

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="27"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2010"/> - * <input type="text" value="041"/> 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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="text"/> 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 checked="" type="checkbox"/> 19b-4(f)(6)		

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

Proposed Rule Change to Amend FINRA Rule 2360 (Options) to Extend the Time to Submit Contrary Exercise Advice and the Time for a Final Exercise Decision in the Event of a Modified Close of Trading.

**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)**

Add Remove View

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

**Exhibit 1 - Notice of Proposed Rule Change (required)**

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

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

Add Remove View

Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

Add Remove View

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

**Exhibit 5 - Proposed Rule Text**

Add Remove View

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

**Partial Amendment**

Add Remove View

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

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<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 2360 (Options) to: (1) extend the time by which members must submit Contrary Exercise Advice (“CEA”) notices; (2) amend the time for a final exercise decision in the event of a modified close of trading; and (3) make certain changes to reorganize the rule text to clarify the rule requirements.

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

(b) Not applicable.

(c) Not applicable.

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

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

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice.

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<sup>1</sup> 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

The purpose of the proposed rule change is to amend FINRA Rule 2360(b)(23)(A) to: (1) extend the time by which members must submit Contrary Exercise Advice (“CEA”)<sup>2</sup> notices; (2) amend the time for a final exercise decision in the event of a modified close of trading; and (3) make certain changes to reorganize the rule text to clarify the rule requirements.

FINRA Rule 2360(b)(23)(A) contains special procedures that apply to the exercise of standardized options on the last business day before expiration. An option holder with an expiring standardized option may (1) take no action and allow automatic exercise determinations to be made in accordance with the Options Clearing Corporation’s (“OCC”) exercise-by-exception (“Ex-by-Ex”) procedures,<sup>3</sup> or (2) submit a CEA as specified below. A CEA is a communication to (i) not exercise an option that would be automatically exercised under OCC’s Ex-by-Ex procedure, or (ii) exercise an option that would not be automatically exercised under OCC’s Ex-by-Ex procedure.

FINRA proposes to relocate and revise the provisions from the current subparagraph (ii) regarding the deadline for option holders to inform members of exercise decisions and the deadline for members to submit CEAs indicating such decision into two separate subsections to improve readability. In new subsection (iii), FINRA provides (as currently provided in current subsection (ii)) that option holders have until

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<sup>2</sup> Contrary Exercise Advices also are referred to as Expiring Exercise Declarations (“EED”) in The Options Clearing Corporation’s rules.

5:30 p.m. Eastern Time (“ET”) on the business day immediately prior to the expiration date to make a final exercise decision to exercise or not exercise an expiring option. In addition, FINRA clarifies that members may not accept exercise instructions for customer or non-customer accounts after 5:30 p.m. ET. This is not a new requirement but meant to highlight that this provision is still in effect.

The balance of current subparagraph (ii) regarding the deadline for members to submit CEAs indicating the option holders exercise decision is relocated to the end of new subparagraph (iv) after the explanation of the contents of CEAs. FINRA believes this improves the readability of the rule. In addition, FINRA proposes to extend the deadline for members to submit CEAs in certain instances. Currently, members have until 6:30 p.m. ET to submit a CEA for customer accounts. In addition, members have until 6:30 p.m. ET to submit a CEA for non-customer accounts if the member employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. FINRA proposes to extend these deadlines by one hour, from 6:30 p.m. ET to 7:30 p.m. ET. FINRA believes that granting members additional time to submit CEAs is necessary to address concerns raised by members that the existing deadline has raised issues regarding timely back-office processing. FINRA notes that the Ex-by-Ex threshold has changed from \$0.75 for customers (and \$0.25 for broker-dealers) to \$0.01 for all accounts. This decrease in the Ex-by-Ex threshold coupled with the increase in options trading volume in recent years has lead to a larger number of CEAs and increased the burden on firms to process and submit instructions

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<sup>3</sup> Under the Ex-by-Ex procedures an option will be automatically exercised if the option contract is in-the-money by a requisite amount.

timely. The proposed additional one hour will address this concern by further enabling firms to more timely manage, process and submit CEAs.

