407(a) and 407.10 be eliminated.[19] Rather than requiring the member to obtain FINRA's consent to open a securities or commodities account or execute a trade (as set forth under NYSE Rules 407(a) and 407.10), FINRA believes that it is sufficient, as set forth under NASD Rule 3090(a), to continue to require the member to obtain and implement an instruction from the FINRA employee directing the member to provide duplicate statements to FINRA. The proposed rule change would, as set forth in NASD Rule 3090(b), continue to prohibit members from making any loan of money or securities to a FINRA employee, subject to the exceptions set forth in that rule. Lastly, the proposed rule change would, as set forth in NASD Rule 3090(c), continue to prohibit members from directly or indirectly giving, or permitting to be given, anything above nominal value to any FINRA employee who has responsibility for a ''regulatory matter'' involving the member. FINRA does not believe that its employees should be permitted to receive gifts of up to $50 per year when such employees have responsibility for a regulatory matter. In addition, FINRA proposed not to adopt the $50 limit in NYSE Rule 350(a)(2) for gifts to all other employees to maintain consistency with the FINRA Code of Conduct, which, like NASD Rule 3060(a) (and proposed FINRA Rule 3220(a)), establishes a $100 limit. Rule 3090(c) need not be amended to address the employment and compensation issues as to NYSE employees in NYSE Rules 350(a)(1) and 350.10 because the FINRA Code of Conduct addresses these issues through its provisions on Outside Activities or Employment.

FINRA proposed to delete listing and delisting proceedings as potential ''regulatory matters'' under NASD Rule 3090(c) in light of FINRA's separation from NASDAQ and The American Stock Exchange.

III. Comment Letters

The Commission received one comment letter on the proposal[20] and a response to comments from FINRA.[21] In its comment letter, SIFMA supported FINRA's effort to consolidate its two rulebooks.[22] However, SIFMA suggested that FINRA should amend the proposed rule change with respect to NASD Rule 3060 to incorporate a principles-based approach to gifts and gratuities.[23] SIFMA said that FINRA should permit firms to establish their own gifts and gratuities policies and limits rather than retain the limits set forth in the rule.[24] SIFMA also supports the inclusion of a safe harbor in new Rule 3220, under which a FINRA member firm would be deemed to be in compliance with new Rule 3220, if the aggregate annual amount of gifts and gratuities to any one person did not exceed a de minimis amount, such as $250.[25]

FINRA responded to the request by SIFMA for a principles-based approach to gifts and gratuities by stating that FINRA had given a great deal of consideration to this approach, but had determined to maintain the existing standards, which offer predictability and clarity.[26] FINRA also noted that it does not believe that it is appropriate at this time to increase the limit for gifts and gratuities to $250 from $100.[27]

IV. Discussion and Findings

After careful review, 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.[28] In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[29] 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 Commission believes that, as part of the FINRA rulebook consolidation process, the proposed rule change would streamline and reorganize existing rules that govern influencing or rewarding the employees of others and transactions involving FINRA employees. Further, the proposed rule change would provide greater regulatory clarity with respect to these issues.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–FINRA–2008–027) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23196 Filed 10–1–08; 8:45 am]

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[19] With respect to NYSE Rule 407(a), the only change to the rule at this stage in the rulebook consolidation would be to delete language pertaining to employees of the NYSE. *See* Exhibit 5. NYSE Rule 407.10 would be deleted in its entirety. With respect to NYSE Rules 350(a)(1), 350(a)(2) and 350.10, *see supra* notes 10 and 11.

[20] *See supra*, footnote 5.

[21] *See* letter from Gary L. Goldsholle, Vice President and Associate General Counsel, FINRA Regulatory Group, dated September 11, 2008.

[22] *See* SIFMA letter.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *See supra,* footnote 21.

[27] *Id.*

[28] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78o–3(b)(6).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–58661; File No. SR–FINRA–2008–030]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes) in the Consolidated FINRA Rulebook

September 26, 2008.

I. Introduction

On June 18, 2008, 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'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM–3013 (Annual Compliance and Supervision Certification) as a FINRA rule in the consolidated FINRA rulebook (''Consolidated FINRA Rulebook'')[3] without material change, and to delete the corresponding provisions in Incorporated NYSE Rule 342.30 and NYSE Rule Interpretations 311(b)(5)/04 through /05 and 342.30(d)/01 through (e)/01.[4] The proposed rule change would renumber NASD Rule 3013 and IM–3013 as FINRA Rule 3130 in the Consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 7 for discussion about the Consolidated FINRA Rulebook.

[4] *See infra* note 7 regarding ''Incorporated NYSE Rules.''

