

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="14"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2010"/> - * <input type="text" value="037"/> 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 * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			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  Senior Vice President and Director of Capital Markets Policy  
 (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**

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

**Partial Amendment**

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

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 5190 (Notification Requirements for Offering Participants) relating to the notice requirements applicable to distributions of “actively traded” securities, as defined under SEC Regulation M.

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

\* \* \* \* \*

**5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES**

**5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION**

\* \* \* \* \*

**5190. Notification Requirements for Offering Participants**

(a) through (c) No Change.

**(d) Notice Relating to Distributions of “Actively Traded” Securities Under SEC Regulation M**

A member acting as a manager (or in a similar capacity) of a distribution of any security that is considered an “actively traded” security under Rule 101 of SEC Regulation M shall provide written notice to FINRA, in such form as specified by FINRA, of the following:

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

(1) the member's determination that no restricted period applies under Rule 101 of SEC Regulation M and the basis for such determination[, including the security name and symbol, at least one business day prior to the pricing of the distribution, unless later notification is necessary under specific circumstances]; and

(2) the pricing of the distribution, including the security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis, the SEC effective date and time, the trade date, and identification of the distribution participants and affiliated purchasers[.].

Such notice shall be provided no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.

If no member is acting as a manager (or in a similar capacity) of such distribution, then each member that is a distribution participant or an affiliated purchaser shall provide the notice required under this paragraph (d), unless another member has assumed responsibility in writing for compliance therewith.

(e) No Change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

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

At its meeting on April 17, 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.

The proposed rule change will be effective on the date of Commission approval.

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

(a) Purpose

FINRA Rule 5190 imposes certain notice requirements on members participating in distributions of listed and unlisted securities and is designed to ensure that FINRA receives pertinent distribution-related information from its members in a timely fashion to facilitate its Regulation M compliance program.

Rule 5190(d) sets forth the notice requirements applicable to distributions of securities that are considered “actively traded” and thus are not subject to a restricted period under Rule 101 of Regulation M.<sup>2</sup> In connection with such distributions, pursuant to Rule 5190(d)(1), members are required to provide written notice to FINRA of the member’s determination that no restricted period applies and the basis for such determination. Members must provide such notice at least one business day prior to the pricing of the distribution, unless later notification is necessary under specific circumstances. Rule 5190(d)(2) requires that upon pricing a distribution of an “actively traded” security, members provide written notice to FINRA, along with pricing-related information such as the offering price, the last sale before the distribution and the pricing basis. Notice of pricing must be provided no later than the close of business the next

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<sup>2</sup> The exclusion for “actively traded” securities removes from Rule 101 of Regulation M securities with an “ADTV” value, as defined in Rule 100 of Regulation M, of at least \$1 million where the issuer’s common equity securities have a public float value of at least \$150 million.

business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.

FINRA is proposing to amend Rule 5190(d) to require that notice under subparagraphs (1) and (2) be provided at the same time; specifically, no later than the close of business the next business day following the pricing of the distribution. While the timing of notice under subparagraph (1) would change, the information required would not change. Thus, pursuant to the proposed rule change, members will be required to provide a single notice after pricing of the distribution and will be required to provide all of the same information that they provide today.

FINRA has determined that it will be sufficient for members to provide notice of their determination that no restricted period applies following the pricing of the distribution. Since there is no restricted period for distributions of “actively traded” securities, surveillance of members’ trading activity prior to pricing is not required. Accordingly, the proposed rule change will not negatively impact FINRA’s Regulation M surveillance program.

Additionally, a significant number of distributions of “actively traded” securities evolve quickly after the market close and are priced overnight before the next trading session. Thus, members frequently do not have sufficient advance knowledge of their participation in the distribution to provide notice to FINRA at least one business day prior to pricing and in such instances are unable to comply with the express terms of Rule 5190(d)(1). FINRA then must make a determination whether later notification was necessary under the circumstances, in accordance with the rule. The proposed rule change will clarify members’ notice obligations in the context of such distributions.

As noted in Item 2 of this filing, the proposed rule change will be effective on the date of Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>3</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify and streamline FINRA's Regulation M-related notice requirements.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were neither solicited nor received.

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

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>4</sup>

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

Not applicable.

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

<sup>4</sup> 15 U.S.C. 78s(b)(2).

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

Not applicable.

**9. Exhibits**

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2010-037)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 5190 (Notification Requirements for Offering Participants)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend FINRA Rule 5190 (Notification Requirements for Offering Participants) relating to the notice requirements applicable to distributions of “actively traded” securities, as defined under SEC Regulation M.

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.

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

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

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

FINRA Rule 5190 imposes certain notice requirements on members participating in distributions of listed and unlisted securities and is designed to ensure that FINRA receives pertinent distribution-related information from its members in a timely fashion to facilitate its Regulation M compliance program.

Rule 5190(d) sets forth the notice requirements applicable to distributions of securities that are considered "actively traded" and thus are not subject to a restricted period under Rule 101 of Regulation M.<sup>3</sup> In connection with such distributions, pursuant to Rule 5190(d)(1), members are required to provide written notice to FINRA of the member's determination that no restricted period applies and the basis for such determination. Members must provide such notice at least one business day prior to the pricing of the distribution, unless later notification is necessary under specific circumstances. Rule 5190(d)(2) requires that upon pricing a distribution of an "actively

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<sup>3</sup> The exclusion for "actively traded" securities removes from Rule 101 of Regulation M securities with an "ADTV" value, as defined in Rule 100 of Regulation M, of at least \$1 million where the issuer's common equity securities have a public float value of at least \$150 million.

traded” security, members provide written notice to FINRA, along with pricing-related information such as the offering price, the last sale before the distribution and the pricing basis. Notice of pricing must be provided no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.

FINRA is proposing to amend Rule 5190(d) to require that notice under subparagraphs (1) and (2) be provided at the same time; specifically, no later than the close of business the next business day following the pricing of the distribution. While the timing of notice under subparagraph (1) would change, the information required would not change. Thus, pursuant to the proposed rule change, members will be required to provide a single notice after pricing of the distribution and will be required to provide all of the same information that they provide today.

FINRA has determined that it will be sufficient for members to provide notice of their determination that no restricted period applies following the pricing of the distribution. Since there is no restricted period for distributions of “actively traded” securities, surveillance of members’ trading activity prior to pricing is not required. Accordingly, the proposed rule change will not negatively impact FINRA’s Regulation M surveillance program.

Additionally, a significant number of distributions of “actively traded” securities evolve quickly after the market close and are priced overnight before the next trading session. Thus, members frequently do not have sufficient advance knowledge of their participation in the distribution to provide notice to FINRA at least one business day prior to pricing and in such instances are unable to comply with the express terms of Rule

5190(d)(1). FINRA then must make a determination whether later notification was necessary under the circumstances, in accordance with the rule. The proposed rule change will clarify members' notice obligations in the context of such distributions.

The proposed rule change will be effective on the date of Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>4</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify and streamline FINRA's Regulation M-related notice requirements.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

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

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2010-037 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-2010-037. 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-2010-037 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

Florence E. Harmon  
Deputy Secretary

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