FINRA does not propose to extend the CEA submission cut-off time for non-customer accounts of members that do not use electronic time stamps to record the submission of exercise instructions from option holders. Such CEAs must be manually submitted by the member by 5:30 p.m. ET.

FINRA also proposes two amendments to subparagraph (vii), re-numbered as subparagraph (viii), regarding the deadlines in the event a modified close of trading is announced. First, FINRA proposes to amend the deadline for option holders to make a final exercise decision for an expiring standardized option from 1 hour and 28 minutes following the modified time announced for the close of trading to 1 hour and 30 minutes following the modified closing time. The proposed rule change is consistent with the rules of the options exchanges, which were modified to correspond to the two-minute difference in trading time created by the change in the close of trading time from 4:02 p.m. to 4 p.m. ET.<sup>4</sup> Consistent with this modification, FINRA also proposes that members that do not employ an electronic submission procedure for exercise instructions would be required to submit a CEA within 1 hour and 30 minutes after the modified close of trading for its non-customer accounts rather than 1 hour and 28 minutes.

Second, FINRA proposes to modify re-numbered subparagraph (viii), which allows a member up to 2 hours and 28 minutes to submit a CEA in the event of a

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<sup>4</sup> See Securities Exchange Act Release Nos. 53519 (March 20, 2006), 71 FR 15229 (March 27, 2006) (SR-AMEX-2006-26); 53249 (February 7, 2006), 71 FR 8035 (February 15, 2006) (SR-PCX-2005-138); 53407 (March 3, 2006), 71 FR 12764 (March 13, 2006) (SR-PHLX-2006-12); 53439 (March 7, 2006), 71 FR 13643

modified close of trading, by removing such provision and allowing a member to submit a CEA in such circumstances up to 7:30 p.m. ET. FINRA believes making uniform the submission deadlines on both regular and modified close expiration days provides for consistent regulation and prevents the possibility for error when determining what the CEA submission deadline is on any modified close expiration day. The initiative to address members' concern regarding the cut-off time for CEAs is industry-wide, and FINRA proposes these amendments to maintain consistency with the rules of the options exchanges.<sup>5</sup>

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. If the implementation date of the proposed rule change is more than 5 business days prior to the date of the next expiration Friday, i.e., the third Friday of the month ("Expiration Friday"),<sup>6</sup> FINRA will implement the proposed rule change so as to be effective for that Expiration Friday. If the implementation date of the proposed rule change is 5 business days or less prior to the date of the next Expiration Friday, FINRA will implement the rule change so as to be effective for the following Expiration Friday. FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice.

(b) Statutory Basis

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(March 16, 2006) (SR-ISE-2006-11); and 53438 (March 7, 2006), 71 FR 13641 (March 16, 2006) (SR-CBOE-2006-19).

<sup>5</sup> See Securities Exchange Act Release No. 61710 (March 15, 2010), 75 FR 13636 (March 22, 2010) (Order Approving SR-ISE-2010-02). FINRA anticipates that the other options exchanges will propose similar rule changes.

<sup>6</sup> For example, Expiration Friday for August 2010 options will be August 20, 2010, Expiration Friday for September options will be September 17, 2010.

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities as set forth in Section 15A(b)(6) of the Act<sup>8</sup> by providing members an additional hour within which to complete the necessary processing of CEAs, will thereby decrease members' burden of processing an increasing number of CEAs and enable them to more easily manage and process these instructions. In addition, the proposed rule change is being made to maintain consistency with the rules of the options exchanges.<sup>9</sup>

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

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

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

Written comments were neither solicited nor received.

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<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> See note 5.

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

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act<sup>10</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>11</sup> in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing.

