FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. Under the Plan, BX will also provide FINRA with a current list of Dual Members and shall update the list no less frequently than once each quarter.[21] The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective a plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all BX rules that are substantially similar to the rules of FINRA for Dual Members of BX and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to BX rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should the Parties decide to add a BX rule to the Certification that is not substantially similar to a FINRA rule; delete a BX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a BX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act and noticed for public comment.[22]

The Plan also permits BX and FINRA to terminate the Plan, subject to notice.[23] The Commission notes, however, that while the Plan permits the Parties to terminate the Plan, the Parties cannot by themselves reallocate the regulatory responsibilities set forth in the Plan, since Rule 17d–2 under the Act requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission.[24]

IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–575. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan in File No. 4–575, between FINRA and BX, filed pursuant to Rule 17d–2 under the Act, is approved and declared effective.

It is further ordered that BX is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4–575.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8011–01–P

[21] *See* paragraph 3 of the proposed 17d–2 Plan.

[22] The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Plan for examining, and enforcing compliance by, Dual Members, also would constitute an amendment to the Plan.

[23] *See* paragraph 13 of the proposed 17d–2 Plan.

[24] The Commission notes that paragraph 13 of the Plan reflects the fact that FINRA's responsibilities under the Plan will continue in effect until the Commission approves any termination of the Plan.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59222; File No. SR–FINRA–2009–002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Conforming Changes to FINRA Rules 6380B and 6730 To Reflect Amendments Proposed Pursuant to SR–FINRA–2008–060

January 8, 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 January 8, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) (''FINRA'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[25] 17 CFR 200.30–3(a)(34).

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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

FINRA is proposing to make conforming changes to Rules 6380B and 6730 to reflect amendments that were proposed pursuant to proposed rule change SR–FINRA–2008–060, but were superseded by an intervening rule change.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, 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, FINRA 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 those statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

On December 11, 2008, FINRA filed proposed rule change SR–FINRA–2008–060 to amend FINRA rules to clarify the trade reporting requirements relating to transfers of securities pursuant to an asset purchase agreement (''APA''). In that filing, FINRA proposed to amend Rule 6380C(e) relating to trade reporting to the FINRA/NYSE Trade Reporting Facility (the ''FINRA/NYSE TRF'') and Rule 6730(e) relating to trade reporting to the Trade Reporting and Compliance Engine (''TRACE''). SR–FINRA–2008–060 was filed for immediate effectiveness with an operative date of January 12, 2009.[4]

On December 18, 2008, FINRA filed proposed rule change SR–FINRA–2008–065 to extend the pilot program in Rule 6730(e)(4). SR–FINRA–2008–065 was filed for immediate effectiveness with an operative date of January 8, 2009. The underlying text of SR–FINRA–2008–065 did not reflect the amendments to Rule 6730(e) that were proposed pursuant to SR–FINRA–2008–

[4] See Securities Exchange Act Release No. 59126 (December 19, 2008), 73 FR 79948 (December 30, 2008) (notice of filing and immediate effectiveness of SR–FINRA–2008–060).

060, because those changes are not operative until January 12, 2009.[5]

On December 22, 2008, FINRA filed proposed rule change SR–FINRA–2008–066 to reflect the closing of the FINRA/NSX Trade Reporting Facility. As part of that proposed rule change, FINRA proposed to renumber the rules relating to the FINRA/NYSE TRF and Rule 6380C became Rule 6380B. SR–FINRA–2008–066 was filed for immediate effectiveness with an operative date of January 1, 2009. The underlying text of SR–FINRA–2008–066 did not reflect the amendments to Rule 6380C(e) that were proposed pursuant to SR–FINRA–2008–060, because those changes are not operative until January 12, 2009.[6]

Because of the timing of the aforementioned filings, the amendments to Rules 6380B(e) and 6730(e) that were proposed pursuant to SR–FINRA–2008–060 were effectively superseded. Accordingly, FINRA is proposing to make conforming changes to Rules 6380B(e) and 6730(e) to reflect the amendments that were proposed pursuant to SR–FINRA–2008–060, with no material changes to those amendments.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] 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. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[5] See SR–FINRA–2008–065, available at *http://www.finra.org/Industry/Regulation/RuleFilings/2008/P117571*.

[6] *See* Securities Exchange Act Release No. 59175 (December 30, 2008), 74 FR 840 (January 8, 2009) (notice of filing and immediate effectiveness of SR–FINRA–2008–066).

[7] 15 U.S.C. 78*o*–3(b)(6).

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

FINRA represented that the proposed rule change qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[10]

The Exchange has requested that the Commission waive the 30-day operative delay, so that the proposed rule change may become operative upon filing. The Commission hereby grants the Exchange's request.[11] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it makes only technical changes to FINRA's rules necessitated by an earlier rule change and thus should help avoid confusion among FINRA members and other market participants.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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*. Please include File Number SR–FINRA–2009–002 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–2009–002. 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 a.m. and 3 p.m. Copies of the 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–2009–002 and should be submitted on or before February 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).