

*Required fields are shown with yellow backgrounds and asterisks.*

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No.\* SR - 2011 - \* 065

Amendment No. (req. for Amendments \*)

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"/>
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Rule

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

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Update Rule Cross-References within Certain FINRA Rules

**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 *	Philip	Last Name *	Shaikun
Title *	Associate Vice President and Associate General Counsel		
E-mail *	philip.shaikun@finra.org		
Telephone *	(202) 728-8451	Fax	(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 11/02/2011

By Patrice Gliniecki  
(Name \*)Senior Vice President and Deputy General Counsel  
(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.

Patrice Gliniecki,

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 update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook.

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. The implementation date for the proposed change to FINRA Rule 9559 will be December 2, 2011. The implementation date for certain proposed rule changes to FINRA Rules 0150<sup>2</sup> and 6630,<sup>3</sup> and proposed rule changes to FINRA Rules 2114, 2124, 2130, 2264, 2270, 2330, 2360, 2370, 5122, 5320, 7230A, 7330 and 9217 will be December 5, 2011. The implementation date for the proposed rule changes to update certain references in FINRA

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

<sup>2</sup> See note 5 for additional detail.

<sup>3</sup> See note 6 for additional detail.

Rules 0150, 6630(c)(2) and 9610(a) that would delete the reference to NASD Rule 3020 and add the reference to FINRA Rule 4360 will be January 1, 2012.

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

(a) Purpose

FINRA is in the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”).<sup>4</sup> That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references to reflect changes adopted in the Consolidated FINRA Rulebook. In this regard, the proposed rule change would update references in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities),<sup>5</sup> 2114 (Recommendations to Customers in OTC

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<sup>4</sup> 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).

<sup>5</sup> The proposed rule change would update FINRA Rule 0150 to reflect (1) the adoption of Rules 2268, 4510 Series, and 5340 and the deletion of NASD Rule 3110 and NASD IM-3110, effective December 5, 2011, and (2) the deletion of NASD Rule 3020 to add Rule 4360, effective January 1, 2012. See Regulatory Notice 11-19 (April 2011) (regarding File No. SR-FINRA-2010-052) and Regulatory Notice 11-21 (May 2011) (regarding File No. SR-FINRA-2010-059).

Equity Securities), 2124 (Net Transactions with Customers), 2130 (Approval Procedures for Day-Trading Accounts), 2264 (Margin Disclosure Statement), 2270 (Day-Trading Risk Disclosure Statement), 2330 (Members' Responsibilities Regarding Deferred Variable Annuities), 2360 (Options), 2370 (Security Futures), 5122 (Private Placements of Securities Issued by Members), 5320 (Prohibition Against Trading Ahead of Customer Orders), 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities),<sup>6</sup> 7230A (Trade Report Input), 7330 (Trade Report Input), 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)), 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), and 9610 (Application) that are needed as the result of Commission approval of three recent FINRA proposed rule changes.<sup>7</sup> Also, the proposed rule change will delete the general recordkeeping provisions of NYSE Rule 440 (Books and Records).<sup>8</sup> In addition, the proposed rule change would update reference to former MSRB Rule G-36 (Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-

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<sup>6</sup> The proposed rule change would update FINRA Rule 6630 to reflect (1) the adoption of Rules 4510 Series and the deletion of NASD Rule 3110, effective December 5, 2011, and (2) the deletion of NASD Rule 3020 to add Rule 4360, effective January 1, 2012. See Regulatory Notice 11-19 (April 2011) (regarding File No. SR-FINRA-2010-052) and Regulatory Notice 11-21 (May 2011) (regarding File No. SR-FINRA-2010-059).

<sup>7</sup> See Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Order Approving File No. SR-FINRA-2010-052); Securities Exchange Act Release No. 63961 (February 24, 2011), 76 FR 11542 (March 2, 2011) (Order Approving File No. SR-FINRA-2010-059); and Securities Exchange Act Release No. 65281 (September 7, 2011), 76 FR 56848 (September 14, 2011) (Order Approving File No. SR-FINRA-2011-031).

