



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rule 2210 (Communications with the Public) to create an exception from the principal approval requirements for certain filed sales material.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC**

**2210. Communications with the Public**

(a) No Change.

**(b) Approval and Recordkeeping**

**(1) Registered Principal Approval for Advertisements, Sales**

**Literature and Independently Prepared Reprints**

(A) A registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with NASD's Advertising Regulation Department (“Department”).

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

(B) With respect to debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange, [this requirement] the requirements of paragraph (A) may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

(C) A registered principal qualified to supervise security futures activities must approve by signature or initial and date each advertisement or item of sales literature concerning security futures.

(D) The requirements of paragraph (A) shall not apply with regard to any advertisement, item of sales literature, or independently prepared reprint if, at the time that a member intends to publish or distribute it:

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this paragraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

**(2) Record-keeping**

(A) Members must maintain all advertisements, sales literature, and independently prepared reprints in a separate file for a period beginning on the date of first use and ending three years from the date of last use. The file must include:

(i) a copy of the advertisement, item of sales literature or independently prepared reprint, and the dates of first and (if applicable) last use of such material;

(ii) the name of the registered principal who approved each advertisement, item of sales literature, and independently prepared reprint and the date that approval was given, unless such approval is not required pursuant to paragraph (b)(1)(D); and

(iii) for any advertisement, item of sales literature or independently prepared reprint for which principal approval is not required pursuant to paragraph (b)(1)(D), the name of the member that filed the advertisement, sales literature or independently prepared reprint with the Department, and a copy of the corresponding review letter from the Department.

(B) No Change.

(c) through (e) No Change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on April 18, 2007, which authorized the filing of the rule

change with the SEC. The Board of Governors of FINRA (then known as NASD) had an opportunity to review the proposed rule change at its meeting on April 19, 2007. No other action by FINRA is necessary for the filing of the 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 the date FINRA publishes the Regulatory Notice announcing Commission approval.

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

(a) Purpose

NASD Rule 2210 (Communications with the Public) requires that a registered principal of a FINRA member firm approve in writing all advertisements, sales literature, and independently prepared reprints (collectively, “sales material”) prior to use. Certain types of sales material, such as advertisements and sales literature concerning mutual funds or variable insurance products, must be filed with the FINRA Advertising Regulation Department (“Department”).

For funds and variable products that are sold through intermediary firms, typically a registered principal at the fund’s or variable product’s underwriter approves sales material internally and files the material with the Department. FINRA rules require registered principals at each of the intermediary firms that use the underwriter’s sales material to re-approve in writing each of these items used by their firms. (The intermediary firm is not required to re-file the sales material so long as it is used without material change.) If firms have selling agreements with multiple fund families and

insurance companies, the number of items that require re-approval can easily be in the hundreds, and often thousands, per firm annually.

Based on recommendations made by its Small Firms Rules Impact Task Force,<sup>2</sup> and to eliminate what FINRA regards as a compliance redundancy, FINRA is proposing to create an exception to Rule 2210's registered principal approval requirements for intermediary firms that use the sales material of another firm. The exception would apply only to sales material that another firm has filed with the Department, and for which the Department has issued a review letter finding that the material appears to be consistent with applicable standards.

The intermediary firm that relies on this exception could not materially alter the sales material or use it in a manner that is inconsistent with any conditions stated in the FINRA review letter. For example, if the Department's review letter was based in part upon the representation by the filing firm that the sales material would be accompanied by a fund prospectus, the intermediary firm would be subject to a similar constraint.

Although FINRA anticipates that firms will utilize the exception primarily with respect to mutual fund and variable insurance product sales material, the exception is not limited to sales material for particular products. Thus, the exception also would apply to sales material for other products, such as real estate investment trusts or direct participation programs, provided the sales material meets the exception's requirements.

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<sup>2</sup> NASD established the Small Firms Rules Impact Task Force in September 2006 to examine how existing NASD rules impact smaller firms. In particular, the Task Force focuses on possible opportunities to amend or modernize certain conduct rules that may be particularly burdensome for small firms, where such changes are consistent with investor protection and market integrity.

If this exception were adopted, FINRA believes it would save intermediary firms' compliance personnel numerous hours that are currently spent reviewing sales material that has already been approved by a registered principal at the product underwriter, and that the Department staff also has reviewed and found to be consistent with applicable standards. Of course, some firms may want to continue to review this sales material, and the proposal would allow them to do so.<sup>3</sup>

The proposed rule change would also revise certain of the advertising record-keeping requirements. Today Rule 2210(b)(2)(A) states that firms must maintain a copy of all sales material for a period of three years from the date of last use. Existing practice has been to assume that the record-keeping requirement begins on the date of first use. The proposal would codify this position. For sales material subject to the principal approval exception, firms would have to keep a record of the name of the firm that filed the sales material and a copy of the related FINRA review letter.

As noted in Item 2 of this filing, 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 the date FINRA publishes the Regulatory Notice announcing Commission approval.

