

and traded on another national securities exchange. As such, transparent last sale information will continue to be disseminated on the securities on an uninterrupted basis. Further, this requirement will ensure other protections for trading a security on a national securities exchange will remain in place, such as the periodic reporting obligations under the Act.

Further, the Commission finds that the deletion of the restatements of Rule 18 and Rule 12d2-2 in the Amex Company Guide is consistent with the requirements of the Act. The rules of Amex and the Commission are equally available on the Internet, and are updated when changed. As such, the restatements in the Company Guide are no longer necessary. The Exchange rules, however, will continue to reference Rule 12d2-2 to ensure issuers know they must comply with that rule, as well as the Exchange's requirements, to delist.

Finally, as noted above, the new rule will only be implemented upon the closing of the Exchange Acquisition. The Exchange has represented that, upon closing of the merger, it will notify applicable issuers that the rule has become effective.<sup>14</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2008-65) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58651; File No. SR-FINRA-2008-047]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Codes of Arbitration Procedure To Raise the Amount in Controversy Heard by a Single Chair-Qualified Arbitrator to \$100,000

September 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 18, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 FINRA. 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

FINRA is proposing to amend NASD Rule 12401 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and NASD Rule 13401 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to raise the amount in controversy that will be heard by a single chair-qualified arbitrator to \$100,000. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

#### 12401. Number of Arbitrators

##### (a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800.

##### (b) Claims of More Than \$25,000 Up To \$100,000

If the amount of a claim is more than \$25,000 but not more than \$100,000

*\$100,000*, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any party requests a panel of three arbitrators in its initial pleading] *unless the parties agree in writing to three arbitrators.*

##### (c) Claims of More Than \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

#### 13401. Number of Arbitrators

##### (a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 13800.

##### (b) Claims of More Than \$25,000 Up To \$100,000

If the amount of a claim is more than \$25,000 but not more than \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any party requests a panel of three arbitrators in its initial pleading] *unless the parties agree in writing to three arbitrators.*

##### (c) Claims of More Than \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

\* \* \* \* \*

#### 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 these 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 aspects of such statements.

<sup>14</sup> Telephone conversation between Marija Willen, Vice President and Associate General Counsel, Amex, and Steve Kuan, Special Counsel, Commission, on September 25, 2008.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

1. Purpose

FINRA is proposing to amend its Customer Code and Industry Code to raise the amount in controversy that would be heard by a single arbitrator to \$100,000, exclusive of interest and expenses.<sup>3</sup> The arbitrator would be selected from the roster of arbitrators who are qualified to serve as chairpersons. This means that investors' claims for up to \$100,000 would be heard by a public, chair-qualified arbitrator.

Under the proposal, parties would be permitted to request a panel of three arbitrators for claims of more than \$25,000, but not more than \$100,000, if all parties agreed in writing to the request.<sup>4</sup> Claims of more than \$100,000 would continue to be heard by three arbitrators unless the parties agree in writing to one arbitrator.<sup>5</sup>

Currently, if the amount of a claim is \$25,000 or less, a single arbitrator is appointed to resolve the matter. If the amount of a claim is more than \$25,000, but not more than \$50,000, a single arbitrator is appointed, unless a party asks for three arbitrators in its initial pleading. Claims for over \$50,000 are heard by a panel of three arbitrators.<sup>6</sup>

FINRA is also proposing to remove the current option for one party unilaterally to require three arbitrators in cases with claims for more than \$25,000.<sup>7</sup> FINRA believes this is not an efficient use of resources, as it requires other parties to incur higher hearing session costs and additional delays caused by scheduling three arbitrators instead of one. Therefore, the proposed rule would mandate a single arbitrator in all such cases unless all parties agree, in writing, to request a three person panel.

Raising the threshold for claims heard by a single arbitrator would increase efficiencies and decrease costs for parties and FINRA. Parties would experience reduced case processing times because of the flexibility associated with scheduling conference calls and hearing dates with one arbitrator as opposed to three. Parties would save time in the arbitrator selection process because they would receive only one list of eight names from which to choose their arbitrator, rather than three lists of eight names.<sup>8</sup> This means they would only research the disclosures and histories of eight proposed arbitrators instead of 24.

Parties would also benefit from reduced hearing session fees. For claims between \$25,000.01 and \$50,000, parties would save \$150 per hearing session<sup>9</sup> by reducing fees from \$600 (for a hearing with three arbitrators) to \$450 (for a hearing with one arbitrator).<sup>10</sup> For claims between \$50,000.01 and \$100,000, the savings would be \$300 per hearing session by reducing fees from \$750 (for a hearing with three arbitrators) to \$450 (for a hearing with one arbitrator). The parties' cost for photocopying pleadings and exhibits would be reduced by two-thirds. FINRA would benefit from a more efficient use of its arbitrator roster since cases for \$100,000 or less would use only one arbitrator instead of three. FINRA's photocopying costs and mailing expenses would also be reduced.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</sup> 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 that the proposed rule change would further the

purposes of the Act because it would make arbitration more expeditious and efficient, and would decrease users' forum fees and related expenses.

*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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2008-047 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-047. 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

<sup>3</sup> See proposed amendments to Rules 12401(b) and 13401(b).

<sup>4</sup> *Id.*

<sup>5</sup> See proposed amendments to Rules 12401(c) and 13401(c).

<sup>6</sup> See Rules 12401 and 13401. The current threshold for appointing one or three arbitrators has been in effect since 1998. See Securities Exchange Act Release No. 38635 (May 14, 1997), 62 FR 27819 (May 21, 1997) (SR-NASD-97-22) (approval order) and NASD Notice to Members 98-90. Customer disputes are resolved by a single, chair-qualified public arbitrator or a majority-public panel consisting of a public arbitrator, a chair-qualified public arbitrator, and a non-public arbitrator. Industry disputes are resolved by a public panel or a non-public panel depending upon the parties to the controversy and the nature of the claims asserted (see Rules 13402 and 13802).