In accordance with Rule 19b-4,<sup>12</sup> FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

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

The proposed rule change is being made to maintain consistency with the rules of the options exchanges.<sup>13</sup>

**9. Exhibits**

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

Exhibit 5. Text of the proposed rule change.

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<sup>10</sup> 15 U.S.C. 78s(b)(3).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4.

<sup>13</sup> See note 5.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2010-041)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to FINRA Rule 2360 to Extend the Time to Submit a Contrary Exercise Advice and the Time for a Final Exercise Decision in the Event of a Modified Close of Trading

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 and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend FINRA Rule 2360 (Options) to: (1) extend the time by which members must submit Contrary Exercise Advice (“CEA”) notices; (2) amend the time for a final exercise decision in the event of a modified close of trading; and (3) make certain changes to reorganize the rule text to clarify the rule requirements.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend FINRA Rule 2360(b)(23)(A) to: (1) extend the time by which members must submit Contrary Exercise Advice ("CEA")<sup>4</sup> notices; (2) amend the time for a final exercise decision in the event of a modified close of trading; and (3) make certain changes to reorganize the rule text to clarify the rule requirements.

FINRA Rule 2360(b)(23)(A) contains special procedures that apply to the exercise of standardized options on the last business day before expiration. An option holder with an expiring standardized option may (1) take no action and allow automatic exercise determinations to be made in accordance with the Options Clearing

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<sup>4</sup> Contrary Exercise Advices also are referred to as Expiring Exercise Declarations ("EED") in The Options Clearing Corporation's rules.

Corporation's ("OCC") exercise-by-exception ("Ex-by-Ex") procedures,<sup>5</sup> or (2) submit a CEA as specified below. A CEA is a communication to (i) not exercise an option that would be automatically exercised under OCC's Ex-by-Ex procedure, or (ii) exercise an option that would not be automatically exercised under OCC's Ex-by-Ex procedure.

FINRA proposes to relocate and revise the provisions from the current subparagraph (ii) regarding the deadline for option holders to inform members of exercise decisions and the deadline for members to submit CEAs indicating such decision into two separate subsections to improve readability. In new subsection (iii), FINRA provides (as currently provided in current subsection (ii)) that option holders have until 5:30 p.m. Eastern Time ("ET") on the business day immediately prior to the expiration date to make a final exercise decision to exercise or not exercise an expiring option. In addition, FINRA clarifies that members may not accept exercise instructions for customer or non-customer accounts after 5:30 p.m. ET. This is not a new requirement but meant to highlight that this provision is still in effect.

The balance of current subparagraph (ii) regarding the deadline for members to submit CEAs indicating the option holders exercise decision is relocated to the end of new subparagraph (iv) after the explanation of the contents of CEAs. FINRA believes this improves the readability of the rule. In addition, FINRA proposes to extend the deadline for members to submit CEAs in certain instances. Currently, members have until 6:30 p.m. ET to submit a CEA for customer accounts. In addition, members have until 6:30 p.m. ET to submit a CEA for non-customer accounts if the member employs an electronic submission procedure with time stamp for the submission of exercise

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<sup>5</sup> Under the Ex-by-Ex procedures an option will be automatically exercised if the option contract is in-the-money by a requisite amount.

instructions by option holders. FINRA proposes to extend these deadlines by one hour, from 6:30 p.m. ET to 7:30 p.m. ET. FINRA believes that granting members additional time to submit CEAs is necessary to address concerns raised by members that the existing deadline has raised issues regarding timely back-office processing. FINRA notes that the Ex-by-Ex threshold has changed from \$0.75 for customers (and \$0.25 for broker-dealers) to \$0.01 for all accounts. This decrease in the Ex-by-Ex threshold coupled with the increase in options trading volume in recent years has led to a larger number of CEAs and increased the burden on firms to process and submit instructions timely. The proposed additional one hour will address this concern by further enabling firms to more timely manage, process and submit CEAs.

