

consists of a proposal to establish a real-time subscription to the continuing disclosure document collection. The real-time data stream subscription to the EMMA continuing disclosure service to be provided through a Web service would be made available for an annual fee of \$45,000.⁵ The continuing disclosure subscription service would make available to subscribers all continuing disclosure documents and related information provided by submitters through the EMMA submission process that is posted on the EMMA portal. Such documents and information would be made available to subscribers simultaneously with the posting thereof on the EMMA portal.

The MSRB would make the continuing disclosure subscription service available on an equal and non-discriminatory basis. In addition, the MSRB would not impose any limitations on or additional charges for redistribution of such documents by subscribers to their customers, clients or other end-users. Subscribers would be subject to all of the terms of the subscription agreement to be entered into between the MSRB and each subscriber, including proprietary rights of third parties in information provided by such third parties that is made available through the subscription. The MSRB would not be responsible for the content of the information or documents submitted by submitters distributed to subscribers through the continuing disclosure subscription service. The MSRB has requested approval of the proposed rule change on or prior to July 1, 2009. A full description of the proposal is contained in the Commission's Notice.

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB⁶ and, in particular, the requirements of

Section 15B(b)(2)(C) of the Act⁷ and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.⁸ In particular, the Commission finds that the EMMA continuing disclosure subscription service would serve as a mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The subscription service would make the indexed comprehensive collection of continuing disclosure documents of the EMMA continuing disclosure service available to marketplace participants for re-dissemination and for use in creating value-added products and services. Such re-dissemination and third-party use would provide market participants, including investors and the general public, additional avenues for obtaining these key disclosures and would make additional tools available in making well-informed investment decisions. Broad access to continuing disclosure documents through the subscription service, in addition to the public access available through the EMMA Web portal, should further assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers, their securities and the prices at which such securities trade.

Furthermore, broader re-dissemination and third-party use of continuing disclosure documents should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities (including any changes thereto), changes in circumstances of issuers and obligated persons, and the potential investment risks arising therefrom.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-MSRB-2009-05), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60112; File No. SR-FINRA-2009-039]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 3310 (Anti-Money Laundering Compliance Program) in the Consolidated FINRA Rulebook

June 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 June 1, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "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 adopt: (1) NASD Rule 3011 (Anti-Money Laundering Compliance Program) as FINRA Rule 3310 (Anti-Money Laundering Compliance Program), without substantive change; (2) NASD IM-3011-1 (Independent Testing Requirements) as supplementary material to proposed FINRA Rule 3310, subject to certain amendments; and (3) NASD IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information) as supplementary material to proposed FINRA Rule 3310, without substantive change. The proposed rule change would delete Incorporated NYSE Rule 445 (Anti-Money Laundering

2008) (File No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009).

⁵ The proposed subscription price would cover a portion of the administrative, technical and operating costs of the EMMA continuing disclosure subscription service but would not cover all costs of such subscription service or of the EMMA continuing disclosure service. The MSRB has proposed establishing the subscription price at a fair and reasonable level consistent with the MSRB's objective that subscriptions be made available on terms that promote the broad dissemination of documents and data throughout the marketplace.

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-4(b)(2)(C).

⁸ *Id.*

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Compliance Program) in its entirety as duplicative.

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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt: (1) NASD Rule 3011 (Anti-Money Laundering Compliance Program) as FINRA Rule 3310 (Anti-Money Laundering Compliance Program), without substantive change; (2) NASD IM-3011-1 (Independent Testing Requirements) as supplementary material to proposed FINRA Rule 3310, subject to certain amendments; and (3) NASD IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information) as supplementary material to proposed FINRA Rule 3310, without substantive change. The proposed rule change would delete Incorporated NYSE Rule 445 in its entirety (Anti-Money Laundering Compliance Program) as duplicative. The proposed rule change is discussed in further detail below.

Background

NASD Rule 3011 (Anti-Money Laundering Compliance Program) and

Incorporated NYSE Rule 445 (Anti-Money Laundering Compliance Program) are substantially similar rules requiring members to develop and implement a written anti-money laundering ("AML") program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act ("BSA")⁴ and the implementing regulations promulgated by the Department of the Treasury. Each member's AML compliance program must be approved, in writing, by a member of senior management.

The rules require that each AML compliance program, must, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and its implementing regulations; (3) provide for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or a qualified outside party;⁵ (4) designate and identify to FINRA an individual or individuals (*i.e.*, AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML compliance program and provide prompt notification to FINRA of any changes to the designation; and (5) provide ongoing training for appropriate persons.

NASD IM-3011-1 (Independent Testing Requirements) and the supplementary material to Incorporated NYSE Rule 445 also contain substantially similar provisions clarifying that: (1) Members should undertake more frequent testing than required if circumstances warrant; (2) the person conducting the independent test must have a working knowledge of applicable requirements under the BSA and its implementing regulations; and (3) the testing cannot be conducted by the AML compliance person(s), by any person who performs the functions

being tested, or by any person who reports to any of these persons.

