

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 27	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2012 - * 045	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 checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>			
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule					
			19b-4(f)(1) <input type="checkbox"/>	19b-4(f)(2) <input type="checkbox"/>	19b-4(f)(3) <input type="checkbox"/>	19b-4(f)(4) <input type="checkbox"/>	19b-4(f)(5) <input type="checkbox"/>	19b-4(f)(6) <input type="checkbox"/>
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>						
Description Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). Proposed Rule Change to Amend NASD Rule 2711 to Conform with the Requirements of the Jumpstart Our Business Startups Act and Related Changes								
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 09/28/2012 By Patrice Gliniecki 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. 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)

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

Exhibit 1 - Notice of Proposed Rule Change (required)

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rule 2711 (Research Analysts and Research Reports) to conform with the requirements of the Jumpstart Our Business Startups Act (“JOBS Act”) and make certain additional changes to quiet period restrictions consistent with the policies underlying the JOBS Act. The proposed rule change also makes conforming amendments to Incorporated NYSE Rule 472 (Communications With The Public).

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

At its meeting on September 13, 2012, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Exchange Act² for approving the proposed rule change prior to the 30th day after its publication in the Federal Register so that FINRA can implement changes to conform with the JOBS Act, which has been effective since April 5, 2012. FINRA

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(2).

requests that the proposed changes to NASD Rules 2711(c)(4), (f)(1)(A), (f)(2) and (f)(4) (with respect to the 15-day quiet period before the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472 be effective retroactively to April 5, 2012, the date on which the changes conforming to the JOBS Act provisions became effective. FINRA requests that the proposed changes to NASD Rules 2711(f)(1)(B) and (f)(4) (with respect to the 15-day quiet period after the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472, which further the policies underlying the statutory mandates, become effective upon Commission approval.

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

(a) Purpose

The JOBS Act was signed into law on April 5, 2012. Among other things, the JOBS Act is intended to help facilitate capital formation for “emerging growth companies” (“EGCs”) by improving the information flow about EGCs to investors. To that end, Section 105(b) of the JOBS Act amended Section 15D of the Exchange Act to prohibit the Commission or any national securities association from adopting or maintaining any rule or regulation in connection with an initial public offering (“IPO”) of an EGC that:

- restricts, based on functional role, which associated persons of a broker, dealer or member of a national securities association, may arrange for communications between an analyst and a potential investor; or
- restricts a securities analyst from participating in any communication with the management of an EGC that is also attended by any other associated person of a

broker, dealer, or member of a national securities association whose functional role is other than as securities analyst.

Section 105(d) further amends the Exchange Act to prohibit the Commission or any national securities association from adopting or maintaining any rule or regulation that prohibits a broker or dealer from publishing or distributing any research report or making a public appearance, with respect to the securities of an EGC either:

- within any prescribed period of time following the initial public offering date of the emerging growth company; or
- within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the emerging growth company or its shareholders that restricts or prohibits the sale of securities held by the emerging growth company or its shareholders after the initial public offering date.

These provisions became effective upon signature of the President on April 5, 2012. On August 22, 2012, the SEC's Division of Trading and Markets provided guidance on these provisions in the form of Frequently Asked Questions ("FAQs"). FINRA is amending the applicable provisions of NASD Rule 2711 to conform with the SEC guidance with regard to the applicable JOBS Act provisions.³

³ We note that the SEC staff guidance interprets the JOBS Act provisions as applicable to Incorporated NYSE Rule 472 to the same extent as NASD Rule 2711. As such, the proposed rule change makes corresponding amendments to Incorporated NYSE Rule 472.

Arranging and Participating in Communications

NASD Rule 2711(c)(4)⁴ prohibits a research analyst from participating “in efforts to solicit investment banking business,” including any “pitches” for investment banking business or other communications with companies for the purpose of soliciting investment banking business. The SEC staff guidance interprets the JOBS Act to now allow, in connection with an IPO of an EGC, research analysts to attend meetings with issuer management that are also attended by investment banking personnel, including pitch meetings, but not “engage in otherwise prohibited conduct in such meetings,” including “efforts to solicit investment banking business.” The guidance further explains that a research analyst that attends a pitch meeting “could, for example, introduce themselves, outline their research program and the types of factors that the analyst would consider in his or her analysis of a company, and ask follow-up questions to better understand a factual statement made by the emerging growth company’s management.” Accordingly, the proposed rule change creates an exception to NASD Rule 2711(c)(4) to reflect this guidance regarding the application of the JOBS Act.⁵

The SEC staff guidance states that under Section 105(b) of the JOBS Act, an associated person of a broker-dealer, including investment banking personnel, may arrange communications between research analysts and investors in connection with an IPO of an EGC. As an example, the guidance states that an investment banker could forward a list of clients to a research analyst that the analyst could, “at his or her own discretion and with appropriate controls, contact.” The guidance acknowledges that

⁴ See Incorporated NYSE Rule 472(b)(5).