FINRA does not propose to extend the CEA submission cut-off time for non-customer accounts of members that do not use electronic time stamps to record the submission of exercise instructions from option holders. Such CEAs must be manually submitted by the member by 5:30 p.m. ET.

FINRA also proposes two amendments to subparagraph (vii), re-numbered as subparagraph (viii), regarding the deadlines in the event a modified close of trading is announced. First, FINRA proposes to amend the deadline for option holders to make a final exercise decision for an expiring standardized option from 1 hour and 28 minutes following the modified time announced for the close of trading to 1 hour and 30 minutes following the modified closing time. The proposed rule change is consistent with the rules of the options exchanges, which were modified to correspond to the two-minute difference in trading time created by the change in the close of trading time from 4:02

p.m. to 4 p.m. ET.<sup>6</sup> Consistent with this modification, FINRA also proposes that members that do not employ an electronic submission procedure for exercise instructions would be required to submit a CEA within 1 hour and 30 minutes after the modified close of trading for its non-customer accounts rather than 1 hour and 28 minutes.

Second, FINRA proposes to modify re-numbered subparagraph (viii), which allows a member up to 2 hours and 28 minutes to submit a CEA in the event of a modified close of trading, by removing such provision and allowing a member to submit a CEA in such circumstances up to 7:30 p.m. ET. FINRA believes making uniform the submission deadlines on both regular and modified close expiration days provides for consistent regulation and prevents the possibility for error when determining what the CEA submission deadline is on any modified close expiration day. The initiative to address members' concern regarding the cut-off time for CEAs is industry-wide, and FINRA proposes these amendments to maintain consistency with the rules of the options exchanges.<sup>7</sup>

FINRA has filed the proposed rule change for immediate effectiveness. If the implementation date of the proposed rule change is more than 5 business days prior to the date of the next expiration Friday, i.e., the third Friday of the month ("Expiration

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<sup>6</sup> See Securities Exchange Act Release Nos. 53519 (March 20, 2006), 71 FR 15229 (March 27, 2006) (SR-AMEX-2006-26); 53249 (February 7, 2006), 71 FR 8035 (February 15, 2006) (SR-PCX-2005-138); 53407 (March 3, 2006), 71 FR 12764 (March 13, 2006) (SR-PHLX-2006-12); 53439 (March 7, 2006), 71 FR 13643 (March 16, 2006) (SR-ISE-2006-11); and 53438 (March 7, 2006), 71 FR 13641 (March 16, 2006) (SR-CBOE-2006-19).

<sup>7</sup> See Securities Exchange Act Release No. 61710 (March 15, 2010), 75 FR 13636 (March 22, 2010) (Order Approving SR-ISE-2010-02). FINRA anticipates that the other options exchanges will propose similar rule changes.

Friday”),<sup>8</sup> FINRA will implement the proposed rule change so as to be effective for that Expiration Friday. If the implementation date of the proposed rule change is 5 business days or less prior to the date of the next Expiration Friday, FINRA will implement the rule change so as to be effective for the following Expiration Friday. FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities as set forth in Section 15A(b)(6) of the Act<sup>10</sup> by providing members an additional hour within which to complete the necessary processing of CEAs, will thereby decrease members’ burden of processing an increasing number of CEAs and enable them to more easily manage and process these instructions. In addition, the proposed rule change is being made to maintain consistency with the rules of the options exchanges.<sup>11</sup>

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<sup>8</sup> For example, Expiration Friday for August 2010 options will be August 20, 2010, Expiration Friday for September options will be September 17, 2010.

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>11</sup> See note 7.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

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-2010-041 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-2010-041. 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-2010-041 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>14</sup>

Florence E. Harmon

Deputy Secretary

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<sup>14</sup> 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.

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**2300. SPECIAL PRODUCTS**

\* \* \* \* \*

**2360. Options**

(a) No Change.

**(b) Requirements**

(1) through (22) No Change.

**(23) Tendering Procedures for Exercise of Options**

**(A) Exercise of Options Contracts**

(i) No Change.

