

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="52"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="043"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing 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"/>
			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)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Provide a Process for an Expedited Proceeding and Adopt a Rule to Prohibit Disruptive Quoting and Trading Activity

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 action.

First Name * <input type="text" value="Brant"/>	Last Name * <input type="text" value="Brown"/>
Title * <input type="text" value="Associate General Counsel"/>	
E-mail * <input type="text" value="brant.brown@finra.org"/>	
Telephone * <input type="text" value="(202) 728-6927"/>	Fax <input type="text" value="(202) 728-8264"/>

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date <input type="text" value="11/15/2016"/>	Senior Vice President and Director of Capital Markets Policy
By <input type="text" value="Stephanie Dumont"/>	Stephanie Dumont,
(Name *)	

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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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 *

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice 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 the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to (i) adopt new Supplementary Material to Rule 5210 to address two specific types of disruptive quoting and trading activity, as further described below and (ii) amend the FINRA Rule 9800 Series to permit FINRA to initiate an expedited proceeding to take prompt action for violations of the new Supplementary Material.

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 May 6, 2016, 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 filed the proposed rule change for immediate effectiveness. The implementation date will be 30 days after the date of the filing.

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

(a) Purpose

FINRA is proposing two rule changes regarding disruptive trading and quoting activity. The first proposed rule change would adopt new Supplementary Material .03 to Rule 5210 to define and prohibit specific conduct that is deemed disruptive trading and

¹ 15 U.S.C. 78s(b)(1).

quoting activity. The second proposed rule change would amend the Rule 9800 Series to provide FINRA with the authority to issue, on an expedited basis, a permanent cease and desist order against a respondent that engages in a frequent pattern or practice of the disruptive trading and quoting activity in Supplementary Material .03 to Rule 5210. The proposed rule change mirrors the framework that Bats BZX Exchange, Inc., formerly known as BATS Exchange, Inc. (“BATS”), and The Nasdaq Stock Market LLC (“Nasdaq”) have recently adopted, but builds off of FINRA’s existing process for temporary cease and desist orders (“TCDOs”).² FINRA believes that having the authority to issue a cease and desist order on an expedited basis to stop certain well-defined disruptive and manipulative quoting and trading activity when the activity is persistent would significantly enhance FINRA’s ability to protect investors and market integrity.

² On February 18, 2016, the SEC approved a proposed rule change filed by BATS to adopt new BATS Rule 12.15, which prohibits certain types of disruptive quoting and trading activities, and BATS Rule 8.17, which permits BATS to conduct a new expedited suspension proceeding when it believes BATS Rule 12.15 has been violated. See Securities Exchange Act Release No. 77171 (February 18, 2016), 81 FR 9017 (February 23, 2016) (“BATS Approval Order”); see also Securities Exchange Act Release No. 77606 (April 13, 2016), 81 FR 23026 (April 19, 2016) (adopting identical rules for Bats EDGA Exchange, Inc.); Securities Exchange Act Release No. 77602 (April 13, 2016), 81 FR 23046 (April 19, 2016) (adopting identical rules for Bats BYX Exchange, Inc.); Securities Exchange Act Release No. 77589 (April 12, 2016), 81 FR 22691 (April 18, 2016) (adopting identical rules for Bats EDGX Exchange, Inc.). On May 19, 2016, Nasdaq filed a substantially similar proposed rule change with the SEC for immediate effectiveness. See Securities Exchange Act Release No. 77913 (May 25, 2016), 81 FR 35081 (June 1, 2016). Nasdaq has similarly extended the rule to other exchanges. See, e.g., Securities Exchange Act Release No. 78208 (June 30, 2016), 81 FR 44366 (July 7, 2016).

Proposed Disruptive Trading and Quoting Rule

As a national securities association registered pursuant to Section 15A of the Act, FINRA is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members with, among other things, the Act, the rules and regulations thereunder, and FINRA Rules.³ Further, FINRA’s rules are required to be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.”⁴ In fulfilling these requirements, FINRA has developed a comprehensive regulatory program that includes automated surveillance of a substantial portion of trading activity.⁵ When potentially disruptive, manipulative, or otherwise improper quoting and trading activity is identified, FINRA staff conducts an investigation into the activity, which often includes requesting additional information from the member or members involved.⁶ To the extent violations of the Act, the rules and regulations thereunder, or FINRA Rules (or the rules of an exchange with which FINRA has an RSA) have been identified and confirmed, FINRA will commence the enforcement process (either on its own behalf or on behalf of a client exchange), which

³ See 15 U.S.C. 78o-3(b)(2).

⁴ 15 U.S.C. 78o-3(b)(6).

⁵ FINRA conducts, on its own behalf, surveillance of its members’ trading activity, as well as surveillance for numerous national securities exchanges pursuant to Regulatory Services Agreements (“RSAs”). FINRA currently has RSAs with 18 different exchanges to perform some degree of surveillance. FINRA also combines its own data with data received from those exchanges with which it has RSAs to conduct cross-market surveillance.

⁶ See, e.g., Rule 8210.

might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or a temporary or permanent ban from the securities industry.⁷

The process described above, from the initial identification of potentially disruptive, manipulative, or improper quoting and trading activity to a final resolution of the matter, can often take up to several years.⁸ FINRA believes that this time period is generally necessary and appropriate to ensure that the subject member has a fair procedure before a sanction is imposed, particularly in complex cases. However, as described below, FINRA believes that there are certain clear cases of disruptive and manipulative behavior, or cases where the potential harm to investors is so large, that FINRA should have the authority to initiate an expedited proceeding to stop the behavior from continuing, similar to that which currently exists under the Rule 9800 Series for issuing TCDOs.

In recent years, several cases have been brought and resolved by FINRA and other self-regulatory organizations (“SROs”) that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities over which neither FINRA nor other SROs had direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering⁹ or spoofing.¹⁰ The exchanges and FINRA were able to identify

⁷ 15 U.S.C. 78o-3(b)(7). See generally Rule 9200 Series.

⁸ See BATS Approval Order, supra note 2, at 9017.

⁹ “Layering” is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the

the disruptive quoting and trading activity in real-time or near real-time; however, due to the procedural requirements in existing SRO rules, the members responsible for the conduct or responsible for their customers' conduct were able to continue the disruptive quoting and trading activity during the entirety of the subsequent lengthy investigation and enforcement process.¹¹ FINRA believes that it should have the authority to initiate an expedited proceeding to stop the behavior from continuing if a member is engaging in or facilitating certain clear types of disruptive quoting and trading activity and the member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The proposed rule change therefore adds Supplementary Material .03 to FINRA Rule 5210 (Publication of Transactions and Quotations) to explicitly prohibit members from engaging in or facilitating the disruptive quoting and trading activities set forth in the rule.¹² The Supplementary Material would prohibit members from engaging in or

opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

¹⁰ “Spoofing” is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement or response from other market participants, which the market manipulator is able to take advantage of by placing orders on the opposite side of the market.

¹¹ For descriptions of two specific examples, see SR-BATS-2015-101. See also Securities Exchange Act Release No. 75693 (August 13, 2015), 80 FR 50370, 50371-72 (August 19, 2015).

