

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="144"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2010"/> - * <input type="text" value="034"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
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			Rule		
			<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 type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

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 (required)

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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 (required)

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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

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

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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”),¹ 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 adopt NASD Rule 3070 (Reporting Requirements) as FINRA Rule 4530 (Reporting Requirements) in the consolidated FINRA rulebook, subject to certain amendments, and to delete paragraphs (a) through (d) of Incorporated NYSE Rule 351 (Reporting Requirements) and Incorporated NYSE Rules 351.10 and 351.13. The proposed rule change also would add a supplementary material section to proposed FINRA Rule 4530.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

(b) Upon Commission approval and implementation by FINRA of the proposed rule change, the corresponding NASD and Incorporated NYSE rules, or sections thereof, will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 16, 2008, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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. The implementation date will be no later than 240 days following Commission approval.

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),² FINRA is proposing to adopt NASD Rule 3070 as FINRA Rule 4530 in the Consolidated FINRA Rulebook, subject to certain amendments as described below. The proposed rule change also would delete paragraphs (a) through (d) of Incorporated NYSE Rule 351³ and NYSE Rules 351.10 and 351.13 from the Transitional Rulebook.⁴ Further, the proposed rule change would add a supplementary material section to proposed FINRA Rule 4530 as detailed below.

² 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 Information Notice, March 12, 2008 (Rulebook Consolidation Process).

³ For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

⁴ NYSE Rule 351(e) and NYSE Rule Interpretation 351(e)/01 (Reports of Investigation) govern trade investigation reporting requirements. NYSE Rules 351(f), 351.11 and 351.12 govern the annual attestation requirement of the research analyst conflict of interest rules. These provisions will be addressed as part of the supervision rules and research analyst conflict of interest rules, respectively. See Regulatory Notice 08-24 (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls) and Regulatory Notice 08-55 (October 2008) (FINRA Requests Comment on Proposed Research Registration and Conflict of Interest Rules).

Background

NASD Rule 3070 and NYSE Rule 351 require members to report to FINRA certain specified events (e.g., regulatory actions) and quarterly statistical and summary information regarding written customer complaints. FINRA uses the reported information for regulatory purposes. Among other things, the information assists FINRA to identify and investigate firms, offices and associated persons that may pose a regulatory risk.

Proposal

FINRA proposes replacing NASD Rule 3070 and NYSE Rule 351 with a single rule, proposed FINRA Rule 4530, in the Consolidated FINRA Rulebook. FINRA Rule 4530 is based in large part on NASD Rule 3070, taking into account certain requirements under NYSE Rule 351. The proposed rule also includes a supplementary material section that contains certain clarifications and definitions as well as codifications of existing staff guidance. More specifically, FINRA is proposing the following changes.

A. Reporting Deadline (Proposed FINRA Rule 4530(a))

FINRA Rule 4530(a) consolidates the requirement (currently in NASD Rules 3070(a)(1), (a)(9) and (b)) that a firm report an event after the firm “knows or should have known” of the existence of the event. Consistent with the requirements of NYSE Rule 351, FINRA Rule 4530(a) also extends the time period for reporting any of the events specified in paragraph (a) of the proposed rule to no later than 30 calendar days after the firm knows or should have known of the existence of the event (rather than the 10 business days currently provided under NASD Rule 3070(b)). The proposed 30-calendar-day reporting deadline also is consistent with the reporting deadline for

disclosing information on the Forms BD (Uniform Application for Broker-Dealer Registration), U4 (Uniform Application for Securities Industry Registration or Transfer) and U5 (Uniform Termination Notice for Securities Industry Registration) (collectively referred to as the “Uniform Forms”).

B. External Findings (Proposed FINRA Rule 4530(a)(1)(A))

NASD Rule 3070(a)(1) requires that a firm report whenever the firm or an associated person of the firm has been found to have violated any provision of any securities law or regulation, “any” rule or standard of conduct of “any” governmental agency, self-regulatory organization (“SRO”), or financial business or professional organization, or engaged in conduct that is inconsistent with just and equitable principles of trade. This provision requires firms to report findings of violations by an external body.

FINRA Rule 4530(a)(1)(A) generally retains the requirement under NASD Rule 3070(a)(1), though it limits the scope of reportable findings of violation by an external body to violations of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body, SRO or business or professional organization. FINRA believes that limiting the scope of the rule to violations of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body, SRO or business or professional organization will make it more effective and relevant to FINRA’s program, as well as enhance firms’ ability to more accurately report such information. For similar reasons, FINRA has eliminated the requirement that firms report any and all findings that amount to violations

of just and equitable principles of trade. However, for instance, firms would continue to report a finding of violation of an SRO's just and equitable principles of trade rule, such as FINRA Rule 2010.

C. Civil Litigation or Arbitration; Other Claims for Damages (Proposed FINRA Rule 4530(a)(1)(G))

FINRA Rule 4530(a)(1)(G) merges for simplification the reporting provisions, currently in NASD Rules 3070(a)(7) and (a)(8) and NYSE Rules 351(a)(7) and (a)(8), pertaining to (1) any securities- or commodities-related civil litigation or arbitration; and (2) any claim for damages by a customer or broker-dealer, disposed of by judgment, award or settlement for certain monetary thresholds. In addition, the proposed rule extends the provision relating to civil litigation or arbitration matters to include the reporting of any "insurance" civil litigation or arbitration that is "financial related." Further, the proposed rule clarifies that firms are required to report any claim for damages by a customer or broker-dealer that is "financial" or "transactional" in nature. FINRA believes that transactional claims by customers, including contractual disputes, are relevant to its programs since they may reveal misconduct, such as an impermissible customer loan.

D. Statutory Disqualifications (Proposed FINRA Rule 4530(a)(1)(H))

Consistent with NYSE Rule 351(a)(9), FINRA Rule 4530(a)(1)(H) requires a firm to report whenever the firm itself is subject to a "statutory disqualification" and clarifies that a firm is required to report whenever an associated person of the firm is subject to a "statutory disqualification." The proposed rule also replaces the requirement in NASD Rule 3070(a)(9) and NYSE Rule 351(a)(9) to report whenever a firm or an associated person of the firm "is associated in any business or financial activity" with a person

subject to a “statutory disqualification” with a requirement to report whenever the firm or an associated person of the firm “is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities” with a person subject to a “statutory disqualification.” FINRA believes that this change provides greater clarity as to the scope of the provision.

E. Internal Disciplinary Actions Against Associated Persons (Proposed FINRA Rule 4530(a)(2))

Similar to NASD Rule 3070(a)(10) and NYSE Rule 351(a)(10), FINRA Rule 4530(a)(2) continues to require a firm to report certain disciplinary actions taken by the firm against its associated persons. However, the proposed rule clarifies that any such disciplinary action involving the withholding of compensation or of any other remuneration (not just commissions) in excess of \$2,500 is a reportable event.

F. Internal Conclusions (Proposed FINRA Rules 4530(b) and 4530.01)

NYSE Rule 351(a)(1) requires that a firm report whenever it or its associated persons have violated any provision of any securities law or regulation, “any” agreement with or rule or standard of conduct of “any” governmental agency, SRO, or business or professional organization, or engaged in conduct that is inconsistent with just and equitable principles of trade or detrimental to the interests or welfare of the NYSE. This provision requires firms to report their internal conclusions of the enumerated violative conduct.

FINRA Rule 4530(b) generally incorporates the requirement under NYSE Rule 351(a)(1) and provides that a firm is required to report to FINRA no later than 30 calendar days after the firm has concluded, or reasonably should have concluded, *on its own* that an associated person of the firm or the firm itself has engaged in violative

conduct.⁵ However, the proposed rule limits the scope of reportable violative conduct to violations of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or SRO.

Additionally, FINRA Rule 4530.01 excludes from the reporting requirement an isolated violation by the firm or an associated person of the firm that can be reasonably viewed as a ministerial violation of the applicable rules that did not result in customer harm and was remedied promptly upon discovery. Thus, for example, if a firm discovers a few corporate accounts that, due to a ministerial lapse, do not have a record identifying the person(s) authorized to transact business on behalf of the accounts and upon discovering the problem promptly updates the accounts with the required information, it would not be considered a reportable event for purposes of proposed FINRA Rule 4530(b). Conversely, if there is a wholesale failure by a firm to maintain such information, it would be considered a reportable event for purposes of the proposed rule.

Further, if a firm disciplines an associated person in the manner described in FINRA Rule 4530(a)(2), FINRA Rule 4530.01 requires the firm to report the event under paragraph (a)(2), rather than paragraph (b) of the proposed rule.

G. Domestic and Foreign Actions and Actions By a Regulatory Body
(Proposed FINRA Rules 4530(a)(1)(A), (C), (D), (F) and 4530.04)

⁵ Proposed FINRA Rule 4530(b) was originally proposed as FINRA Rule 4530(a)(3) in Regulatory Notice 08-71 (discussed in Item 5 of this filing). As discussed above, proposed FINRA Rule 4530(a) requires a firm to report an event after the firm “knows or should have known” of the existence of the event. To clarify the standard applicable to a firm’s internal conclusion of violation, FINRA is proposing to re-designate paragraph (a)(3) as paragraph (b) of FINRA Rule 4530 and require a firm to report where it has concluded or reasonably should have concluded that the firm or an associated person has engaged in the enumerated violative conduct.

