

connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon.**

*Deputy Secretary.*

[FR Doc. E9-29523 Filed 12-10-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61122; File No. SR-FINRA-2009-083]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt FINRA Rule 2330 (Members' Responsibilities Regarding Deferred Variable Annuities) in the Consolidated FINRA Rulebook

December 7, 2009.

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 November 20, 2009 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. 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>3</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 adopt NASD Rule 2821 into the Consolidated FINRA Rulebook,<sup>4</sup> as FINRA Rule 2330, without any substantive changes. 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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>5</sup> FINRA is proposing to transfer NASD Rule 2821 into the Consolidated FINRA Rulebook as FINRA Rule 2330. NASD Rule 2821 establishes sales practice standards regarding recommended purchases and exchanges of deferred variable annuities. The rule has six main sections. First, the rule addresses general considerations, such as the rule's applicability. Second, the rule has requirements governing broker recommendations, including suitability and disclosure obligations. Third, the rule includes various principal review and approval obligations. Fourth, the rule requires members to establish and maintain supervisory procedures reasonably designed to achieve compliance with the standards set forth in the rule. Fifth, the rule has a training component. Sixth, the rule has a supplementary material section that addresses a variety of issues ranging from the handling of customer funds and checks to information gathering and sharing.

FINRA seeks to transfer this important sales-practice rule, which the Commission only recently approved,<sup>6</sup> into the Consolidated FINRA Rulebook as FINRA Rule 2330 without any substantive changes. Moving the rule into the Consolidated FINRA Rulebook ensures that the rule's requirements will continue to protect investors and does not impose any significant burden on competition. FINRA notes that FINRA Rule 2330 will apply to broker-dealers

<sup>5</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 *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>6</sup> See Securities Exchange Act Release No. 59772 (April 15, 2009), 74 FR 18419 (April 22, 2009) (approval order); *Regulatory Notice 09-32* (June 2009). See also Securities Exchange Act Release No. 56375 (September 7, 2007), 72 FR 52403 (September 13, 2007) (approval order).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See *infra* note 5.

in the same manner and to the same extent as NASD Rule 2821.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for FINRA Rule 2330 will be February 8, 2010.<sup>7</sup>

## 2. Statutory Basis

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's 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. Transferring the rule to the Consolidated FINRA Rulebook is consistent with FINRA's obligations under the Act because the rule enhances members' compliance and supervisory systems and provides more comprehensive and targeted protection to investors in deferred variable annuities.

### 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

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<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</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 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-2009-083 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-2009-083. 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-2009-083 and

should be submitted on or before January 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-29526 Filed 12-10-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61116; File No. SR-FINRA-2009-080]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 4570 (Custodian of Books and Records) in the Consolidated FINRA Rulebook

December 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "SEA")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 17, 2009, 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 NASD Rule 3121 (Custodian of the Record) as FINRA Rule 4570 (Custodian of Books and Records) in the consolidated FINRA rulebook with minor changes.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets:

#### 4500. BOOKS, RECORDS AND REPORTS

\* \* \* \* \*

[3121]4570. Custodian of [the] *Books and Records*

A member who files a [Securities and Exchange Commission] Form BDW shall designate on the Form BDW, as the custodian of the *member's books and records*, a person associated with the

<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>7</sup> See Securities Exchange Act Release No. 59772 (April 15, 2009), 74 FR 18419 (April 22, 2009) (approval order); *Regulatory Notice 09-32* (June 2009) (announcing SEC approval of amendments to NASD Rule 2821 governing purchases and exchanges of deferred variable annuities and an effective date for those amendments of February 8, 2010).

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).