¹² FINRA currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rules 2010 and 2020. The proposed Supplementary Material would define more specifically and prohibit certain types of disruptive quoting and trading activity. Violations of the Supplementary Material would also provide the basis to apply the proposed cease and desist proceeding described below. Combined, proposed Supplementary Material .03 to

facilitating disruptive quoting and trading activity as defined in the rule, including acting in concert with other persons to effect such activity. FINRA believes it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several firms or customers.

The proposed rule change defines two types of prohibited activities and states that, for purposes of the rule, disruptive quoting and trading activity would include a “frequent pattern or practice” of these activities. As is the case with BATS Rule 12.15, the prohibited activities do not include an express intent element.¹³

- Trading Scenario One: a frequent pattern in which the following facts are present: (1) a party enters multiple limit orders on one side of the market at various price levels; (2) following the entry of the limit orders, the level of supply and demand for the security changes; (3) the party enters one or more orders on the opposite side of the market that are subsequently executed; and (4) following the execution, the party cancels the original limit orders.
- Trading Scenario Two: a frequent pattern in which the following facts are present: (1) a party narrows the spread for a security by placing an order inside the national best bid and offer and (2) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the party.

Rule 5210 and the proposed amendments to the Rule 9800 Series would provide FINRA with the authority to act promptly to prevent the defined types disruptive quoting and trading activity from continuing to occur.

¹³ BATS Rule 12.15 refers to these activities as “Disruptive Quoting and Trading Activity Type 1” and “Disruptive Quoting and Trading Activity Type 2.”

Similar to Interpretation and Policy .02 to BATS Rule 12.15, Supplementary Material .03 also makes clear that the order of the events indicating the pattern does not change the applicability of the rule and that these types of disruptive quoting and trading activity can occur regardless of the venue(s) on which the activity is conducted.

Proposed Cease and Desist Proceeding

In addition to the new Supplementary Material describing the prohibited trading and quoting activity, the proposed rule change provides FINRA with authority to issue, on an expedited basis, a permanent cease and desist order (“PCDO”) under FINRA’s existing TCDO rules for violations of Supplementary Material .03 to FINRA Rule 5210.¹⁴

Under the current TCDO rules, FINRA can initiate a TCDO proceeding under the Rule 9800 Series when respondents are alleged to have violated certain specific rules,¹⁵ and although BATS modeled its expedited suspension proceeding rule on FINRA’s TCDO rules, there are some differences.¹⁶ Under the proposed rule change, FINRA can

¹⁴ FINRA has existing authority to issue PCDOs. See Rule 9291.

¹⁵ FINRA has the authority to initiate a TCDO for alleged violations of Section 10(b) of the Act and Rule 10b-5 thereunder; SEA Rules 15g-1 through 15g-9 concerning penny stocks; FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act of 1933; FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices); or FINRA Rule 4330 (Customer Protection – Permissible Use of Customers’ Securities) if the alleged violation is misuse or conversion of customer assets. See FINRA Rule 9810(a).

¹⁶ See Rule 9800 Series. BATS noted in its filing that its proposed rule was based in part on FINRA Rules 9810 through 9870. See SR-BATS-2015-101. In those instances where the BATS procedural rule differs from FINRA’s current TCDO process, FINRA believes that continuing to follow its existing TCDO process will be more efficient and effective than conforming to the BATS rule.

issue a PCDO under which a respondent to the proceeding would be (1) ordered to cease and desist from the violative activity under Supplementary Material .03 to Rule 5210 or (2) ordered to cease and desist from providing market access to a client engaged in the violative trading activity.¹⁷

The proposed process for issuing a PCDO for violations of Supplementary Material .03 to Rule 5210 closely follows the existing TCDO procedures in the Rule 9800 Series. Specifically, like a TCDO, under the proposed amendments to FINRA's procedural rules, the following provisions would apply to a PCDO proceeding for alleged violations of the new Supplementary Material .03 to Rule 5210:

- Only FINRA's Chief Executive Officer (or such other senior officer as the CEO may designate) may initiate a PCDO proceeding under the rule;¹⁸
- The PCDO proceeding is initiated by service of a notice, effective upon service, stating whether FINRA is requesting that the respondent take action or refrain

¹⁷ Under the current TCDO rules, FINRA must file an underlying complaint at the same time it issues a TCDO notice if a complaint has not already been filed. See Rule 9810(d). A TCDO remains in effect only until the conclusion of the underlying disciplinary proceeding. See Rule 9840(c). Under the proposed rule change, as in the BATS rule, the PCDO would be permanent, and there would be no required underlying disciplinary proceeding. However, the proposed rule change would in no way preclude FINRA from pursuing a separate disciplinary action for the underlying conduct.

¹⁸ See Rule 9810(a). A PCDO proceeding would be initiated only after attempts to resolve the conduct with the firm were unsuccessful. In approving the BATS rules, the SEC noted that BATS represented that it "will only seek an expedited suspension when – after multiple requests to a Member for an explanation of [a pattern of potentially disruptive quoting and trading] activity – it continues to see the same pattern of manipulation from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity." See BATS Approval Order, supra note 2. FINRA anticipates using the proposed PCDO authority in the proposed rule change under the same circumstances.

from certain action, and the notice must be accompanied by a declaration of facts, a memorandum of points and authorities, and a proposed order containing the required elements of an order;¹⁹

- A hearing is conducted by a Hearing Panel,²⁰ and the rules include provisions regarding the conduct of the hearing and generally require that the hearing be held within 15 days of service of the notice initiating the proceeding;²¹
- The Hearing Panel must issue a written decision no later than ten days after receipt of the hearing transcript;²²
- The PCDO must set forth the alleged violation and the significant market disruption or investor harm that is likely to result without the issuance of an order and describe in reasonable detail the act or acts the respondent is to take or refrain from taking;²³
- The PCDO is effective upon service and remains effective and enforceable unless modified, set aside, limited, or revoked pursuant to the rule;²⁴
- Any time after the respondent is served with a PCDO, a party to the proceeding may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended, and the Hearing Panel must generally respond to any such request in

¹⁹ See Rule 9810(a), (b).

²⁰ See Rule 9820.

²¹ See Rule 9830(a).

²² See Rule 9840(a).

²³ See Rule 9840(a).

²⁴ See Rule 9840, 9850.

writing within ten days after receipt of the request;²⁵

- FINRA can initiate an expedited proceeding pursuant to FINRA Rules 9556 and 9559 for violations of a PCDO;²⁶
- Sanctions issued under the rule constitute final and immediately effective disciplinary sanctions thus allowing the respondent to appeal the PCDO to the SEC; however, filing an application for review with the SEC does not stay the effectiveness of the PCDO unless the SEC otherwise orders;²⁷ and
- The issuance of the PCDO does not alter FINRA's ability to further investigate the matter or later sanction the member pursuant to its standard disciplinary process for violations of supervisory obligations or other violations of FINRA rules or the Act.

