

the Sponsored Access system, and the ability for either the Sponsoring Member or Nasdaq to terminate Participant access.

Nasdaq also responds to comments regarding the financial and regulatory controls provisions of the Original Proposal. Commenters argue that the procedures and controls meant to prevent certain conduct should be "reasonably designed," rather than impose a strict liability standard;⁵⁸ and that the regulatory controls provision should not include a non-exclusive list of regulatory requirements that would potentially confuse market participants.⁵⁹ In Amendment No. 2, Nasdaq agrees with both points, and modifies the proposed rule change to require "reasonably designed" procedures and controls, and to eliminate the non-exclusive list of regulatory requirements. Nasdaq also clarifies that trading activity reports would be reviewed by "appropriate supervisory personnel." The Commission finds that Nasdaq's proposed changes in response to commenter concerns in Amendment No. 2 are consistent with the Act.

In Amendment No. 3, Nasdaq modifies language in the proposed rule change to clarify the requirement that when a Sponsoring Member provides another person or entity with access to Nasdaq, it must do so either through a Sponsored Access System or a Member System. By providing such access through either of these two types of systems, Sponsoring Members are responsible for all trading conducted pursuant to that arrangement to the same extent as trading directly conducted by the Member for its customers.⁶⁰ The Commission believes that this proposed change sufficiently clarifies the significant responsibilities that the Sponsoring Members must assume for any Sponsored Access arrangements. The Commission believes that Nasdaq's proposed changes in response to commenter concerns in Amendment No. 3 are consistent with the Act.

The changes proposed in Amendment Nos. 2 and 3, discussed above, seek to clarify the operation of the proposal and address commenters concerns regarding the proposal as noticed in the **Federal Register** on January 29, 2009. The Commission notes that one commenter requests that the proposal, as modified by Amendment Nos. 2 and 3, be published for notice and comment before Commission approval of the

proposal.⁶¹ The Commission believes that the changes proposed in Amendment Nos. 2 and 3, discussed above, are designed to address commenters' concerns as raised through the notice and comment process under Section 19(b).⁶² Accordingly, the Commission finds that good cause exists to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 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. Please include File No. SR-NASDAQ-2008-104 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-NASDAQ-2008-104. 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 am and 3 pm. Copies of such filing also will 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-NASDAQ-2008-104 and should be submitted on or before February 10, 2010.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶³ that the proposed rule change (SR-NASDAQ-2008-104), as modified by Amendment Nos. 1, 2, and 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁴

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61332; File No. SR-FINRA-2009-080]

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

January 12, 2010.

On November 17, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA Rule 4570 (Custodian of Books and Records) in the Consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal Register** on December 11, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

Rule 17a-4 of the Act requires members to retain their books and records for specified retention periods.⁴ Pursuant to Rule 17a-4(g), a member that ceases doing business as a

⁶³ 15 U.S.C. 78s(b)(2).

⁶⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61116 (December 4, 2009), 74 FR 65817.

⁴ 17 CFR 240.17a-4.

⁵⁸ See *supra* notes 39-41 and 45.

⁵⁹ See *supra* note 48.

⁶⁰ See proposed Nasdaq Rule 4611(d).

⁶¹ See SIFMA II Letter.

⁶² See 15 U.S.C. 78s(b).

registered broker-dealer has a continuing obligation to retain its required books and records for the remainder of the specified retention periods.⁵

To that end, Form BDW (Uniform Request for Broker-Dealer Withdrawal) requires that the member identify and provide the contact information of the person who will have custody of the firm's books and records after the firm has discontinued its business operations. The form also requires that the firm provide the address where the books and records will be located, if different than the custodian's address. In addition, Form BDW provides that the firm and the person signing the form on behalf of the firm must certify that the firm's books and records will be preserved and made available for inspection.

NASD Rule 3121 requires a member to designate as the custodian of its required books and records on Form BDW a person who is associated with the firm at the time Form BDW is filed. The rule, which was approved by the Commission in 2000,⁶ is intended to enhance FINRA's ability to obtain required books and records from firms that are no longer conducting business and to ensure that the custodian of the books and records has been subject to certain background checks.⁷ There is no comparable Incorporated NYSE Rule. Therefore, FINRA proposed to adopt NASD Rule 3121 as FINRA Rule 4570 in the Consolidated FINRA Rulebook, with only minor technical changes. Specifically, NASD Rule 3121 currently states that a member must designate an associated person "as the custodian of the record"; the revised rule text will reflect that the associated person is designated "as the custodian of the member's books and records," which is consistent with the terminology used in Form BDW.

The Commission 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 association.⁸ In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the

Act,⁹ 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, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will further the purposes of the Act by, among other things, enhancing FINRA's ability to obtain required books and records from member firms that are no longer conducting business. The Commission therefore believes that it is appropriate and consistent with the Act for the Exchange to include adopt the Custodian of Books and Records rule.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-FINRA-2009-080) is approved.

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

Florence E. Harmon,
Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 6871]

30-Day Notice of Proposed Information Collections: DS-4143, Brokering Prior Approval (License), OMB No. 1405-0142; DS-4142, Annual Brokering Report, OMB No. 1405-0141

ACTION: Notice of request for public comment and submission to OMB of proposed collections 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:* Brokering Prior Approval (License).
- *OMB Control Number:* 1405-0142.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 980.
- *Estimated Number of Responses:* 100.

⁵ 17 CFR 240.17a-4(g).

⁶ See Securities Exchange Act Release No. 43102 (August 1, 2000), 65 FR 48266 (August 7, 2000) (Order Approving File No. SR-NASD-99-76).

⁷ For example, associated persons who have custody of a member's original books and records relating to securities or funds are subject to the fingerprinting requirements of SEA Rule 17f-2 for purposes of a criminal background check.

⁸ 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).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 200 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain Benefits.
- *Title of Information Collection:* Annual Brokering Report.
- *OMB Control Number:* 1405-0141.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 980.
- *Estimated Number of Responses:* 600.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 1,200 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Mandatory.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from January 20, 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:* oir_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 collections and supporting documents from Nicholas Memos, PM/DDTC, SA-1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522-0112, who may be reached via phone at (202) 663-2804, or via e-mail at memosni@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.