

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57504; File No. SR-NASD-2007-52)

March 14, 2008

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the NASD Rule 9700 Series To Streamline the Procedural Rules Applicable to General Grievances Related to FINRA Automated Systems

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 July 23, 2007, the National Association of Securities Dealers, Inc. (“NASD”) (n/k/a Financial Industry Regulatory Authority, Inc. (“FINRA”)) 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.<sup>3</sup> On February 7, 2008, FINRA filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

FINRA proposes to amend the NASD Rule 9700 Series to streamline the existing procedural rules applicable to general grievances related to FINRA automated systems, to provide discretionary review by the National Adjudicatory Council (“NAC”), acting

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

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

<sup>3</sup> On July 26, 2007, the Commission approved a proposed rule change filed by the NASD to amend the NASD’s Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) (SR-NASD-2007-053).

through the NAC's Review Subcommittee,<sup>4</sup> and to delete certain text that is no longer necessary. The text of the proposed rule change is available at the principal office of FINRA, the Commission's Public Reference Room and <http://www.finra.org>.

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

The NASD Rule 9700 Series, Procedures on Grievances Concerning the Automated Systems, provides redress, where justified, for persons aggrieved by the operations of any automated quotation, execution or communication system owned or operated by FINRA that is not otherwise provided for under the Code of Procedure ("Rule 9000 Series") or the Uniform Practice Code ("Rule 11000 Series"). The Rule 9700 Series was established to ensure adequate procedural protections to users of FINRA systems.<sup>5</sup> Although by its terms the Rule 9700 Series has potentially broader application,

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<sup>4</sup> For purposes of the proposed rule change, the term "Review Subcommittee" will have the meaning set forth in NASD Rule 9120(aa).

<sup>5</sup> See Securities Exchange Act Release No. 27867, 55 FR 12978 (April 6, 1990) (order approving SR-NASD-90-6).

it historically has been used only for appeals of staff Over-the-Counter Bulletin Board (“OTCBB”) eligibility determinations under Rule 6530.<sup>6</sup>

Currently under the Rule 9700 Series, a party that is aggrieved by the operation of a FINRA automated system may request a review by a hearing panel. In accordance with the Rule 9700 Series, the aggrieved party may also request a review of the hearing panel’s decision by a Committee designated by the Board.<sup>7</sup> With respect to OTCBB eligibility reviews, both of these reviews pursuant to the Rule 9700 Series are solely to determine whether the issuer filed a complete report by the applicable due date and, thus, whether the security of the issuer is eligible for continued quotation. There is no discretion to grant extensions of time for ineligible securities to become eligible or any other form of relief.

Given that these reviews focus on one narrow issue, FINRA now proposes to amend the Rule 9700 Series to streamline the review process. Specifically, reviews of staff determinations under the Rule 9700 Series would be adjudicated by a Hearing

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<sup>6</sup> The OTCBB is a facility for the publication of quotations in eligible OTC equity securities of issuers that are subject to the filing of financial reports with the Commission (or other appropriate regulator) and are current in their reporting. FINRA staff monitors the submission of such periodic reports to determine an issuer’s initial and continued eligibility for quotation on the OTCBB and, pursuant to Rule 6530, restricts the quoting of securities of issuers that are late or delinquent in filing periodic reports.

<sup>7</sup> Currently, the Nasdaq Listing and Hearing Review Council (“NLHRC”) has authority to review hearing panel decisions and has only ever had one such review, which upheld the decision of the hearing panel. NLHRC decisions may be called for further review by FINRA’s Board solely upon the request of one or more Governors. Finally, an aggrieved party also has the right to appeal a decision to the Commission.

Officer<sup>8</sup> appointed by FINRA’s Office of Hearing Officers (“OHO”), subject to discretionary review by the NAC, acting through the NAC’s Review Subcommittee.<sup>9</sup>

After the review hearing, the Hearing Officer will prepare a written decision and provide it to the NAC’s Review Subcommittee, which would have the ability to call the decision for review during certain specified timeframes.<sup>10</sup> As is currently the case with most expedited actions under the Rule 9550 Series, aggrieved parties will not have the right to appeal the decision to the NAC’s Review Subcommittee.<sup>11</sup> The Hearing Officer decision, if not called for review by the NAC’s Review Subcommittee, would constitute final FINRA action on the matter.<sup>12</sup>

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<sup>8</sup> For purposes of the proposed rule change, the term “Hearing Officer” will have the meaning set forth in Rule 9120(p).

<sup>9</sup> Subject to the NAC’s discretionary review (acting through the NAC’s Review Subcommittee), a Hearing Officer currently acts as the adjudicator in expedited actions involving (1) a failure to pay FINRA dues, fees or other charges and (2) a failure to pay an arbitration award or related settlement, pursuant to Rules 9553 and 9554, respectively.

<sup>10</sup> The NAC’s Review Subcommittee will have the right to call an OHO decision for review within 21 days after receipt of such decision, which is consistent with the timeframe for the Review Subcommittee’s call right involving expedited actions under the Rule 9550 Series.