<sup>8</sup> See Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Order Approving File No. SR-FINRA-2010-052). See also Securities Exchange Act Release No. 63999 (March 1, 2011), 76 FR 12380 (March 7, 2011) (Order Approving File No. SR-FINRA-2010-061).

36(ARD) to Board or its Designee) in FINRA Rule 9217 to reflect changes made in a MSRB Rule filing.<sup>9</sup>

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed change to FINRA Rule 9559 will be December 2, 2011.<sup>10</sup> The implementation date for certain proposed rule changes to FINRA Rules 0150 and 6630, and proposed rule changes to FINRA Rules 2114, 2124, 2130, 2264, 2270, 2330, 2360, 2370, 5122, 5320, 7230A, 7330 and 9217 will be December 5, 2011. The implementation date for the proposed rule changes to update certain references in FINRA Rules 0150, 6630(c)(2) and 9610(a) that would delete the reference to NASD Rule 3020 and add the reference to FINRA Rule 4360 will be January 1, 2012.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</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 the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

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<sup>9</sup> See Securities Exchange Act Release No. 59966 (May 21, 2009), 74 FR 25790 (May 29, 2009) (Order Approving File No. SR-MSRB-2009-02).

<sup>10</sup> See Regulatory Notice 11-50 (November 2011) (regarding File No. SR-FINRA-2011-031).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

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

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

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

Written comments were neither solicited nor received.

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

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act<sup>12</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>13</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 or such shorter time as the Commission may designate.

In accordance with Rule 19b-4(f)(6),<sup>14</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, or such shorter

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

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

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Act.<sup>15</sup>

**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 5. Text of proposed rule change.

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<sup>15</sup> 17 CRF 240.19b-4(f)(6)(iii).



EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2011-065)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Update Rule Cross-References within Certain FINRA Rules

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 update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook.

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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 website 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

FINRA is in the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").<sup>4</sup> That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

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<sup>4</sup> 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).

The proposed rule change would update rule cross-references to reflect changes adopted in the Consolidated FINRA Rulebook. In this regard, the proposed rule change would update references in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities),<sup>5</sup> 2114 (Recommendations to Customers in OTC Equity Securities), 2124 (Net Transactions with Customers), 2130 (Approval Procedures for Day-Trading Accounts), 2264 (Margin Disclosure Statement), 2270 (Day-Trading Risk Disclosure Statement), 2330 (Members' Responsibilities Regarding Deferred Variable Annuities), 2360 (Options), 2370 (Security Futures), 5122 (Private Placements of Securities Issued by Members), 5320 (Prohibition Against Trading Ahead of Customer Orders), 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities),<sup>6</sup> 7230A (Trade Report Input), 7330 (Trade Report Input), 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)), 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), and 9610 (Application) that are needed as the result of Commission approval of three recent

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<sup>5</sup> The proposed rule change would update FINRA Rule 0150 to reflect (1) the adoption of Rules 2268, 4510 Series, and 5340 and the deletion of NASD Rule 3110 and NASD IM-3110, effective December 5, 2011, and (2) the deletion of NASD Rule 3020 to add Rule 4360, effective January 1, 2012. See Regulatory Notice 11-19 (April 2011) (regarding File No. SR-FINRA-2010-052) and Regulatory Notice 11-21 (May 2011) (regarding File No. SR-FINRA-2010-059).

<sup>6</sup> The proposed rule change would update FINRA Rule 6630 to reflect (1) the adoption of Rules 4510 Series and the deletion of NASD Rule 3110, effective December 5, 2011, and (2) the deletion of NASD Rule 3020 to add Rule 4360, effective January 1, 2012. See Regulatory Notice 11-19 (April 2011) (regarding File No. SR-FINRA-2010-052) and Regulatory Notice 11-21 (May 2011) (regarding File No. SR-FINRA-2010-059).

