

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58134; File No. SR-FINRA-2008-025]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Adoption of NASD Rule 2790 as FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) in the Consolidated FINRA Rulebook

July 10, 2008.

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 June 12, 2008, 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 substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to adopt NASD Rule 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) (“Rule”) as FINRA Rule 5130 in the consolidated FINRA rulebook, with only minor changes.

The text of the proposed rule change is available at FINRA, on FINRA’s Web site at <http://www.finra.org>, and in 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

As part of the process of developing the new consolidated rulebook (the “Consolidated FINRA Rulebook”),<sup>3</sup> FINRA is proposing to adopt NASD Rule 2790 as FINRA Rule 5130 in the Consolidated FINRA Rulebook, with only minor changes as described below.

NASD Rule 2790 protects the integrity of the initial public offering (“IPO”) process by ensuring that: (1) Firms make *bona fide* public offerings of securities at the offering price; (2) firms do not withhold securities in a public offering for their own benefit or use such securities to reward persons who are in a position to direct future business to firms; and (3) industry insiders, including firms and their associated persons, do not take advantage of their insider position to purchase new issues for their own benefit at the expense of public customers. NASD Rule 2790 plays an important part in maintaining investor confidence in the capital raising and IPO process.

NASD Rule 2790 was adopted, effective March 23, 2004, replacing NASD IM-2110-1 (the Free-Riding and Withholding Interpretation) in its entirety.<sup>4</sup> The Rule was subject to extensive input from the industry and other interested persons during a four-year rulemaking process, and FINRA believes that there is broad support for it. NASD Rule 2790 provides necessary predictability and certainty in support of capital formation. Based on FINRA’s experience, NASD Rule 2790 is achieving its purpose and is significantly easier than NASD IM-2110-1 for member firms and the investing public to understand and follow. Among other things, FINRA has seen a significant reduction in the number of interpretive and exemptive issues that have arisen with respect to

<sup>3</sup> 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 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 regarding the rulebook consolidation process, see FINRA Information Notice March 12, 2008 (Rulebook Consolidation Process).

<sup>4</sup> See Securities Exchange Act Release No. 48701 (October 24, 2003), 68 FR 62126 (October 31, 2003) (Order Approving File No. SR-NASD-99-60); see also NASD Notice to Members 03-79 (December 2003) (SEC Approves New Rule 2790 (Restrictions on the Purchase and Sale of IPOs of Equity Securities); Replaces Free-Riding and Withholding Interpretation).

the IPO allocation process since the Rule became effective. There is no Incorporated NYSE Rule equivalent to NASD Rule 2790.

For the reasons discussed above, FINRA is proposing to transfer NASD Rule 2790 to the Consolidated FINRA Rulebook in substantially the same form. As part of this transfer, FINRA is proposing minor changes to the Rule to reflect the registration of The NASDAQ Stock Market LLC (“NASDAQ”) as a national securities exchange. The Rule currently refers to the NASDAQ Global Market because at the time the Rule was adopted, references to the listing standards of a national securities exchange did not include NASDAQ’s Global Market. Since NASDAQ completed its registration as a national securities exchange, the references to the NASDAQ Global Market in the Rule are no longer necessary. In addition, FINRA is proposing certain minor, technical changes to the Rule.

Within 60 days following Commission approval of the proposed rule change, FINRA will publish a *Regulatory Notice* setting forth the implementation date of the proposed rule change.

##### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</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. The Rule being adopted as part of the Consolidated FINRA Rulebook previously has been found to meet the statutory requirements, and FINRA believes the Rule has since proven effective in achieving the statutory mandates.

#### 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.

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

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

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

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2008-025 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2008-025. 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-2008-025 and should be submitted on or before August 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58128; File No. SR-FICC-2007-04]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Applicant and Member Disqualification Criteria

July 9, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 30, 2007, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change and on February 7, 2008, and March 19, 2008, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by FICC. 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

The proposed rule change would amend FICC's Government Securities Division's ("GSD") and Mortgage Backed Securities Division's ("MBSD") (collectively, "Divisions") rules concerning applicant and member disqualification criteria.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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

In its filing with the Commission, FICC 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. FICC 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

The purpose of this filing is for FICC to amend GSD's and MBSD's rules concerning applicant and member disqualification criteria in order to make the Divisions' rules consistent with the rules of FICC's affiliated clearing agencies, the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC"). The proposed rule changes cover the following areas:

##### 1. Management Consideration of Disqualification Criteria<sup>2</sup>

GSD's membership qualification rules currently require FICC's Board of Directors to determine whether the presence of certain negative factors affecting a membership application should constitute the basis for denying membership to such applicant. Information that might disqualify an applicant (referred to in GSD's rules as "disqualification criteria") include the applicant being subject to a statutory disqualification<sup>3</sup> or conviction of various crimes such as bribery. The disqualification criteria in GSD's rules similarly apply as standards for continued membership.

FICC proposes to change GSD's disqualification criteria to allow FICC's management, instead of FICC's Board, to determine whether the presence of a potential disqualifier should prevent an entity from obtaining or continuing membership in GSD. Such change would conform to the rules of MBSD, DTC, and NSCC, which allow such determinations to be made by management.

##### 2. Associated and Affiliated Persons

GSD's and MBSD's respective rules also apply certain applicant and

<sup>2</sup> GSD Rule 2A, Section 3(d).

<sup>3</sup> See 15 U.S.C. 78c(a)(39) (definition of "statutory disqualification").