

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
---	---

Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change Relating to Amendments to FINRA Rule 2360 regarding position limits for options on exchange-traded funds and registration qualifications with respect to options discretionary accounts

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
 Title
 E-mail
 Telephone Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date
 By Vice President and Associate General Counsel
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

[Add](#) [Remove](#) [View](#)

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

[Add](#) [Remove](#) [View](#)

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

[Add](#) [Remove](#) [View](#)

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

[Add](#) [Remove](#) [View](#)

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

[Add](#) [Remove](#) [View](#)

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

[Add](#) [Remove](#) [View](#)

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

[Add](#) [Remove](#) [View](#)

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”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 2360 (Options) to (1) establish higher position limits for options on selected exchange-traded funds, (2) clarify the application of position limits to conventional options on exchange-traded funds, and (3) clarify the appropriate registration qualifications for accepting and reviewing the acceptance of options discretionary accounts.

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

* * * * *

2300. SPECIAL PRODUCTS

* * * * *

2360. Options

(a) No Change.

(b) Requirements

(1) through (17) No Change.

(18) Discretionary Accounts

(A) Authorization and Approval

(i) No member and no person associated with a member

¹ 15 U.S.C. 78s(b)(1).

shall exercise any discretionary power with respect to trading in option contracts in a customer's account, or accept orders for option contracts for an account from a person other than the customer, except in compliance with the provisions of NASD Rule 2510 and unless:

a. No Change.

b. the account shall have been accepted in writing by a Registered Options Principal or Limited Principal—General Securities Sales Supervisor.

(ii) Each firm shall designate specific Registered Options Principals [or Limited Principal—General Securities Sales Supervisors] as described below to review discretionary accounts. A Registered Options Principal other than the Registered Options Principal or Limited Principal—General Securities Sales Supervisor who accepted the account shall review the acceptance of each discretionary account to determine that the Registered Options Principal or Limited Principal—General Securities Sales Supervisor accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed, and shall maintain a record of the basis for such determination. Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate

supervisory review by a Registered Options Principal who is not exercising the discretionary authority. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in NASD Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled instructions issued on a “not held” basis. Any exercise of time and price discretion must be reflected on the order ticket.

(iii) No Change.

(B) through (C) No Change.

(19) through (24) No Change.

(c) No Change.

••• Supplementary Material: -----

.01 No Change.

.02 No Change.

.03 Position Limits for Exchange-Traded Funds

(a) In accordance with Rule 2360(b)(3)(A)(vi), FINRA may fix the position limit for one or more classes or series of options. The position limits applicable to option contracts on the securities listed in the chart below are as follows:

<u>Security Underlying Option</u>	<u>Position Limit</u>
<u>The DIAMONDS Trust (DIA)</u>	<u>300,000 contracts</u>
<u>The Standard and Poor’s Depository Receipts Trust (SPY)</u>	<u>300,000 contracts</u>
<u>The iShares Russell 2000 Index Fund (IWM)</u>	<u>500,000 contracts</u>
<u>The PowerShares QQQ Trust (QQQQ)</u>	<u>900,000 contracts</u>

(b) The position limit for a conventional option contract on an exchange-traded fund (“ETF”) that also underlies a standardized option shall be the same as the position limit for the applicable standardized option.

(c) The position limit for a conventional option contract on an ETF that does not also underlie a standardized option shall be the basic limit of 25,000 contracts. To qualify for a position limit of more than 25,000 contracts, a member must apply for an increased position limit in accordance with Rule 2360(b)(3)(A)(viii)b.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change has been approved by the General Counsel of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

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

(a) Purpose

The proposed rule change would add Supplementary Material to FINRA Rule 2360 (Options) to (1) establish higher position limits for options on selected exchange-traded funds (“ETFs”) and (2) clarify the application of position limits to conventional options on ETFs. In addition, the proposed rule change would amend FINRA Rule 2360(b)(18) to clarify the appropriate registration qualifications for accepting and reviewing the acceptance of options discretionary accounts.

Options on ETFs

FINRA Rule 2360(b)(3) subjects standardized and conventional options² to one of five different position limits with the maximum limit of 250,000 contracts. FINRA’s position limits are consistent with those of the Options Exchanges.³ The Options Exchanges, however, have Supplementary Material that designates higher position limits for options on selected ETFs. The position limit for options on The DIAMONDS Trust

² A “conventional option” is an option contract not issued, or subject to issuance by, The Options Clearing Corporation. See FINRA Rule 2360(a)(9). Currently, position limits for standardized and conventional options are the same with respect to the same underlying security.

