

The Exchange will provide its Routing Services pursuant to the proposed rule and three separate agreements, to the extent that they are applicable to a specific routing decision and deemed necessary by the Exchange and/or a third-party broker-dealer providing connectivity to other markets: (a) An agreement between the Exchange and each Participant on whose behalf orders will be routed ("Participant-Exchange Agreement"); (b) an agreement between each Participant and a specified third-party broker-dealer that will use its routing connectivity to other markets and, if necessary, serve as a "give-up" in those markets ("Give-Up Agreement"); and (c) an agreement between the Exchange and the specified third-party broker-dealer ("Routing Connectivity Agreement") pursuant to which the third-party broker-dealer agrees to provide routing connectivity to other markets and serve as a "give-up" for the Exchange's Participants in other markets. The Routing Connectivity Agreement will include terms and conditions that enable the Exchange to comply with this rule.

The Exchange will provide such Routing Services in compliance with its rules and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements of Sections 6(b)(4)<sup>11</sup> and (5)<sup>12</sup> of the Act that the rules of a national securities exchange provide for the equitable allocation of dues, fees and other charges among its members and issues and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>13</sup> and furthers the objectives of Section 6(b)(5) in particular,<sup>14</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and

by the other market. The Router ABC would send an execution report back to the Exchange (for routing to the original order-sending participant). Under this proposal, if the participant and Router ABC had requested, the Exchange would take the execution report and create a clearing-only record, flipping the execution from Router ABC's account to the account of the order-sending participant (ABC selling to the order-sending participant).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

the public interest. In this case, providing Participants the ability to have their undisplayed orders rejected from the Exchange's Matching System, to be cancelled or routed elsewhere for execution, protects investors and removes an impediment to a free and open market in that it improves the certainty of order execution.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose 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

No written comments were either solicited or 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2009-02 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-CHX-2009-02. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-CHX-2009-02 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-14146 Filed 6-16-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60085; File No. SR-FINRA-2009-030]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 6440 To Require Members To Create a Contemporaneous Record of Certain Customer and Order Information

June 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("SEA" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 22, 2009 Financial Industry Regulatory

<sup>15</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.

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

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

FINRA is proposing to amend Rules 6440 and 6540 to, among other things, require members to create a contemporaneous record of certain customer and order information demonstrating eligibility for the unsolicited customer order exception of SEA Rule 15c2-11 when the member is relying on such exception.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of 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**

SEA Rule 15c2-11 sets forth the information review and maintenance requirements for broker-dealers that publish quotations<sup>3</sup> in a quotation medium<sup>4</sup> for certain over-the-counter

<sup>3</sup> SEA Rule 15c2-11 defines "quotation" as any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that advertises its general interest in buying or selling a particular security.

<sup>4</sup> "Quotation medium" means any "inter-dealer quotation system" or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell. "Inter-dealer quotation system" means any system of general circulation to brokers or dealers that

equity securities (e.g., OTC Bulletin Board and Pink Sheets securities). Specifically, SEA Rule 15c2-11 prohibits a broker-dealer from publishing (or submitting for publication) a quotation for a covered OTC equity security unless it has obtained and reviewed current information about the issuer whose security is the subject of the quotation that the broker-dealer believes is accurate and obtained from a reliable source. There are several exceptions to SEA Rule 15c2-11, including paragraph (f)(2) of the Rule, which excepts quotations that represent a customer's unsolicited order or indication of interest (unsolicited customer order exception).

Rule 6440 sets forth the standards applicable to member firms for demonstrating compliance with SEA Rule 15c2-11, unless an exception applies. FINRA has found that member firms maintain varying levels of documentation for demonstrating eligibility for the unsolicited customer order exception and, in some cases, are unable to produce any proof that a quote in fact represented a customer's unsolicited order or indication of interest ("IOI"). While a member relying on this or any exception should be able to proffer evidence of its eligibility for and compliance with the exception, FINRA believes that providing specific recordkeeping requirements for demonstrating eligibility for the SEA Rule 15c2-11(f)(2) exception is appropriate and will promote more uniform recordkeeping and compliance with this exception.

Specifically, contemporaneous with the receipt of any unsolicited customer order or IOI, members would be required to record the following details: the identity of the associated person who receives the order or IOI directly from the customer, if applicable;<sup>5</sup> the identity of the customer; the date and time the order or IOI was received; and the terms of the order or IOI that is the subject of the quotation (e.g., security name and symbol, size, side of the market, the duration (if specified) and,

regularly disseminates the quotations of identified brokers or dealers.

