

report that second leg of the away-market transaction to clearing.⁵

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. 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)⁶ and (5)⁷ 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.

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 exchange.⁸ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change may increase the efficiency of Exchange Participants in seeking to execute their customers' orders that are ineligible for execution or display in the Exchange's Matching System. In particular, odd-lot orders

that are not immediately displayed in the Matching System or orders that otherwise would be cancelled back to a participant may be sent directly to a destination chosen by the participant for handling. The Commission notes that the Exchange's proposed generic routing rule will operate in the same manner as its current routing rule for orders rejected by the Exchange's Matching System under its NMS trade-through validation rule,¹⁰ which was previously approved by the Commission.¹¹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CHX-2009-02) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60348; File No. SR-FINRA-2009-019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rules 1010 (Electronic Filing Requirements for Uniform Forms) and 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) in the Consolidated FINRA Rulebook

July 20, 2009.

I. Introduction

On April 7, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a "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, subject to certain amendments, NASD Rule 1140 (Electronic Filing Rules) as new FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms) and NASD Rule 3080 (Disclosure to Associated Persons When Signing Form

U-4) as new FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) in the consolidated FINRA rulebook. The proposal was published for comment in the **Federal Register** on April 24, 2009.³ The Commission received one comment letter, on May 15, 2009, on the proposal.⁴ FINRA responded to the commenter on July 8, 2009.⁵ This order approves the proposed rule change.

II. Description of the Proposal

Proposed FINRA Rule 1010

NASD's Rule 1140 specifies that an electronic initial and transfer Form U4 must be based on a signed Form U4, but the rule does not expressly state that the signatures must be manual. The proposed rule would require that every initial Form U4 and every Form U4 filed to transfer a registered person's association from one firm to another firm be based on an original, manually-signed Form U4 provided to the member by the person on whose behalf the Form U4 is being filed.⁶

The proposed rule change also modifies the signature requirement with respect to amendments to disclosure information in the Form U4. NASD's Rule 1140 requires the associated person on whose behalf the filing is made to sign amendments to Form U4 that provide disclosure information. Proposed FINRA Rule 1010 would permit a firm to file amendments to the Form U4 disclosure information without obtaining the registered person's manual signature if the firm uses reasonable efforts to i) provide the registered person with a copy of the amended disclosure information before filing and ii) obtain the registered person's written acknowledgment that the information has been received and reviewed, which may be accomplished electronically, before filing.⁷

³ See Securities Exchange Act Release No. 59784 (April 17, 2009), 74 FR 18779 (April 24, 2009) ("Notice").

⁴ See letter to Florence E. Harmon, Deputy Secretary, Commission, from Bari Havlik, Senior Vice President and Chief Compliance Officer, Charles Schwab & Co., Inc., dated May 15, 2009 ("Schwab Letter").

⁵ See letter to Elizabeth M. Murphy, Secretary, Commission, from Patricia Albrecht, Assistant General Counsel, FINRA, dated July 8, 2009 ("Response Letter").

⁶ Member firms use the Central Registration Depository (CRD), a Web based system, to submit the form on behalf of the associated person by typing the person's name into the signature box on the electronic form.

⁷ The member, as part of its recordkeeping requirements pursuant to Rule 17a-4(e)(1) under the Act, would be required to retain the written acknowledgment and make it available promptly upon request.

⁵ For example, if the Exchange routes a participant's buy order to the participant's chosen destination (Router ABC) and Router ABC gets an execution of that order in another market against market maker XYZ, the first leg of the transaction (ABC buying from XYZ) will be reported to clearing 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).

⁶ 15 U.S.C. 78f(b)(4)

⁷ 15 U.S.C. 78f(b)(5)

⁸ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See CHX Rules Article 20, Rule 5, Interpretations and Policies .03.