<sup>11</sup> Under many of the existing rules with expedited components, respondents may not appeal the matter to a FINRA appellate body, such as the NAC. For example, the decision of the Hearing Officer under Rule 9553 (Failure to Pay Dues, Fees and Other Charges) is not appealable, at the request of a party, to the NAC or any other internal, FINRA appellate body under the existing system.

<sup>12</sup> Currently under Rule 9780, FINRA’s Board has a right to review NLHRC decisions issued pursuant to Rule 9770. The proposed rule change would provide the NAC (rather than the Board) with a call right, which is consistent with other expedited actions under the Rule 9550 Series.

If a decision is called for review by the NAC's Review Subcommittee, the NAC or NAC's Review Subcommittee would appoint a Subcommittee<sup>13</sup> of the NAC to conduct a review.<sup>14</sup> Based on its review, the Subcommittee would make a recommendation to the NAC and the NAC, in turn, would issue a decision on the matter. The decision of the NAC would constitute final FINRA action.

An aggrieved party also would continue to have the right to appeal the Hearing Officer's decision, or the NAC decision, as the case may be, to the SEC. FINRA believes that this abbreviated review process is appropriate given the narrow and straightforward issue presented and the experience of OHO and the NAC in adjudicating matters. FINRA further believes the streamlined review process strikes an appropriate balance between the need to ensure fairness to aggrieved parties and the need for expedited action in these instances.

FINRA also proposes to make conforming and non-substantive changes to Rules 6530 and 9120 to reflect the amended review process contained in the Rule 9700 Series. There are no proposed changes to other aspects of the review process relating to OTCBB eligibility determinations under Rule 6530 (e.g., notifications and time periods for requesting review, the scope of review and the applicable fees for such review).<sup>15</sup>

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<sup>13</sup> For purposes of the proposed rule change, the term "Subcommittee" will have the meaning set forth in Rule 9120(cc). The Subcommittee will be comprised as set forth in Rule 9331(a)(1).

<sup>14</sup> If the NAC's Review Subcommittee calls a matter for review, the timelines for such review would be as set forth in proposed Rule 9760.

<sup>15</sup> In accordance with Rule 6530, an aggrieved party requesting a review of an OTCBB eligibility determination by a Hearing Officer will continue to be required to pay a \$4,000 fee for such review. Given that aggrieved parties would only have the right to appeal to OHO and any further level of review would be at the discretion of the NAC's Review Subcommittee, the additional \$4,000 fee currently provided for in Rule 6530(f)(3) would be eliminated.

In addition, FINRA proposes to make a technical change to the text of Rule 9710. As noted above, Rule 9710 provides that the scope of the Rule 9700 Series is to provide redress, where justified, for persons aggrieved by the operations of any automated quotation, execution or communication system owned or operated by FINRA that is not otherwise provided for under the NASD Code of Procedure (Rule 9000 Series) or the Uniform Practice Code (Rule 11000 Series). There are certain appeal and procedural rights contained in FINRA Rules other than the Rule 9000 Series or the Rule 11000 Series. For example, within the Alternative Display Facility (“ADF”) Rules (the Rule 4000A Series), there are certain appeals rights and procedures relating to ADF related grievances (e.g., ADF Trading Center excused withdrawals reviews under Rule 4619A). In such cases, given the language in Rule 9710, there may be confusion whether the Rule 9700 Series or the Rule 4000A Series governs such disputes. Therefore, FINRA proposes to amend the text of Rule 9710 to clarify that the scope of the Rule 9700 Series is to address general grievances not otherwise provided for by any other FINRA Rules. FINRA believes that this clarification will alleviate any potential confusion in this regard and is consistent with the history and intent of the Rule 9700 Series.

Finally, FINRA proposes to delete language in Rule 6530(e) that is no longer necessary. Specifically, Rule 6530(e) contains text indicating that periodic filings for reporting periods ended before October 1, 2005 will not count toward determining eligibility for quotation on the OTCBB pursuant to paragraph (e). Given that the text

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Also in accordance with Rule 6530, a request for review will stay the OTCBB security’s removal until the Hearing Officer issues a decision. If the NAC’s Review Subcommittee calls a mater for review, the OTCBB security’s removal will be stayed until the NAC issues a decision.

relating to the October 1, 2005 timeframe is no longer necessary, FINRA proposes to delete that text as part of this proposed rule change.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing 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,<sup>16</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 strikes an appropriate balance between the need to ensure fairness to aggrieved parties and the need for expedited action in these instances.

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

The proposed rule change does not impose 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

FINRA has not solicited, and does not intend to solicit, comments on this proposed rule change. FINRA has not received any unsolicited written comments from members or other interested parties.

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<sup>16</sup> 15 U.S.C. 78o-3(b)(6).

### III. 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 No. SR-NASD-2007-52 on the subject line.

#### Paper comments:

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

All submissions should refer to File Number SR-NASD-2007-52. 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 10:00 a.m. and



3:00 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-NASD-2007-52 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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