The proposed rule change does include two notable differences between the proposed process for a PCDO for violation of Supplementary Material .03 to Rule 5210 and FINRA's existing TCDO process. First, under the proposed rule change, a PCDO would be imposed if the Hearing Panel finds: (1) by a preponderance of the evidence that the alleged violation specified in the notice occurred and (2) that the conduct or continuation thereof is likely to result in significant market disruption or significant harm to investors. The standard of proof for TCDOs is a likelihood of success on the merits, which is a lower standard than the preponderance standard.²⁸ Second, the permitted

²⁵ See Rule 9850.

²⁶ See Rule 9860, 9556, 9559.

²⁷ See Rule 9870.

²⁸ See Rule 9840(a)(1). In 2015, FINRA amended its TCDO process to, among other things, change the evidentiary standard for TCDOs to a likelihood of

terms of the order would differ to reflect the nature of Supplementary Material .03 to Rule 5210 and, as discussed above, the common circumstance where the member is not engaged directly in the activity but is facilitating the disruptive quoting or trading activity by providing market access to one of its clients. Thus, under the proposed rule change a PCDO would be limited to: (1) ordering a respondent to cease and desist from violating Supplementary Material .03 to FINRA Rule 5210, and/or (2) ordering a respondent to cease and desist from providing access to a client of the respondent that is causing violations of Supplementary Material .03 to FINRA Rule 5210.

Unlike BATS Rule 12.15, under which the respondent is suspended unless and until it takes or refrains from taking the act or acts described in the suspension order, the proposed rule change, like FINRA's current TCDO process, would require a subsequent expedited proceeding for violation of the PCDO before a respondent could be suspended from FINRA membership. This approach is similar to FINRA's existing TCDO authority, and FINRA believes it is preferable given the broader impact a FINRA suspension would have on a firm's operations versus a suspension by an individual exchange.²⁹

As noted above, FINRA is proposing to adopt rules substantially similar to the BATS rules recently approved by the SEC combined with FINRA's existing TCDO rules. Similar to the concerns expressed by BATS in its rule filing, FINRA is concerned that it has no expedited means by which it can prevent disruptive quoting and trading

success on the merits. See Securities Exchange Act Release No. 75629 (August 6, 2015), 80 FR 48379 (August 12, 2015).

²⁹ Rather than be limited to a full suspension, a separate expedited proceeding for violation of a PCDO would also allow for the imposition of a wider range of sanctions if the respondent requests a hearing. See FINRA Rules 9556, 9559.

activity from continuing to occur after it has been identified without resorting to a formal disciplinary proceeding which can often take years to complete. Moreover, during the pendency of a disciplinary proceeding, the conduct often continues to take place. By contrast, an expedited proceeding like that recently approved for BATS, and similar to the FINRA TCDO provisions already in place to prevent ongoing fraud or conversion of customer funds, can preclude the activity in a significantly more expeditious manner while still ensuring that respondents have adequate procedural protections in place.

The proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue PCDOs on an expedited basis to stop certain disruptive and manipulative activity and prevent ongoing fraud in an expeditious manner. FINRA anticipates that the issuance of PCDOs under the proposed rule change would be limited to those extreme circumstances where an expedited proceeding is the only means by which FINRA can stop ongoing violative conduct.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be 30 days after the date of the filing.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³⁰ 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.

³⁰ 15 U.S.C. 78q-3(b)(6).

Pursuant to the proposal, FINRA will have a mechanism to promptly initiate expedited proceedings in the event it believes that it has sufficient proof that a violation of Supplementary Material .03 to Rule 5210 has occurred and is ongoing. FINRA believes the proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue PCDOs to stop the defined types of disruptive and manipulative activity and prevent ongoing fraud in an expeditious manner.

FINRA also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen FINRA's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other members and their customers if conduct is allowed to continue. As explained above, FINRA notes that, like BATS Rule 12.15, it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing to eliminate an express intent element. FINRA believes this modification is necessary for the protection of investors so that ongoing disruptive quoting and trading activity does not occur while a more formal disciplinary proceeding is conducted, which can take several years to complete. Through this proposal, FINRA does not intend to modify the definitions of spoofing and layering that have generally been used by FINRA and other regulators in connection with actions like those cited above.

FINRA further believes that the proposal is consistent with Section 15A(b)(8) of the Act, which requires that the rules of a national securities association “provide a fair procedure for the disciplining of members and persons associated with members.”³¹

FINRA believes that following the existing procedures under its TCDO rules to issue a PCDO under the proposed rule change provides a fair procedure for disciplining members and persons associated with members. FINRA recognizes that the proposed rule change lowers the threshold necessary to stop activity consistent with the patterns described above and potentially suspend, or otherwise sanction, member firms engaging in such activity.³² FINRA believes that, by following its existing TCDO procedures, these risks are mitigated by numerous controls in place to assure that cease and desist orders are sought and imposed only in appropriate cases. For example, FINRA could impose such an order only if the action has been authorized by FINRA’s CEO or other senior officers designated by the CEO. The proposed rule change also ensures the respondents have an opportunity for a hearing prior to the imposition of a sanction and an independent Hearing Panel has made findings that the standards for issuing the order have been met. Moreover, a party subject to a cease and desist order may appeal to the SEC.

³¹ 15 U.S.C. 78o-3(b)(8).

³² Consistent with the BATS framework approved by the SEC, the proposed rule eliminates an express intent element from the definition of prohibited activities, thereby lowering the burden of proof necessary to stop these prohibited activities from express intent to a “frequent pattern or practice” of such activities, coupled with the requirement that the conduct is likely to result in significant market disruption or significant harm to investors. See BATS Approval Order, supra note 2.

Finally, FINRA also believes the proposal is consistent with Section 15A(h)(1) of the Act,³³ which requires that the rules of a national securities association with respect to a disciplinary proceeding: bring specific charges against a member or person associated with a member, notify such member or person of and provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. FINRA believes that each of these requirements is addressed by the notice and due process provisions included within its TCDO Rules and the amendments proposed thereto. Importantly, as noted above, FINRA anticipates using the authority proposed in this filing only in clear and egregious cases when necessary to protect investors or other members, and even in such cases, the respondent will be afforded a fair procedure in connection with the cease and desist proceedings.

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. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking and its potential economic impacts, including the anticipated costs and benefits associated with the proposed rule change.

³³ 15 U.S.C. 78q-3(h)(1).

Economic Impact Assessment

A. Regulatory Need

As discussed above, FINRA has developed a comprehensive surveillance program that allows it to identify potentially disruptive quoting and trading activity almost in real-time. However, under the current rules, it can often take FINRA up to several years to stop potentially disruptive activity. FINRA believes that there are certain clear cases of disruptive activity, or cases where the potential harm to investors is so large, in which FINRA should be able to stop the disruptive behavior and the associated ongoing investor harm from continuing in an expeditious manner. The proposed rule change defines and prohibits specific types of disruptive quoting and trading activity and gives FINRA the authority to initiate an expedited proceeding and issue a PCDO to take prompt action against these potentially harmful activities.