<sup>7</sup> See proposed amendments to Rules 12401(b) and 13401(b).

<sup>8</sup> For example, for customer cases, if the panel consists of one arbitrator, the Neutral List Selection System ("the System") generates a list of eight public arbitrators from the chairperson roster. If the panel consists of three arbitrators, the System generates a list of eight public arbitrators from the chairperson roster; a list of eight arbitrators from the public roster; and a list of eight arbitrators from the non-public roster. FINRA sends the lists to the parties along with each arbitrator's employment history for the prior 10 years and other background information (see Rules 12403 and 13403).

<sup>9</sup> The term "hearing session" means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a pre-hearing conference. (see Rules 12100(n) and 13100(n)). For full day hearings, the savings would be \$300 for claims between \$25,000.01 and \$50,000, and \$600 for claims between \$50,000.01 and \$100,000.

<sup>10</sup> See Rules 12902 and 13902.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

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 such 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-2008-047 and should be submitted on or before October 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
Acting Secretary.

[FR Doc. E8-23195 Filed 10-1-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58660; File No. SR-FINRA-2008-027]

### Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to the Adoption of FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and FINRA Rule 2070 (Transactions Involving FINRA Employees) in the Consolidated FINRA Rulebook

September 26, 2008.

#### I. Introduction

On July 18, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule relating to the adoption of FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and FINRA Rule 2070 (Transactions Involving FINRA Employees) in the new consolidated FINRA rulebook ("Consolidated FINRA Rulebook").<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on August 11, 2008.<sup>4</sup> The Commission received one comment letter in response to the proposed rule change.<sup>5</sup> This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

As part of the process of developing the Consolidated FINRA Rulebook, FINRA proposed to transfer without material change NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) into the Consolidated FINRA Rulebook and to delete the corresponding provisions in Incorporated NYSE Rules 350, 350.10, 407(a), 407.10 and NYSE Rule Interpretations 350/01 through 350/03. The proposed rule change would renumber NASD Rule 3060 as FINRA Rule 3220 and NASD Rule 3090 as FINRA Rule 2070 in the Consolidated FINRA Rulebook, and would delete NASD Rules 3060 and 3090 in their entirety from the Transitional Rulebook.

##### (A) Proposed FINRA Rule 3220

##### (1) Background

NASD Rule 3060 (Influencing or Rewarding Employees of Others) currently states that no member or associated person shall give gifts or gratuities to an agent or employee of another person in excess of \$100 per year where the gift or gratuity is in relation to the business of the employer of the recipient. The rule, which

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules (hereinafter, "NYSE Rules") apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, see *FINRA Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>4</sup> See Securities Exchange Act Release No. 34-58308 (August 5, 2008); 73 FR 46664 (Aug. 11, 2008) (notice).

<sup>5</sup> See letter from Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated Sept. 2, 2008 ("SIFMA letter").

protects against improprieties that may arise when members or their associated persons give gifts or gratuities to employees of a customer, has been in effect in its current form since 1969, with changes only to the dollar amounts, rising from \$25 to \$50 to \$100.<sup>6</sup> The rule requires each member to maintain a separate record of all gifts or gratuities. The rule also contains an express exclusion for payments made pursuant to bona fide, written employment contracts.

NYSE Rule 350 (Compensation or Gratuities to Employees of Others) reaches similar conduct in prohibiting, absent prior written consent of the recipient's employer, any member or member organization from giving any gratuity in excess of \$100 per person per year to any principal, officer, or employee of another member or member organization, financial institution, news or financial information media, or non-member broker or dealer in securities, commodities or money instruments.<sup>7</sup> NYSE Rule 350 has specific provisions addressing compensation to operations employees of members (e.g., NYSE Floor personnel). In addition, NYSE Rule 350 requires that records of all such gratuities and compensation be retained for at least three years.

##### (2) Proposal

FINRA proposed to transfer NASD Rule 3060 into the Consolidated FINRA Rulebook without material change and renumbered as FINRA Rule 3220. One of the advantages of the existing regulatory standard is the clarity of the rule's application—it prevents gifts in excess of a fixed amount, currently \$100. Both the NASD and NYSE rules have a \$100 limitation on gifts.

FINRA believes that NASD Rule 3060 generally is well understood by members. FINRA recently issued additional guidance on NASD Rule 3060 in *Notice to Members* 06-69.<sup>8</sup> Among the issues addressed in that *Notice* was the fact that NASD Rule 3060 does not apply to gifts of *de minimis* value, or to promotional items of nominal value

<sup>6</sup> See *NASD Notice to Members* 93-8 (February 1993) (SEC Approval of Amendment Relating to the Payment of Gratuities or Anything of Value by Members to Others); see also Securities Exchange Act Release No. 21074 (June 20, 1984), 49 FR 26330 (June 27, 1984) (SR-NASD-84-8) (approval order).

<sup>7</sup> In addition, NYSE Rule 350(a)(1) prohibits any member from employing or compensating any person for services rendered except with the prior consent of that person's employer. FINRA proposed to delete this provision, even though it does not pertain to gifts, because a substantively identical provision exists in NYSE Rule 346(b). FINRA intends to review NYSE Rule 346(b) as part of a later phase of the rulebook consolidation process.

<sup>8</sup> See *NASD Notice to Members* 06-69 (December 2006) (Gifts and Gratuities).

<sup>12</sup> 17 CFR 200.30-3(a)(12).