

The subject matter of the Closed Meeting scheduled for Thursday, March 26, 2009 will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings of an enforcement nature;
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: March 19, 2009.

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-6434 Filed 3-19-09; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59586; File No. SR-FINRA-2008-045]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the FINRA Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

March 17, 2009.

I. Introduction

The 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”) and amended on December 11, 2008,¹ pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ a proposed rule change relating to amendments to the FINRA Rule 9520 Series, which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws. The proposed rule change was published for comment in the **Federal**

Register on January 13, 2009.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

In light of FINRA’s obligation to enforce the federal securities laws, and as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. and the formation of FINRA, FINRA adopted by Board and membership vote a revised By-Law definition of disqualification that is consistent with the federal securities laws, such that any person subject to a statutory disqualification under Section 3(a)(39) of the Act also is subject to disqualification under Article III, Section 4 of the FINRA By-Laws.⁵ Consequently, as further detailed in the proposed *Regulatory Notice* (filed with the Commission as Exhibit 2 to SR-FINRA-2008-045), FINRA’s revised definition of disqualification incorporates three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations with certain other persons subject to disqualification.

Absent the proposed rule change, all persons subject to any of the added categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. The proposed rule change would both amend the text of the FINRA Rule 9520 Series generally to reflect the amended definition of disqualification in the By-Laws, as well as include the proposed *Regulatory Notice* that outlines in detail the applicable eligibility procedures. The amended FINRA Rule 9520 Series would incorporate by reference the procedures set forth in the *Regulatory Notice*. As further detailed in the *Regulatory Notice*, the need for a member to file an application with FINRA for approval notwithstanding the disqualification would depend on (1)

the type of the disqualification; (2) the date of the disqualification; and (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

The proposed rule change would amend FINRA Rule 9522 to address the initiation of eligibility proceedings and the authority of FINRA’s Department of Member Regulation (“Member Regulation”) to approve applications relating to a disqualification, where the disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arises under Section 3(a)(39)(E) of the Act (*i.e.*, the added categories of disqualification). Currently, FINRA Rule 9522(a)(1) provides, among other things, that if FINRA staff has reason to believe that a disqualification exists, FINRA staff will issue a written notice to the member or applicant for membership under NASD Rule 1013, specifying the grounds for such disqualification. The proposed amendments to FINRA Rule 9522(a)(1) provide that FINRA staff would issue such written notice with respect to the added categories of disqualification only when the member or applicant is required to file an application pursuant to the *Regulatory Notice*. Similarly, the proposed rule change would amend FINRA Rule 9522(b) to require a member to file an application with FINRA with respect to the added categories of disqualification only when instructed to submit one by the *Regulatory Notice*.

Moreover, under the current rules, Member Regulation is responsible for evaluating applications for relief from a disqualification filed by a disqualified member or sponsoring member. In certain circumstances, Member Regulation is authorized to approve the application, while in other cases, Member Regulation must make a recommendation to either approve or deny the applications to the National Adjudicatory Council (“NAC”). The proposed amendments to FINRA Rule 9522 would authorize Member Regulation to approve applications based on the added categories of disqualification. In the event Member Regulation does not approve these applications, the disqualified member or sponsoring member would have the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.

In addition, if Member Regulation determines that an application relating to a disqualification that arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arises under Section 3(a)(39)(E) of the

⁴ See Securities Exchange Act Release No. 59208 (January 6, 2009), 74 FR 1738 (January 13, 2009) (SR-FINRA-2008-045) (notice).

⁵ See Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023) (notice). See also Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (SR-NASD-2007-023) (approval order), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008). See also NASD, SEC No-Action Letter, 2007 SEC No-Act. LEXIS 540 (July 27, 2007).