B. Anticipated Benefits

The proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue cease and desist orders to stop certain disruptive and manipulative activity and prevent ongoing fraud or conversion of customer funds in an expeditious manner. FINRA anticipates that the issuance of cease and desist orders under the proposed rule change would be limited to those extreme circumstances where an expedited proceeding is the only means by which FINRA can stop ongoing violative conduct. While the expedited proceedings would be limited to extreme cases with clear violations, FINRA believes that the proposed rule would allow FINRA to initiate and resolve the proceedings sooner, in which case the potential benefits can be substantial in just a single case where investors are being harmed.

C. Anticipated Costs

FINRA does not believe that the proposed rule change would impose material costs on member firms as the underlying conduct is already prohibited by existing rules. Further, FINRA anticipates that any costs would likely be minimal relative to the substantial investor protection benefits that may arise from just a single case where investors are being harmed significantly.

D. Other Economic Impacts

FINRA recognizes that the proposed rule change lowers the threshold necessary to stop activity consistent with the patterns described above and suspend member firms engaging in such activity.³⁴ Accordingly, in developing this proposal, FINRA considered the possibility that the lower threshold may result in actions taken against firms for activity that is not manipulative. FINRA believes that such risks are mitigated by numerous controls in place to assure that cease and desist orders are sought and imposed only in appropriate cases. For example, as discussed above, FINRA anticipates that it would seek a cease and desist order only if it continues to see a frequent pattern of potentially manipulative activity from a member, even after making multiple requests to that member for an explanation. Similarly, FINRA could impose such an order only if the action has been authorized by FINRA's CEO or other senior officers designated by the CEO. The proposed rule also ensures the respondents have an opportunity for a hearing prior to the imposition of a suspension and an independent Hearing Panel has

³⁴ Consistent with the BATS framework approved by the SEC, the proposed rule eliminates an express intent element from the definition of prohibited activities, thereby lowering the burden of proof necessary to stop these prohibited activities from express intent to a "frequent pattern or practice" of such activities. See BATS Approval Order, supra note 2.

made findings that the standards for issuing the order have been met. Moreover, a party subject to a cease and desist order may appeal to the SEC.

Similarly, FINRA also considered the possibility that in response to the proposed rule, firms may avoid legitimate activities that may appear to fall within the trading scenarios discussed above to avoid regulatory and enforcement related costs. If such a response is large, it might manifest itself in the provision of liquidity in the relevant market. FINRA believes the controls discussed above, particularly those associated with providing opportunities to the firms to explain their trading strategy prior to any regulatory action, would largely mitigate this risk.

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) or Section 19(b)(7)(D)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act³⁵ and paragraph (f)(6) of Rule 19b-4 thereunder,³⁶ 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.³⁷

³⁵ 15 U.S.C. 78s(b)(3).

³⁶ 17 CFR 240.19b-4(f)(6).

³⁷ In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along

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

This proposed rule change is based on a similar proposal filed by BATS to adopt BATS Rules 8.17 and 12.15, which the Commission approved on February 18, 2016.³⁸

As described above, the proposed rule change adopts new Supplementary Material .03 to Rule 5210, which is substantially similar to BATS Rule 12.15; however, the proposed process to initiate an expedited proceeding for violations of the new Supplementary Material is based primarily on FINRA's existing TCDO process as well as certain aspects of BATS Rule 8.17 (e.g., the standard of proof, contents of a cease and desist order).

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

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

Exhibit 5. Text of the proposed rule change.

with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission. 17 CFR 240.19b-4(f)(6)(iii). FINRA provided the Commission with a draft of the proposed rule change, along with the text of the proposed rule change, more than five business days prior to the date of filing.

³⁸ See BATS Approval Order, supra note 2.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2016-043)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Provide a Process for an Expedited Proceeding and Adopt a Rule to Prohibit Disruptive Quoting and Trading Activity

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”) 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. 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,³ 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 (i) adopt new Supplementary Material to Rule 5210 to address two specific types of disruptive quoting and trading activity, as further described below and (ii) amend the FINRA Rule 9800 Series to permit FINRA to initiate an

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

expedited proceeding to take prompt action for violations of the new Supplementary Material.

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 proposing two rule changes regarding disruptive trading and quoting activity. The first proposed rule change would adopt new Supplementary Material .03 to Rule 5210 to define and prohibit specific conduct that is deemed disruptive trading and quoting activity. The second proposed rule change would amend the Rule 9800 Series to provide FINRA with the authority to issue, on an expedited basis, a permanent cease and desist order against a respondent that engages in a frequent pattern or practice of the disruptive trading and quoting activity in Supplementary Material .03 to Rule 5210. The proposed rule change mirrors the framework that Bats BZX Exchange, Inc., formerly known as BATS Exchange, Inc. ("BATS"), and The Nasdaq Stock Market LLC

(“Nasdaq”) have recently adopted, but builds off of FINRA’s existing process for temporary cease and desist orders (“TCDOs”).⁴ FINRA believes that having the authority to issue a cease and desist order on an expedited basis to stop certain well-defined disruptive and manipulative quoting and trading activity when the activity is persistent would significantly enhance FINRA’s ability to protect investors and market integrity.

Proposed Disruptive Trading and Quoting Rule

As a national securities association registered pursuant to Section 15A of the Act, FINRA is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members with, among other things, the Act, the rules and regulations thereunder, and FINRA Rules.⁵ Further, FINRA’s rules are required to be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . to remove impediments to and perfect

⁴ On February 18, 2016, the SEC approved a proposed rule change filed by BATS to adopt new BATS Rule 12.15, which prohibits certain types of disruptive quoting and trading activities, and BATS Rule 8.17, which permits BATS to conduct a new expedited suspension proceeding when it believes BATS Rule 12.15 has been violated. See Securities Exchange Act Release No. 77171 (February 18, 2016), 81 FR 9017 (February 23, 2016) (“BATS Approval Order”); see also Securities Exchange Act Release No. 77606 (April 13, 2016), 81 FR 23026 (April 19, 2016) (adopting identical rules for Bats EDGA Exchange, Inc.); Securities Exchange Act Release No. 77602 (April 13, 2016), 81 FR 23046 (April 19, 2016) (adopting identical rules for Bats BYX Exchange, Inc.); Securities Exchange Act Release No. 77589 (April 12, 2016), 81 FR 22691 (April 18, 2016) (adopting identical rules for Bats EDGX Exchange, Inc.). On May 19, 2016, Nasdaq filed a substantially similar proposed rule change with the SEC for immediate effectiveness. See Securities Exchange Act Release No. 77913 (May 25, 2016), 81 FR 35081 (June 1, 2016). Nasdaq has similarly extended the rule to other exchanges. See, e.g., Securities Exchange Act Release No. 78208 (June 30, 2016), 81 FR 44366 (July 7, 2016).