Currently, both NASD Rule 3070 and NYSE Rule 351 make frequent reference to, for example, “any” regulatory or self-regulatory body, without denoting that it includes both domestic and foreign regulators. FINRA Rules 4530(a)(1)(A), (C), (D) and (F) clarify that they apply to both domestic and foreign actions and that they apply to actions by a “regulatory body.” FINRA Rule 4530.04 defines the term “regulatory body” as governmental regulatory bodies and authorized non-governmental regulatory bodies, such as the Financial Services Authority.

H. Reporting Obligation (Proposed FINRA Rule 4530(e))

NASD Rule 3070(d) provides that compliance with NASD Rule 3070 does not relieve a firm or an associated person from certain other obligations, such as the requirement to disclose information on the Uniform Forms, as applicable.

FINRA Rule 4530(e) continues the requirement of NASD Rule 3070(d). The proposed rule also clarifies that a firm has an obligation to report the specified events (FINRA Rules 4530(a) and (b)) and quarterly statistical and summary information regarding written customer complaints (FINRA Rule 4530(d)), regardless of whether such information is reported or disclosed pursuant to any other rule or requirement, including the requirements of the Forms BD or U4. However, the proposed rule provides that a firm is not required to report an event otherwise required to be reported under FINRA Rules 4530(a) or (b) if the firm discloses the event on the Form U5, consistent with the requirements of that form. While information disclosed on the Forms BD and U4 are not subject to this exception at this time, FINRA will work toward the goal of eliminating duplicative reporting of information disclosed on those forms.

I. Elimination of the Exemption for Dual Members Subject to Another SRO's Rule

NASD Rule 3070(e) provides an exemption for firms subject to substantially similar reporting requirements of another SRO. This provision is intended to exempt Dual Members subject to the reporting requirements of NYSE Rule 351. The proposed rule change eliminates this exemption since FINRA proposes creating a single rule and deleting the applicable reporting requirements of NYSE Rule 351 (as noted below).

Accordingly, all FINRA members will be subject to FINRA Rule 4530.

J. Filing of Related Documents with FINRA (Proposed FINRA Rule 4530(f))

NASD Rule 3070(f) requires a firm to file copies of certain criminal and civil complaints and arbitration claims with FINRA, including copies of (1) any complaint in which the firm is named as a defendant or respondent in any securities- or commodities-related private civil litigation; and (2) any securities- or commodities-related arbitration claim filed against the firm in any forum other than FINRA Dispute Resolution.

Consistent with FINRA Rule 4530(a)(1)(G) discussed above, FINRA Rule 4530(f) extends the filing requirement to copies of any "insurance" civil litigation or arbitration that is "financial related."

K. Additional Supplementary Material (Proposed FINRA Rules 4530.02, .03, .05, .06, .07 and .08)

In addition to the supplementary material discussed above (FINRA Rules 4530.01 and .04), FINRA proposes adding the following supplementary material:

- FINRA Rule 4530.02 clarifies the distinction between a firm's internal conclusion of violative conduct and a finding of violative conduct by an

external body, such as a court, domestic or foreign regulatory body, SRO or business or professional organization;

- FINRA Rule 4530.03 defines the term “found” as used in FINRA Rule 4530(a)(1)(A) generally consistent with the definition of the term in the Uniform Forms, and clarifies that the term also includes any formal finding (regardless of whether the finding will be appealed), but that it does not include a minor rule violation involving a fine of \$2,500 or less;
- FINRA Rule 4530.05 clarifies that for purposes of FINRA Rules 4530(a) and (b), firms should not report a single event under more than one paragraph or subparagraph, but that they may be required to report related events under more than one paragraph or subparagraph.
- FINRA Rule 4530.06 clarifies that when calculating the monetary thresholds for reporting civil litigations, arbitrations or claims for damages for purposes of FINRA Rule 4530(a)(1)(G), firms must include any attorneys fees and interest in the total amount. The proposed rule also codifies existing staff guidance regarding the calculation of the monetary thresholds when the parties are subject to “joint and several” liability (i.e., if the parties are subject to “joint and several” liability, each party is separately liable for the aggregate amount);⁶
- FINRA Rule 4530.07 clarifies that for purposes of FINRA Rules 4530(a), (b) and (d), firms should report an event relating to a former associated

⁶ See Notice to Members 96-85 (December 1996) (Customer Complaint Reporting Rule Update).

person if the event occurred while the individual was associated with the member; and

- FINRA Rule 4530.08 codifies existing staff guidance regarding a firm's obligation to report quarterly statistical and summary information with respect to written customer complaints alleging theft or misappropriation of funds or securities, or forgery.⁷

L. Provisions Transferring With Non-Substantive Changes (Proposed FINRA Rules 4530(a)(1)(B), (a)(1)(E), (d) and (g))

FINRA proposes to transfer into FINRA Rule 4530 with non-substantive changes the provisions of NASD Rules 3070(a)(2), (a)(5), (c) and (g).

M. NYSE Provisions Proposed for Deletion

FINRA proposes to delete paragraphs (a) through (d) of NYSE Rule 351 and NYSE Rules 351.10 and 351.13 relating to the reporting of specified events and quarterly statistical and summary information regarding written customer complaints as these provisions are substantially similar to proposed FINRA Rule 4530, otherwise incorporated as described above, rendered obsolete by the approach reflected in the proposed rule, or addressed by other rules.

As noted in Item 2 of this filing, 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. The implementation date will be no later than 240 days following Commission approval.

⁷ See Notice to Members 96-85.

(b) 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 will further the purposes of the Act by enhancing FINRA's ability to detect and investigate violative conduct.

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

In November 2008, FINRA published Regulatory Notice 08-71 soliciting comment on a proposal relating to the FINRA reporting requirements. FINRA received 21 comment letters in response to the Notice,⁹ which are discussed below.¹⁰ A copy of

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ See Letter from Puplava Securities, Inc., dated December 4, 2008 ("Puplava"); letter from Committee of Annuity Insurers, dated December 29, 2008 ("CAI"); letter from Cutter & Company, Inc., dated December 29, 2008 ("Cutter"); letter from Farmers Financial Solutions, LLC, dated December 29, 2008 ("Farmers"); letter from National Association of Independent Broker-Dealers, Inc., dated December 29, 2008 ("NAIBD"); letter from GBS Financial Corp., dated December 30, 2008 ("GBS"); letter from Goodwin Browning & Luna Securities, dated December 30, 2008 ("Goodwin"); letter from OmniCap, LLC, dated December 30, 2008 ("OmniCap"); letter from Pointe Capital, Inc., dated December 30, 2008 ("Pointe"); letter from R.F. Lafferty & Co., Inc., dated December 30, 2008 ("Lafferty"); letter from Wachovia Securities, LLC, dated December 30, 2008 ("Wachovia"); letter from Financial Telesis, Inc., dated

the Notice is attached as Exhibit 2a. A list of the comment letters received in response to the Notice is attached as Exhibit 2b. Copies of the comment letters received in response to the Notice are attached as Exhibit 2c.

A. Reporting Deadline (Proposed FINRA Rule 4530(a))

As discussed above, the proposed rule requires that a firm report an event after the firm “knows or should have known” of the existence of the event. One commenter argues that the “should have known” standard is too demanding.¹¹ The purpose of the “should have known” standard is to ensure that members do not intentionally avoid becoming aware of a reportable event.¹² FINRA does not believe that this standard, which has been a part of NASD Rule 3070 since its adoption, is too demanding.

B. External Findings (Proposed FINRA Rule 4530(a)(1)(A))

January 5, 2009 (“Telesis”); letter from Askar Corp., dated January 6, 2009 (“Askar”); letter from Investment Company Institute, dated January 15, 2009 (“ICI”); letter from Northwestern Mutual Investment Services, LLC, dated January 15, 2009 (“Northwestern”); letter from Charles Schwab & Co., Inc., dated January 16, 2009 (“Schwab”); letter from Financial Services Institute, Inc., dated January 16, 2009 (“FSI”); letter from National Society of Compliance Professionals, Inc., dated January 16, 2009 (“NSCP”); letter from PFS Investments, Inc., dated January 16, 2009 (“PFS”); letter from the Securities Industry and Financial Markets Association, dated January 16, 2009 (“SIFMA”); and letter from State Farm VP Management Corp., dated January 16, 2009 (“State Farm”).

¹⁰ Askar, GBS, Goodwin, Lafferty, OmniCap, Pointe and Telesis support NAIBD’s comments. Northwestern submitted its own comments, but it also supports FSI’s comments.

¹¹ NSCP.

¹² See also Securities Exchange Act Release No. 35956 (July 11, 1995), 60 FR 36838 (July 18, 1995) (Notice of File No. SR-NASD-95-16).

Several commenters argue that the proposed rule, including the requirement to report external findings relating to “insurance” matters, is too expansive and unduly burdensome.¹³ As noted above, the proposed rule actually limits the scope of current reportable external findings and requires firms to report external findings related to the financial services industry (i.e., securities, insurance, commodities, financial or investment related). Additionally, the requirement to report matters related to the financial services industry, such as “insurance” and “commodities” matters, is consistent with other provisions of the current rules. This information assists FINRA in identifying and investigating firms, offices and associated persons that may pose a regulatory risk. Some of these commenters are also concerned that the proposed rule may reach the activities of affiliates.¹⁴ Similar to NASD Rule 3070, the proposed rule is limited to findings against a firm or an associated person of the firm.

Some commenters believe that the proposed term “business or professional organization” is overly broad and vague compared to the current term “financial business or professional organization.”¹⁵ The proposed rule requires firms to report a business or professional organization’s findings of violations relating to securities, insurance, commodities, financial or investment-related matters. For instance, a finding of violation of the Code of Professional Conduct of the American Institute of Certified Public Accountants is an example of the type of finding by a business or professional organization that is reportable under the proposed rule.

