

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="5"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2010"/> - * <input type="text" value="042"/> Amendment No. (req. for Amendments *) <input type="text" value="1"/>
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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) *
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			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 * <input type="text" value="Matthew"/>	Last Name * <input type="text" value="Vitek"/>
Title * <input type="text" value="Counsel"/>	
E-mail * <input type="text" value="matthew.vitek@finra.org"/>	
Telephone * <input type="text" value="(202) 728-8156"/>	Fax <input type="text" value="(202) 728-8264"/>

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 <input type="text" value="10/01/2010"/>		
By <input type="text" value="Patrice Gliniecki"/>	<input type="text" value="Senior Vice President and Deputy 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

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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.

On August 4, 2010, FINRA filed with the Securities and Exchange Commission (“SEC” or “Commission”) SR-FINRA-2010-042, a proposed rule change to adopt FINRA Rule 4160 (Verification of Assets). The proposed rule provides that a member, when notified by FINRA, may not continue to custody or retain record ownership of assets, whether such assets are proprietary or customer assets, at a financial institution that is not a member of FINRA, which, upon FINRA staff’s request, fails promptly to provide FINRA with written verification of assets maintained by the member at such financial institution. The SEC published the proposed rule change for notice and comment on August 11, 2010¹ and received one comment letter.² FINRA is filing this Partial Amendment No. 1 to respond to the comments received by the Commission and to propose amendments in response to such comments.

As noted above, the SEC received one comment letter in response to the publication in the Federal Register.³ The commenter opposed the proposal and asserted that the harm outweighed any benefit of the proposed rule. The commenter’s concerns are summarized and responded to below.

First, the commenter indicated that certain assets are hard to verify and that the proposed rule does not differentiate among different types of assets. The commenter suggested, among other things, that FINRA not apply the rule to proprietary assets that are not allowable for net capital purposes. The commenter further raised concerns that the proposed rule will create an unwarranted burden on members because it fails to address instances where a particular asset cannot be relocated from its country of origin or readily moved to another financial institution. Additionally, the commenter asserted that the rule “indirectly extends the extraterritorial application of the U.S. securities laws,” and that compliance with the rule may violate foreign law. Finally, the commenter believed that instead of adopting the proposed rule, FINRA should look at other asset verification options and suggested the alternatives of conducting a study regarding the necessity of the proposed rule or establishing a separate bureau that would verify customers’ statements against the books and records of their broker-dealers.

FINRA agrees with the commenter’s suggestion that the rule should not apply to proprietary assets of members that are not allowable for net capital purposes. Accordingly, FINRA is proposing new paragraph (b)(1) of the rule, which would expressly exclude from the rule proprietary assets of members that are treated as non-allowable assets pursuant to Rule 15c3-1 under the Securities Exchange Act of 1934 (“SEA” or “Act”). Moreover, in response to the commenter’s concerns regarding the application of the proposed rule to assets that cannot be relocated to another financial

¹ See Securities Exchange Act Release No. 62655 (August 5, 2010), 75 FR 48731 (August 11, 2010) (Notice of Filing of File No. SR-FINRA-2010-042).

² See Letter from Howard Spindel, Senior Managing Director, and Cassondra E. Joseph, Managing Director, Integrated Management Solutions USA LLC, dated August 30, 2010 (“IMS”).

³ IMS.

institution, such as many limited partnership or hedge fund investments, FINRA is proposing new paragraph (b)(2) of the rule, which provides that the rule would not apply in instances where FINRA determines that there is no independent custody or record ownership of the assets.

With respect to the commenter's other concerns, FINRA notes that the commenter raised several hypothetical situations but did not provide specific examples of conflicting law or potential burdens on members. Further, with respect to foreign locations, FINRA notes that members may only custody customer securities at a foreign depository, foreign clearing agency or foreign custodian bank that the SEC upon application has designated as a satisfactory control location pursuant to SEA Rule 15c3-3.⁴ As stated in the original rule filing, the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that independent verification of assets will further strengthen FINRA's ability to effectively detect fraud and protect investors.⁵ The proposed rule change serves to protect the capital structure of members and to safeguard the custody of customer assets.

The amendments to the proposed rule change are set forth below. FINRA is including with this Partial Amendment No. 1 an Exhibit 4 that shows the changes from the original rule text set forth in the proposed rule change.

⁴ See 17 CFR 240.15c3-3(c)(4).

⁵ 15 U.S.C. 78o-3(b)(6).

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed additions in this Partial Amendment No. 1 appear underlined.

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

4100. FINANCIAL CONDITION

* * * * *

4160. Verification of Assets

(a) A member, when notified by FINRA, may not continue to custody or retain record ownership of assets, whether such assets are proprietary or customer assets, at a financial institution that is not a member of FINRA, which, upon FINRA staff's request, fails promptly to provide FINRA with written verification of assets maintained by the member at such financial institution.

(b) The Rule shall not apply:

(1) to proprietary assets of members that are treated as non-allowable assets under SEA Rule 15c3-1; or

(2) in instances where FINRA determines that there is no independent custody or record ownership of the assets.

••• Supplementary Material: -----

.01 Asset Transfers. Any member required to transfer its proprietary and/or customer assets pursuant to this Rule shall effect such transfer within a reasonable period of time.

.02 Member Obligations Under SEA Rule 15c3-3. Nothing in this Rule shall be construed as altering in any manner a member's obligations under SEA Rule 15c3-3.

* * * * *