<sup>5</sup> In cases where a member is displaying a quote representing an unsolicited customer order or IOI that was received electronically, it is understood that there may not be a "person" associated with the receipt or submission of such unsolicited customer order or IOI. Thus, with respect to the requirement that members record (1) the identity of the associated person who received the unsolicited customer order or IOI; or (2) the identity of the person from whom information regarding the unsolicited customer order or IOI was received where the order or IOI is received from another broker-dealer, members are only required to record such information if applicable.

if priced, the price). To the extent a member is displaying a quote representing an unsolicited customer order or IOI that was received from another broker-dealer, the member is still required to create a contemporaneous record of the identity of the person from whom information regarding the unsolicited customer order or IOI was received, if applicable; the date and time the unsolicited customer order or IOI was received by the member displaying the quotation; and the terms of the order that is the subject of the quotation.<sup>6</sup> The member displaying the quotation may rely on the information provided by the routing firm if the member has a reasonable basis for believing that the information is valid.

In addition, FINRA is amending Rule 6540 (Requirements Applicable to Market Makers) to delete footnote #1. Footnote #1 sets forth a summary of exemptive relief granted by the SEC from the requirements of SEA Rule 15c2-11 (subject to certain conditions). However, given that the SEC has since granted additional exemptive requests from the requirements of SEA Rule 15c2-11 that are not included in footnote #1 (and may continue to grant further requests in the future), FINRA is proposing to delete footnote #1 in its entirety and specify in Rule 6540 that members must demonstrate compliance with (or qualify for an exception or exemption from) SEC Rule 15c2-11.<sup>7</sup>

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no

<sup>6</sup> It is critical that the member receiving an order be advised of and understand the terms of the order that are relevant to the exception so that the receiving member may reasonably and accurately rely on the unsolicited customer order exception. For example, if the customer order is a "day" order, the receiving member must be advised of that fact so that it can withdraw the quote upon the expiration of the order. Similarly, to the extent that the terms of the order change or other significant information is received by the firm routing the order (e.g., a "good-till-cancelled" order is cancelled or there is a change in the terms of the order), the firm routing such order must promptly update the member displaying the quote as to the change in the terms of the order. To the extent the firm routing the order is not a member, the member should make periodic inquiry as to whether the terms of the order have changed. Members may not rely on the unsolicited customer order exception where a displayed quote no longer accurately represents current unsolicited customer interest.

<sup>7</sup> SEA Rule 15c2-11(h) sets forth the SEC's exemptive authority with respect to the requirements of SEA Rule 15c2-11 and provides that SEA Rule 15c2-11 shall not prohibit any publication or submission of any quotation if the SEC, upon written request or upon its own motion, exempts such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of the rule.

later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing 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,<sup>8</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 will promote more uniform recordkeeping and compliance with SEA Rule 15c2-11's unsolicited customer order exception.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-030 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-FINRA-2009-030. 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-2009-030 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60086; File No. SR-FINRA-2009-023]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 2320 in the Consolidated FINRA Rulebook

June 10, 2009.

## I. Introduction

On March 31, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")), filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt NASD Rule 2820 as FINRA Rule 2320 in the consolidated FINRA rulebook ("Consolidated FINRA Rulebook")<sup>3</sup> with minor changes. The proposal was published in the **Federal Register** on April 21, 2009.<sup>4</sup> The Commission received one comment letter on the proposal.<sup>5</sup> On June 1, 2009, FINRA responded to the comment letter.<sup>6</sup> This order approves the proposed rule change.

## II. Description of the Proposal

NASD Rule 2820 prohibits members from participating in the offer or sale of variable life insurance and variable annuity contracts unless certain conditions are met (collectively, "variable contract"). Specifically, members: (i) May not participate in the offering or sale of a variable contract on any basis other than at a value to be

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

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

<sup>3</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) 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"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>4</sup> See Securities Exchange Act Release No. 59762 (April 14, 2009), 74 FR 18269 ("Notice").

<sup>5</sup> See letter from Clifford E. Kirsch and Eric A. Arnold for the Committee of Annuity Insurers, Sutherland Asbill & Brennan LLP, to Elizabeth M. Murphy, Secretary, Commission, dated May 12, 2009 ("CAI Comment Letter").

<sup>6</sup> See letter from Stan Macel, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated June 1, 2009.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 17 CFR 200.30-3(a)(12).