

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

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because, as provided in (f)(2), it changes “a due, fee or other charge applicable only to a member” (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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-NSX-2010-13 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 20549-9303.

All submissions should refer to File No. SR-NSX-2010-13. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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 website viewing and printing in the Commission’s Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings will also 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-NSX-2010-13 and should be submitted on or before November 3, 2010.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-25622 Filed 10-12-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63044; File No. SR-FINRA-2010-042]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to FINRA Rule 4160 (Verification of Assets)

October 5, 2010.

#### I. Introduction

On August 4, 2010, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “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 that provides that a member, when notified by FINRA, may not continue to custody or retain record ownership of assets, at a non-member financial institution, which, upon FINRA staff’s request, fails promptly to provide FINRA with written verification of assets maintained by the member at such financial institutions. The proposed rule change was published for comment in the **Federal Register** on August 11, 2010.<sup>3</sup> The Commission received one comment on the proposed

rule change.<sup>4</sup> On October 1, 2010, FINRA responded to the comments and filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

### II. Description of Proposed Rule Change, as Modified by Amendment No. 1

FINRA has proposed to adopt FINRA Rule 4160 (Verification of Assets). The proposed rule provides that a member, when notified by FINRA, may not continue to custody or retain record ownership of assets, at a non-member financial institution, which, upon FINRA staff’s request, fails promptly to provide FINRA with written verification of assets maintained by the member at such financial institution. The proposed rule change also would add a supplementary material section to the new rule.

FINRA proposes new paragraph (b) in its Amendment No. 1. Paragraph (b)(1) expressly excludes from the rule proprietary assets of members that are treated as non-allowable assets pursuant to Rule 15c3-1 under the Act. Paragraph (b)(2) provides that the rule would not apply in instances where FINRA determines that there is no other available independent custody or record ownership of the assets. Amendment No. 1 would also designate the original rule text as paragraph (a). Finally, the Supplementary Material remains unchanged by Amendment No. 1.

The text of the proposed rule change, as modified by Amendment No. 1, is below. Proposed new language is underlined.

\* \* \* \* \*

#### 4000. FINANCIAL AND OPERATIONAL RULES

##### 4100. FINANCIAL CONDITION

\* \* \* \* \*

##### 4160. Verification of Assets

(a) A member, when notified by FINRA, may not continue to custody or retain record ownership of assets, whether such assets are proprietary or

<sup>4</sup> See Letter from Howard Spindel, Senior Managing Director, and Cassandra E. Joseph, Managing Director, Integrated Management Solutions USA LLC, dated August 30, 2010 (“IMS letter”).

<sup>5</sup> See Amendment No. 1 dated October 1, 2010 (“Amendment No. 1”). The text of Amendment No. 1 is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA, and on the Commission’s Web site, <http://www.sec.gov/rules/sro.shtml>.

<sup>8</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> See Securities Exchange Act Release No. 62655 (August 5, 2010), 75 FR 48731 (August 11, 2010).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4.

customer assets, at a financial institution that is not a member of FINRA, which, upon FINRA staff's request, fails promptly to provide FINRA with written verification of assets maintained by the member at such financial institution.

(b) *The Rule shall not apply:*

(1) *to proprietary assets of members that are treated as non-allowable assets under SEA Rule 15c3-1; or*

(2) *in instances where FINRA determines that there is no independent custody or record ownership of the assets.*

• • • Supplementary Material:

.01 Asset Transfers. Any member required to transfer its proprietary and/or customer assets pursuant to this Rule shall effect such transfer within a reasonable period of time.

.02 Member Obligations Under SEA Rule 15c3-3. Nothing in this Rule shall be construed as altering in any manner a member's obligations under SEA Rule 15c3-3.

\* \* \* \* \*

### III. Summary of Comment Letters and FINRA's Response

The Commission received one comment to the proposed rule change.<sup>6</sup> The commenter opposed the proposal and asserted that the harm outweighed any benefit of the proposed rule. Specifically, the commenter indicated that certain assets are hard to verify and that the proposed rule failed to differentiate among different types of assets.<sup>7</sup> The commenter suggested, among other things, that FINRA not apply the rule to proprietary assets that are not allowable for net capital purposes. The commenter further raised concerns that the proposed rule would create an unwarranted burden on members, because it fails to address instances where a particular asset cannot be relocated from its country of origin or readily moved to another financial institution.<sup>8</sup> Additionally, the commenter asserted that the rule "indirectly extends the extraterritorial application of the U.S. securities laws," and that compliance with the rule may violate foreign law. Finally, the commenter believed that instead of adopting the proposed rule, FINRA should look at other asset verification options and suggested the alternatives of conducting a study regarding the necessity of the proposed rule or establishing a separate bureau that would verify customers' statements