⁵ A corresponding exception is created for Incorporated NYSE Rule 472(b)(5).

FINRA does not have a rule that directly prohibits this activity and further states that such activity, without more, would not constitute conduct by investment banking personnel to directly or indirectly direct a research analyst to engage in sales or marketing efforts related to an investment banking services transaction, in violation of NASD Rule 2711(c)(6).⁶ Accordingly, this JOBS Act provision requires no conforming rule change.

Quiet Periods

Section 105(d) of the JOBS Act expressly permits publication of research and public appearances any time after the IPO of an EGC or prior to the expiration of any lock up agreement. While the JOBS Act refers only to the “expiration” of a lock-up agreement, the guidance states that Congress intended for the JOBS Act provisions to apply equally to the period before a “waiver” or “termination” of a lock-up agreement. Thus, in accordance with SEC staff guidance on this JOBS Act provision, the proposed rule change amends NASD Rule 2711 to eliminate the following quiet periods with respect to an IPO of an EGC:

- NASD Rule 2711(f)(1)(A),⁷ which imposes a 40-day quiet period after an IPO on a member that acts as a manager or co-manager of such IPO;
- NASD Rule 2711(f)(2),⁸ which imposes a 25-day quiet period after an IPO on a member that participates as an underwriter or dealer (other than manager or co-manager) of such an IPO; and

⁶ See Incorporated NYSE Rule 427(b)(6)(ii).

⁷ See Incorporated NYSE Rule 472(f)(1).

⁸ See Incorporated NYSE Rule 472(f)(3).

- NASD Rule 2711(f)(4)⁹ with respect to the 15-day quiet period applicable to IPO managers and co-managers prior to the expiration, waiver, or termination of a lock-up agreement or any other agreement that such member has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of an IPO.

The SEC staff guidance notes that the JOBS Act makes no reference to quiet periods after a secondary offering or during a period of time after expiration of a lock-up agreement. Accordingly, the guidance concludes that NASD Rule 2711(f)(1)(B),¹⁰ which imposes a 10-day quiet period on managers and co-managers following a secondary offering and the remaining portion of NASD Rule 2711(f)(4)¹¹ relating to quiet periods *after* the expiration, termination or waiver of a lock up agreement, remain fully in effect. Nonetheless, the guidance expresses the SEC staff's belief that the policies underlying the JOBS Act are equally applicable to quiet periods during these other times. FINRA agrees that elimination of those quiet periods would advance the policy objectives of the JOBS Act and therefore has proposed to amend NASD Rule 2711 accordingly.¹²

As noted in Item 2 of this filing, FINRA has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Exchange Act¹³ for approving the

⁹ See Incorporated NYSE Rule 472(f)(4).

¹⁰ See Incorporated NYSE Rule 472(f)(2).

¹¹ See Incorporated NYSE Rule 472(f)(4).

¹² A corresponding change is made to Incorporated NYSE Rule 472(f).

¹³ 15 U.S.C. 78s(b)(2).

proposed rule change prior to the 30th day after its publication in the Federal Register, because the changes conforming to the JOBS Act have been effective since April 5, 2012, and the additional proposed changes further the policies underlying the applicable JOBS Act provisions. FINRA has requested that the effective date of the proposed changes to NASD Rules 2711(c)(4), (f)(1)(A), (f)(2) and (f)(4) (with respect to the 15-day quiet period before the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472 be retroactive to April 5, 2012, the date on which the changes conforming to the JOBS Act provisions became effective. FINRA has requested that the effective date of the proposed changes to NASD Rules 2711(f)(1)(B) and (f)(4) (with respect to the 15-day quiet period after the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472, which further the policies underlying the statutory mandates, become effective upon Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,¹⁴ 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. The changes to NASD Rules 2711(c)(4),¹⁵ (f)(1)(A),¹⁶ (f)(2)¹⁷ and

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ See Incorporated NYSE Rule 472(b)(5).

¹⁶ See Incorporated NYSE Rule 472(f)(1).

¹⁷ See Incorporated NYSE Rule 472(f)(3).