¹³ FSI, NAIBD, Northwestern, NSCP and State Farm.

¹⁴ FSI, Northwestern and NSCP.

¹⁵ NAIBD, NSCP and Wachovia.

C. Civil Litigation or Arbitration; Other Claims for Damages (Proposed FINRA Rule 4530(a)(1)(G))

As originally proposed in Regulatory Notice 08-71, the rule required members to report any insurance-related civil litigation or arbitration. The purpose of this proposed change was to make the provision consistent with other provisions of NASD Rule 3070 and NYSE Rule 351 that require the reporting of regulatory matters relating to insurance. Several commenters argued that the proposed requirement will result in voluminous reporting regarding insurance matters completely unrelated to securities activities (e.g., auto and health).¹⁶ In response, FINRA has revised the proposed rule to require the reporting of any “insurance” civil litigation or arbitration that is “financial related.” One of these commenters also argued that the requirement to report “any other claim for damages” by a customer or broker-dealer is too expansive since it may require the reporting of a wide array of matters (e.g., family grievances).¹⁷ In response to this comment, FINRA has revised the proposed rule to require the reporting of any claim for damages by a customer or broker-dealer that is “financial” or “transactional” in nature.

One commenter asks that FINRA clarify that matters reportable under the proposed rule continue to be subject to the current dollar thresholds for reporting (\$15,000 for associated persons; \$25,000 for firms).¹⁸ In response to this comment, FINRA has revised the proposed rule to clarify this point.

¹⁶ CAI, Cutter, Farmers, FSI, NSCP, Schwab and State Farm.

¹⁷ Cutter.

¹⁸ State Farm.

Several commenters suggest that the current dollar thresholds for reporting are too low and outdated.¹⁹ FINRA believes that the current dollar thresholds continue to be consistent with the purposes of the rule. In addition, the \$15,000 reporting threshold for an associated person is consistent with the Forms U4 and U5 current reporting thresholds.

D. Statutory Disqualifications (Proposed FINRA Rule 4530(a)(1)(H))

As noted above, the proposed rule replaces the current requirement to report whenever a firm or an associated person of the firm “is associated in any business or financial activity” with a person subject to a “statutory disqualification” with a requirement to report whenever the firm or an associated person of the firm “is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities” with a person subject to a “statutory disqualification.” Two commenters ask whether the term “investment advice” in the proposed rule refers to advisory activities and suggest that the inclusion of such activities broadens the scope of NASD Rule 3070(a)(9) and NYSE Rule 351(a)(9).²⁰ FINRA notes that advisory activities are covered under the current rules (i.e., considered a “financial activity”) and will continue to be covered under the proposed rule. One of these commenters also requests that FINRA Rule 4530(a)(1)(H) include the phrase “knows or should have known,” which is currently in NASD Rule 3070(a)(9).²¹ As discussed above, FINRA is proposing to consolidate in a single paragraph, FINRA Rule 4530(a), the various references to the “knows or should have known” standard.

¹⁹ CAI, FSI and NSCP.

²⁰ Cutter and NAIBD.

²¹ NAIBD.

E. Internal Disciplinary Actions Against Associated Persons (Proposed FINRA Rule 4530(a)(2))

Several commenters suggest that the current \$2,500 threshold for reporting internal disciplinary actions is too low and outdated.²² FINRA believes that the current dollar threshold continues to be consistent with the purposes of the rule.

F. Internal Conclusions (Proposed FINRA Rules 4530(b) and 4530.01)

Several commenters believe that the proposed provisions are unnecessary, unduly burdensome, overly broad and costly.²³ These commenters also argue that the provisions are vague and too subjective and that certain terms, such as “the member has concluded,” “isolated” and “ministerial,” need further clarification. For instance, one commenter asks whether internal conclusions that are equivalent to minor rule violations will have to be reported.²⁴ One commenter recommends that the proposal exclude either a “ministerial” or “non-material” violation.²⁵ One commenter suggests that the requirement be limited to those matters that result in “material customer harm.”²⁶ Another commenter recommends that the requirement be limited to matters that result in “customer harm.”²⁷ Some of these commenters also suggest that if FINRA opts to retain the proposed requirement, it adopt the reporting standard set forth in NYSE Information Memorandum 06-11, which provides that if a firm determines not to impose discipline against an

²² CAI, FSI and NSCP.

²³ CAI, FSI, ICI, Northwestern, NSCP, PFS, Schwab, SIFMA and State Farm.

²⁴ Schwab.

²⁵ ICI.

²⁶ Northwestern.

individual, the firm need only report any recidivist or ongoing violative conduct by the individual.²⁸ NYSE Information Memorandum 06-11 also provides that a firm need only report systemic firm failures involving numerous customers, multiple errors or significant dollar amounts, as well as violative conduct by the firm or its employees that has widespread or potential widespread impact to the firm, its customers or the industry.

FINRA believes that the standard set forth in Information Memorandum 06-11 is too narrow. However, in response to the comments, FINRA has provided an example in Item 3 of this filing of the types of reportable and non-reportable matters.

One commenter suggests that the proposed requirement be limited to conclusions reached at a senior level.²⁹ Another commenter requests that FINRA clarify that a settlement with a customer does not create the presumption that a reportable violation has occurred.³⁰ Additionally, one commenter asks whether internal audit findings are deemed internal conclusions.³¹ FINRA believes that a firm is free to determine the level of seniority required of an associated person in making a determination of a reportable internal conclusion; however, it will not be a defense to a failure to report such conduct that it was of a nature that did not merit consideration by a person of such seniority. With respect to settlements, it is not the fact that a firm has settled a matter that makes it a reportable event under FINRA Rule 4530(b), rather it is whether the firm has reached

²⁷ FSI.

²⁸ FSI, NSCP, PFS, Schwab and SIFMA.

²⁹ CAI.

³⁰ PFS.

³¹ NSCP.

an internal conclusion or reasonably should have reached an internal conclusion that the firm or an associated person has engaged in the enumerated violative conduct.³²

Regarding internal audit findings, FINRA believes that the existence of such findings creates a strong presumption that the matter is reportable, but that any particular finding is eligible to be viewed by the firm as non-reportable (i.e., an isolated, ministerial violation that did not result in customer harm and was remedied promptly upon discovery).

Further, two commenters believe that matters subject to a firm's internal review process as required under other rules (e.g., FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes)) should be excluded from the proposed requirement.³³ FINRA believes that firms have an obligation to meet each of their regulatory requirements (including the requirements of FINRA Rule 3130) and that the obligation to meet a regulatory requirement is not superseded based on compliance with other regulatory requirements.

Additionally, some commenters suggest that the proposed requirement may have a chilling effect on a firm's willingness to reach such conclusions or that reporting such information, which may lack qualified or total immunity, may result in defamation suits.³⁴ Without opining on the issues raised by these commenters, FINRA questions the collateral effects posited by the commenters given the use of the information for FINRA

³² Firms should note that certain settlements will have to be reported based on other reporting requirements (e.g., FINRA Rule 4530(a)(1)(G)).

³³ CAI and ICI.

³⁴ CAI, FSI and Schwab.

internal examination and enforcement purposes and that, in any event, FINRA believes that the goals of customer protection and market integrity necessitate the reporting of such conduct to FINRA.

G. Domestic and Foreign Actions and Actions By a Regulatory Body
(Proposed FINRA Rules 4530(a)(1)(A), (C), (D), (F) and 4530.04)

One commenter suggests that it may be too difficult to obtain information from foreign regulatory bodies.³⁵ In general, firms should report the information in their custody, possession, or control or to which they have knowledge and provide an explanation in the appropriate reporting system fields of the information that they were unable to obtain due to circumstances beyond their control. In addition, as noted above, firms cannot intentionally avoid becoming aware of a reportable event.

H. Quarterly Statistical and Summary Information Regarding Written
Customer Complaints (Proposed FINRA Rule 4530(d))

One commenter argues that the requirement to report quarterly statistical and summary information regarding written customer complaints, including emails, is unduly burdensome and wants to know how the data is used and how it benefits the industry.³⁶ FINRA uses the reported information for its internal examination and enforcement purposes. Among other things, the information assists FINRA to identify and investigate firms, offices and associated persons that may pose a regulatory risk.

Additionally, in response to one commenter,³⁷ FINRA wishes to clarify an interpretive position related to FINRA Rule 4530(c). In Notice to Members 96-85,

³⁵ NSCP.

³⁶ Puplava.

³⁷ Schwab.

FINRA (then NASD) stated that for purposes of reporting written customer complaints under NASD Rule 3070(c), the term “customer” is defined as any person other than a broker-dealer with whom the member has engaged, or has sought to engage, in securities activities, therefore, it was intended to exclude non-securities products. A member is not required to report written complaints relating to non-securities products, but only to the extent that such complaints are not from customers that the member has engaged, or has sought to engage, in securities activities. However, if a member has engaged, or has sought to engage, in securities activities with a person, then any written complaint from that person is reportable under the proposed rule, regardless of whether it relates to non-securities products.³⁸

I. Reporting Obligation (Proposed FINRA Rule 4530(e))

As originally proposed in Regulatory Notice 08-71, the rule required members to report an event under the rule regardless of whether the event was disclosed on the Forms BD, U4 or U5. Several commenters raised concerns regarding this obligation.³⁹ FINRA has revised the proposed rule to provide that a firm is not required to report an event otherwise required to be reported under FINRA Rules 4530(a) or (b) if the firm has disclosed the event on the Form U5, consistent with the requirements of that form. This

³⁸ FINRA notes that the original proposal in Regulatory Notice 08-71 included a provision reminding firms of their obligations under proposed FINRA Rule 3110(b)(5) to have procedures to capture, acknowledge and respond to all written (including electronic) customer complaints. Proposed FINRA Rule 3110(b)(5) is part of the proposed consolidated supervision rules. See Regulatory Notice 08-24 (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls). FINRA will consider whether to re-propose the reference to FINRA Rule 3110(b)(5) at a later date.

