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.

[FR Doc. E9–1656 Filed 1–26–09; 8:45 am]

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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.

filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') on January 8, 2009, the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA Dispute Resolution. 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.

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

FINRA is proposing to amend the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') to insert rule language from the Code of Arbitration Procedure (''old Code'') that was inadvertently omitted when the Customer Code and Industry Code were adopted, to correct inaccurate cross-references, and typographical errors. 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 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.

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

1. Purpose

On January 24, 2007, the SEC approved a proposal to amend the old Code by simplifying the language, codifying current dispute resolution practices, and implementing several substantive changes to dispute resolution rules.[4] The proposal reorganized the old Code into three separate procedural codes: the Customer Code, the Industry Code, and the NASD Code of Mediation Procedure (''Mediation Code'').[5] The Customer, Industry and Mediation Codes (the ''new Codes'') replace the old Code in its entirety.[6]

Since the new Codes became effective, FINRA has found some inaccurate cross-references, typographical errors, inadvertent omissions, and rule language that could be improved to better convey FINRA's intent or to clarify current practice regarding those rules. FINRA is, therefore, proposing several technical, non-substantive amendments to the Customer and Industry Codes that would correct inaccurate cross-references and typographical errors, insert rule language that was inadvertently omitted, codify current practice concerning the administration of existing rules, and make certain clarifying changes. FINRA will discuss the proposed changes in the order that they appear in the new Codes, beginning with the proposed amendments to the Customer Code.

Proposed Non-Substantive Amendments to the Customer Code

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FINRA proposes to amend the title that introduces Part IV of the Table of Contents, by adding a comma after the word ''Disqualification,'' so that the title in the Table of Contents to the Customer Code is the same as the title in the Customer Code.

Rule 12102—National Arbitration and Mediation Committee

Rule 10102(a) of the old Code authorized the then—NASD Dispute Resolution Board of Directors to appoint a National Arbitration and Mediation Committee (the ''Committee''); and, under this rule, the Committee was authorized to establish and maintain rosters of neutrals.

When the old Code was reorganized into the Customer Code, the Committee's authorization to establish and maintain neutral rosters was inadvertently omitted from Rule 12102. Thus, FINRA proposes to amend Rule 12102(b) to insert language similar to that in old Rule 10102(a), which will authorize the Committee to establish and maintain rosters of neutrals composed of persons from within and outside of the securities industry. As the Committee currently works to establish and maintain FINRA's arbitrator rosters, the amendment would not be a change to current practice.

Rule 12206—Time Limits

FINRA proposes to amend Rule 12206(d) to correct a proofreading oversight by removing the word ''matter'' from the end of the sentence. Under the new Codes, the term ''claim,'' not ''matter,'' is used when referring to an allegation or request for relief.

Rule 12307—Deficient Claims

In the Customer Code, FINRA codified its practice regarding deficient claims, which had not been codified in the old Code. Under Rule 12307, the deficient claims rule, FINRA lists the reasons that a claim may be deficient, explains the process if a deficiency is not corrected, and sets forth procedures for handling other pleadings that may be deficient. Specifically, Rule 12307(b) provides that the Director will not refund any filing fees paid by claimants when staff closes a deficient case. FINRA proposes to amend Rule 12307(b) because it does not reflect accurately its practice concerning refunding certain fees paid by claimants when FINRA closes a deficient claim.

When claimants filed a claim under the old Code, they submitted their Statement of Claim along with two separate fees: A non-refundable filing fee and a hearing session deposit.[7] When FINRA staff closed a deficient case, FINRA would retain the non-refundable filing fee and refund the hearing session deposit to the claimants. Under the Customer Code, FINRA combined the old Code filing fee and hearing session deposit into one ''filing fee.''[8] However, FINRA did not change its practice regarding refunds of a portion of the filing fee when it closes a deficient case—FINRA continues to refund the refundable part of the filing fee to claimants, while retaining the remaining portion. Thus, FINRA believes the language in Rule 12307(b) does not reflect accurately its practice and could be confusing to users of the forum. Therefore, FINRA proposes to amend Rule 12307(b) to state that the Director will close the case without

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 55158 (January 24, 2007); 72 FR 4574 (January 31, 2007) (File Nos. SR–NASD–2003–158 and SR–NASD–2004–011).

[5] The SEC approved the Mediation Code on October 31, 2005. *See* Securities Exchange Act Release No. 52705 (Oct. 31, 2005); 70 FR 67525 (November 7, 2005) (File No. SR–NASD–2004–013). It became effective on January 30, 2006. *See Notice to Members* 05–85 (December 2005).

[6] The Customer and Industry Codes became effective on April 16, 2007. *See Notice to Members* 07–07 (February 2007).

[7] *See* Rule 10332(c) of the Code of Arbitration Procedure.

[8] *See* Rule 12900. A portion of the filing fee is refundable under certain circumstances, Rule 12900(c).

serving the claim, and will refund part of the filing fee in the amount indicated in the schedule of fees. FINRA believes the amendment will reflect accurately its practice concerning refunds when it closes a deficient case and will minimize confusion concerning its fees.