¹ Amendment No. 1 to SR-FINRA-2008-045 replaced and superseded the original rule filing submitted to the Commission on September 8, 2008.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

Act should be approved, but with specific supervisory requirements that have the consent of the disqualified member, sponsoring member and/or disqualified person, then proposed FINRA Rule 9523(b) would authorize Member Regulation to approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NAC. Consistent with the current rule regarding the submission of supervisory plans,⁶ proposed FINRA Rule 9523(b)(1) would provide that, by submitting an executed letter consenting to a supervisory plan, a disqualified member, sponsoring member and/or disqualified person waive the following (in summary):

(a) The right to a hearing and any right of appeal to challenge the validity of the supervisory plan;

(b) The right to claim bias or prejudice by Member Regulation or the General Counsel regarding the supervisory plan; and

(c) The right to claim a violation of the *ex parte* prohibitions or the separation of functions provisions of FINRA Rules 9143 and 9144, respectively, in connection with participation in the supervisory plan.

If the supervisory plan is rejected, the disqualified member, sponsoring member and/or disqualified person would have the right to proceed under FINRA Rule 9524.

The proposed rule change also would make several technical amendments. For example, the proposed rule change would amend FINRA Rule 9522(c) to allow a member that has filed a statutory disqualification application to withdraw that application after the start of a hearing but prior to the issuance of a decision by the NAC by filing a written notice with FINRA's Department of Registration and Disclosure and FINRA's Office of General Counsel. In addition, for purposes of clarity and consistency, the proposed rule change would amend FINRA Rule 9522(e) to replace references that Member Regulation "may grant" or "may approve" certain matters with "is authorized to approve" such matters.

III. Discussion and Findings

After careful review of the proposed rule change, 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.⁷ In particular, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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 the proposed rule change is consistent with the provisions of the Act noted above because it should allow FINRA to integrate filings mandated by the revised definition of disqualification into established programs that monitor subject persons and allow FINRA and the Commission to focus resources on filings that raise important investor protection concerns.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-FINRA-2008-045), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-6208 Filed 3-20-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59579; File No. SR-NASDAQ-2006-056]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendment No. 2 Thereto To Establish Nasdaq Custom Data Feeds

March 13, 2009.

On December 12, 2006, The NASDAQ Stock Market LLC ("Nasdaq") 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 establish a data filtration service called Nasdaq Custom Data Feeds ("Service"). The Service would

⁷ 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).

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

permit entities to request and receive customized data feeds containing data elements from Nasdaq's current data feeds. The proposed rule change was published in the **Federal Register** on December 27, 2006.³ On March 9, 2009, Nasdaq filed Amendment No. 1 to the proposed rule change. On March 10, 2009, Nasdaq filed Amendment No. 2 to the proposed rule change.⁴

The Commission received one comment on the proposal from the Securities Industry and Financial Markets Association ("SIFMA").⁵ SIFMA believes that the proposed rule change does not meet the requirements of the Act because "there is no cost-based analysis or justification for the service in the release."⁶ SIFMA also asserts that the proposed rule change "raises problems regarding how the proposed fee was calculated."⁷ Finally, SIFMA questions if competitors will be disadvantaged by the proposal as Nasdaq will have processed the raw data into a customized data feed when the data is released, and if a commercial service should be provided by Nasdaq or if it should instead "be offered by an affiliate on the condition that the terms under which that affiliate receives the underlying market data are offered to other vendors so as to assure competition and prevent commercial conflicts of interest."⁸

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁹ and, in particular, Section 6(b)(4) of the Act,¹⁰ which requires, among other things, that Nasdaq's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and

³ See Securities Exchange Act Release No. 54959 (December 18, 2006), 71 FR 77842 ("Notice").

⁴ Amendment No. 2 replaced Amendment No. 1, which was withdrawn. In Amendment No. 2, Nasdaq proposed to re-number the new rule from Rule 7038 to Rule 7047, as rule number 7038 has since been used for a subsequent rule. Nasdaq also clarified that the Service will only be available with respect to data feeds that contain non-core market data. Nasdaq also listed the current data feeds which can be customized through the Service. Because Amendment No. 2 is technical in nature, it is not subject to notice and comment.

⁵ See letter from Melissa MacGregor, Assistant Vice President and Assistant General Counsel, SIFMA, to Nancy M. Morris, Secretary, Commission, dated January 17, 2007.

⁶ *Id.* at 1.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(4).

⁶ See FINRA Rule 9523(b)(1) (to be renumbered as FINRA Rule 9523(a)(1)).