³⁹ CAI, Cutter, FSI, NAIBD, NSCP, Schwab and SIFMA.

exception to FINRA Rules 4530(a) and (b) only applies to information that has been disclosed on the Form U5. As noted above, FINRA will also work toward the goal of eliminating duplicative reporting of information disclosed on the Forms BD and U4.

J. Filing of Related Documents with FINRA (Proposed FINRA Rule 4530(f))

As originally proposed in Regulatory Notice 08-71, the rule required members to file, in addition to report, any insurance-related civil litigation or arbitration. Several commenters argued that the proposed requirement will result in voluminous filings regarding insurance matters completely unrelated to securities activities.⁴⁰ Consistent with the revisions to FINRA Rule 4530(a)(1)(G) discussed above, FINRA Rule 4530(f) has been revised to require the filing of copies of any “insurance” civil litigation complaint or arbitration claim that is “financial related.”

K. Calculation of Monetary Thresholds and Former Associated Persons (Proposed FINRA Rules 4530.06 and .07)

Several commenters raise concerns regarding the inclusion of attorneys fees and interest when calculating the dollar thresholds for reporting civil litigations, arbitrations or other claims for damages.⁴¹ Based on FINRA’s experience, some firms have considered structuring settlements using attorneys fees to avoid the dollar thresholds for reporting. The inclusion of attorneys fees and interest in the proposed rule is intended to address this concern. One commenter believes that “joint and several” liability should not be aggregated for purposes of the proposed rule.⁴² As noted above, since each party

⁴⁰ CAI, Farmers, NSCP and State Farm.

⁴¹ CAI, Cutter, FSI, NAIBD, Northwestern, NSCP, Schwab and SIFMA.

⁴² Schwab.

subject to “joint and several” liability is separately liable for the aggregate amount, the aggregate amount must be reported for each party. For instance, if two parties have “joint and several” liability for \$40,000, the amount reported would be \$40,000 for each party.

Some commenters are also concerned that it may be too difficult to obtain information from former associated persons.⁴³ As discussed above, in general, firms should report the information in their custody, possession, or control or to which they have knowledge and provide an explanation in the appropriate reporting system fields of the information that they were unable to obtain due to circumstances beyond their control, with the understanding that firms cannot intentionally avoid becoming aware of a reportable event.

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.⁴⁴

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.

⁴³ CAI, FSI, Northwestern and NSCP.

⁴⁴ 15 U.S.C. 78s(b)(2).

9. Exhibits

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

Exhibit 2a. Regulatory Notice 08-71 (November 2008).

Exhibit 2b. A list of the comment letters received in response to Regulatory Notice 08-71 (November 2008).

Exhibit 2c. Copies of the comment letters received in response to Regulatory Notice 08-71 (November 2008).

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2010-034)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 4530 (Reporting Requirements) in the Consolidated FINRA Rulebook

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, 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 adopt NASD Rule 3070 (Reporting Requirements) as FINRA Rule 4530 (Reporting Requirements) in the consolidated FINRA rulebook, subject to certain amendments, and to delete paragraphs (a) through (d) of Incorporated NYSE Rule 351 (Reporting Requirements) and Incorporated NYSE Rules 351.10 and 351.13. The proposed rule change also would add a supplementary material section to proposed FINRA Rule 4530.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 NASD Rule 3070 as FINRA Rule 4530 in the Consolidated FINRA Rulebook, subject to certain amendments as described below. The proposed rule change also would delete paragraphs (a) through (d) of Incorporated NYSE Rule 351⁴ and NYSE Rules 351.10 and 351.13 from the Transitional

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 Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁴ For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

Rulebook.⁵ Further, the proposed rule change would add a supplementary material section to proposed FINRA Rule 4530 as detailed below.

Background

NASD Rule 3070 and NYSE Rule 351 require members to report to FINRA certain specified events (e.g., regulatory actions) and quarterly statistical and summary information regarding written customer complaints. FINRA uses the reported information for regulatory purposes. Among other things, the information assists FINRA to identify and investigate firms, offices and associated persons that may pose a regulatory risk.

Proposal

FINRA proposes replacing NASD Rule 3070 and NYSE Rule 351 with a single rule, proposed FINRA Rule 4530, in the Consolidated FINRA Rulebook. FINRA Rule 4530 is based in large part on NASD Rule 3070, taking into account certain requirements under NYSE Rule 351. The proposed rule also includes a supplementary material section that contains certain clarifications and definitions as well as codifications of existing staff guidance. More specifically, FINRA is proposing the following changes.

⁵ NYSE Rule 351(e) and NYSE Rule Interpretation 351(e)/01 (Reports of Investigation) govern trade investigation reporting requirements. NYSE Rules 351(f), 351.11 and 351.12 govern the annual attestation requirement of the research analyst conflict of interest rules. These provisions will be addressed as part of the supervision rules and research analyst conflict of interest rules, respectively. See Regulatory Notice 08-24 (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls) and Regulatory Notice 08-55 (October 2008) (FINRA Requests Comment on Proposed Research Registration and Conflict of Interest Rules).

A. Reporting Deadline (Proposed FINRA Rule 4530(a))

FINRA Rule 4530(a) consolidates the requirement (currently in NASD Rules 3070(a)(1), (a)(9) and (b)) that a firm report an event after the firm “knows or should have known” of the existence of the event. Consistent with the requirements of NYSE Rule 351, FINRA Rule 4530(a) also extends the time period for reporting any of the events specified in paragraph (a) of the proposed rule to no later than 30 calendar days after the firm knows or should have known of the existence of the event (rather than the 10 business days currently provided under NASD Rule 3070(b)). The proposed 30-calendar-day reporting deadline also is consistent with the reporting deadline for disclosing information on the Forms BD (Uniform Application for Broker-Dealer Registration), U4 (Uniform Application for Securities Industry Registration or Transfer) and U5 (Uniform Termination Notice for Securities Industry Registration) (collectively referred to as the “Uniform Forms”).

B. External Findings (Proposed FINRA Rule 4530(a)(1)(A))

NASD Rule 3070(a)(1) requires that a firm report whenever the firm or an associated person of the firm has been found to have violated any provision of any securities law or regulation, “any” rule or standard of conduct of “any” governmental agency, self-regulatory organization (“SRO”), or financial business or professional organization, or engaged in conduct that is inconsistent with just and equitable principles of trade. This provision requires firms to report findings of violations by an external body.

FINRA Rule 4530(a)(1)(A) generally retains the requirement under NASD Rule 3070(a)(1), though it limits the scope of reportable findings of violation by an external

body to violations of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body, SRO or business or professional organization. FINRA believes that limiting the scope of the rule to violations of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body, SRO or business or professional organization will make it more effective and relevant to FINRA's program, as well as enhance firms' ability to more accurately report such information. For similar reasons, FINRA has eliminated the requirement that firms report any and all findings that amount to violations of just and equitable principles of trade. However, for instance, firms would continue to report a finding of violation of an SRO's just and equitable principles of trade rule, such as FINRA Rule 2010.

C. Civil Litigation or Arbitration; Other Claims for Damages (Proposed FINRA Rule 4530(a)(1)(G))

FINRA Rule 4530(a)(1)(G) merges for simplification the reporting provisions, currently in NASD Rules 3070(a)(7) and (a)(8) and NYSE Rules 351(a)(7) and (a)(8), pertaining to (1) any securities- or commodities-related civil litigation or arbitration; and (2) any claim for damages by a customer or broker-dealer, disposed of by judgment, award or settlement for certain monetary thresholds. In addition, the proposed rule extends the provision relating to civil litigation or arbitration matters to include the reporting of any "insurance" civil litigation or arbitration that is "financial related." Further, the proposed rule clarifies that firms are required to report any claim for damages by a customer or broker-dealer that is "financial" or "transactional" in nature. FINRA believes that transactional claims by customers, including contractual disputes,

are relevant to its programs since they may reveal misconduct, such as an impermissible customer loan.

D. Statutory Disqualifications (Proposed FINRA Rule 4530(a)(1)(H))

Consistent with NYSE Rule 351(a)(9), FINRA Rule 4530(a)(1)(H) requires a firm to report whenever the firm itself is subject to a “statutory disqualification” and clarifies that a firm is required to report whenever an associated person of the firm is subject to a “statutory disqualification.” The proposed rule also replaces the requirement in NASD Rule 3070(a)(9) and NYSE Rule 351(a)(9) to report whenever a firm or an associated person of the firm “is associated in any business or financial activity” with a person subject to a “statutory disqualification” with a requirement to report whenever the firm or an associated person of the firm “is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities” with a person subject to a “statutory disqualification.” FINRA believes that this change provides greater clarity as to the scope of the provision.

E. Internal Disciplinary Actions Against Associated Persons (Proposed FINRA Rule 4530(a)(2))

Similar to NASD Rule 3070(a)(10) and NYSE Rule 351(a)(10), FINRA Rule 4530(a)(2) continues to require a firm to report certain disciplinary actions taken by the firm against its associated persons. However, the proposed rule clarifies that any such disciplinary action involving the withholding of compensation or of any other remuneration (not just commissions) in excess of \$2,500 is a reportable event.