FINRA proposed rule changes.<sup>7</sup> Also, the proposed rule change will delete the general recordkeeping provisions of NYSE Rule 440 (Books and Records).<sup>8</sup> In addition, the proposed rule change would update reference to former MSRB Rule G-36 (Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or its Designee) in FINRA Rule 9217 to reflect changes made in a MSRB Rule filing.<sup>9</sup>

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed change to FINRA Rule 9559 will be December 2, 2011.<sup>10</sup> The implementation date for certain proposed rule changes to FINRA Rules 0150 and 6630, and proposed rule changes to FINRA Rules 2114, 2124, 2130, 2264, 2270, 2330, 2360, 2370, 5122, 5320, 7230A, 7330 and 9217 will be December 5, 2011. The implementation date for the proposed rule changes to update certain references in FINRA Rules 0150, 6630(c)(2) and 9610(a) that would delete the

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<sup>7</sup> See Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Order Approving File No. SR-FINRA-2010-052); Securities Exchange Act Release No. 63961 (February 24, 2011), 76 FR 11542 (March 2, 2011) (Order Approving File No. SR-FINRA-2010-059); and Securities Exchange Act Release No. 65281 (September 7, 2011), 76 FR 56848 (September 14, 2011) (Order Approving File No. SR-FINRA-2011-031).

<sup>8</sup> See Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Order Approving File No. SR-FINRA-2010-052). See also Securities Exchange Act Release No. 63999 (March 1, 2011), 76 FR 12380 (March 7, 2011) (Order Approving File No. SR-FINRA-2010-061).

<sup>9</sup> See Securities Exchange Act Release No. 59966 (May 21, 2009), 74 FR 25790 (May 29, 2009) (Order Approving File No. SR-MSRB-2009-02).

<sup>10</sup> See Regulatory Notice 11-50 (November 2011) (regarding File No. SR-FINRA-2011-031).

reference to NASD Rule 3020 and add the reference to FINRA Rule 4360 will be January 1, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</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 the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

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,

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<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

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 summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2011-065 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.

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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).

All submissions should refer to File Number SR-FINRA-2011-065. 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 website (<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 website 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-2011-065 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>

Elizabeth M. Murphy

Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

\* \* \* \* \*

**0100. GENERAL STANDARDS**

\* \* \* \* \*

**0150. Application of Rules to Exempted Securities Except Municipal Securities**

(a) through (b) No Change.

(c) Unless otherwise indicated within a particular Rule, the following FINRA and NASD rules are applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons:

FINRA Rules 2010, 2020, 2060, 2150, 2261, 2268, 2269, 2320(g), 3220, 3270, 4120, 4130, 4210, 4311, 4360, 4510 Series, 4530, 5160, 5210, 5220, 5230, 5340, 8110, 8120, 8210, 8310, 8311, 8312, 8320, 8330 and 9552; NASD Rules 2210, IM-2210-1, IM-2210-2, IM-2210-3, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2510, 3010, [3020, ]3040, 3050, [3110, IM-3110, ]3140.

\* \* \* \* \*

**2000. DUTIES AND CONFLICTS**

\* \* \* \* \*

**2100. TRANSACTIONS WITH CUSTOMERS**

**2110. Recommendations**

\* \* \* \* \*



#### **2114. Recommendations to Customers in OTC Equity Securities**

Preliminary Note: The requirements of this Rule are in addition to other existing member obligations under FINRA rules and the federal securities laws, including obligations to determine suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. This Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under FINRA rules and the federal securities laws.

(a) through (d) No Change.

##### **(e) Exemptions**

(1) The requirements of this Rule shall not apply to:

(A) No Change.

(B) Transactions with or for an account that qualifies as an "institutional account" under [NASD] Rule 4512(c)[3110(c)(4)] or with a customer that is a "qualified institutional buyer" under Securities Act Rule 144A or "qualified purchaser" under Section 2(a)(51) of the Investment Company Act;

(C) through (E) No Change.

(2) No Change.

#### **2120. Commissions, Mark Ups and Charges**

#### **2124. Net Transactions with Customers**

(a) through (d) No Change.

(e) For purposes of this Rule:

(1) "institutional customer" shall mean a customer whose account qualifies as an "institutional account" under [NASD] Rule 4512(c)[3110(c)(4)]; and

(2) No Change.

(f) Members must retain and preserve all documentation relating to consent obtained pursuant to this Rule in accordance with [NASD] Rule 4511[3110(a)].

**2130. Approval Procedures for Day-Trading Accounts**

(a) through (c) No Change.

(d) Any record or written statement prepared or obtained by a member pursuant to this Rule shall be preserved in accordance with [NASD] Rule 4511[3110(a)].

