the CEO and each designated CCO, individually or collectively. And at each such meeting, the CEO would be required to discuss with each CCO the required topics, but only as it relates to the particular CCO’s defined area of primary compliance responsibility. Similarly, the IM currently requires review by the CCO of the report evidencing a member’s processes and consultation by the CEO with the CCO prior to execution of the certification. The proposed rule change

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

would require review by and consultation with each CCO.

The proposed rule change also would permit the designation of a single co-CEO for the purposes of compliance with Rule 3013 and IM-3013 only.<sup>5</sup> However, in contrast to the proposal to allow co-CCOs, co-CEOs could not divide up the requirements of the Rule and interpretive material; rather, each of the two CEOs would be required to individually discharge all of the obligations set forth in Rule 3013 and IM-3013, each would be held responsible for the representations in the certification as if they were the member's only CEO, and the signature of each co-CEO would be expected to appear on the same single annual certification.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, July 16, 2007.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> 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 is consistent with the provisions of the Act noted above in that it will enhance focus on members' compliance and supervision systems, thereby decreasing the likelihood of fraud and manipulative acts and increasing investor protection.

### 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.<sup>7</sup>

### 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.

<sup>5</sup> Designation of a co-CEO pursuant to this proposed rule change would have no effect on any other regulatory obligation imposed on a member or its CEO.

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

<sup>7</sup> 15 U.S.C. 78a.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>9</sup> However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and in the public interest because it will: (1) Improve the compliance certification and supervisory processes of members by assigning responsibility in multiple CCOs based on expertise; and (2) still make the designated CCO responsible for compliance in his or her area of expertise as if the individual was the member's only CCO. For this reason, the Commission designates that the proposed rule change become operative immediately.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five days prior to the date of filing of the proposed rule change, or shorter time as designated by the Commission. FINRA has satisfied the five-day pre-filing notice requirement.

<sup>10</sup> *Id.*

<sup>11</sup> For the purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2007-049 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-NASD-2007-049. 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-NASD-2007-049 and should be submitted on or before September 14, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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

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<sup>12</sup> 17 CFR 200.30-3(a)(12).