(f)(4)¹⁸ (with respect to the 15-day quiet period before the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472 conform those rules to statutory mandates. The proposed additional changes to NASD Rules 2711(f)(1)(B)¹⁹ and (f)(4)²⁰ further the policies underlying the statutory mandates by improving information flow to investors with respect to EGCs without sacrificing the reliability of research reports, as the other objectivity safeguards in NASD Rule 2711²¹ and SEC Regulation Analyst Certification are effective and will continue to apply.

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 Exchange Act, as amended by the JOBS Act.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Exchange Act.²²

¹⁸ See Incorporated NYSE Rule 472(f)(4).

¹⁹ See Incorporated NYSE Rule 472(f)(2).

²⁰ See Incorporated NYSE Rule 472(f)(4).

²¹ See Incorporated NYSE Rule 472.

²² 15 U.S.C. 78s(b)(2).

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

FINRA requests the Commission to find good cause pursuant to Section 19(b)(2) of the Exchange Act²³ for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

Because the changes conforming to the JOBS Act have been effective since April 5, 2012, and the additional proposed changes further the policies underlying the applicable JOBS Act provision, FINRA requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

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 the proposed rule change.

²³ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2012-045)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Amend NASD Rule 2711 to Conform with the Requirements of the Jumpstart Our Business Startups Act and Related Changes

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

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

FINRA is proposing to amend NASD Rule 2711 (Research Analysts and Research Reports) to conform with the requirements of the Jumpstart Our Business Startups Act (“JOBS Act”) and make certain additional changes to quiet period restrictions consistent with the policies underlying the JOBS Act. The proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

change also makes conforming amendments to Incorporated NYSE Rule 472 (Communications With The Public).

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

The JOBS Act was signed into law on April 5, 2012. Among other things, the JOBS Act is intended to help facilitate capital formation for "emerging growth companies" ("EGCs") by improving the information flow about EGCs to investors. To that end, Section 105(b) of the JOBS Act amended Section 15D of the Exchange Act to prohibit the Commission or any national securities association from adopting or maintaining any rule or regulation in connection with an initial public offering ("IPO") of an EGC that:

- restricts, based on functional role, which associated persons of a broker, dealer or member of a national securities association, may arrange for communications

between an analyst and a potential investor; or

- restricts a securities analyst from participating in any communication with the management of an EGC that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as securities analyst.

Section 105(d) further amends the Exchange Act to prohibit the Commission or any national securities association from adopting or maintaining any rule or regulation that prohibits a broker or dealer from publishing or distributing any research report or making a public appearance, with respect to the securities of an EGC either:

- within any prescribed period of time following the initial public offering date of the emerging growth company; or
- within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the emerging growth company or its shareholders that restricts or prohibits the sale of securities held by the emerging growth company or its shareholders after the initial public offering date.

These provisions became effective upon signature of the President on April 5, 2012. On August 22, 2012, the SEC's Division of Trading and Markets provided guidance on these provisions in the form of Frequently Asked Questions ("FAQs"). FINRA is amending the applicable provisions of NASD Rule 2711 to conform with the SEC guidance with regard to the applicable JOBS Act provisions.³

³ We note that the SEC staff guidance interprets the JOBS Act provisions as applicable to Incorporated NYSE Rule 472 to the same extent as NASD Rule

Arranging and Participating in Communications

NASD Rule 2711(c)(4)⁴ prohibits a research analyst from participating “in efforts to solicit investment banking business,” including any “pitches” for investment banking business or other communications with companies for the purpose of soliciting investment banking business. The SEC staff guidance interprets the JOBS Act to now allow, in connection with an IPO of an EGC, research analysts to attend meetings with issuer management that are also attended by investment banking personnel, including pitch meetings, but not “engage in otherwise prohibited conduct in such meetings,” including “efforts to solicit investment banking business.” The guidance further explains that a research analyst that attends a pitch meeting “could, for example, introduce themselves, outline their research program and the types of factors that the analyst would consider in his or her analysis of a company, and ask follow-up questions to better understand a factual statement made by the emerging growth company’s management.” Accordingly, the proposed rule change creates an exception to NASD Rule 2711(c)(4) to reflect this guidance regarding the application of the JOBS Act.⁵

The SEC staff guidance states that under Section 105(b) of the JOBS Act, an associated person of a broker-dealer, including investment banking personnel, may arrange communications between research analysts and investors in connection with an IPO of an EGC. As an example, the guidance states that an investment banker could forward a list of clients to a research analyst that the analyst could, “at his or her own

2711. As such, the proposed rule change makes corresponding amendments to Incorporated NYSE Rule 472.

⁴ See Incorporated NYSE Rule 472(b)(5).