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<sup>3</sup> The proposed rule change would not affect the contractual obligations that exist between underwriters and intermediary firms. Some dealer agreements may, for example, restrict the ability of underwriters and product wholesalers to send their sales material directly to an intermediary firm's sales force. These restrictions can facilitate the intermediary firm's ability to supervise its sales force. The proposed rule change would not alter the underwriter's obligations to comply with these contractual restrictions.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>4</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 creation of an exception that eliminates the requirement for firms to re-approve sales material in limited circumstances where a registered principal of a firm has previously approved the sales material and the Department has previously supplied a favorable review letter is 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. This exception from the principal approval requirements of Rule 2210 will eliminate a current compliance redundancy and will continue to protect investors, since the initial firm creating all sales material subject to this exception will still have to obtain approval from its registered principal, file it for review with the Department, and obtain a favorable review letter from the Department.

**4. 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.

**5. 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.

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<sup>4</sup> 15 U.S.C. 78o-3(b)(6).

6. **Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>5</sup>

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

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<sup>5</sup> 15 U.S.C. 78s(b)(2).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2007-020)

\_\_\_\_\_, 2007

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc., Notice of Filing of Proposed Rule Change to Create Exception to Principal Approval Requirements for Certain Filed Sales Material

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 \_\_\_\_\_, 2007, 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 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 2210 (Communications with the Public) to create an exception from the principal approval requirements for certain filed sales material. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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

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

**2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC**

**2210. Communications with the Public**

(a) No Change.

**(b) Approval and Recordkeeping**

**(1) Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints**

(A) A registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with NASD's Advertising Regulation Department ("Department").

(B) With respect to debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange, [this requirement] the requirements of paragraph (A) may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

(C) A registered principal qualified to supervise security futures activities must approve by signature or initial and date each advertisement or item of sales literature concerning security futures.

(D) The requirements of paragraph (A) shall not apply with regard to any advertisement, item of sales literature, or independently prepared reprint if, at the time that a member intends to publish or distribute it:

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this paragraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

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with the Department, and a copy of the corresponding review letter from the Department.

(B) No Change.

(c) through (e) No Change.

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**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

NASD Rule 2210 (Communications with the Public) requires that a registered principal of a FINRA member firm approve in writing all advertisements, sales literature, and independently prepared reprints (collectively, "sales material") prior to use. Certain types of sales material, such as advertisements and sales literature concerning mutual funds or variable insurance products, must be filed with the FINRA Advertising Regulation Department ("Department").

For funds and variable products that are sold through intermediary firms, typically a registered principal at the fund's or variable product's underwriter approves sales material internally and files the material with the Department. FINRA rules require

registered principals at each of the intermediary firms that use the underwriter's sales material to re-approve in writing each of these items used by their firms. (The intermediary firm is not required to re-file the sales material so long as it is used without material change.) If firms have selling agreements with multiple fund families and insurance companies, the number of items that require re-approval can easily be in the hundreds, and often thousands, per firm annually.

Based on recommendations made by its Small Firms Rules Impact Task Force,<sup>3</sup> and to eliminate what FINRA regards as a compliance redundancy, FINRA is proposing to create an exception to Rule 2210's registered principal approval requirements for intermediary firms that use the sales material of another firm. The exception would apply only to sales material that another firm has filed with the Department, and for which the Department has issued a review letter finding that the material appears to be consistent with applicable standards.

The intermediary firm that relies on this exception could not materially alter the sales material or use it in a manner that is inconsistent with any conditions stated in the FINRA review letter. For example, if the Department's review letter was based in part upon the representation by the filing firm that the sales material would be accompanied by a fund prospectus, the intermediary firm would be subject to a similar constraint.

Although FINRA anticipates that firms will utilize the exception primarily with respect to mutual fund and variable insurance product sales material, the exception is not

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limited to sales material for particular products. Thus, the exception also would apply to sales material for other products, such as real estate investment trusts or direct participation programs, provided the sales material meets the exception's requirements.

If this exception were adopted, FINRA believes it would save intermediary firms' compliance personnel numerous hours that are currently spent reviewing sales material that has already been approved by a registered principal at the product underwriter, and that the Department staff also has reviewed and found to be consistent with applicable standards. Of course, some firms may want to continue to review this sales material, and the proposal would allow them to do so.<sup>4</sup>

The proposed rule change would also revise certain of the advertising record-keeping requirements. Today Rule 2210(b)(2)(A) states that firms must maintain a copy of all sales material for a period of three years from the date of last use. Existing practice has been to assume that the record-keeping requirement begins on the date of first use. The proposal would codify this position. For sales material subject to the principal approval exception, firms would have to keep a record of the name of the firm that filed the sales material and a copy of the related NASD review letter.

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.

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<sup>4</sup> The proposed rule change would not affect the contractual obligations that exist between underwriters and intermediary firms. Some dealer agreements may, for example, restrict the ability of underwriters and product wholesalers to send their sales material directly to a retail firm's sales force. These restrictions can facilitate the intermediary firm's ability to supervise its sales force. The proposed rule change would not alter the underwriter's obligations to comply with these contractual restrictions.

The effective date will be the date FINRA publishes 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, 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 creation of an exception that eliminates the requirement for firms to re-approve sales material in limited circumstances where a registered principal of a firm has previously approved the sales material and the Department has previously supplied a favorable review letter is 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. This exception from the principal approval requirements of Rule 2210 will eliminate a current compliance redundancy and will continue to protect investors, since the initial firm creating all sales material subject to this exception will still have to obtain approval from its registered principal, file it for review with the Department, and obtain a favorable review letter from the Department.

**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.

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 such 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-2007-020 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-FINRA-2007-020. 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 20549-1090. 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-2007-020 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Nancy M. Morris

Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).