⁵ See 15 U.S.C. 78o-3(b)(2).

the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.”⁶ In fulfilling these requirements, FINRA has developed a comprehensive regulatory program that includes automated surveillance of a substantial portion of trading activity.⁷ When potentially disruptive, manipulative, or otherwise improper quoting and trading activity is identified, FINRA staff conducts an investigation into the activity, which often includes requesting additional information from the member or members involved.⁸ To the extent violations of the Act, the rules and regulations thereunder, or FINRA Rules (or the rules of an exchange with which FINRA has an RSA) have been identified and confirmed, FINRA will commence the enforcement process (either on its own behalf or on behalf of a client exchange), which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or a temporary or permanent ban from the securities industry.⁹

The process described above, from the initial identification of potentially disruptive, manipulative, or improper quoting and trading activity to a final resolution of the matter, can often take up to several years.¹⁰ FINRA believes that this time period is

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ FINRA conducts, on its own behalf, surveillance of its members’ trading activity, as well as surveillance for numerous national securities exchanges pursuant to Regulatory Services Agreements (“RSAs”). FINRA currently has RSAs with 18 different exchanges to perform some degree of surveillance. FINRA also combines its own data with data received from those exchanges with which it has RSAs to conduct cross-market surveillance.

⁸ See, e.g., Rule 8210.

⁹ 15 U.S.C. 78o-3(b)(7). See generally Rule 9200 Series.

¹⁰ See BATS Approval Order, supra note 4, at 9017.

generally necessary and appropriate to ensure that the subject member has a fair procedure before a sanction is imposed, particularly in complex cases. However, as described below, FINRA believes that there are certain clear cases of disruptive and manipulative behavior, or cases where the potential harm to investors is so large, that FINRA should have the authority to initiate an expedited proceeding to stop the behavior from continuing, similar to that which currently exists under the Rule 9800 Series for issuing TCDOs.

In recent years, several cases have been brought and resolved by FINRA and other self-regulatory organizations (“SROs”) that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities over which neither FINRA nor other SROs had direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering¹¹ or spoofing.¹² The exchanges and FINRA were able to identify the disruptive quoting and trading activity in real-time or near real-time; however, due to the procedural requirements in existing SRO rules, the members responsible for the conduct or responsible for their customers’ conduct were able to continue the disruptive quoting and trading activity during the entirety of the subsequent

¹¹ “Layering” is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

¹² “Spoofing” is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement or response from other market participants, which the market manipulator is able to take advantage of by placing orders on the opposite side of the market.

lengthy investigation and enforcement process.¹³ FINRA believes that it should have the authority to initiate an expedited proceeding to stop the behavior from continuing if a member is engaging in or facilitating certain clear types of disruptive quoting and trading activity and the member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The proposed rule change therefore adds Supplementary Material .03 to FINRA Rule 5210 (Publication of Transactions and Quotations) to explicitly prohibit members from engaging in or facilitating the disruptive quoting and trading activities set forth in the rule.¹⁴ The Supplementary Material would prohibit members from engaging in or facilitating disruptive quoting and trading activity as defined in the rule, including acting in concert with other persons to effect such activity. FINRA believes it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several firms or customers.

The proposed rule change defines two types of prohibited activities and states that, for purposes of the rule, disruptive quoting and trading activity would include a

¹³ For descriptions of two specific examples, see SR-BATS-2015-101. See also Securities Exchange Act Release No. 75693 (August 13, 2015), 80 FR 50370, 50371-72 (August 19, 2015).

¹⁴ FINRA currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rules 2010 and 2020. The proposed Supplementary Material would define more specifically and prohibit certain types of disruptive quoting and trading activity. Violations of the Supplementary Material would also provide the basis to apply the proposed cease and desist proceeding described below. Combined, proposed Supplementary Material .03 to Rule 5210 and the proposed amendments to the Rule 9800 Series would provide FINRA with the authority to act promptly to prevent the defined types disruptive quoting and trading activity from continuing to occur.

“frequent pattern or practice” of these activities. As is the case with BATS Rule 12.15, the prohibited activities do not include an express intent element.¹⁵

- Trading Scenario One: a frequent pattern in which the following facts are present: (1) a party enters multiple limit orders on one side of the market at various price levels; (2) following the entry of the limit orders, the level of supply and demand for the security changes; (3) the party enters one or more orders on the opposite side of the market that are subsequently executed; and (4) following the execution, the party cancels the original limit orders.
- Trading Scenario Two: a frequent pattern in which the following facts are present: (1) a party narrows the spread for a security by placing an order inside the national best bid and offer and (2) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the party.

Similar to Interpretation and Policy .02 to BATS Rule 12.15, Supplementary Material .03 also makes clear that the order of the events indicating the pattern does not change the applicability of the rule and that these types of disruptive quoting and trading activity can occur regardless of the venue(s) on which the activity is conducted.

Proposed Cease and Desist Proceeding

In addition to the new Supplementary Material describing the prohibited trading and quoting activity, the proposed rule change provides FINRA with authority to issue, on an expedited basis, a permanent cease and desist order (“PCDO”) under FINRA’s

¹⁵ BATS Rule 12.15 refers to these activities as “Disruptive Quoting and Trading Activity Type 1” and “Disruptive Quoting and Trading Activity Type 2.”

existing TCDO rules for violations of Supplementary Material .03 to FINRA Rule 5210.¹⁶

Under the current TCDO rules, FINRA can initiate a TCDO proceeding under the Rule 9800 Series when respondents are alleged to have violated certain specific rules,¹⁷ and although BATS modeled its expedited suspension proceeding rule on FINRA's TCDO rules, there are some differences.¹⁸ Under the proposed rule change, FINRA can issue a PCDO under which a respondent to the proceeding would be (1) ordered to cease and desist from the violative activity under Supplementary Material .03 to Rule 5210 or (2) ordered to cease and desist from providing market access to a client engaged in the violative trading activity.¹⁹

¹⁶ FINRA has existing authority to issue PCDOs. See Rule 9291.

¹⁷ FINRA has the authority to initiate a TCDO for alleged violations of Section 10(b) of the Act and Rule 10b-5 thereunder; SEA Rules 15g-1 through 15g-9 concerning penny stocks; FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act of 1933; FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices); or FINRA Rule 4330 (Customer Protection – Permissible Use of Customers' Securities) if the alleged violation is misuse or conversion of customer assets. See FINRA Rule 9810(a).

¹⁸ See Rule 9800 Series. BATS noted in its filing that its proposed rule was based in part on FINRA Rules 9810 through 9870. See SR-BATS-2015-101. In those instances where the BATS procedural rule differs from FINRA's current TCDO process, FINRA believes that continuing to follow its existing TCDO process will be more efficient and effective than conforming to the BATS rule.

¹⁹ Under the current TCDO rules, FINRA must file an underlying complaint at the same time it issues a TCDO notice if a complaint has not already been filed. See Rule 9810(d). A TCDO remains in effect only until the conclusion of the underlying disciplinary proceeding. See Rule 9840(c). Under the proposed rule change, as in the BATS rule, the PCDO would be permanent, and there would be no required underlying disciplinary proceeding. However, the proposed rule change would in no way preclude FINRA from pursuing a separate disciplinary action for the underlying conduct.