F. Internal Conclusions (Proposed FINRA Rules 4530(b) and 4530.01)

NYSE Rule 351(a)(1) requires that a firm report whenever it or its associated persons have violated any provision of any securities law or regulation, “any” agreement

with or rule or standard of conduct of “any” governmental agency, SRO, or business or professional organization, or engaged in conduct that is inconsistent with just and equitable principles of trade or detrimental to the interests or welfare of the NYSE. This provision requires firms to report their internal conclusions of the enumerated violative conduct.

FINRA Rule 4530(b) generally incorporates the requirement under NYSE Rule 351(a)(1) and provides that a firm is required to report to FINRA no later than 30 calendar days after the firm has concluded, or reasonably should have concluded, *on its own* that an associated person of the firm or the firm itself has engaged in violative conduct.⁶ However, the proposed rule limits the scope of reportable violative conduct to violations of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or SRO.

Additionally, FINRA Rule 4530.01 excludes from the reporting requirement an isolated violation by the firm or an associated person of the firm that can be reasonably viewed as a ministerial violation of the applicable rules that did not result in customer harm and was remedied promptly upon discovery. Thus, for example, if a firm discovers a few corporate accounts that, due to a ministerial lapse, do not have a record identifying

⁶ Proposed FINRA Rule 4530(b) was originally proposed as FINRA Rule 4530(a)(3) in Regulatory Notice 08-71 (discussed in Item II.C. of this filing). As discussed above, proposed FINRA Rule 4530(a) requires a firm to report an event after the firm “knows or should have known” of the existence of the event. To clarify the standard applicable to a firm’s internal conclusion of violation, FINRA is proposing to re-designate paragraph (a)(3) as paragraph (b) of FINRA Rule 4530 and require a firm to report where it has concluded or reasonably should have concluded that the firm or an associated person has engaged in the enumerated violative conduct.

the person(s) authorized to transact business on behalf of the accounts and upon discovering the problem promptly updates the accounts with the required information, it would not be considered a reportable event for purposes of proposed FINRA Rule 4530(b). Conversely, if there is a wholesale failure by a firm to maintain such information, it would be considered a reportable event for purposes of the proposed rule.

Further, if a firm disciplines an associated person in the manner described in FINRA Rule 4530(a)(2), FINRA Rule 4530.01 requires the firm to report the event under paragraph (a)(2), rather than paragraph (b) of the proposed rule.

G. Domestic and Foreign Actions and Actions By a Regulatory Body (Proposed FINRA Rules 4530(a)(1)(A), (C), (D), (F) and 4530.04)

Currently, both NASD Rule 3070 and NYSE Rule 351 make frequent reference to, for example, “any” regulatory or self-regulatory body, without denoting that it includes both domestic and foreign regulators. FINRA Rules 4530(a)(1)(A), (C), (D) and (F) clarify that they apply to both domestic and foreign actions and that they apply to actions by a “regulatory body.” FINRA Rule 4530.04 defines the term “regulatory body” as governmental regulatory bodies and authorized non-governmental regulatory bodies, such as the Financial Services Authority.

H. Reporting Obligation (Proposed FINRA Rule 4530(e))

NASD Rule 3070(d) provides that compliance with NASD Rule 3070 does not relieve a firm or an associated person from certain other obligations, such as the requirement to disclose information on the Uniform Forms, as applicable.

FINRA Rule 4530(e) continues the requirement of NASD Rule 3070(d). The proposed rule also clarifies that a firm has an obligation to report the specified events (FINRA Rules 4530(a) and (b)) and quarterly statistical and summary information

regarding written customer complaints (FINRA Rule 4530(d)), regardless of whether such information is reported or disclosed pursuant to any other rule or requirement, including the requirements of the Forms BD or U4. However, the proposed rule provides that a firm is not required to report an event otherwise required to be reported under FINRA Rules 4530(a) or (b) if the firm discloses the event on the Form U5, consistent with the requirements of that form. While information disclosed on the Forms BD and U4 are not subject to this exception at this time, FINRA will work toward the goal of eliminating duplicative reporting of information disclosed on those forms.

I. Elimination of the Exemption for Dual Members Subject to Another SRO's Rule

NASD Rule 3070(e) provides an exemption for firms subject to substantially similar reporting requirements of another SRO. This provision is intended to exempt Dual Members subject to the reporting requirements of NYSE Rule 351. The proposed rule change eliminates this exemption since FINRA proposes creating a single rule and deleting the applicable reporting requirements of NYSE Rule 351 (as noted below).

Accordingly, all FINRA members will be subject to FINRA Rule 4530.

J. Filing of Related Documents with FINRA (Proposed FINRA Rule 4530(f))

NASD Rule 3070(f) requires a firm to file copies of certain criminal and civil complaints and arbitration claims with FINRA, including copies of (1) any complaint in which the firm is named as a defendant or respondent in any securities- or commodities-related private civil litigation; and (2) any securities- or commodities-related arbitration claim filed against the firm in any forum other than FINRA Dispute Resolution.

Consistent with FINRA Rule 4530(a)(1)(G) discussed above, FINRA Rule 4530(f)

extends the filing requirement to copies of any “insurance” civil litigation or arbitration that is “financial related.”

- K. Additional Supplementary Material (Proposed FINRA Rules 4530.02, .03, .05, .06, .07 and .08)

In addition to the supplementary material discussed above (FINRA Rules 4530.01 and .04), FINRA proposes adding the following supplementary material:

- FINRA Rule 4530.02 clarifies the distinction between a firm’s internal conclusion of violative conduct and a finding of violative conduct by an external body, such as a court, domestic or foreign regulatory body, SRO or business or professional organization;
- FINRA Rule 4530.03 defines the term “found” as used in FINRA Rule 4530(a)(1)(A) generally consistent with the definition of the term in the Uniform Forms, and clarifies that the term also includes any formal finding (regardless of whether the finding will be appealed), but that it does not include a minor rule violation involving a fine of \$2,500 or less;
- FINRA Rule 4530.05 clarifies that for purposes of FINRA Rules 4530(a) and (b), firms should not report a single event under more than one paragraph or subparagraph, but that they may be required to report related events under more than one paragraph or subparagraph.
- FINRA Rule 4530.06 clarifies that when calculating the monetary thresholds for reporting civil litigations, arbitrations or claims for damages for purposes of FINRA Rule 4530(a)(1)(G), firms must include any attorneys fees and interest in the total amount. The proposed rule also codifies existing staff guidance regarding the calculation of the monetary

thresholds when the parties are subject to “joint and several” liability (i.e., if the parties are subject to “joint and several” liability, each party is separately liable for the aggregate amount);⁷

- FINRA Rule 4530.07 clarifies that for purposes of FINRA Rules 4530(a), (b) and (d), firms should report an event relating to a former associated person if the event occurred while the individual was associated with the member; and
- FINRA Rule 4530.08 codifies existing staff guidance regarding a firm’s obligation to report quarterly statistical and summary information with respect to written customer complaints alleging theft or misappropriation of funds or securities, or forgery.⁸

L. Provisions Transferring With Non-Substantive Changes (Proposed FINRA Rules 4530(a)(1)(B), (a)(1)(E), (d) and (g))

FINRA proposes to transfer into FINRA Rule 4530 with non-substantive changes the provisions of NASD Rules 3070(a)(2), (a)(5), (c) and (g).

M. NYSE Provisions Proposed for Deletion

FINRA proposes to delete paragraphs (a) through (d) of NYSE Rule 351 and NYSE Rules 351.10 and 351.13 relating to the reporting of specified events and quarterly statistical and summary information regarding written customer complaints as these provisions are substantially similar to proposed FINRA Rule 4530, otherwise

⁷ See Notice to Members 96-85 (December 1996) (Customer Complaint Reporting Rule Update).

⁸ See Notice to Members 96-85.

incorporated as described above, rendered obsolete by the approach reflected in the proposed rule, or addressed by other rules.

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. The implementation date will be no later than 240 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,⁹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act by enhancing FINRA's ability to detect and investigate violative conduct.

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

In November 2008, FINRA published Regulatory Notice 08-71 soliciting comment on a proposal relating to the FINRA reporting requirements. FINRA received 21 comment letters in response to the Notice,¹⁰ which are discussed below.¹¹ A copy of

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ See Letter from Puplava Securities, Inc., dated December 4, 2008 ("Puplava"); letter from Committee of Annuity Insurers, dated December 29, 2008 ("CAI"); letter from Cutter & Company, Inc., dated December 29, 2008 ("Cutter"); letter

the Notice is attached as Exhibit 2a. A list of the comment letters received in response to the Notice is attached as Exhibit 2b. Copies of the comment letters received in response to the Notice are attached as Exhibit 2c.