[(ii) Final exercise decisions of options holders to either exercise or not to exercise an expiring standardized equity option must be indicated to an options exchange that is a national securities exchange (national options exchange) that lists and trades the option, either directly to such national options exchange or via a member of such national options exchange if it is not a member of such exchange, by the respective member no later than 5:30 p.m. Eastern time (“ET”) on the business day immediately prior to the expiration date. For customer accounts, members may not accept exercise instructions after 5:30 p.m. ET but have until 6:30 p.m. ET to submit a Contrary Exercise Advice (as defined

below). For non-customer accounts, members may not accept exercise instructions after 5:30 p.m. ET but have until 6:30 p.m. ET to submit a Contrary Exercise Advice if such member employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Members are required to submit a Contrary Exercise Advice by 5:30 p.m. ET for non-customer accounts if such members do not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Each member shall establish fixed procedures to ensure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options. For purposes of this Rule 2360(b)(23)(A), the terms “customer account” and non-customer account” shall have the meanings as defined in The Options Clearing Corporation By-laws.]

[(iii)](ii) Special procedures apply to the exercise of standardized equity options on the last business day before their expiration (“expiring options”). Unless waived by The Options Clearing Corporation, expiring standardized equity options are subject to the Exercise-by-Exception (“Ex-by-Ex”) procedure under The Options Clearing Corporation Rule 805. This Rule provides that, unless contrary instructions are given, standardized

equity option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to The Options Clearing Corporation rules, the following FINRA requirements apply with respect to expiring standardized equity options. Option holders desiring to exercise or not exercise expiring standardized equity options must either:

a. take no action and allow exercise determinations to be made in accordance with The Options Clearing Corporation's Ex-by-Ex procedure where applicable; or

b. submit a "Contrary Exercise Advice" by the deadline specified [in subparagraph (ii) above] below.

(iii) Exercise cut-off time. Option holders have until 5:30 p.m. Eastern Time ("ET") on the business day immediately prior to the expiration date to make a final exercise decision to exercise or not exercise an expiring option. Members may not accept exercise instructions for customer or non-customer accounts after 5:30 p.m. ET.

(iv) Submission of Contrary Exercise Advice. A Contrary Exercise Advice is a form approved by the national options exchanges, FINRA or The Options Clearing Corporation for use by a member to submit a final exercise decision committing an options holder to either: (1) not exercise an option position which would automatically be exercised pursuant to The Options

Clearing Corporation's Ex-by-Ex procedure; or (2) to exercise a standardized equity option position which would not automatically be exercised pursuant to The Options Clearing Corporation's Ex-by-Ex procedure. A Contrary Exercise Advice may be canceled by filing an "Advice Cancel" or resubmitted at any time up to the submission cut-off times specified herein [in subparagraph (ii) above]. For customer accounts, members have until 7:30 p.m. ET to submit a Contrary Exercise Advice. For non-customer accounts, members have until 7:30 p.m. ET to submit a Contrary Exercise Advice if such member employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Members are required to manually submit a Contrary Exercise Advice by 5:30 p.m. ET for non-customer accounts if such members do not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Each member shall establish fixed procedures to ensure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options. For purposes of this Rule 2360(b)(23)(A), the terms "customer account" and "non-customer account" shall have the meanings as defined in The Options Clearing Corporation By-

laws. Contrary Exercise Advices and/or Advice Cancels may be submitted by any member to:

[1]a. a place designated for that purpose by any national options exchange of which it is a member and where the standardized equity option is listed;

[2]b. a place designated for that purpose by any national options exchange that lists and trades the standardized equity option via a member of such exchange if the member is not a member of such exchange;

[3]c. any national options exchange of which it is a member and where the standardized equity option is listed via The Options Clearing Corporation in a form prescribed by The Options Clearing Corporation; or

[4]d. any national options exchange where the standardized equity option is listed via The Options Clearing Corporation in a form prescribed by The Options Clearing Corporation, provided the member is a member of The Options Clearing Corporation.