The proposed process for issuing a PCDO for violations of Supplementary Material .03 to Rule 5210 closely follows the existing TCDO procedures in the Rule 9800 Series. Specifically, like a TCDO, under the proposed amendments to FINRA’s procedural rules, the following provisions would apply to a PCDO proceeding for alleged violations of the new Supplementary Material .03 to Rule 5210:

- Only FINRA’s Chief Executive Officer (or such other senior officer as the CEO may designate) may initiate a PCDO proceeding under the rule;²⁰
- The PCDO proceeding is initiated by service of a notice, effective upon service, stating whether FINRA is requesting that the respondent take action or refrain from certain action, and the notice must be accompanied by a declaration of facts, a memorandum of points and authorities, and a proposed order containing the required elements of an order;²¹
- A hearing is conducted by a Hearing Panel,²² and the rules include provisions regarding the conduct of the hearing and generally require that the hearing be held within 15 days of service of the notice initiating the proceeding;²³

²⁰ See Rule 9810(a). A PCDO proceeding would be initiated only after attempts to resolve the conduct with the firm were unsuccessful. In approving the BATS rules, the SEC noted that BATS represented that it “will only seek an expedited suspension when – after multiple requests to a Member for an explanation of [a pattern of potentially disruptive quoting and trading] activity – it continues to see the same pattern of manipulation from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity.” See BATS Approval Order, supra note 4. FINRA anticipates using the proposed PCDO authority in the proposed rule change under the same circumstances.

²¹ See Rule 9810(a), (b).

²² See Rule 9820.

²³ See Rule 9830(a).

- The Hearing Panel must issue a written decision no later than ten days after receipt of the hearing transcript;²⁴
- The PCDO must set forth the alleged violation and the significant market disruption or investor harm that is likely to result without the issuance of an order and describe in reasonable detail the act or acts the respondent is to take or refrain from taking;²⁵
- The PCDO is effective upon service and remains effective and enforceable unless modified, set aside, limited, or revoked pursuant to the rule;²⁶
- Any time after the respondent is served with a PCDO, a party to the proceeding may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended, and the Hearing Panel must generally respond to any such request in writing within ten days after receipt of the request;²⁷
- FINRA can initiate an expedited proceeding pursuant to FINRA Rules 9556 and 9559 for violations of a PCDO;²⁸
- Sanctions issued under the rule constitute final and immediately effective disciplinary sanctions thus allowing the respondent to appeal the PCDO to the

²⁴ See Rule 9840(a).

²⁵ See Rule 9840(a).

²⁶ See Rule 9840, 9850.

²⁷ See Rule 9850.

²⁸ See Rule 9860, 9556, 9559.

SEC; however, filing an application for review with the SEC does not stay the effectiveness of the PCDO unless the SEC otherwise orders;²⁹ and

- The issuance of the PCDO does not alter FINRA's ability to further investigate the matter or later sanction the member pursuant to its standard disciplinary process for violations of supervisory obligations or other violations of FINRA rules or the Act.

The proposed rule change does include two notable differences between the proposed process for a PCDO for violation of Supplementary Material .03 to Rule 5210 and FINRA's existing TCDO process. First, under the proposed rule change, a PCDO would be imposed if the Hearing Panel finds: (1) by a preponderance of the evidence that the alleged violation specified in the notice occurred and (2) that the conduct or continuation thereof is likely to result in significant market disruption or significant harm to investors. The standard of proof for TCDOs is a likelihood of success on the merits, which is a lower standard than the preponderance standard.³⁰ Second, the permitted terms of the order would differ to reflect the nature of Supplementary Material .03 to Rule 5210 and, as discussed above, the common circumstance where the member is not engaged directly in the activity but is facilitating the disruptive quoting or trading activity by providing market access to one of its clients. Thus, under the proposed rule change a PCDO would be limited to: (1) ordering a respondent to cease and desist from violating Supplementary Material .03 to FINRA Rule 5210, and/or (2) ordering a respondent to

²⁹ See Rule 9870.

³⁰ See Rule 9840(a)(1). In 2015, FINRA amended its TCDO process to, among other things, change the evidentiary standard for TCDOs to a likelihood of success on the merits. See Securities Exchange Act Release No. 75629 (August 6, 2015), 80 FR 48379 (August 12, 2015).

cease and desist from providing access to a client of the respondent that is causing violations of Supplementary Material .03 to FINRA Rule 5210.

Unlike BATS Rule 12.15, under which the respondent is suspended unless and until it takes or refrains from taking the act or acts described in the suspension order, the proposed rule change, like FINRA's current TCDO process, would require a subsequent expedited proceeding for violation of the PCDO before a respondent could be suspended from FINRA membership. This approach is similar to FINRA's existing TCDO authority, and FINRA believes it is preferable given the broader impact a FINRA suspension would have on a firm's operations versus a suspension by an individual exchange.³¹

As noted above, FINRA is proposing to adopt rules substantially similar to the BATS rules recently approved by the SEC combined with FINRA's existing TCDO rules. Similar to the concerns expressed by BATS in its rule filing, FINRA is concerned that it has no expedited means by which it can prevent disruptive quoting and trading activity from continuing to occur after it has been identified without resorting to a formal disciplinary proceeding which can often take years to complete. Moreover, during the pendency of a disciplinary proceeding, the conduct often continues to take place. By contrast, an expedited proceeding like that recently approved for BATS, and similar to the FINRA TCDO provisions already in place to prevent ongoing fraud or conversion of customer funds, can preclude the activity in a significantly more expeditious manner while still ensuring that respondents have adequate procedural protections in place.

³¹ Rather than be limited to a full suspension, a separate expedited proceeding for violation of a PCDO would also allow for the imposition of a wider range of sanctions if the respondent requests a hearing. See FINRA Rules 9556, 9559.

The proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue PCDOs on an expedited basis to stop certain disruptive and manipulative activity and prevent ongoing fraud in an expeditious manner. FINRA anticipates that the issuance of PCDOs under the proposed rule change would be limited to those extreme circumstances where an expedited proceeding is the only means by which FINRA can stop ongoing violative conduct.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be 30 days after the date of the filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³² 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.

Pursuant to the proposal, FINRA will have a mechanism to promptly initiate expedited proceedings in the event it believes that it has sufficient proof that a violation of Supplementary Material .03 to Rule 5210 has occurred and is ongoing. FINRA believes the proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue PCDOs to stop the defined types of disruptive and manipulative activity and prevent ongoing fraud in an expeditious manner.

FINRA also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the

³² 15 U.S.C. 78q-3(b)(6).

proposal helps to strengthen FINRA's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other members and their customers if conduct is allowed to continue. As explained above, FINRA notes that, like BATS Rule 12.15, it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing to eliminate an express intent element. FINRA believes this modification is necessary for the protection of investors so that ongoing disruptive quoting and trading activity does not occur while a more formal disciplinary proceeding is conducted, which can take several years to complete. Through this proposal, FINRA does not intend to modify the definitions of spoofing and layering that have generally been used by FINRA and other regulators in connection with actions like those cited above.

FINRA further believes that the proposal is consistent with Section 15A(b)(8) of the Act, which requires that the rules of a national securities association "provide a fair procedure for the disciplining of members and persons associated with members."³³

FINRA believes that following the existing procedures under its TCDO rules to issue a PCDO under the proposed rule change provides a fair procedure for disciplining members and persons associated with members. FINRA recognizes that the proposed rule change lowers the threshold necessary to stop activity consistent with the patterns described above and potentially suspend, or otherwise sanction, member firms engaging in such activity.³⁴ FINRA believes that, by following its existing TCDO procedures,

³³ 15 U.S.C. 78o-3(b)(8).