A. Reporting Deadline (Proposed FINRA Rule 4530(a))

As discussed above, the proposed rule requires that a firm report an event after the firm “knows or should have known” of the existence of the event. One commenter argues that the “should have known” standard is too demanding.¹² The purpose of the “should have known” standard is to ensure that members do not intentionally avoid

from Farmers Financial Solutions, LLC, dated December 29, 2008 (“Farmers”); letter from National Association of Independent Broker-Dealers, Inc., dated December 29, 2008 (“NAIBD”); letter from GBS Financial Corp., dated December 30, 2008 (“GBS”); letter from Goodwin Browning & Luna Securities, dated December 30, 2008 (“Goodwin”); letter from OmniCap, LLC, dated December 30, 2008 (“OmniCap”); letter from Pointe Capital, Inc., dated December 30, 2008 (“Pointe”); letter from R.F. Lafferty & Co., Inc., dated December 30, 2008 (“Lafferty”); letter from Wachovia Securities, LLC, dated December 30, 2008 (“Wachovia”); letter from Financial Telesis, Inc., dated January 5, 2009 (“Telesis”); letter from Askar Corp., dated January 6, 2009 (“Askar”); letter from Investment Company Institute, dated January 15, 2009 (“ICI”); letter from Northwestern Mutual Investment Services, LLC, dated January 15, 2009 (“Northwestern”); letter from Charles Schwab & Co., Inc., dated January 16, 2009 (“Schwab”); letter from Financial Services Institute, Inc., dated January 16, 2009 (“FSI”); letter from National Society of Compliance Professionals, Inc., dated January 16, 2009 (“NSCP”); letter from PFS Investments, Inc., dated January 16, 2009 (“PFS”); letter from the Securities Industry and Financial Markets Association, dated January 16, 2009 (“SIFMA”); and letter from State Farm VP Management Corp., dated January 16, 2009 (“State Farm”).

¹¹ Askar, GBS, Goodwin, Lafferty, OmniCap, Pointe and Telesis support NAIBD’s comments. Northwestern submitted its own comments, but it also supports FSI’s comments.

¹² NSCP.

becoming aware of a reportable event.¹³ FINRA does not believe that this standard, which has been a part of NASD Rule 3070 since its adoption, is too demanding.

B. External Findings (Proposed FINRA Rule 4530(a)(1)(A))

Several commenters argue that the proposed rule, including the requirement to report external findings relating to “insurance” matters, is too expansive and unduly burdensome.¹⁴ As noted above, the proposed rule actually limits the scope of current reportable external findings and requires firms to report external findings related to the financial services industry (i.e., securities, insurance, commodities, financial or investment related). Additionally, the requirement to report matters related to the financial services industry, such as “insurance” and “commodities” matters, is consistent with other provisions of the current rules. This information assists FINRA in identifying and investigating firms, offices and associated persons that may pose a regulatory risk. Some of these commenters are also concerned that the proposed rule may reach the activities of affiliates.¹⁵ Similar to NASD Rule 3070, the proposed rule is limited to findings against a firm or an associated person of the firm.

Some commenters believe that the proposed term “business or professional organization” is overly broad and vague compared to the current term “financial business or professional organization.”¹⁶ The proposed rule requires firms to report a business or professional organization’s findings of violations relating to securities, insurance,

¹³ See also Securities Exchange Act Release No. 35956 (July 11, 1995), 60 FR 36838 (July 18, 1995) (Notice of File No. SR-NASD-95-16).

¹⁴ FSI, NAIBD, Northwestern, NSCP and State Farm.

¹⁵ FSI, Northwestern and NSCP.

¹⁶ NAIBD, NSCP and Wachovia.

commodities, financial or investment-related matters. For instance, a finding of violation of the Code of Professional Conduct of the American Institute of Certified Public Accountants is an example of the type of finding by a business or professional organization that is reportable under the proposed rule.

C. Civil Litigation or Arbitration; Other Claims for Damages (Proposed FINRA Rule 4530(a)(1)(G))

As originally proposed in Regulatory Notice 08-71, the rule required members to report any insurance-related civil litigation or arbitration. The purpose of this proposed change was to make the provision consistent with other provisions of NASD Rule 3070 and NYSE Rule 351 that require the reporting of regulatory matters relating to insurance. Several commenters argued that the proposed requirement will result in voluminous reporting regarding insurance matters completely unrelated to securities activities (e.g., auto and health).¹⁷ In response, FINRA has revised the proposed rule to require the reporting of any “insurance” civil litigation or arbitration that is “financial related.” One of these commenters also argued that the requirement to report “any other claim for damages” by a customer or broker-dealer is too expansive since it may require the reporting of a wide array of matters (e.g., family grievances).¹⁸ In response to this comment, FINRA has revised the proposed rule to require the reporting of any claim for damages by a customer or broker-dealer that is “financial” or “transactional” in nature.

One commenter asks that FINRA clarify that matters reportable under the proposed rule continue to be subject to the current dollar thresholds for reporting

¹⁷ CAI, Cutter, Farmers, FSI, NSCP, Schwab and State Farm.

¹⁸ Cutter.

(\$15,000 for associated persons; \$25,000 for firms).¹⁹ In response to this comment, FINRA has revised the proposed rule to clarify this point.

Several commenters suggest that the current dollar thresholds for reporting are too low and outdated.²⁰ FINRA believes that the current dollar thresholds continue to be consistent with the purposes of the rule. In addition, the \$15,000 reporting threshold for an associated person is consistent with the Forms U4 and U5 current reporting thresholds.

D. Statutory Disqualifications (Proposed FINRA Rule 4530(a)(1)(H))

As noted above, the proposed rule replaces the current requirement to report whenever a firm or an associated person of the firm “is associated in any business or financial activity” with a person subject to a “statutory disqualification” with a requirement to report whenever the firm or an associated person of the firm “is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities” with a person subject to a “statutory disqualification.” Two commenters ask whether the term “investment advice” in the proposed rule refers to advisory activities and suggest that the inclusion of such activities broadens the scope of NASD Rule 3070(a)(9) and NYSE Rule 351(a)(9).²¹ FINRA notes that advisory activities are covered under the current rules (i.e., considered a “financial activity”) and will continue to be covered under the proposed rule. One of these commenters also requests that FINRA Rule 4530(a)(1)(H) include the phrase “knows or should have

¹⁹ State Farm.

²⁰ CAI, FSI and NSCP.

²¹ Cutter and NAIBD.

known,” which is currently in NASD Rule 3070(a)(9).²² As discussed above, FINRA is proposing to consolidate in a single paragraph, FINRA Rule 4530(a), the various references to the “knows or should have known” standard.

E. Internal Disciplinary Actions Against Associated Persons (Proposed FINRA Rule 4530(a)(2))

Several commenters suggest that the current \$2,500 threshold for reporting internal disciplinary actions is too low and outdated.²³ FINRA believes that the current dollar threshold continues to be consistent with the purposes of the rule.

F. Internal Conclusions (Proposed FINRA Rules 4530(b) and 4530.01)

Several commenters believe that the proposed provisions are unnecessary, unduly burdensome, overly broad and costly.²⁴ These commenters also argue that the provisions are vague and too subjective and that certain terms, such as “the member has concluded,” “isolated” and “ministerial,” need further clarification. For instance, one commenter asks whether internal conclusions that are equivalent to minor rule violations will have to be reported.²⁵ One commenter recommends that the proposal exclude either a “ministerial” or “non-material” violation.²⁶ One commenter suggests that the requirement be limited to those matters that result in “material customer harm.”²⁷ Another commenter recommends

²² NAIBD.

²³ CAI, FSI and NSCP.

²⁴ CAI, FSI, ICI, Northwestern, NSCP, PFS, Schwab, SIFMA and State Farm.

²⁵ Schwab.

²⁶ ICI.

²⁷ Northwestern.

that the requirement be limited to matters that result in “customer harm.”²⁸ Some of these commenters also suggest that if FINRA opts to retain the proposed requirement, it adopt the reporting standard set forth in NYSE Information Memorandum 06-11, which provides that if a firm determines not to impose discipline against an individual, the firm need only report any recidivist or ongoing violative conduct by the individual.²⁹ NYSE Information Memorandum 06-11 also provides that a firm need only report systemic firm failures involving numerous customers, multiple errors or significant dollar amounts, as well as violative conduct by the firm or its employees that has widespread or potential widespread impact to the firm, its customers or the industry.

FINRA believes that the standard set forth in Information Memorandum 06-11 is too narrow. However, in response to the comments, FINRA has provided an example in Item II.A. of this filing of the types of reportable and non-reportable matters.

One commenter suggests that the proposed requirement be limited to conclusions reached at a senior level.³⁰ Another commenter requests that FINRA clarify that a settlement with a customer does not create the presumption that a reportable violation has occurred.³¹ Additionally, one commenter asks whether internal audit findings are deemed internal conclusions.³² FINRA believes that a firm is free to determine the level of seniority required of an associated person in making a determination of a reportable

²⁸ FSI.

²⁹ FSI, NSCP, PFS, Schwab and SIFMA.

³⁰ CAI.

³¹ PFS.

³² NSCP.

internal conclusion; however, it will not be a defense to a failure to report such conduct that it was of a nature that did not merit consideration by a person of such seniority. With respect to settlements, it is not the fact that a firm has settled a matter that makes it a reportable event under FINRA Rule 4530(b), rather it is whether the firm has reached an internal conclusion or reasonably should have reached an internal conclusion that the firm or an associated person has engaged in the enumerated violative conduct.³³ Regarding internal audit findings, FINRA believes that the existence of such findings creates a strong presumption that the matter is reportable, but that any particular finding is eligible to be viewed by the firm as non-reportable (i.e., an isolated, ministerial violation that did not result in customer harm and was remedied promptly upon discovery).

Further, two commenters believe that matters subject to a firm's internal review process as required under other rules (e.g., FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes)) should be excluded from the proposed requirement.³⁴ FINRA believes that firms have an obligation to meet each of their regulatory requirements (including the requirements of FINRA Rule 3130) and that the obligation to meet a regulatory requirement is not superseded based on compliance with other regulatory requirements.