Rule 12410—Removal of Arbitrator by Director

Rule 12410 addresses removal of an arbitrator by the Director of Arbitration. Specifically, Rule 12410(a)(1) states, in relevant part, that ''the Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.'' [9] FINRA believes the word ''direct'' in the second sentence of the rule conflicts with the meaning of the first sentence, in which an arbitrator may be challenged for having ''a direct or indirect interest in the outcome of the arbitration.'' Thus, FINRA proposes to remove ''direct'' from the second sentence of Rule 12410(a)(1) to eliminate the conflict in the rule language.

Proposed Non-Substantive Amendments to the Industry Code [10]

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For an explanation of the proposed amendment, see the relevant section under ''Proposed Non-Substantive Amendments to the Customer Code'' above.

Rule 13102—National Arbitration and Mediation Committee

For an explanation of the proposed amendment, see the relevant section under ''Proposed Non-Substantive Amendments to the Customer Code'' above.

Rule 13206—Time Limits

For an explanation of the proposed amendment, see the relevant section under ''Proposed Non-Substantive Amendments to the Customer Code'' above.

Rule 13307—Deficient Claims

For an explanation of the proposed amendment, see the relevant section under ''Proposed Non-Substantive Amendments to the Customer Code'' above.

Rule 13314—Combining Claims

FINRA proposes to amend the erroneous cross-reference to Rule 13404(c) in Rule 13314. Rule 13314 states, in relevant part, that before ranked arbitrator lists are due to the Director under Rule 13404(c), the Director may combine separate but related claims into one arbitration. Rule 13404(c) instructs parties on the ranking procedures in the forum. Rule 13404(d) governs when ranked lists must be returned to the Director. Thus, the reference to Rule 13404(c) in Rule 13314 is inaccurate and should be changed to Rule 13404(d).

Rule 13403—Generating and Sending Lists to the Parties

FINRA proposes to amend the erroneous cross-reference to Rule 13404(c) in Rule 13403(c)(2). The relevant provision of Rule 13403(c)(2) states that when a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 13404(c). For the reason discussed pertaining to the proposed amendment to Rule 13314, the reference to Rule 13404(c) is inaccurate and should be changed to Rule 13404(d).

Rule 13410—Removal of Arbitrator by Director

For an explanation of the proposed amendment, see the relevant section under ''Proposed Non-Substantive Amendments to the Customer Code'' above.

Rule 13804—Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

FINRA proposes to correct a typographical error in Rule 13804(b)(3)(A)(ii). The relevant sentence of the rule states that ''the Direct shall consolidate the parties'' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.'' FINRA proposes to change the word ''Direct'' to ''Director.''

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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 will assist in the efficient administration of arbitrations by clarifying current practices and by correcting inaccurate cross-references and typographical errors. FINRA believes these technical, non-substantive amendments will enhance the new Codes by making them easier to understand and apply.

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, as amended.

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 by FINRA.

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

FINRA has represented that the proposed rule change qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder [12] 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.[13]

FINRA 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 FINRA's request.[14] The Commission believes that

[9] *See* Rule 12410(a)(1).

[10] Most rules of the Customer and Industry Codes are identical, except for panel composition, references to document production lists that apply only in customer cases, and rules relating to employment discrimination and injunctive relief that apply only to industry claims. Wherever possible, the last three digits of the rule numbers in the Customer and Industry Codes are the same. Thus, the explanation for the proposed amendments in the Customer Code also apply to the proposed amendments in the Industry Code, except where indicated.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 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.

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the

Continued

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 which should help to 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–2009–003 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–2009–003. 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. 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 the File Number SR–FINRA–2009–003 and should be submitted on or before February 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

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proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59261; File No. SR–BX–2009–001]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deferring Operation of Its Listing Standards for Primary Listings and Consolidating Into a Single Rule Certain Requirements for Products Traded on the Exchange Pursuant to Unlisted Trading Privileges

January 15, 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, NASDAQ OMX BX, Inc. (the ''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 the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

[3] 15 U.SC. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

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

The Exchange proposes (i) to suspend the operation of the Exchange's newly adopted listing standards with respect to primary listings on the Exchange until such time as the Exchange adopts listing fees, and (ii) to adopt rules reflecting the requirements for trading products on the Exchange pursuant to unlisted trading privileges (''UTP'') that have been established in various new product proposals previously approved by the Commission. The Exchange proposes to make the change operative on January 12, 2009.

The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Web site at *http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange*.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On August 29, 2008, the Exchange was acquired by The NASDAQ OMX Group, Inc. At the time of this acquisition, the Exchange was not operating a venue for listing or trading cash equities. Pursuant to SR–BSE–2008–48, the Exchange has adopted a new rulebook with rules governing membership, the regulatory obligations of members, listing, and equity trading.[5] The new rules, which are designated as the ''Equity Rules,'' include rules that permit issuers of various types of securities to establish primary listings on the Exchange. However, the Exchange has determined that market conditions do not currently warrant offering the Exchange as a listing venue.

[5] Securities Exchange Act Release No. 59154 (December 23, 2008) (SR–BSE–2008–48).