¹¹ See Securities Exchange Act Release No. 54963 (December 19, 2006), 71 FR 77834 (December 17, 2006) (SR-CHX-2006-30).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

In the event the member is not able to obtain an associated person's manual signature or written acknowledgement of an amendment to disclosure information before filing the amended Form U4, the proposal would require that the member file disclosure information of which it has knowledge, and the member would enter "Representative Refused to Sign/Acknowledge" or "Representative Not Available" or a substantially similar phrase in the signature box of the electronic form. This change codifies the member's obligation in Article V, Section 2 of FINRA's By-Laws that every Form U4 be kept current.

Fourth, the proposed rule change incorporates the practice in the Web CRD of permitting administrative information (such as the addition of state or self-regulatory organization registrations, exam scheduling, and updates to residential, business, and personal history) to be amended on Form U4 without obtaining the associated person's signature.⁸ If that occurs, the member must use reasonable efforts to provide the associated person with a copy of the amended administrative information that was filed.

Fifth, the proposal would permit the registered principal(s) or corporate officer(s) who is responsible for supervising a firm's electronic filings to delegate to another associated person, who need not be registered, the electronic filing of the member's forms via Web CRD. The principal(s) or corporate officer(s) may not, however, delegate any of his supervision, review or approval responsibilities and must take reasonable and appropriate action to ensure that all delegated electronic filing functions are properly executed and supervised.

Proposed FINRA Rule 2263

The proposed rule change transfers NASD Rule 3080 into the consolidated FINRA Rulebook as FINRA Rule 2263 with several minor changes. First, the proposed rule change amends the current title "Disclosure to Associated Person When Signing Form U-4" to "Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4" to clarify that the rule relates to arbitration disclosures. Second, proposed FINRA Rule 2263 clarifies that a member must provide the required arbitration disclosures whenever a

member asks an associated person, pursuant to proposed FINRA Rule 1010, to manually sign an initial or amended Form U4, or to otherwise provide written acknowledgement, which may be electronic, of an amendment to the Form. Third, the proposed rule updates language to reflect amendments to FINRA's Code of Arbitration Procedure requiring arbitrators to provide an explained decision to the parties in eligible cases if there is a joint request by all parties at least twenty days before the first scheduled hearing date.⁹

III. Summary of Comments

Proposed FINRA Rule 1010(c)(3)

While the Schwab Letter generally supports the proposal, it expressed several concerns, including that the aspect of the proposed rule that requires the member to file amendments to U4 regarding disclosure information as to which it has knowledge, proposed FINRA Rule 1010(c)(3) would require a firm to file a Form U4 disclosure amendment when the firm may have inaccurate or incomplete information. Schwab also argues that the proposal may dilute the standard that the primary responsibility for updating and keeping current Form U4 lies with the associated person.¹⁰

FINRA responded that the proposal merely codifies a member's existing obligation under Article V, Section 2(c) of FINRA's By-Laws that every U4 be kept current, and implicit in this duty is the expectation that the member will seek to ensure that such information is accurate and complete.¹¹ FINRA noted that the member's obligation is in addition to the associated person's obligation to keep Form U4 current, which is set forth generally in Article V, Section 2 of the FINRA By-Laws.¹²

Proposed FINRA Rule 1010(c)(4)

Schwab supports allowing firms to file amendments to administrative information without obtaining the associated person's signature, but it objects to the requirement that the member firm use reasonable efforts to provide the associated person with a copy of the amended administrative information and believes that this could cause firms to incur significant system changes and costs.¹³ FINRA responded that Web CRD is used to help protect investors, and its effectiveness depends

on accurate information.¹⁴ Thus, FINRA believes this aspect of the proposal is appropriate in that it encourages members to verify information with an associated person while allowing firms the flexibility to do so after amendments to administrative information have been filed.

Proposed FINRA Rule 1010(c)(1) and (2) and FINRA Rule 2263

Schwab believes that the requirements imposed on a firm, in connection with filing amendments to Form U4 disclosure information without obtaining the associated person's manual signature, and providing the written statement related to arbitration disclosure, may prove costly and complex for firms to implement.¹⁵ Schwab opines that the goal of having clear evidence of the registered person's knowledge and acceptance of disclosure information may be achieved using existing procedures and electronic systems that accomplish certain functions.¹⁶ FINRA stated that this concern can be addressed with interpretive guidance and that it would address it accordingly, assuming approval of the proposal.¹⁷

IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Schwab Letter, and the Response Letter, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹⁸ In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,¹⁹ which requires, among other things that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the revisions FINRA proposed in connection with moving NASD Rule 1140 and Rule 3080 to the consolidated FINRA Rulebook as new FINRA Rule 1010 and new FINRA Rule 2263 should,

¹⁴ See Response Letter at 4.