³⁴ Consistent with the BATS framework approved by the SEC, the proposed rule eliminates an express intent element from the definition of prohibited activities,

these risks are mitigated by numerous controls in place to assure that cease and desist orders are sought and imposed only in appropriate cases. For example, FINRA could impose such an order only if the action has been authorized by FINRA's CEO or other senior officers designated by the CEO. The proposed rule change also ensures the respondents have an opportunity for a hearing prior to the imposition of a sanction and an independent Hearing Panel has made findings that the standards for issuing the order have been met. Moreover, a party subject to a cease and desist order may appeal to the SEC.

Finally, FINRA also believes the proposal is consistent with Section 15A(h)(1) of the Act,³⁵ which requires that the rules of a national securities association with respect to a disciplinary proceeding: bring specific charges against a member or person associated with a member, notify such member or person of and provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. FINRA believes that each of these requirements is addressed by the notice and due process provisions included within its TCDO Rules and the amendments proposed thereto. Importantly, as noted above, FINRA anticipates using the authority proposed in this filing only in clear and egregious cases when necessary to protect investors or other

thereby lowering the burden of proof necessary to stop these prohibited activities from express intent to a "frequent pattern or practice" of such activities, coupled with the requirement that the conduct is likely to result in significant market disruption or significant harm to investors. See BATS Approval Order, supra note 4.

³⁵ 15 U.S.C. 78q-3(h)(1).

members, and even in such cases, the respondent will be afforded a fair procedure in connection with the cease and desist proceedings.

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. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking and its potential economic impacts, including the anticipated costs and benefits associated with the proposed rule change.

Economic Impact Assessment

1. Regulatory Need

As discussed above, FINRA has developed a comprehensive surveillance program that allows it to identify potentially disruptive quoting and trading activity almost in real-time. However, under the current rules, it can often take FINRA up to several years to stop potentially disruptive activity. FINRA believes that there are certain clear cases of disruptive activity, or cases where the potential harm to investors is so large, in which FINRA should be able to stop the disruptive behavior and the associated ongoing investor harm from continuing in an expeditious manner. The proposed rule change defines and prohibits specific types of disruptive quoting and trading activity and gives FINRA the authority to initiate an expedited proceeding and issue a PCDO to take prompt action against these potentially harmful activities.

2. Anticipated Benefits

The proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue cease and desist orders to stop certain disruptive and manipulative activity and prevent ongoing fraud or conversion of customer funds in an expeditious manner. FINRA anticipates that the issuance of cease and desist orders under the proposed rule change would be limited to those extreme circumstances where an expedited proceeding is the only means by which FINRA can stop ongoing violative conduct. While the expedited proceedings would be limited to extreme cases with clear violations, FINRA believes that the proposed rule would allow FINRA to initiate and resolve the proceedings sooner, in which case the potential benefits can be substantial in just a single case where investors are being harmed.

3. Anticipated Costs

FINRA does not believe that the proposed rule change would impose material costs on member firms as the underlying conduct is already prohibited by existing rules. Further, FINRA anticipates that any costs would likely be minimal relative to the substantial investor protection benefits that may arise from just a single case where investors are being harmed significantly.

4. Other Economic Impacts

FINRA recognizes that the proposed rule change lowers the threshold necessary to stop activity consistent with the patterns described above and suspend member firms engaging in such activity.³⁶ Accordingly, in developing this proposal, FINRA considered

³⁶ Consistent with the BATS framework approved by the SEC, the proposed rule eliminates an express intent element from the definition of prohibited activities, thereby lowering the burden of proof necessary to stop these prohibited activities

the possibility that the lower threshold may result in actions taken against firms for activity that is not manipulative. FINRA believes that such risks are mitigated by numerous controls in place to assure that cease and desist orders are sought and imposed only in appropriate cases. For example, as discussed above, FINRA anticipates that it would seek a cease and desist order only if it continues to see a frequent pattern of potentially manipulative activity from a member, even after making multiple requests to that member for an explanation. Similarly, FINRA could impose such an order only if the action has been authorized by FINRA's CEO or other senior officers designated by the CEO. The proposed rule also ensures the respondents have an opportunity for a hearing prior to the imposition of a suspension and an independent Hearing Panel has made findings that the standards for issuing the order have been met. Moreover, a party subject to a cease and desist order may appeal to the SEC.

Similarly, FINRA also considered the possibility that in response to the proposed rule, firms may avoid legitimate activities that may appear to fall within the trading scenarios discussed above to avoid regulatory and enforcement related costs. If such a response is large, it might manifest itself in the provision of liquidity in the relevant market. FINRA believes the controls discussed above, particularly those associated with providing opportunities to the firms to explain their trading strategy prior to any regulatory action, would largely mitigate this risk.

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.

from express intent to a "frequent pattern or practice" of such activities. See BATS Approval Order, supra note 4.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁷ and Rule 19b-4(f)(6) thereunder.³⁸

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. Please include File Number SR-FINRA-2016-043 on the subject line.

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 17 CFR 240.19b-4(f)(6).

Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2016-043. 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-2016-043 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.³⁹

Robert W. Errett
Deputy Secretary

³⁹ 17 CFR 200.30-3(a)(12).

Exhibit 5

Proposed rule text is below. Proposed new language is underlined. Proposed deletions are in brackets.

* * * * *

5200. QUOTATION AND TRADING OBLIGATIONS AND PRACTICES

5210. Publication of Transactions and Quotations

No Change.

• • • **Supplementary Material:** -----

.01 through .02 No Change.

.03 Disruptive Quoting and Trading Activity Prohibited

(a) No member shall engage in or facilitate disruptive quoting and trading activity as described in paragraph (b), including acting in concert with other persons to effect such activity.

(b) Disruptive quoting and trading activity shall include a frequent pattern in which the following facts are present:

(1) Disruptive Quoting and Trading Activity Type 1:

(A) a party enters multiple limit orders on one side of the market at various price levels (the “Displayed Orders”); and

(B) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and

(C) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the “Contra-Side Orders”) that are subsequently executed; and

(D) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders.

(2) Disruptive Quoting and Trading Activity Type 2:

(A) a party narrows the spread for a security by placing an order inside the national best bid and national best offer (“NBBO”); and

(B) the party then executes an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in paragraph (A).

(c) For purposes of this Supplementary Material .03, disruptive quoting and trading activity shall include a frequent pattern in which the facts listed above are present. Unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of the Supplementary Material. Further, disruptive quoting and trading activity includes a pattern or practice in which all of the quoting and trading activity is conducted on a single venue as well as a pattern or practice in which some portion of the quoting and trading activity is conducted on a one venue and the other portions of the quoting and trading activity are conducted on one or more other venues.