against the books and records of their broker-dealers.<sup>9</sup>

FINRA filed Amendment No. 1 and responded to the comments. Amendment No. 1 specifically addresses the commenter's suggestion that the rule should not apply to proprietary assets of members that are not allowable for net capital purposes. Accordingly, FINRA is proposing new paragraph (b)(1) of the rule, which would expressly exclude from the rule proprietary assets of members that are treated as non-allowable assets pursuant to Rule 15c3-1 of the Act. Moreover, in response to the commenter's concerns regarding the application of the proposed rule to assets that cannot be relocated to another financial institution, such as many limited partnership or hedge fund investments, FINRA is proposing new paragraph (b)(2) of the rule, which provides that the rule would not apply in instances where FINRA determines that there is no independent custody or record ownership of the assets.

### IV. Discussion and Commission Findings

After carefully considering the proposal, as modified by Amendment No. 1, the comments, and FINRA's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.<sup>10</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because it would enhance FINRA's ability to verify assets at a financial institution which is not a member of FINRA.

The Commission believes that FINRA adequately addressed the concerns raised by the commenter. The rule language in Amendment No. 1 specifically excludes proprietary assets that are not allowable for net capital

<sup>9</sup> *Id.*

<sup>10</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

purposes. It also adequately addresses the commenter's concerns regarding the application of the proposed rule to assets that cannot be relocated to another financial institution, by adding paragraph (b)(2) of the rule clarifies that the rule would not apply in instances where FINRA determines that there is no other independent custody or record ownership of the assets. The Commission believes the proposed rule, as modified by Amendment No. 1, further strengthens FINRA's ability to effectively detect fraud and protect investors.

### V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act<sup>12</sup> for approving the proposed rule change, as modified by Amendment No. 1 thereto, prior to the 30th day after publication of Amendment No. 1 in the **Federal Register**. The changes proposed in Amendment No. 1 respond to specific concerns raised by the commenter and do not raise novel regulatory concerns. In particular, Amendment No. 1 further clarifies the scope of the asset verification rule, which serves to protect the capital structure of members and to safeguard the custody of customer assets.

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

### VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 to 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-2010-042 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-2010-042. This file number should be included on the subject line if e-mail is used. To help the Commission process

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> IMS letter.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

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 Web site viewing and printing 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-2010-042 and should be submitted on or before November 3, 2010.

## VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-FINRA-2010-042), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-25623 Filed 10-12-10; 8:45 am]

BILLING CODE 8011-01-P

## DEPARTMENT OF STATE

[Public Notice: 7205]

### 30-Day Notice of Proposed Information Collection: Form DS-5504, Application for a U.S. Passport: Name Change, Data Correction, and Limited Passport Book Replacement, OMB Control Number 1405-0160

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application for a U.S. Passport: Name Change, Data Correction, and Limited Passport Book Replacement.
- *OMB Control Number:* 1405-0160.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services CA/PPT.
- *Form Number:* DS-5504.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 181,000 respondents per year.
- *Estimated Number of Responses:* 181,000 responses per year.
- *Average Hours per Response:* 30 minutes.
- *Total Estimated Burden:* 90,500 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from October 13, 2010.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail:* [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** You may obtain copies of the proposed information collection and supporting documents from the Passport Forms Management Officer who may be reached on 202-663-2457 or at [PPTFormsOfficer@state.gov](mailto:PPTFormsOfficer@state.gov).

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

*Abstract of proposed collection:* The information collected on the DS-5504 is used to facilitate the re-issuance of passports to U.S. citizens and nationals when (a) the passport holder's name has changed within the first year of the issuance of the passport (b) the passport holder needs correction of descriptive information on the data page of the passport (c) the passport holder wishes to obtain a fully valid passport after obtaining a full-fee passport with a limited validity of two years or less. The primary purpose of soliciting the information is to establish citizenship, identity, and entitlement of the applicant to the U.S. passport or related service, and to properly administer and enforce the laws pertaining to the issuance thereof.

*Methodology:* Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the Application for a U.S. Passport: Name Change, Data Correction, and Limited Passport Book Replacement. Passport applicants can either download the DS-5504 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's valid U.S. passport and supporting documents for corrective action.

Dated: October 1, 2010.

**Barry J. Conway,**

*Acting Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2010-25750 Filed 10-12-10; 8:45 am]

BILLING CODE 4710-06-P

## DEPARTMENT OF STATE

[Public Notice: 7206]

### 30-Day Notice of Proposed Information Collection: Form DS-3053, Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor Under Age 16, OMB Control Number 1405-0129

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor Under Age 16.

<sup>13</sup> 15 U.S.C. 78(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).