

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59495; File No. SR-FINRA-2008-052)

March 3, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to the Adoption of FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) in the Consolidated FINRA Rulebook

I. Introduction

On October 29, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ["NASD"]) filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FINRA-2008-052 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the Federal Register on January 27, 2009.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change adopts without material change NASD Interpretive Material 2110-7 (IM-2110-7) (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) as a FINRA rule in the consolidated FINRA rulebook.

(1) Purpose

As part of the process of developing the new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt without material

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 59253 (January 15, 2009), 74 FR 4792.

³ The current Consolidated FINRA Rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (until the completion of the rulebook consolidation process, the FINRA rulebook includes NASD Rules and Incorporated NYSE Rules, together referred to as the "Transitional

change NASD IM-2110-7 as a FINRA rule in the Consolidated FINRA Rulebook. The proposed rule change would renumber NASD IM-2110-7 as FINRA Rule 2140 in the Consolidated FINRA Rulebook.

(A) Background

NASD IM-2110-7 provides that it shall be inconsistent with just and equitable principles of trade for a member or person associated with a member⁴ to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery, or acceptance of a written request from a customer to transfer his or her account.⁵

Rulebook"), in addition to the new consolidated FINRA Rules). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁴ The term "person associated with a member" includes, among others, registered representatives. See FINRA By-Laws, Article I, Paragraph (rr).

⁵ IM-2110-7 further states that nothing in the Interpretation shall affect the operation of NASD Rule 11870 (Customer Account Transfer Contracts). Generally, Rule 11870 addresses the transfer of securities account assets from one member to another member in connection with a customer request. (FINRA intends to review NASD Rule 11870 and related interpretive materials as part of a later phase in the rulebook consolidation process. Note that the Commission has approved FINRA's proposed rule change to rescind, as duplicative of Rule 11870 Incorporated NYSE Rule 412 and its Interpretation. See Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) [File No. SR-FINRA-2008-036].

FINRA adopted IM-2110-7 to address the practice of delaying customer account transfers.⁶ In adopting IM-2110-7, FINRA noted in a Notice to Members that, when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may decide to continue their relationship with the registered representative by transferring their accounts to the registered representative's new firm. FINRA expressed concern that the registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new firm or by soliciting clients to transfer their accounts to the new firm, sometimes would seek a court order to prevent the transfer of accounts. FINRA noted that in a prior Notice to Members it had already alerted members that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade.⁷ FINRA stated that obtaining court orders to prevent customers from following a registered representative to a different firm is similar to the unfair practice of delaying transfers that the prior Notice had warned about.

In adopting IM-2110-7, FINRA further stated that the Interpretive Material does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Members are not prevented from pursuing other remedies they may have arising from employment disputes with former

⁶ See NASD Notice to Members 02-07 (January 2002) (Interfering With Customer Account Transfers); see also Securities Exchange Act Release No. 45239 (January 4, 2002), 67 FR 1790 (January 14, 2002) [File No. SR-NASD-2001-95].

⁷ NASD Notice to Members 79-7 (February 1979) (Fair Treatment of Customer Accounts); see also Securities Exchange Act Release No. 15194 (September 28, 1978) (Notice to Broker-Dealers Concerning Fair Treatment of Customer Accounts).

registered representatives. Rather, IM-2110-7 is limited to restricting a member from interfering with a customer's right to transfer his or her account once the customer has asked the firm to move the account.

(B) Proposal

FINRA believes that NASD IM-2110-7 is consistent with the goal of investor protection and serves the public interest. FINRA proposes to transfer NASD IM-2110-7 with only minor changes into the Consolidated FINRA Rulebook. Specifically, IM-2110-7 would be recodified with conforming revisions as a stand-alone FINRA rule rather than as interpretive material to NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade).⁸

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than ninety days following Commission approval.

III. Discussion

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 applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ 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

⁸ The exact revised text of IM-2100-8 is attached as Exhibit 5 to the proposed rule change and is available at <http://www.finra.org/Industry/Regulation/RuleFilings/2008/P117330>. Similarly, FINRA has transferred NASD Rule 2110 to the Consolidated FINRA Rulebook without change as FINRA Rule 2010. Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) [File No. SR-FINRA-2008-028].

⁹ 15 U.S.C. 78o-3(b)(6).

of trade, and, in general, to protect investors and the public interest. The proposed rule change is an interpretation to an existing rule of NASD that is being adopted without material change to the FINRA rulebook. The proposed rule change should continue to protect investors and the public interest by addressing interference with the transfer of customer accounts in the context of employment disputes between registered representatives and their former firms. For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15A(b)(6) of the Act and the rules and regulations thereunder.¹⁰

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FINRA-2008-052) be and hereby is approved.

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

Florence E. Harmon
Deputy Secretary

¹⁰ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).