Additionally, some commenters suggest that the proposed requirement may have a chilling effect on a firm's willingness to reach such conclusions or that reporting such information, which may lack qualified or total immunity, may result in defamation

³³ Firms should note that certain settlements will have to be reported based on other reporting requirements (e.g., FINRA Rule 4530(a)(1)(G)).

³⁴ CAI and ICI.

suits.³⁵ Without opining on the issues raised by these commenters, FINRA questions the collateral effects posited by the commenters given the use of the information for FINRA internal examination and enforcement purposes and that, in any event, FINRA believes that the goals of customer protection and market integrity necessitate the reporting of such conduct to FINRA.

G. Domestic and Foreign Actions and Actions By a Regulatory Body
(Proposed FINRA Rules 4530(a)(1)(A), (C), (D), (F) and 4530.04)

One commenter suggests that it may be too difficult to obtain information from foreign regulatory bodies.³⁶ In general, firms should report the information in their custody, possession, or control or to which they have knowledge and provide an explanation in the appropriate reporting system fields of the information that they were unable to obtain due to circumstances beyond their control. In addition, as noted above, firms cannot intentionally avoid becoming aware of a reportable event.

H. Quarterly Statistical and Summary Information Regarding Written
Customer Complaints (Proposed FINRA Rule 4530(d))

One commenter argues that the requirement to report quarterly statistical and summary information regarding written customer complaints, including emails, is unduly burdensome and wants to know how the data is used and how it benefits the industry.³⁷ FINRA uses the reported information for its internal examination and enforcement purposes. Among other things, the information assists FINRA to identify and investigate firms, offices and associated persons that may pose a regulatory risk.

³⁵ CAI, FSI and Schwab.

³⁶ NSCP.

³⁷ Puplava.

Additionally, in response to one commenter,³⁸ FINRA wishes to clarify an interpretive position related to FINRA Rule 4530(c). In Notice to Members 96-85, FINRA (then NASD) stated that for purposes of reporting written customer complaints under NASD Rule 3070(c), the term “customer” is defined as any person other than a broker-dealer with whom the member has engaged, or has sought to engage, in securities activities, therefore, it was intended to exclude non-securities products. A member is not required to report written complaints relating to non-securities products, but only to the extent that such complaints are not from customers that the member has engaged, or has sought to engage, in securities activities. However, if a member has engaged, or has sought to engage, in securities activities with a person, then any written complaint from that person is reportable under the proposed rule, regardless of whether it relates to non-securities products.³⁹

I. Reporting Obligation (Proposed FINRA Rule 4530(e))

As originally proposed in Regulatory Notice 08-71, the rule required members to report an event under the rule regardless of whether the event was disclosed on the Forms BD, U4 or U5. Several commenters raised concerns regarding this obligation.⁴⁰ FINRA has revised the proposed rule to provide that a firm is not required to report an event

³⁸ Schwab.

³⁹ FINRA notes that the original proposal in Regulatory Notice 08-71 included a provision reminding firms of their obligations under proposed FINRA Rule 3110(b)(5) to have procedures to capture, acknowledge and respond to all written (including electronic) customer complaints. Proposed FINRA Rule 3110(b)(5) is part of the proposed consolidated supervision rules. See Regulatory Notice 08-24 (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls). FINRA will consider whether to re-propose the reference to FINRA Rule 3110(b)(5) at a later date.

⁴⁰ CAI, Cutter, FSI, NAIBD, NSCP, Schwab and SIFMA.

otherwise required to be reported under FINRA Rules 4530(a) or (b) if the firm has disclosed the event on the Form U5, consistent with the requirements of that form. This exception to FINRA Rules 4530(a) and (b) only applies to information that has been disclosed on the Form U5. As noted above, FINRA will also work toward the goal of eliminating duplicative reporting of information disclosed on the Forms BD and U4.

J. Filing of Related Documents with FINRA (Proposed FINRA Rule 4530(f))

As originally proposed in Regulatory Notice 08-71, the rule required members to file, in addition to report, any insurance-related civil litigation or arbitration. Several commenters argued that the proposed requirement will result in voluminous filings regarding insurance matters completely unrelated to securities activities.⁴¹ Consistent with the revisions to FINRA Rule 4530(a)(1)(G) discussed above, FINRA Rule 4530(f) has been revised to require the filing of copies of any “insurance” civil litigation complaint or arbitration claim that is “financial related.”

K. Calculation of Monetary Thresholds and Former Associated Persons (Proposed FINRA Rules 4530.06 and .07)

Several commenters raise concerns regarding the inclusion of attorneys fees and interest when calculating the dollar thresholds for reporting civil litigations, arbitrations or other claims for damages.⁴² Based on FINRA’s experience, some firms have considered structuring settlements using attorneys fees to avoid the dollar thresholds for reporting. The inclusion of attorneys fees and interest in the proposed rule is intended to address this concern. One commenter believes that “joint and several” liability should

⁴¹ CAI, Farmers, NSCP and State Farm.

⁴² CAI, Cutter, FSI, NAIBD, Northwestern, NSCP, Schwab and SIFMA.

not be aggregated for purposes of the proposed rule.⁴³ As noted above, since each party subject to “joint and several” liability is separately liable for the aggregate amount, the aggregate amount must be reported for each party. For instance, if two parties have “joint and several” liability for \$40,000, the amount reported would be \$40,000 for each party.

Some commenters are also concerned that it may be too difficult to obtain information from former associated persons.⁴⁴ As discussed above, in general, firms should report the information in their custody, possession, or control or to which they have knowledge and provide an explanation in the appropriate reporting system fields of the information that they were unable to obtain due to circumstances beyond their control, with the understanding that firms cannot intentionally avoid becoming aware of a reportable event.

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

⁴³ Schwab.

⁴⁴ CAI, FSI, Northwestern and NSCP.

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-2010-034 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-2010-034. 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 Web site viewing and printing 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-2010-034 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.⁴⁵

Florence E. Harmon

Deputy Secretary

⁴⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

**Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 3070; NASD Rule 3070 to be Deleted in
its Entirety from the Transitional Rulebook)**

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4500. BOOKS, RECORDS AND REPORTS

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[3070]4530. Reporting Requirements

(a) Each member shall promptly report to FINRA, [the Association whenever such member or person associated with the member] but in any event not later than 30 calendar days, after the member knows or should have known of the existence of any of the following:

(1) the member or an associated person of the member:

(A) has been found to have violated any securities-, insurance-, commodities-, financial- or investment-related [provision of any securities] laws, rules, [or] regulations[, any rule] or standards of conduct of any domestic or foreign [governmental agency,] regulatory body, self-regulatory organization[, or [financial] business or professional organization[, or engaged in conduct which is inconsistent with just and equitable principles of trade; and the member knows or should have known that any of the aforementioned events have occurred];

[(2)] (B) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;

[(3)] (C) is named as a defendant or respondent in any proceeding brought by a domestic or foreign regulatory body or self-regulatory [body] organization alleging the violation of any provision of the Exchange Act, or of any other federal, [or] state or foreign securities, insurance[,] or commodities statute, or of any rule or regulation thereunder, or of any provision of the [B]by-laws, rules or similar governing instruments of any securities, insurance or commodities domestic or foreign regulatory body or self-regulatory organization;

[(4)] (D) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry domestic or foreign regulatory body or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;

[(5)] (E) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or a conspiracy to

commit any of these offenses, or substantially equivalent activity in a domestic, military[,] or foreign court;

[(6)] (F) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company [which] that was suspended, expelled or had its registration denied or revoked by any domestic or foreign [agency] regulatory body, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution [which] that was convicted of or pleaded no contest to, any felony or misdemeanor in a domestic or foreign court;

[(7)] (G) is a defendant or respondent in any securities- or commodities-related civil litigation or arbitration, is a defendant or respondent in any financial-related insurance civil litigation or arbitration, or is the subject of any claim for damages by a customer, broker or dealer that is financial or transactional in nature, [which] and such civil litigation, arbitration or claim for damages has been disposed of by judgment, award or settlement for an amount exceeding \$15,000. However, when the member is the defendant or respondent or is the subject of any claim for damages by a customer, broker or dealer, then the reporting to [the Association] FINRA shall be required only when such judgment, award[,] or settlement is for an amount exceeding \$25,000; or

[(8)] is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding \$15,000. However, when the

claim for damages is against a member, then the reporting to the Association shall be required only when such claim is settled for an amount exceeding \$25,000;]

[(9)] (H) is, or is involved [associated] in the sale of any [business or] financial [activity] instrument, the provision of any investment advice or the financing of any such activities with any person who is, subject to a “statutory disqualification” as that term is defined in the Exchange Act[, and the member knows or should have known of the association]. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification; or

[(10)] (2) an associated person of the member is the subject of any disciplinary action taken by the member [against any person associated with the member] involving suspension, termination, the withholding of [commissions] compensation or of any other remuneration in excess of \$2,500, [or] the imposition of fines in excess of \$2,500[,] or is otherwise disciplined in any manner [which] that would have a significant limitation on the individual’s activities on a temporary or permanent basis.

(b) Each member shall promptly report to FINRA, but in any event not later than 30 calendar days, after the member has concluded or reasonably should have concluded that an associated person of the member or the member itself has violated any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or self-regulatory organization.

[(b)] (c) Each person associated with a member shall promptly report to the member the existence of any of the [conditions] events set forth in paragraph (a)(1) of this Rule. [Each member shall report to the Association not later than 10 business days after the member knows or should have known of the existence of any of the conditions set forth in paragraph (a) of this rule.]