³ See Rule 4.11 of the CBOE; Rule 412 of the ISE; Rule 1001 of NASDAQ OMX PHLX; Rule 904 of NYSE AMEX; Rule 6.8 of NYSE Arca; and Chapter III Section 7 of the BOX (collectively referred to as the “Options Exchanges”).

(DIA) and the Standard and Poor's Depository Receipts Trust (SPY) is 300,000 contracts. The position limit for options on The iShares Russell 2000 Index Fund (IWM) is 500,000 contracts, and the position limit for options on The PowerShares QQQ Trust (QQQQ) is 900,000 contracts. FINRA proposes, in accordance with Rule 2360(b)(3)(A)(vi), to establish the same position limits on such options to ensure consistency with rules of the Options Exchanges.

In addition, FINRA proposes to clarify that the position limits for conventional options on ETFs should be the same as position limits for other equity securities. Thus, if an ETF underlying a conventional option also underlies a standardized option, then the position limit on the conventional ETF option shall be the same as the position limit for the standardized ETF option.⁴ However, if an ETF underlying a conventional option does not also underlie a standardized option, then the position limit for the conventional ETF option shall be the basic limit of 25,000 contracts.⁵ In order for such a conventional ETF option to qualify for a position limit greater than 25,000 contracts, a member must apply for an increased position limit in accordance with FINRA Rule 2360(b)(3)(A)(viii)b. by first demonstrating to FINRA's Market Regulation Department

⁴ Since 1999, FINRA has maintained position limit parity between conventional and standardized options on the same security. See Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930, 2931 (January 19, 1999). Prior to 1999, position limits on conventional options were three times greater than the limits for standardized options. See Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998).

⁵ See FINRA Rule 2360(b)(3)(A)(viii)a.1. Conventional options are generally subject to a position limit equal to the greater of (i) the basic limit of 25,000 contracts or (ii) any standardized option position limit as set forth in Rule 2360(b)(3)(A)(ii) through (v) (i.e., 50,000 to 250,000 contracts) for which the underlying security qualifies.

that the underlying ETF security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

Options Discretionary Accounts

On November 12, 2008, the SEC approved SR-FINRA-2008-032 (the “Options Transfer Filing”), which adopted NASD Rules 2840 through 2853 regarding Trading in Index Warrants, Currency Index Warrants and Currency Warrants, 2860 (Options), and 2865 (Security Futures) as FINRA Rules in the consolidated FINRA rulebook.⁶ The Options Transfer Filing renumbered NASD Rules 2840 through 2853 as FINRA Rules 2350 through 2359, NASD Rule 2860 as FINRA Rule 2360 and NASD Rule 2865 as FINRA Rule 2370 in the consolidated FINRA rulebook. The FINRA rules became effective on February 17, 2009.⁷

In response to a comment letter to the Options Transfer Filing,⁸ FINRA proposed in Amendment No. 1, consistent with the rules of the Chicago Board Options Exchange (“CBOE”), to amend FINRA Rule 2360(b)(18) to permit greater flexibility and allow a Limited Principal-General Securities Sales Supervisor (“LP-GSSS”) (Series 9/10) in addition to a Registered Options Principal (“ROP”) (Series 4) to accept an options

⁶ See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1; File No. SR-FINRA 2008-032).

⁷ See Regulatory Notice 08-78 (December 2008) (SEC Approves New Consolidated FINRA Rules).

⁸ See Letter from Melissa MacGregor, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association, to Florence E. Harmon, Acting Secretary, SEC, dated September 4, 2008.

discretionary account.⁹ Also, consistent with the CBOE provision, FINRA retained the requirement that the review of the acceptance of a discretionary options account may only be performed by a ROP (Series 4).¹⁰ FINRA proposes to amend FINRA Rule 2360(b)(18)(A)(i)b. and (b)(18)(A)(ii) to ensure that the rule text more clearly reflects the policy approved in the Options Transfer Filing that either a ROP (Series 4) or a LP-GSSS (Series 9/10) may accept an options discretionary account, but that the review of the acceptance must be performed by a ROP (Series 4).

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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 regarding options on ETFs will

⁹ See CBOE Rule 9.2.01 specifying that Options Principals are qualified by passing either the Series 4 or the Series 9/10 and CBOE Rule 9.2.02 specifying that the review of the acceptance of a discretionary account must be performed by a Series 4 qualified individual.