(e) For purposes of this Rule, the following terms shall have the meanings specified below:

(1) "Day-trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

(2) "Non-institutional customer" means a customer that does not qualify as an "institutional account" under [NASD] Rule 4512(c)[3110(c)(4)].

**••• Supplementary Material: -----**

**.01** through **.03** No Change.

\* \* \* \* \*

**2200. COMMUNICATIONS AND DISCLOSURES**

\* \* \* \* \*

**2260. Disclosures**

\* \* \* \* \*

**2264. Margin Disclosure Statement**

(a) through (c) No Change.

(d) For purposes of this Rule, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under [NASD] Rule 4512(c)[3110(c)(4)].

\* \* \* \* \*

**2270. Day-Trading Risk Disclosure Statement**

(a) through (b) No Change.

(c) For purposes of this Rule, the following terms shall have the meanings specified below:

(1) "Day-trading strategy" shall have the meaning provided in Rule 2130(e).

(2) "Non-institutional customer" means a customer that does not qualify as an "institutional account" under [NASD] Rule 4512(c)[3110(c)(4)].

(3) "Promoting a day-trading strategy" shall have the meaning provided in Rule 2130.01.

**••• Supplementary Material: -----**

**.01** through **.02** No Change.

**2300. SPECIAL PRODUCTS**

\* \* \* \* \*

**2330. Members' Responsibilities Regarding Deferred Variable Annuities**

(a) through (c) No Change.

**(d) Supervisory Procedures**

In addition to the general supervisory and recordkeeping requirements of NASD Rules 3010, 3012, [and ]3110, and Rule 3130, and 4510 Series, a member must establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in this Rule. The member also must (1) implement surveillance procedures to determine if any of the member's associated persons have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchanges evidence conduct inconsistent with the applicable provisions of this Rule, other applicable FINRA rules, or the federal securities laws ("inappropriate exchanges") and (2) have policies and procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of associated persons who engage in inappropriate exchanges.

(e) No Change.

**••• Supplementary Material: -----**

**.01 through .07** No Change.

\* \* \* \* \*

**2360. Options**

(a) No Change.

**(b) Requirements**

(1) through (16) No Change.

**(17) Maintenance of Records**

(A) In addition to the requirements of [NASD] Rules 2268, 5340 and Rule 4510 Series[3110], every member shall maintain and keep

current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved. The central file shall be located at the principal place of business of the member or such other principal office as shall be designated by the member. At a minimum, the central file shall include:

(i) through (v) No Change.

(B) No Change.

**(18) Discretionary Accounts**

**(A) Authorization and Approval**

(i) No Change.

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

supervisory review by a Registered Options Principal who is not exercising the discretionary authority. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in [NASD] Rule 4512(c) [3110(c)(4)], pursuant to valid Good-Till-Cancelled instructions issued on a "not held" basis. Any exercise of time and price discretion must be reflected on the order ticket.

(iii) No Change.

(B) through (C) No Change.

(19) through (24) No Change.

(c) No Change.

••• **Supplementary Material:** -----

.01 through .03 No Change.

**2370. Security Futures**

(a) No Change.

**(b) Requirements**

(1) through (16) No Change.

**(17) Maintenance of Records**

(A) In addition to the requirements of [NASD] Rules 4511, and 4513 [3110], every member shall maintain and keep current a separate central log, index, or other file for all security futures-related complaints, through which these complaints can easily be identified and retrieved. The central file shall be located at the principal place of business of the member or such other principal office as shall be designated by the member. At a minimum, the central file shall include:

(i) through (v) No Change.

(B) No Change.

**(18) Discretionary Accounts**

**(A) Authorization and Approval**

(i) No Change.

(ii) When analyzing an account to determine if it should be approved for security futures trading, each firm shall designate specific principals qualified to supervise security futures activities to review discretionary accounts. A principal other than the principal who accepted the account shall have a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed, and shall maintain a record of the basis for such determination. Every discretionary

order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by a principal qualified to supervise security futures activities who is not exercising the discretionary authority. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of security futures contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in [NASD] Rule 4512(c) [3110(c)(4)], pursuant to valid Good-Till-Cancelled instructions issued on a "not held" basis. Any exercise of time and price discretion must be reflected on the order ticket.