Register on July 15, 2008.[5] The Commission received two comment letters in response to the proposed rule change.[6] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

As part of the process of developing the new consolidated rulebook (the ''Consolidated FINRA Rulebook''),[7] FINRA proposed to adopt NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM–3013 (Annual Compliance and Supervision Certification) as a FINRA rule without material change and, delete the corresponding provisions in Incorporated NYSE Rule 342.30 and NYSE Rule Interpretations 311(b)(5)/04 through /05 and 342.30(d)/01 through (e)/01. The proposed rule change would renumber NASD Rule 3013 and IM–3013 as FINRA Rule 3130 in the Consolidated FINRA Rulebook.

Currently, NASD Rule 3013 and Incorporated NYSE Rule 342 require each member to designate one or more principals to serve as a chief compliance officer (''CCO''). These Rules further require that the chief executive officer(s) (''CEO'') certify annually that the member has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable NASD (or NYSE) rules and federal securities laws and regulations. The certification includes not only a statement that the member has in place certain compliance processes, but also that the CEO(s) has conducted one or more meetings with the CCO(s) in the preceding 12 months to discuss the processes. Incorporated NYSE Rule 342 and NASD IM–3013 explain that the mandated meetings between the CEO(s) and CCO(s) 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. NASD IM–3013 contains additional guidance, including setting forth the expertise that is expected of a CCO. The same expertise requirements are also found in Incorporated NYSE Rule Interpretation 342.30.

There currently are four differences between the NASD and NYSE rules. First, NASD IM–3013 requires that the member provide to its board of directors and audit committees (or equivalent bodies) the report that evidences the processes to which the CEO(s) certifies either prior to execution of the certification or at the earlier of their next scheduled meetings or within 45 days of certification. The Incorporated NYSE rules require submission of the report to those bodies prior to certification. FINRA does not intend to require the board of directors or audit committee to review or consider the report as a condition to the CEO executing the certification; rather, FINRA intends the provision to ensure that those governing bodies remain informed of this aspect of the member's compliance system in the context of their overall responsibility for governance and internal controls of the member for which they serve. Accordingly, the proposed rule change would maintain the NASD rule requirements.

Second, the current rules differ in the certification deadline. Incorporated NYSE Rule 342.30 requires certification as part of the submission of a member's annual compliance report, which is due by April 1 of each year. NASD Rule 3013 requires certification not later than the anniversary of the prior year's certification. And while NASD allowed members to execute their first certification no later than April 1, 2006, to accommodate Dual Members, many FINRA-only firms executed their first certification earlier than that and thus have differing anniversary dates. Moreover, new members are required to execute their first certification within a year of approval for membership; therefore some firms necessarily are on a cycle that does not correspond to April 1. The proposed rule change would maintain the NASD rule deadline to provide firms the flexibility to certify on a schedule that meets with their organizational structure and procedures. Firms that have certified on April 1 of each year could continue to do so on that date.

Third, Incorporated NYSE Rule 342.30 requires that the member submit its certification to the Exchange, whereas the NASD rule requires only that the certification be maintained for inspection. FINRA believes the submission of the certification creates an unnecessary—albeit small—additional burden on members with no attendant benefits to FINRA's examination program. Therefore, the proposed rule change would retain the NASD requirement that the certifications be kept for inspection by members.

Finally, while both rules permit designation of multiple CCOs subject to certain conditions, Incorporated NYSE Rule Interpretation 311(b)(5) requires Exchange approval of the allocation of supervisory responsibilities between those CCOs. By comparison, the NASD rules rely on the business judgment of the member and require only that the member define and document the areas of responsibility allocated to each CCO. FINRA believes the NASD approach is more appropriate, and therefore the proposed rule change would not adopt the approval requirement into the new rule in the Consolidated FINRA Rulebook.

III. Comment Letters

The Commission received two comment letters on the proposal,[8] to which FINRA responded to in a letter to the Commission.[9] The first commenter generally supported the proposal but disagreed with the deletion of the April 1 certification deadline contained in Incorporated NYSE Rule 342.30.[10] In this commenter's view, adopting the NASD rule requiring certification no later than on the anniversary date of the previous year's certification could make the process less predictable and potentially more cumbersome for member firms. Specifically, the commenter indicated that for larger firms, the annual deadline would ''inject uncertainty as to when the entire report and process should commence each year'' and that ''the time period covered by the report and certification will be constantly shifting.''[11] As an alternative, the commenter suggested either: (1) Retaining the April 1 deadline of Incorporated NYSE rule 342.30 or; (2) amending the proposed rule to allow member firms to effect annual certifications no later than three weeks after the anniversary date of the previous year's certification, but in no event later than April 1.