¹⁰ FINRA would leave unchanged the requirement that “frequent supervisory review by a ROP who is not exercising the discretionary authority” should be performed by a ROP (Series 4) as stated in Amendment No. 1 to the Options Transfer Filing.

¹¹ 15 U.S.C. 78o-3(b)(6).

promote consistent regulation by harmonizing FINRA's position limits for options on ETFs with those of the Options Exchanges and clarifying the applicable position limits for conventional options on ETFs. In addition, FINRA believes that the proposed rule change regarding options discretionary accounts will clarify the appropriate registration qualifications that are required to approve and review the approval of such accounts.

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.

6. Extension of Time Period for Commission Action

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act¹² and paragraph (f)(6) of Rule 19b-4 thereunder,¹³ in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. FINRA believes that the proposed rule change presents no novel issues as the proposed rule change is substantially similar to the rules the Options Exchanges regarding the options position

¹² 15 U.S.C. 78s(b)(3).

¹³ 17 CFR 240.19b-4(f)(6).

limits on selected ETFs and the CBOE regarding options discretionary accounts, and accordingly is appropriate for filing under paragraph (f)(6) of Rule 19b-4.¹⁴

FINRA requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),¹⁵ such that FINRA may immediately harmonize its position limits for options on ETFs with those of the Options Exchanges and clarify the applicable position limits for conventional options on ETFs, as well as clarify the appropriate registration qualification required to approve and review the approval of options discretionary accounts. In accordance with Rule 19b-4,¹⁶ FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

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

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 17 CFR 240.19b-4.

The proposed rule change regarding options position limits on selected ETFs is substantially similar to the following rules of the Options Exchanges: Rule 4.11 of the CBOE; Rule 412 of the ISE; Rule 1001 of NASDAQ OMX PHLX; Rule 904 of NYSE AMEX; Rule 6.8 of NYSE Arca; and Chapter III Section 7 of the BOX. In addition, the proposed rule change regarding options discretionary accounts is substantially similar to CBOE Rules 9.10 and 9.2.01.

9. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-032)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to FINRA Rule 2360 (Options) regarding position limits for options on exchange-traded funds and registration qualifications with respect to options discretionary accounts

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 , 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 and II below, which Items have been prepared by FINRA. 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 FINRA Rule 2360 (Options) to (1) establish higher position limits for options on selected exchange-traded funds, (2) clarify the application of position limits to conventional options on exchange-traded funds, and (3) clarify the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

appropriate registration qualifications for accepting and reviewing the acceptance of options discretionary accounts.

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

The proposed rule change would add Supplementary Material to FINRA Rule 2360 (Options) to (1) establish higher position limits for options on selected exchange-traded funds ("ETFs") and (2) clarify the application of position limits to conventional options on ETFs. In addition, the proposed rule change would amend FINRA Rule 2360(b)(18) to clarify the appropriate registration qualifications for accepting and reviewing the acceptance of options discretionary accounts.

Options on ETFs

FINRA Rule 2360(b)(3) subjects standardized and conventional options⁴ to one of five different position limits with the maximum limit of 250,000 contracts. FINRA's position limits are consistent with those of the Options Exchanges.⁵ The Options Exchanges, however, have Supplementary Material that designates higher position limits for options on selected ETFs. The position limit for options on The DIAMONDS Trust (DIA) and the Standard and Poor's Depository Receipts Trust (SPY) is 300,000 contracts. The position limit for options on The iShares Russell 2000 Index Fund (IWM) is 500,000 contracts, and the position limit for options on The PowerShares QQQ Trust (QQQQ) is 900,000 contracts. FINRA proposes, in accordance with Rule 2360(b)(3)(A)(vi), to establish the same position limits on such options to ensure consistency with rules of the Options Exchanges.

In addition, FINRA proposes to clarify that the position limits for conventional options on ETFs should be the same as position limits for other equity securities. Thus, if an ETF underlying a conventional option also underlies a standardized option, then the position limit on the conventional ETF option shall be the same as the position limit for

⁴ A "conventional option" is an option contract not issued, or subject to issuance by, The Options Clearing Corporation. See FINRA Rule 2360(a)(9). Currently, position limits for standardized and conventional options are the same with respect to the same underlying security.