(iii) No Change.

(B) through (C) No Change.

(19) through (25) No Change.

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



\* \* \* \* \*

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

\* \* \* \* \*

**5120. Offerings of Members' Securities**

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**5122. Private Placements of Securities Issued by Members**

(a) through (b) No Change.

**(c) Exemptions**

The following Member Private Offerings are exempt from the requirements of this Rule:

(1) offerings sold solely to:

(A) institutional accounts, as defined in [NASD] Rule 4512(c)

[3110(c)(4)];

(B) through (F) No Change.

(2) through (14) No Change.

(d) through (e) No Change.

**••• Supplementary Material: -----**

**.01** No Change.

\* \* \* \* \*

**5300. HANDLING OF CUSTOMER ORDERS**

**5320. Prohibition Against Trading Ahead of Customer Orders**

(a) through (b) No Change.

**••• Supplementary Material: -----**

**.01 Large Orders and Institutional Account Exceptions.** With respect to orders for customer accounts that meet the definition of an "institutional account" as defined in [NASD] Rule 4512(c)[3110], or for orders of 10,000 shares or more (unless such orders are less than \$100,000 in value), a member is permitted to trade a security on the same side of the market for its own account at a price that would satisfy such customer order, provided that the member has provided clear and comprehensive written disclosure to such customer at account opening and annually thereafter that:

(a) discloses that the member may trade proprietarily at prices that would satisfy the customer order, and

(b) provides the customer with a meaningful opportunity to opt in to the Rule 5320 protections with respect to all or any portion of its order.

If the customer does not opt in to the Rule 5320 protections with respect to all or any portion of its order, the member may reasonably conclude that such customer has consented to the member trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.

In lieu of providing written disclosure to customers at account opening and annually thereafter, a member may provide clear and comprehensive oral disclosure to and obtain consent from the customer on an order-by-order basis, provided that the member documents who provided such consent and such consent evidences the customer's understanding of the terms and conditions of the order.

**.02 through .08** No Change.

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**6600. OTC REPORTING FACILITY**

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**6630. Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities**

(a) No Change.

(b) The following are specifically applicable to transactions and business activities relating to PORTAL securities, with the exceptions specified below:

(1) through (2) No Change.

(3) [NASD ]Rule 4510 Series[3110].

(c) The following are applicable to members and persons associated with members regardless of whether the member participates in transactions in PORTAL securities:

(1) No Change.

(2) NASD Rules 2210, [3020, ]3040, 3050, 3140 and FINRA Rules 3220, 3270, 4120, 4360, and 5260.

(d) No Change.

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**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES**

\* \* \* \* \*

**7200. TRADE REPORTING FACILITIES**

**7200A. FINRA/NASDAQ TRADE REPORTING FACILITY**

\* \* \* \* \*

**7230A. Trade Report Input**

(a) through (g) No Change.

**(h) Inclusion of Transaction Fees in Clearing Reports Submitted to the FINRA/Nasdaq Trade Reporting Facility**

FINRA members may agree in advance to transfer a transaction fee charged by one member to another member on a transaction in NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS, effected otherwise than on an exchange through the submission of a clearing report to the FINRA/Nasdaq Trade Reporting Facility. Such report, inclusive of the transaction fee, will be submitted to the National Securities Clearing Corporation for processing. To facilitate the transfer of the transaction fee, the report submitted to the FINRA/Nasdaq Trade Reporting Facility shall provide, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. Prior to submitting any such report, both members and their respective clearing firms, as applicable, must have executed an agreement, as specified by FINRA, permitting the facilitation of the transfer of the transaction fee through the FINRA/Nasdaq Trade Reporting Facility, as well as any other applicable agreement, such as a give up agreement pursuant to Rule 6380A(h), and submitted the executed agreement(s) to the FINRA/Nasdaq Trade Reporting Facility. Such agreement(s) are considered member records for purposes of [NASD] Rule 4511[3110(a)] and must be made and preserved by both members in conformity with applicable FINRA rules. Nothing in this paragraph shall relieve a member from its obligations under FINRA rules and the federal securities laws, including but not limited to, Rule 2232 and SEA Rule 10b-10.