⁵ A corresponding exception is created for Incorporated NYSE Rule 472(b)(5).

discretion and with appropriate controls, contact.” The guidance acknowledges that FINRA does not have a rule that directly prohibits this activity and further states that such activity, without more, would not constitute conduct by investment banking personnel to directly or indirectly direct a research analyst to engage in sales or marketing efforts related to an investment banking services transaction, in violation of NASD Rule 2711(c)(6).⁶ Accordingly, this JOBS Act provision requires no conforming rule change.

Quiet Periods

Section 105(d) of the JOBS Act expressly permits publication of research and public appearances any time after the IPO of an EGC or prior to the expiration of any lock up agreement. While the JOBS Act refers only to the “expiration” of a lock-up agreement, the guidance states that Congress intended for the JOBS Act provisions to apply equally to the period before a “waiver” or “termination” of a lock-up agreement. Thus, in accordance with SEC staff guidance on this JOBS Act provision, the proposed rule change amends NASD Rule 2711 to eliminate the following quiet periods with respect to an IPO of an EGC:

- NASD Rule 2711(f)(1)(A),⁷ which imposes a 40-day quiet period after an IPO on a member that acts as a manager or co-manager of such IPO;
- NASD Rule 2711(f)(2),⁸ which imposes a 25-day quiet period after an IPO on a member that participates as an underwriter or dealer (other than manager or co-manager) of such an IPO; and

⁶ See Incorporated NYSE Rule 427(b)(6)(ii).

⁷ See Incorporated NYSE Rule 472(f)(1).

⁸ See Incorporated NYSE Rule 472(f)(3).

- NASD Rule 2711(f)(4)⁹ with respect to the 15-day quiet period applicable to IPO managers and co-managers prior to the expiration, waiver, or termination of a lock-up agreement or any other agreement that such member has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of an IPO.

The SEC staff guidance notes that the JOBS Act makes no reference to quiet periods after a secondary offering or during a period of time after expiration of a lock-up agreement. Accordingly, the guidance concludes that NASD Rule 2711(f)(1)(B),¹⁰ which imposes a 10-day quiet period on managers and co-managers following a secondary offering and the remaining portion of NASD Rule 2711(f)(4)¹¹ relating to quiet periods *after* the expiration, termination or waiver of a lock up agreement, remain fully in effect. Nonetheless, the guidance expresses the SEC staff's belief that the policies underlying the JOBS Act are equally applicable to quiet periods during these other times. FINRA agrees that elimination of those quiet periods would advance the policy objectives of the JOBS Act and therefore has proposed to amend NASD Rule 2711 accordingly.¹²

FINRA has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Exchange Act¹³ for approving the proposed rule change prior to the 30th

⁹ See Incorporated NYSE Rule 472(f)(4).

¹⁰ See Incorporated NYSE Rule 472(f)(2).

¹¹ See Incorporated NYSE Rule 472(f)(4).

¹² A corresponding change is made to Incorporated NYSE Rule 472(f).

¹³ 15 U.S.C. 78s(b)(2).

day after its publication in the Federal Register so that FINRA can implement changes to conform with the JOBS Act, which has been effective since April 5, 2012. The proposed changes to NASD Rules 2711(c)(4), (f)(1)(A), (f)(2) and (f)(4) (with respect to the 15-day quiet period before the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472 be effective retroactively to April 5, 2012. FINRA requests that the proposed changes to NASD Rules 2711(f)(1)(B) and (f)(4) (with respect to the 15-day quiet period after the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472, which further the policies underlying the statutory mandates, become effective upon Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,¹⁴ 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. The changes to NASD Rules 2711(c)(4),¹⁵ (f)(1)(A),¹⁶ (f)(2)¹⁷ and (f)(4)¹⁸ (with respect to the 15-day quiet period before the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ See Incorporated NYSE Rule 472(b)(5).

¹⁶ See Incorporated NYSE Rule 472(f)(1).

¹⁷ See Incorporated NYSE Rule 472(f)(3).

¹⁸ See Incorporated NYSE Rule 472(f)(4).

Rule 472 conform those rules to statutory mandates. The proposed additional changes to NASD Rules 2711(f)(1)(B)¹⁹ and (f)(4)²⁰ further the policies underlying the statutory mandates by improving information flow to investors with respect to EGCs without sacrificing the reliability of research reports, as the other objectivity safeguards in NASD Rule 2711²¹ and SEC Regulation Analyst Certification are effective and will continue to apply.

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 Exchange Act, as amended by the JOBS 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

FINRA has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act²² for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA and, in particular, the requirements of Section 15A of the Act and

¹⁹ See Incorporated NYSE Rule 472(f)(2).