[(c)] (d) Each member shall report to [the Association] FINRA statistical and summary information regarding customer complaints in such detail as [the Association] FINRA shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the member. For the purposes of this paragraph, “customer” includes any person other than a broker or dealer with whom the member has engaged, or has sought to engage, in securities activities, and “complaint” includes any written grievance by a customer involving the member or person associated with [a] the member.

[(d)] (e) Nothing contained in this Rule shall eliminate, reduce[,] or otherwise abrogate the responsibilities of a member or person associated with a member to promptly [file with full disclosure,] disclose required [amendments to] information on the Forms BD, [Forms] U[-]4 [and] or U[-]5, as applicable, [or] to make any other required filings[, and] or to respond to [NASD] FINRA with respect to any customer complaint, examination[, or] inquiry. In addition, members are required to comply with the reporting obligations under paragraphs (a), (b) and (d) of this Rule, regardless of whether the information is reported or disclosed pursuant to any other rule or requirement, including the requirements of the Forms BD or U4. However, a member need not report an event

otherwise required to be reported under paragraphs (a) or (b) of this Rule if the member discloses the event on the Form U5, consistent with the requirements of that form.

[(e) Any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member is exempt from paragraphs (a), (b) and (c) of this Rule.]

(f) Each member shall promptly file with [NASD] FINRA copies of:

(1) any indictment, information or other criminal complaint or plea agreement for conduct reportable under paragraph (a)[(5)](1)(E) of this Rule;

(2) any complaint in which a member is named as a defendant or respondent in any securities- or commodities-related private civil litigation, or is named as a defendant or respondent in any financial-related insurance private civil litigation;

(3) any securities- or commodities-related arbitration claim, or financial-related insurance arbitration claim, filed against a member in any forum other than the [NASD] FINRA Dispute Resolution forum;

(4) any indictment, information or other criminal complaint, any plea agreement, or any private civil complaint or arbitration claim against a person associated with a member that is reportable under question 14 on Form U[-]4, irrespective of any dollar thresholds Form U[-]4 imposes for notification, unless, in the case of an arbitration claim, the claim has been filed in the [NASD] FINRA Dispute Resolution forum.

(g) Members shall not be required to comply separately with paragraph (f) in the event that any of the documents required by paragraph (f) have been the subject of a

request by [NASD] FINRA's Registration and Disclosure staff, provided that the member produces those requested documents to the Registration and Disclosure staff not later than 30 days after receipt of such request. This paragraph does not supersede any [NASD] FINRA rule or policy that requires production of documents specified in paragraph (f) sooner than 30 days after receipt of a request by the Registration and Disclosure staff.

• • • Supplementary Material: -----

.01 Reporting of Firms' Conclusions of Violations. For purposes of paragraph (b) of this Rule, with respect to violative conduct by an associated person, the reporting obligation under paragraph (b) must be read in conjunction with the reporting obligation under paragraph (a)(2) of this Rule. If a member has concluded that an associated person has engaged in violative conduct and imposes the discipline set forth under paragraph (a)(2) of this Rule, then the member is required to report the event under paragraph (a)(2), and it need not report the event under paragraph (b). In addition, for purposes of paragraph (b) of this Rule, FINRA does not expect a member to report an isolated violation by the member or an associated person of the member that can be reasonably viewed as a ministerial violation of the applicable rules that did not result in customer harm and was remedied promptly upon discovery.

.02 Firms' Conclusions of Violations versus External Findings. Members should be aware that paragraph (b) of this Rule is limited to situations where the member has concluded or reasonably should have concluded on its own that violative conduct has occurred. Paragraph (a)(1)(A) of this Rule is limited to situations where there has been a

finding of violative conduct by an external body, such as a court, domestic or foreign regulatory body, self-regulatory organization or business or professional organization.

.03 Meaning of “Found.” The term “found” as used in paragraph (a)(1)(A) of this Rule includes among other formal findings, adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include informal agreements, deficiency letters, examination reports, memoranda of understanding, cautionary actions, admonishments and similar informal resolutions of matters. For example, a Letter of Acceptance, Waiver and Consent or an Offer of Settlement is considered an adverse final action. The term “found” also includes any formal finding, regardless of whether the finding will be appealed. The term “found” does not include a violation of a self-regulatory organization rule that has been designated as “minor” pursuant to a plan approved by the SEC, if the sanction imposed consists of a fine of \$2,500 or less, and if the sanctioned person does not contest the fine.

.04 Meaning of “Regulatory Body.” For the purposes of this Rule, the term “regulatory body” refers to governmental regulatory bodies and authorized non-governmental regulatory bodies, such as the Financial Services Authority.

.05 Reporting of Individual and Related Events. With respect to a reportable event under paragraphs (a) or (b) of this Rule, members should not report the same event under more than one paragraph or subparagraph. Members should report the event under the most appropriate paragraph or subparagraph. However, members should be aware that they may be required to report related events under more than one paragraph or subparagraph. For instance, if a member is named as a respondent in a proceeding brought by a self-regulatory organization alleging the violation of the self-regulatory

organization's rules, the member would be required to report that event under paragraph (a)(1)(C) of this Rule. In addition, if the member subsequently is found to have violated the self-regulatory organization's rules, the member would be required to report that finding under paragraph (a)(1)(A) of this Rule.

.06 Calculation of Monetary Thresholds. For purposes of paragraph (a)(1)(G) of this Rule, when determining the dollar amount that would require a report, members must include any attorneys fees and interest in the total amount. In addition if the parties are subject to "joint and several" liability, the amount for each party must be aggregated and reported, if above the dollar thresholds under paragraph (a)(1)(G), as if each party is separately liable for the aggregated amount. For instance, if two parties have "joint and several" liability for \$40,000, the amount reported would be \$40,000 for each party.

.07 Former Associated Persons. For purposes of paragraphs (a), (b) and (d) of this Rule, members should report an event relating to a former associated person if the event occurred while the individual was associated with the member.

.08 Customer Complaints. Any written customer complaint reported under paragraph (a)(1)(B) of this Rule also must be reported pursuant to paragraph (d) of this Rule.

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**Text of Incorporated NYSE Rule
to Remain in the Transitional Rulebook**

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Rule 351. Reporting Requirements

(a) **Reserved.** [Each member not associated with a member organization and each member organization shall promptly report to the Exchange whenever such member

or member organization, or any member or registered or non-registered employee associated with such member or member organization:]

[(1) has violated any provision of any securities law or regulation, or any agreement with or rule or standards of conduct of any governmental agency, self-regulatory organization, or business or professional organization, or engaged in conduct which is inconsistent with just and equitable principles of trade or detrimental to the interests or welfare of the Exchange;]

[(2) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;]

[(3) is named as a defendant or respondent in any proceeding brought by a regulatory or self-regulatory body alleging the violation of any provision of the Securities Exchange Act of 1934, or of any other Federal or state securities, insurance, or commodities statute, or of any rule or regulation thereunder, or of any agreement with, or of any provision of the constitution, rules or similar governing instruments of, any securities, insurance or commodities regulatory or self-regulatory organization;]

[(4) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry regulatory or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member or member organization of any such self-regulatory organization;]

[(5) is arrested, arraigned, indicted or convicted of, or pleads guilty to, pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or a conspiracy to commit any of these offenses, or substantially equivalent activity in a domestic, military or foreign court;]

[(6) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company which was suspended, expelled or had its registration denied or revoked by any agency, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution which was convicted of, or pleaded no contest to, any felony or misdemeanor;]

[(7) is a defendant or respondent in any securities or commodities-related civil litigation or arbitration which has been disposed of by judgment, award or settlement for an amount exceeding \$15,000. However, when a member organization is the defendant or respondent, then the reporting to the Exchange shall be required only when such judgment, award or settlement is for an amount exceeding \$25,000;]

[(8) is the subject of any claim for damages by a customer, broker or dealer which is settled for an amount exceeding \$15,000. However, when the

claim for damages is against a member organization, then the reporting to the Exchange shall be required only when such claim is settled for an amount exceeding \$25,000;]

[(9) is, or learns that he is associated in any business or financial activity with any person who is, subject to a “statutory disqualification” as that term is defined in the Securities Exchange Act of 1934.]

[(10) is the subject of any disciplinary action taken by the member or member organization against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500, or any other significant limitation on activities.]

(b) **Reserved.** [Each member associated with a member organization and each registered or non-registered employee of a member or member organization shall promptly report the existence of any of the conditions set forth in paragraph (a) of this rule to the member or member organization with which such person is associated.]

(c) **Reserved.** [Each approved person shall promptly report to the member organization with which such approved person is associated, whenever such approved person becomes subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934; and upon being so notified, or otherwise learning such fact, the member or member organization shall promptly so advise the Exchange in writing, giving the name of the person subject to the statutory disqualification and details concerning the disqualification.]

(d) **Reserved.** [At such intervals and in such detail as the Exchange shall specify, each member not associated with a member organization and each member organization

shall report to the Exchange statistical information regarding customer complaints relating to such matters as may be specified by the Exchange. For the purpose of this paragraph (d), “customer” includes any person other than a broker or dealer.]

(e) through (f) No Change.

••• **Supplementary Material:** -----

.10 Reserved. [Any report required pursuant to paragraphs (a), (b) or (d) of this Rule 351 shall be submitted to the Exchange on a form or forms prescribed by the Exchange.]

.11 through .12 No Change.

.13 Reserved. [The term “customer complaint” shall mean any written statement of a customer, or any person acting on behalf of a customer, other than a broker or dealer, alleging a grievance involving the activities of those persons under the control of a member organization.]

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