¹⁵ See Schwab Letter at 4-5.

¹⁶ *Id.*

¹⁷ See Response Letter at 4.

¹⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78o-3(b)(6).

⁸ See Securities Exchange Act Release No. 41575 (June 29, 1999), 64 FR 36728, 36729 n.7 (July 7, 1999) (Order Approving File No. SR-NASD-99-28); see also Securities Exchange Act Release No. 37439 (July 15, 1996), 61 FR 37950 (July 22, 1996) (Order Approving File No. SR-NASD-96-21).

⁹ See Securities Exchange Act Release No. 59358 (February 4, 2009), 74 FR 6928 (February 11, 2009) (Order Approving File No. SR-FINRA-2008-051).

¹⁰ See Schwab Letter at 2-3.

¹¹ See Response Letter at 2.

¹² *Id.* at 2-3.

¹³ See Schwab Letter at 4.

among other things, strike a fair balance between providing notice to associated persons of changes to their U4 where obtaining a signature may prove difficult and allowing firms to expeditiously update information. In addition, the Commission believes that it is appropriate for FINRA to make explicit in its rules a member's obligation to ensure that information in Form U4 regarding its associated persons is accurate, even though this requirement is explicit in FINRA's By-Laws. Ensuring that information in Web CRD is current and accurate enhances the usefulness of Web CRD.

The Commission believes that FINRA, in its Response Letter, adequately addressed the comments raised in the Schwab Letter. The Commission emphasizes that FINRA correctly noted that both firms and associated persons have a duty to keep information in Web CRD current, and both are responsible for ensuring that disclosure information is accurate; this proposal merely codifies this obligation. The Commission also agrees with FINRA that firms should try to ensure the accuracy and completeness of information submitted. This purpose should be served by the rule requiring a firm to use reasonable efforts to provide the associated person with a copy of the amended disclosure information post-filing, since the firm should have contact information for the associated person, whom it is responsible for regulating, and the associated person can ensure that the amended information is accurate.

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-FINRA-2009-019), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60359; File No. SR-MSRB-2009-08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities

July 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 14, 2009, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the MSRB. The MSRB has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act,³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal effective upon filing with 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

The MSRB has filed with the Commission a proposed rule change consisting of interpretive guidance on disclosure and other sales practice obligations of brokers, dealers and municipal securities dealers ("dealers") relating to sales of municipal securities to individual and other retail investors. The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, 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, the MSRB 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. The MSRB 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 proposed rule change provides guidance to brokers, dealers and municipal securities dealers ("dealers") of their sales practice obligations under MSRB rules as applied specifically to individual and other retail investors. Among other things, the proposed rule change updates guidance to dealers on (i) their obligations to disclose material information about issuers, their securities and credit/liquidity support for such securities in connection with the fulfillment of their disclosure obligations under MSRB Rule G-17, (ii) their obligations to use such material information in fulfilling their suitability obligations under MSRB Rule G-19, and (iii) their fair pricing obligations under MSRB Rules G-18 and G-30. The proposed rule change also applies previous guidance on bond insurance rating downgrades and wide-scale auction failures for municipal auction rate securities ("ARS"), to municipal securities transactions in general and specifically to transactions with individual and other retail investors in variable rate demand obligations ("VRDOs").

Disclosure

The proposed rule change makes clear that dealers are responsible under Rule G-17 for disclosing to their customers, at or prior to the time of trade for any municipal securities transaction, all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market, including information available from established industry sources. Dealers must provide such disclosures notwithstanding the availability to investors of comprehensive information from the MSRB's Electronic Municipal Market Access system (EMMA) and other established industry sources. Dealers are expected to establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).