Finally, the proposed rule change requires that public notice of the final delisting determination by the Exchange be provided no fewer than 10 days before the delisting becomes effective, in accordance with Rule 12d2–2 under the Act.[19] The Commission believes that public notice of the Exchange's final determination should ensure that investors have adequate notice of an exchange delisting and is consistent with the protection of investors under Section 6(b)(5) of the Act.[20]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–BSE–2008–36) is approved.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1673 Filed 1–26–09; 8:45 am]

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53700 (April 21, 2006), 71 FR 25257 (April 28, 2006) (SR–BSE–2005–46).

[19] 17 CFR 240.12d2–2.

[20] 15 U.S.C. 78f(b)(5).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59253; File No. SR–FINRA–2008–052]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of 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

January 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that 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'') the proposed rule change described in Items I, II, and III below, which items have been prepared by FINRA. The Commission is publishing this notice to solicit comments from interested persons.

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

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

FINRA is proposing to adopt 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. The proposed rule change would renumber NASD IM–2110–7 as FINRA Rule 2140 in the consolidated FINRA rulebook.

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 these statements.

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

1. Purpose

As part of the process of developing the new consolidated rulebook (''Consolidated FINRA Rulebook''),[2] FINRA is proposing to adopt 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. 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 member[3] 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.[4]

FINRA adopted IM–2110–7 to address the practice of delaying customer account transfers.[5] In adopting IM–2110–7, FINRA noted 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.[6] FINRA stated that

[2] The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). 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).

[3] The term ''person associated with a member'' includes, among others, registered representatives. *See* FINRA By-Laws, Article I, Paragraph (rr).

[4] 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].

[5] *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].

[6] 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).

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 earlier *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 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).[7]

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.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] 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 as part of the Consolidated FINRA Rulebook the proposed rule change will protect investors and the public interest by addressing interference with the transfer of customer accounts in the context of employment disputes.

(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 thirty-five 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 ninety 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*. Please include File Number SR–FINRA–2008–052 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–2008–052. 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 such filing also will be available for inspection and copying at the principal office of FINRA and on FINRA's Web site at *http://www.finra.org/Industry/Regulation/RuleFilings/2008/P117330.* 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–2008–052 and should be submitted on or before February 17, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

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[7] 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].

[8] 15 U.S.C. 78o–3(b)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59267; File No. SR–FINRA–2009–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement Technical Changes to the Code of Arbitration Procedure for Customer Disputes and Industry Disputes

January 16, 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 Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD''))

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

[2] 17 CFR 240.19b–4.