**Example:**

SELL 100 shares to another member at 10 plus a transaction fee of .01 per share;  
REPORT 100 shares at 10 (the per share price exclusive of the transaction fee) to the  
FINRA/Nasdaq Trade Reporting Facility for publication and also report 10.01 (the per  
share price inclusive of the transaction fee) for purposes of clearance and settlement  
through the National Securities Clearing Corporation.

(i) No Change.

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**7300. OTC REPORTING FACILITY**

\* \* \* \* \*

**7330. Trade Report Input**

(a) through (h) No Change.

**(i) Inclusion of Transaction Fees in Clearing Reports Submitted to the OTC  
Reporting Facility**

FINRA members may agree in advance to transfer a transaction fee charged by  
one member to another member on a transaction reported to the OTC Reporting Facility  
through the submission of a clearing report to the OTC Reporting Facility. Such report,  
inclusive of the transaction fee, will be submitted to the National Securities Clearing  
Corporation for processing. To facilitate the transfer of the transaction fee, the report  
submitted to the OTC Reporting Facility shall provide, in addition to all other  
information required to be submitted by any other rule, a total per share or contract price  
amount, inclusive of the transaction fee. Prior to submitting any such report, both  
members and their respective clearing firms, as applicable, must have executed an

agreement, as specified by FINRA, permitting the facilitation of the transfer of the transaction fee through the OTC Reporting Facility, as well as any other applicable agreement, such as a give up agreement pursuant to Rule 6622(h), and submitted the executed agreement(s) to the OTC Reporting Facility. Such agreement(s) are considered member records for purposes of [NASD] Rule 4511[3110(a)] and must be made and preserved by both members in conformity with applicable FINRA rules. Nothing in this paragraph shall relieve a member from its obligations under FINRA rules and the federal securities laws, including but not limited to, Rule 2232 and SEA Rule 10b-10.

Example:

SELL 100 shares to another member at 10 plus a transaction fee of .01 per share;  
REPORT 100 shares at 10 (the per share price exclusive of the transaction fee) to the OTC Reporting Facility for publication and also report 10.01 (the per share price inclusive of the transaction fee) for purposes of clearance and settlement through the National Securities Clearing Corporation.

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**9000. CODE OF PROCEDURE**

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**9200. DISCIPLINARY PROCEEDINGS**

**9210. Complaint and Answer**

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**9217. Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)**

Any member of FINRA that is also a member of the New York Stock Exchange LLC ("NYSE") ("Dual Member") (including any persons affiliated with such member) may be subject to a fine under Rule 9216(b) with respect to any rule or By-Law provision listed in this Rule that applies to such member or person. However, any Dual Member that was not also a member of NASD as of July 30, 2007 and that does not engage in any activities that otherwise would require it to be a FINRA member (and its affiliated persons that are not otherwise subject to NASD rules) shall only be subject to a fine under Rule 9216(b) with respect to the following rules or By-Law provisions listed in this Rule: any FINRA By-Law or Schedule to the By-Laws, FINRA rule, SEA rule, or NYSE rule.

Any member of FINRA that is not also a member of the NYSE (and its associated persons that are not otherwise subject to NYSE rules) may be subject to a fine under Rule 9216(b) with respect to any rule or By-Laws provision listed in this Rule, with the exception of the NYSE rules.

- Article IV of the FINRA By-Laws — Failure to timely submit amendments to Form BD.
- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U4.
- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U5.
- Rule 1250 — Failure to comply with the Firm Element of the continuing education requirements.
- Rule 2220 — Options Communications.