[5] *See* Securities Exchange Act Release No. 358118 (July 8, 2008); 73 FR 40647 (July 15, 2008) (''notice'').

[6] *See* letters from Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA'') to Florence Harmon, Acting Secretary, Commission, dated August 4, 2008 (''SIFMA Letter''), and letter from Christine LaBastille, Managing Director, Integrated Management Solutions (''IMS'') to Secretary, Commission, dated August 5, 2008 (''IMS Letter'').

[7] 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 about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[8] *See supra* note 6.

[9] *See* letter from Philip Shaikun, Associate Vice President and Associate General Counsel, FINRA to Florence E. Harmon, Acting Secretary, Commission, dated September 4, 2008 (''FINRA Letter'').

[10] SIFMA Letter.

[11] SIFMA Letter.

FINRA responded that under the proposed rule change, firms that previously certified on or near April 1 may continue to do so, so long as the certification is executed no later than the anniversary of the prior year's certification.[12] Furthermore, FINRA indicated that the commenter's concern appears to result from the mistaken assumption that firms that are members of both FINRA and the NYSE must couple the CEO certification with the annual compliance report that is required to be submitted each year on April 1 under Incorporated NYSE Rule 342.30. FINRA stated that a firm may choose to time the process of the CEO certification so that it coincides with the Annual Compliance Report requirement, but that the proposed rule change does not compel this outcome, thus giving a firm flexibility as to when the certification process begins and ends. In addition, FINRA indicated that the commenter did not adequately consider the needs of FINRA-only firms that have chosen a cycle other than April 1 that better meets their organizational structure and procedures.[13]

The second commenter asserted that NASD Rule 3013 is unworkable and ineffectual for small FINRA member firms and urged FINRA to adopt a small firm exemption as part of the proposal.[14] The commenter stated that the provision requiring the CEO and CCO to meet to discuss and review elements related to the certification is unworkable for small firms when the CEO and CCO are the same person. FINRA indicated that it expects that a person who is both CEO and CCO of a firm will contemplate the required topics of the meeting and document that he or she has reviewed those matters.[15]

IV. Discussion and Findings

After careful review of the proposed rule change, the comment letters and FINRA's response to the comment letters, 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 national securities associations,[16] and in particular, Section 15A(b)(6) of the Act,[17] which requires among other things, that FINRA rules 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 Commission believes that it is reasonable for FINRA to adopt NASD Rule 3013 and IM–3013 as FINRA Rule 3130 in the Consolidated FINRA Rulebook because they have previously been found to meet statutory requirements.[18]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2008–030) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23197 Filed 10–1–08; 8:45 am]

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[12] FINRA Letter.

[13] *Id.*

[14] IMS Letter. IMS also commented on the requirements of NASD Rule 3012, which is not part of the proposal.

[15] FINRA Letter.

[16] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] *See e.g.* Securities Exchange Act Release No. 53509 (March 17, 2006), 71 FR 15238 (March 27, 2006) (SR–NASD–2006–036) (order approving rule change to IM–3013 finding that the proposed change furthered investor protection goals and provided clarity regarding application of the rule); Securities Exchange Act Release No. 56285 (August 17, 2007), 72 FR 48715 (August 24, 2007) (SR–NASD–2007–049) (order approving rule change to NASD Rule 3013 and IM–3013 finding that the proposed changes decreased the likelihood of fraud and manipulative acts in addition to increasing investor protection).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58649; File No. SR–NYSE–2008–82]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify Its Policy With Respect to Legal Opinions in Connection With Listings of Securities

September 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 2008, New York Stock Exchange LLC (''NYSE'' or ''the Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 21, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposal from interested persons.

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

In its filing with the Commission, the Exchange 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

In its filing with the Commission, the Exchange 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 III below. The Exchange 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

The Exchange proposes to amend the Manual by removing the provisions throughout Chapter Seven that require issuers to supply opinions of counsel to the Exchange in connection with any initial listing application or supplemental listing application.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical, non-substantive corrections to Exhibits 3 and 5.

[4] This filing deletes references to the opinion of counsel requirements from the ''Reference Guide For Subsequent Listing Applications'' section at the front of the Manual and replaces them with a requirement (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or (ii) if no opinions of counsel exist, provide to the Exchange a certificate of good standing from the company's jurisdiction of incorporation. In addition, the filing makes the same modification to the following sections of the Manual: 702.04 (Supporting Documents); 703.01 (part 2) (General Information); 703.02 (part 3) (Stock Split/Stock Rights/Stock Dividend Listing Process); 703.03 (Short Term Rights Offerings Relating to

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