NASD IM-3011-1, however, permits the AML compliance program testing to be conducted by persons who report to either the AML compliance person or persons performing the functions being tested if: (1) The member has no other qualified internal personnel to conduct the test; (2) the member establishes written policies and procedures to address conflicts that may arise from allowing the test to be conducted by a person who reports to the person(s) whose activities he or she is testing (*e.g.*, anti-retaliation procedures); (3) to the extent possible, the person conducting the test reports the results of the test to someone who is senior to the AML compliance person or persons performing the functions being tested; and (4) the member documents its rationale, which must be reasonable, for determining there is no other alternative than to comply in this manner. In addition, if the person does not report the results consistent with (3) above, the member must document a reasonable explanation for not doing so. Incorporated NYSE Rule 445 does not have a comparable provision.

Finally, NASD IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information) requires each member to identify, review, and if necessary, update the information regarding its AML compliance person in the manner prescribed in NASD Rule 1160.⁶ This provision is comparable to SM .03 of NYSE Rule 445.

Proposed FINRA Rule 3310 and Related Supplementary Material

The proposed rule change would adopt NASD Rule 3011 without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 3310 (Anti-Money Laundering Compliance Program). In addition, the proposed rule change would adopt NASD IM-3011-2, without substantive change, as supplementary material to proposed FINRA Rule 3310.

With respect to NASD IM-3011-1, the proposed rule change would adopt its provisions as supplementary material to proposed FINRA Rule 3310, but would eliminate the provision that currently allows, subject to specified conditions, the AML compliance program testing to be conducted by persons who report to either the AML compliance person or persons performing the functions being tested (referred to as the "independent

³ The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) 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"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

⁴ See 31 U.S.C. 5311, *et seq.*

⁵ Both rules permit a member to conduct the independent testing every two years (on a calendar-year basis) if it does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (*e.g.*, engages solely in proprietary trading, or conducts business only with other broker-dealers). Incorporated NYSE Rule 445 uses slightly different terminology to achieve the same result, specifically providing that a member may conduct independent testing every two years (on a calendar-year basis) if it "does not engage in a public business (*e.g.*, engages solely in proprietary trading, or conducts business only with other broker-dealers)."

⁶ FINRA is proposing to replace NASD Rule 1160 with FINRA Rule 4540 (Member Information and Data Reporting and Filing Requirements). See *Regulatory Notice* 09-02 (January 2009).

testing exception"). The Financial Crimes Enforcement Network ("FinCEN"), which is responsible for administering the BSA and its implementing regulations, has stated that the independent testing provision of the BSA precludes AML program testing by personnel with an interest in the outcome of the testing and that an independent testing exception, such as the one in NASD IM-3011-1, is inconsistent with this BSA provision and FinCEN's interpretive guidance on the BSA's independent testing requirement.⁷ Accordingly, consistent with FinCEN's guidance, FINRA is proposing to eliminate the independent testing exception in connection with its adoption of proposed FINRA Rule 3310.

Finally, as stated previously, the proposed rule change would delete Incorporated NYSE Rule 445 and its related supplementary material in their entirety as duplicative. FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 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 continue to assist members in identifying and preventing money laundering abuses that can affect the integrity of the U.S. capital markets.

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. Please include File Number SR-FINRA-2009-039 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-2009-039. 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. 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 insert SR-FINRA-2009-039 and should be submitted on or before July 13, 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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DEPARTMENT OF STATE

[Public Notice 6635]

Announcement of a Meeting of the International Telecommunication Advisory Committee

Summary: This notice announces a meeting of the International Telecommunication Advisory Committee (ITAC) to prepare for the International Telecommunication Union (ITU) Regional Preparatory Meeting for the World Telecommunication Development Conference.

The ITAC will meet to begin preparation of advice for the U.S. government for the ITU Regional Preparatory Meeting for the World Telecommunication Development Conference, which will be held from August 13-25, 2009 in Lima, Peru. There will also be reports on recent developments in the ITU, OECD, and CITE.

The ITAC will meet on July 7, 2009 at 1120 20th Street, NW., 10th floor, Washington, DC 20036. This meeting is open to the public as seating capacity allows. The public will have an opportunity to provide comments at this meeting. Those desiring further information on these meeting may contact the Secretariat at jillsonad@state.gov or at 202-647-7847.

⁷ See Letter from Jamal El-Hindi, Associate Director, Regulatory Policy & Programs Division, FinCEN, to Nancy M. Morris, Secretary, SEC (August 22, 2007). FinCEN submitted the letter to the SEC in response to the NYSE's "omnibus filing," a rule filing that sought to achieve greater harmonization between the NYSE and NASD rules, including the AML compliance program rules (SR-NYSE-2007-22). See Exchange Act Release No. 56142 (July 16, 2007), 72 FR 42195 (August 1, 2007).

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 17 CFR 200.30-3(a)(12).