- Rule 2360(b)(3) and (b)(4) — Failure to comply with options position and exercise limits.
- Rule 2360(b)(23) — Failure to comply with contrary exercise advice procedures.
- Rule 4311(b) — Failure to obtain approval of carrying agreement.
- Rule 4510 Series — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with FINRA rules.
- Rule 4521(d) — Failure to submit reports of cash and margin account balances.
- Rule 4530 — Failure to timely file reports.
- Rule 4560 — Failure to timely file reports of short positions on Form NS-1.
- Rules 6282, 6380A, 6550, 6622, 6730, 7130, 7160, 7230A, and 7260A — Transaction reporting in equity and debt securities.
- Rules 7440 and 7450 — Failure to submit data in accordance with the Order Audit Trail System ("OATS").
- Rules 8211 and 8213 — Failure to submit trading data as requested.
- Rule 11870 — Failure to abide by Customer Account Transfer Contracts.
- NASD Rules 2210, 2211, and IM-2210-1, -2210-2, -2210-3, -2210-4, -2210-5, -2210-7, and -2210-8 — Communications with the public.
- NASD Rule 3010(b) — Failure to timely file reports pursuant to the Taping Rule.



[• NASD Rule 3110 — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD rules.]

- Failure to provide or update contact information as required by FINRA or NASD rules.

- SEA Rule 17a-5 — Failure to timely file FOCUS reports and annual audit reports.

- SEA Rule 17a-10 — Failure to timely file Schedule I.

- Rule 602(b)(5) of SEC Regulation NMS — Failure to properly update published quotations in certain Electronic Communication Networks ("ECNs").

- Rule 604 of SEC Regulation NMS — Failure to properly display limit orders.

- MSRB Rule A-14 — Failure to timely pay annual fee.

- MSRB Rule G-12 — Failure to abide by uniform practice rules.

- MSRB Rule G-14 — Failure to submit reports.

- MSRB Rule G-32[6] — Failure to timely submit reports.

- MSRB Rule G-37 — Failure to timely submit reports for political contributions.

- MSRB Rule G-38 — Failure to timely submit reports detailing consultant activities.

- NYSE Rules 312(a), (b) & (c), 313, 345.12, 345.17, and 351 — Reporting rule violations.

- NYSE Rules 312(i), 342(c), and 342.10 — Failure to obtain approval rule violations.

- NYSE Rules 342(b), (d) & 342.13, 311(b)(5), and 344 — Failure of a member organization to have individuals responsible and qualified for the positions of Financial Principal, Operations Principal, Compliance Official, Branch Office Manager and Supervisory Analyst.

- NYSE Rule 343 — Requirements relating to member organization office sharing arrangements.

- NYSE Rule 345(a) — Failure of a member organization to have individuals responsible and qualified for the positions of Securities Lending Supervisor and Securities Trader Supervisor.

- NYSE Rules 345.11, [410, 440, ]and 472(c) — Record retention rule violations.

- NYSE Rule 401A — Failure to acknowledge customer complaint within 15 business days.

- NYSE Rule 407 — Requirements for transactions of employees of the Exchange, members or member organizations.

- NYSE Rule 407A — Reporting and notification requirements for members.

- NYSE Rule 408(a) — Requirement that written authorization be obtained for discretionary power in a customer's account.

- NYSE Rule 416A — Failure to promptly provide or promptly update required membership profile information through the Electronic Filing Platform ("EFP"), or failure to electronically certify that required membership profile information is complete and accurate.

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## **9500. OTHER PROCEEDINGS**

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**9550. Expedited Proceedings**

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**9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series**

(a) through (g) No Change.

**(h) Transmission of Documents**

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than seven days before the hearing in an action brought under Rules 9556 and 9558, and not less than 14 days before the hearing in an action brought under Rules 9551 through 9555, FINRA staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B), [or] (C) or (b)(2). A document that meets such criteria shall not constitute part of the record, but shall be retained by FINRA until the date upon which FINRA serves a final decision or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(2) No Change.

(i) through (s) No Change.

**9600. PROCEDURES FOR EXEMPTIONS**

**9610. Application**

**(a) Where to File**

A member seeking exemptive relief as permitted under NASD Rules 1021, 1050, 1070, 2210, 2320, 2340, 3010(b)(2), [3020, ]or 3150, or Rules 2114, 2310, 2359, 2360,

4210, 4311, 4320, 4360, 5110, 5121, 5122, 5130, 7470, 8211, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of FINRA.

(b) through (c) No Change.

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**NYSE Rules**

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**[Rule 440. Books and Records]**

[Reserved. ]

**[••• Supplementary Material: -----]**

[.10 Reserved.]

[.20 Reserved.]

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