* * * * *

9800. TEMPORARY AND PERMANENT CEASE AND DESIST ORDERS

9810. Initiation of Proceeding

(a) Department of Enforcement or Department of Market Regulation

With the prior written authorization of FINRA's Chief Executive Officer or such other senior officers as the Chief Executive Officer may designate, the Department of Enforcement or the Department of Market Regulation may initiate: (1) a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Exchange Act and SEA Rule 10b-5 thereunder; SEA Rules 15g-1 through 15g-9; FINRA Rule 2010 (if the alleged violation is

unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); FINRA Rule 2020; or FINRA Rule 4330 (if the alleged violation is misuse or conversion of customer assets) (“TCDO Proceeding”) or (2) a permanent cease and desist proceeding with respect to alleged violations of Supplementary Material .03 to Rule 5210 (“PCDO Proceeding”). The Department of Enforcement or the Department of Market Regulation shall initiate the proceeding by serving a notice on a member or associated person (hereinafter "Respondent") (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) and filing a copy thereof with the Office of Hearing Officers. The Department of Enforcement or the Department of Market Regulation shall serve the notice by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Department of Enforcement or the Department of Market Regulation shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

(b) Contents of Notice

The notice shall set forth the rule or statutory provision that the Respondent is alleged to have violated and that the Department of Enforcement or the Department of Market Regulation is seeking to have the Respondent ordered to cease violating. The notice also shall state whether the Department of Enforcement or the Department of Market Regulation is requesting the

Respondent to be required to take action, refrain from taking action or both. The notice shall be accompanied by:

(1) through (2) No Change.

(3) a proposed order that contains the required elements of an [temporary cease and desist] order (except the date and hour of the order's issuance), which are set forth in Rule 9840([b]c), with respect to temporary cease and desist orders, and 9840(d), with respect to permanent cease and desist orders.

(c) Authority to Approve Settlements

If the Parties agree to the terms of the proposed temporary or permanent cease and desist order, the Hearing Officer shall have the authority to approve and issue the order.

(d) Filing of Underlying Complaint for Temporary Cease and Desist Orders

If the Department of Enforcement or the Department of Market Regulation has not issued a complaint under Rule 9211 against the Respondent relating to the subject matter of the [temporary cease and desist] TCDO [p]Proceeding and alleging violations of the rule or statutory provision specified in the notice described in paragraph (b), the Department of Enforcement or the Department of Market Regulation shall serve and file such a complaint with the notice initiating the [temporary cease and desist] TCDO [p]Proceeding. Service of the complaint can be made in accordance with the service provisions in paragraph (a).

9820. Appointment of Hearing Officer and Hearing Panel

(a) As soon as practicable after the Department of Enforcement or the Department of Market Regulation files a copy of the notice initiating a [temporary cease and desist] TCDO [p]Proceeding or a PCDO Proceeding with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the [temporary cease and desist]

proceeding. The Chief Hearing Officer shall appoint two Panelists to serve on a Hearing Panel with the Hearing Officer. Each Panelist shall be associated with a member of FINRA or retired therefrom. The Chief Hearing Officer shall select as a Panelist a person who:

(1) through (5) No Change.

(b) No Change.

9830. Hearing

(a) When Held

The hearing shall be held not later than 15 days after service of the notice and filing initiating the [temporary cease and desist] proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed.

(b) through (g) No Change.

(h) Failure to Appear at Hearing

If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a temporary cease and desist order in a TCDO Proceeding or a permanent cease and desist order in a PCDO Proceeding without further proceedings. If the Department of Enforcement or Department of Market Regulation fails to appear at a hearing for which it has notice, the Hearing Panel may order that the [temporary cease and desist] proceeding be dismissed.

9840. Issuance of [Temporary Cease and Desist] Order by Hearing Panel

(a) Basis for Issuance of a Temporary Cease and Desist Order in a TCDO

Proceeding

The Hearing Panel shall issue a written decision stating whether a temporary cease and desist order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. A temporary cease and desist order shall be imposed if the Hearing Panel finds:

(1) through (2) No Change.

(b) Basis for Issuance of a Permanent Cease and Desist Order in a PCDO

Proceeding

The Hearing Panel shall issue a written decision stating whether a permanent cease and desist order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. A permanent cease and desist order shall be imposed if the Hearing Panel finds:

(1) by a preponderance of the evidence that the alleged violation specified in the notice has occurred; and

(2) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

([b]c) Content, Scope, and Form of Temporary Cease and Desist Order

A temporary cease and desist order shall:

(1) through (4) No Change.

(d) Content, Scope, and Form of Permanent Cease and Desist Order

A permanent cease and desist order shall:

(1) be limited to: (A) ordering a Respondent to cease and desist from violating Rule 5210.03, and/or (B) ordering a Respondent to cease and desist from providing market access to a client of Respondent that is causing violations of Rule 5210.03;

(2) set forth the violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order;

(3) describe in reasonable detail the act or acts the Respondent is to take or refrain from taking and to suspend the Respondent unless and until such action is taken or refrained from; and

(4) include the date and hour of its issuance.

([c]e) Duration of Order

(1) A temporary cease and desist order shall remain effective and enforceable until the issuance of a decision under Rule 9268 or Rule 9269, or until a settlement offer is accepted pursuant to Rule 9270.

(2) A permanent cease and desist order shall remain effective and enforceable unless modified, set aside, limited, or suspended pursuant to Rule 9850.

([d]f) Service and Dissemination Requirements

The Office of Hearing Officers shall serve the Hearing Panel's decision and any temporary or permanent cease and desist order on the Department of Enforcement or the Department of Market Regulation and the Respondent (or upon counsel representing the Respondent or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service

for the Respondent) by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the Hearing Panel's decision and any temporary or permanent cease and desist order by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The temporary or permanent cease and desist order shall be effective when service is complete. The Office of Hearing Officers shall provide a copy of [the] a temporary or permanent cease and desist order to each FINRA member with which a Respondent is associated.

([e]g) Delivery Requirement

Where a Respondent is a member firm, Respondent shall deliver a copy of a temporary or permanent cease and desist order, within one business day of receiving it, to its associated persons.

9850. Review by Hearing Panel

At any time after the Office of Hearing Officers serves the Respondent (or counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) with a temporary or permanent cease and desist order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request. With respect to a temporary cease and desist order, [T]he Hearing Panel that presided over the [temporary cease and desist order] TCDO [p]Proceeding shall retain jurisdiction to modify, set aside, limit, or

suspend the temporary cease and desist order, unless at the time the application is filed a Hearing Panel has already been appointed in the underlying disciplinary proceeding commenced under FINRA Rule 9211 in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. The Hearing Panel's response shall be served on the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) via personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the temporary or permanent cease and desist order by personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of [the] a temporary or permanent cease and desist order.

9860. Violation of [Temporary] Cease and Desist Orders

A Respondent who violates a temporary or permanent cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled or be subject to any fitting sanction under Rule 9556. FINRA's Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate must authorize the initiation of any such proceeding in writing.

9870. Application to SEC for Review

Temporary and permanent cease and desist orders issued pursuant to this Rule Series constitute final and immediately effective disciplinary sanctions imposed by FINRA. The right

to have any action under this Rule Series reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of [the] a temporary or permanent cease and desist order, unless the SEC otherwise orders.

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