²⁰ See Incorporated NYSE Rule 472(f)(4).

²¹ See Incorporated NYSE Rule 472.

²² 15 U.S.C. 78s(b)(2).

the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval because the changes conforming to the JOBS Act have been effective since April 5, 2012, and the additional proposed changes further the policies underlying the applicable JOBS Act provision.

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2012-045 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-2012-045. 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-2012-045 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.²³

Elizabeth M. Murphy

Secretary

²³ 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.

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Text of NASD Rule

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2000. BUSINESS CONDUCT

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2700. SECURITIES DISTRIBUTIONS

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2711. Research Analysts and Research Reports

(a) Definitions

For purposes of this rule, the following terms shall be defined as provided.

(1) – (10) No Change.

(11) “Emerging Growth Company” has the same meaning as in Section 3(a)(80) of the Securities Exchange Act of 1934.

(b) No Change.

(c) Restrictions on Communications with the Subject Company

(1) – (3) No Change.

(4) No research analyst may participate in efforts to solicit investment banking business. Accordingly, no research analyst may, among other things, participate in any “pitches” for investment banking business to prospective investment banking clients, or have other communications with companies for the purpose of soliciting investment banking business. This paragraph shall not

prevent a research analyst from attending a pitch meeting in connection with an initial public offering of an Emerging Growth Company that is also attended by investment banking personnel; provided, however, that a research analyst may not engage in otherwise prohibited conduct in such meetings, including efforts to solicit investment banking business.

(5) – (7) No Change.

(d) – (e) No Change.

(f) Restrictions on Publishing Research Reports and Public Appearances;

Termination of Coverage

(1) – (4) No Change.

(5) Paragraphs (f)(1), (f)(2) and (f)(4) shall not apply to the publication or distribution of a research report or a public appearance following an initial public offering or secondary offering of the securities of an Emerging Growth Company.

([5]6) If a member intends to terminate its research coverage of a subject company, notice of this termination must be made. The member must make available a final research report on the subject company using the means of dissemination equivalent to those it ordinarily uses to provide the customer with its research reports on the subject company. The report must be comparable in scope and detail to prior research reports and must include a final recommendation or rating, unless it is impracticable for the member to produce a comparable report (e.g., if the research analyst covering the subject company or sector has left the member or if the member terminates coverage of the industry or sector). If it is impracticable to produce a final recommendation or rating, the

final research report must disclose the member's rationale for the decision to terminate coverage.

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Text of Incorporated NYSE Rule

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472. Communications With The Public

(a) No Change.

(b) Investment Banking, Research Department and Subject Company

Relationships and Communications

(1) – (4) No Change.

(5) A research analyst is prohibited from participating in efforts to solicit investment banking business. This prohibition includes, but is not limited to, participating in meetings to solicit investment banking business (e.g., “pitch” meetings) of prospective investment banking clients, or having other communications with companies for the purpose of soliciting investment banking business. This prohibition shall not apply to any communication between the research analyst, company, and/or nonresearch personnel, the sole purpose of which is due diligence. This paragraph shall not prevent a research analyst from attending a pitch meeting in connection with an initial public offering of an Emerging Growth Company that is also attended by investment banking personnel; provided, however, that a research analyst may not engage in otherwise prohibited conduct in such meetings, including efforts to otherwise solicit investment banking business.

(6) No Change.

(c) – (e) No Change.

(f) Restrictions on Member's or Member Organization's Issuance of Research Reports and Participation in Public Appearances

(1) – (5) No Change.

(6) Paragraphs (f)(1), (f)(2), (f)(3) and (f)(4) shall not apply to the publication or distribution of a research report or a public appearance following an initial public offering or secondary offering of the securities of an Emerging Growth Company.

[(6)7] If a member organization intends to terminate its research coverage of a subject company, notice of this termination must be made. The member organization must make available a final research report on the subject company using the means of dissemination equivalent to those it ordinarily uses to provide the customer with its research reports on the subject company. The report must be comparable in scope and detail to prior research reports and must include a final recommendation or rating, unless it is impracticable for the member organization to produce a comparable report (e.g., if the research analyst covering the subject company or sector has left the employ of the member organization, or where the member organization terminates coverage on the industry or sector). In instances where it is impracticable for the member organization to provide a final recommendation or rating, the member organization must provide the rationale for the decision to terminate coverage.

(g) – (m) No Change.

••• **Supplementary Material:** -----

.10 Definitions

(1) – (5) **No Change.**

(6) “Emerging Growth Company” has the same meaning as defined in Section 3(a)(80) of the Securities Exchange Act of 1934.

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