⁵ See Rule 4.11 of the CBOE; Rule 412 of the ISE; Rule 1001 of NASDAQ OMX PHLX; Rule 904 of NYSE AMEX; Rule 6.8 of NYSE Arca; and Chapter III Section 7 of the BOX (collectively referred to as the "Options Exchanges").

the standardized ETF option.⁶ However, if an ETF underlying a conventional option does not also underlie a standardized option, then the position limit for the conventional ETF option shall be the basic limit of 25,000 contracts.⁷ In order for such a conventional ETF option to qualify for a position limit greater than 25,000 contracts, a member must apply for an increased position limit in accordance with FINRA Rule 2360(b)(3)(A)(viii)b. by first demonstrating to FINRA's Market Regulation Department that the underlying ETF security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

Options Discretionary Accounts

On November 12, 2008, the SEC approved SR-FINRA-2008-032 (the "Options Transfer Filing"), which adopted NASD Rules 2840 through 2853 regarding Trading in Index Warrants, Currency Index Warrants and Currency Warrants, 2860 (Options), and 2865 (Security Futures) as FINRA Rules in the consolidated FINRA rulebook.⁸ The Options Transfer Filing renumbered NASD Rules 2840 through 2853 as FINRA Rules

⁶ Since 1999, FINRA has maintained position limit parity between conventional and standardized options on the same security. See Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930, 2931 (January 19, 1999). Prior to 1999, position limits on conventional options were three times greater than the limits for standardized options. See Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998).

⁷ See FINRA Rule 2360(b)(3)(A)(viii)a.1. Conventional options are generally subject to a position limit equal to the greater of (i) the basic limit of 25,000 contracts or (ii) any standardized option position limit as set forth in Rule 2360(b)(3)(A)(ii) through (v) (i.e., 50,000 to 250,000 contracts) for which the underlying security qualifies.

⁸ See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1; File No. SR-FINRA 2008-032).

2350 through 2359, NASD Rule 2860 as FINRA Rule 2360 and NASD Rule 2865 as FINRA Rule 2370 in the consolidated FINRA rulebook. The FINRA rules became effective on February 17, 2009.⁹

In response to a comment letter to the Options Transfer Filing,¹⁰ FINRA proposed in Amendment No. 1, consistent with the rules of the Chicago Board Options Exchange (“CBOE”), to amend FINRA Rule 2360(b)(18) to permit greater flexibility and allow a Limited Principal-General Securities Sales Supervisor (“LP-GSSS”) (Series 9/10) in addition to a Registered Options Principal (“ROP”) (Series 4) to accept an options discretionary account.¹¹ Also, consistent with the CBOE provision, FINRA retained the requirement that the review of the acceptance of a discretionary options account may only be performed by a ROP (Series 4).¹² FINRA proposes to amend FINRA Rule 2360(b)(18)(A)(i)b. and (b)(18)(A)(ii) to ensure that the rule text more clearly reflects the policy approved in the Options Transfer Filing that either a ROP (Series 4) or a LP-GSSS (Series 9/10) may accept an options discretionary account, but that the review of the acceptance must be performed by a ROP (Series 4).

⁹ See Regulatory Notice 08-78 (December 2008) (SEC Approves New Consolidated FINRA Rules).

¹⁰ See Letter from Melissa MacGregor, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association, to Florence E. Harmon, Acting Secretary, SEC, dated September 4, 2008.

¹¹ See CBOE Rule 9.2.01 specifying that Options Principals are qualified by passing either the Series 4 or the Series 9/10 and CBOE Rule 9.2.02 specifying that the review of the acceptance of a discretionary account must be performed by a Series 4 qualified individual.

¹² FINRA would leave unchanged the requirement that “frequent supervisory review by a ROP who is not exercising the discretionary authority” should be performed by a ROP (Series 4) as stated in Amendment No. 1 to the Options Transfer Filing.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹³ 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 regarding options on ETFs will promote consistent regulation by harmonizing FINRA's position limits for options on ETFs with those of the Options Exchanges and clarifying the applicable position limits for conventional options on ETFs. In addition, FINRA believes that the proposed rule change regarding options discretionary accounts will clarify the appropriate registration qualifications that are required to approve and review the approval of such accounts.

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.

¹³ 15 U.S.C. 78o-3(b)(6).

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

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-2009-032 on the subject line.

Paper Comments:

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-032. 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 SR-FINRA-2009-032 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.¹⁶

Florence E. Harmon

Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).