[(iv)](v) In those instances when The Options Clearing Corporation has waived the Ex-by-Ex procedure for an options class, members must either:

a. submit to any of the places listed in subparagraphs [(iii)b.1. through 4.] (iv)a. through d. above,

a Contrary Exercise Advice, within the time limits specified in subparagraph [(ii)](iv) above if the holder intends to exercise the standardized equity option, or

b. take no action and allow the standardized equity option to expire without being exercised.

The applicable underlying security price in such instances will be as described in The Options Clearing Corporation Rule 805(1), which is normally the last sale price in the primary market for the underlying security. In cases where the Ex-by-Ex procedure has been waived for an options class, The Options Clearing Corporation rules require that members wanting to exercise such options must submit an affirmative Exercise Notice to The Options Clearing Corporation, whether or not a Contrary Exercise Advice has been filed.

[(v)](vi) Members that maintain proprietary or public customer positions in expiring standardized equity options shall take necessary steps to ensure that final exercise decisions are properly indicated to the relevant national options exchange with respect to such positions. Members that have accepted the responsibility to indicate final exercise decisions on behalf of another member also shall take necessary steps to ensure that such decisions are properly indicated to the relevant national options exchange. Members may establish a processing cut-off time prior

to FINRA's exercise cut-off time at which they will no longer accept final exercise decisions in expiring standardized equity options from customers.

[(vi)](vii) Members may effect or amend exercise decisions for standardized equity options after the exercise cut-off time (but prior to expiration) under the following circumstances:

- a. in order to remedy mistakes or errors made in good faith;
- b. to take appropriate action as the result of a failure to reconcile unmatched option transactions; or
- c. where extraordinary circumstances restricted a customer's or member's ability to inform the respective member of such decisions (or a member's ability to receive such decisions) by the cut-off time.

The burden of establishing an exception for a proprietary or customer account of a member rests solely on the member seeking to rely on such exception.

[(vii)](viii) In the event a national options exchange or The Options Clearing Corporation provides advance notice on or before 5:30 p.m. ET on the business day immediately prior to the last business day before the expiration date indicating that a modified time for the close of trading in standardized equity options on such last business day before expiration will occur, then the deadline for

an option holder to make a final decision to exercise or not exercise an expiring option shall be 1 hour [28] 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. ET deadline found in subparagraph [(ii)](iii) above. However, members have until 7:30 p.m. ET to [may] deliver a Contrary Exercise Advice or Advice Cancel to the places specified in subparagraphs [(iii)b.1. through 4.] (iv)a. through d. above [within 2 hours 28 minutes following the time announced for the close of trading in standardized equity options on that day instead of the 6:30 p.m. ET deadline found in subparagraph (ii) above] for customer accounts and non-customer accounts where such member firm employs an electronic submission procedure with time stamp for the submission of exercise instructions. For non-customer accounts, members that do not employ an electronic procedure with time stamp for the submission of exercise instructions are required to manually deliver a Contrary Exercise Advice or Advice Cancel within 1 hour and [28] 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. ET deadline found in paragraph [(ii)] (iv) above.

[(viii)](ix) The filing of a final exercise decision, exercise instruction, exercise advice, Contrary Exercise Advice or Advice Cancel required by subparagraph (A) hereof does not serve as a

substitute to the effective notice required to be submitted to The Options Clearing Corporation for the exercise or non-exercise of expiring standardized equity options.

~~[(ix)]~~(x) Submitting or preparing an exercise instruction after the exercise cut-off time in any expiring standardized equity option on the basis of material information released after the exercise cut-off time is activity inconsistent with just and equitable principles of trade.

~~[(x)]~~(xi) The exercise cut-off requirements contained in this subparagraph (A) do not apply to any currency option or standardized index option products listed on a national options exchange.

(B) through (D) No Change.

(24) No Change.

(c) No Change.

**••• Supplementary Material: -----**

No Change.

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