

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="27"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="036"/>
		Amendment No. (req. for Amendments *) <input type="text"/>

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 checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" 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 Adopt NASD Interpretive Material 2210-2 as FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities) in the Consolidated FINRA Rulebook

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="Gavin"/>	Last Name * <input type="text" value="Meyers"/>
Title * <input type="text" value="Attorney"/>	
E-mail * <input type="text" value="gavin.meyers@finra.org"/>	
Telephone * <input type="text" value="(202) 728-8012"/>	Fax <input type="text" value="(202) 728-8864"/>

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="08/31/2016"/>	<input type="text" value="Senior Vice President and Deputy General Counsel"/>
By <input type="text" value="Patrice Gliniecki"/>	<input type="text" value="Patrice Gliniecki"/>

(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 *

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

Exhibit 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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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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

Add Remove View

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

Partial Amendment

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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” or “SEA”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt NASD Interpretive Material 2210-2 (Communications with the Public About Variable Life Insurance and Variable Annuities) as FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities) in the consolidated FINRA rulebook without any substantive changes. FINRA also proposes to update cross-references within other FINRA rules accordingly.

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

(b) Upon filing with the Commission and implementation by FINRA of the proposed rule change, NASD Interpretive Material 2210-2 will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Chief Legal Officer of FINRA authorized the filing of the proposed rule change with the SEC pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date 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

¹ 15 U.S.C. 78s(b)(1).

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),² FINRA is proposing to transfer NASD Interpretive Material 2210-2 (Communications with the Public About Variable Life Insurance and Variable Annuities) (“NASD IM-2210-2”) into the Consolidated FINRA Rulebook as FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities) without any substantive changes.

As with NASD IM-2210-2, proposed FINRA Rule 2211 provides a set of guidelines (“Guidelines”) that must be considered—in addition to the standards governing communications with the public under FINRA Rule 2210 (Communications with the Public)—in preparing communications about variable life insurance and variable annuities.

NASD IM-2210-2 states that the Guidelines are applicable to “advertisements” and “sales literature” as defined in NASD Rule 2210, as well as “individualized communications such as personalized letters and computer generated illustrations, whether printed or made available on-screen.” The proposed rule change makes technical changes to NASD IM-2210-2 by replacing references to “advertisements,” “sales literature,” and “individualized communications” with the current corresponding terms defined in FINRA Rule 2210. In adopting FINRA Rule 2210, FINRA updated the

² The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from New York Stock Exchange LLC (“NYSE”) (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see [Information Notice](#), March 12, 2008 (Rulebook Consolidation Process).

definitions under NASD Rule 2210 by adopting the defined terms “retail communication,” for written communications that are distributed or made available to more than 25 retail investors within any 30 calendar-day period, and “correspondence” for written communications that are distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.”³ Accordingly, the proposed rule change would replace references in NASD IM-2210-2, where applicable, to the terms (1) “advertisements” and “sales literature” with the term “retail communications,”⁴ (2) “individualized communications” with the term “correspondence,” and (3) “communications” with the term “retail communications and correspondence,” as such terms are defined in FINRA Rule 2210. The proposed rule change also would amend paragraph (b)(5) of NASD IM-2210-2 by replacing the heading “sales literature and personalized illustrations” with “retail communications and correspondence,” and by replacing the term “sales literature” in paragraph (b)(5)(B) with the term “retail communications and correspondence,” to reflect the current intent and scope of this provision to include communications containing personalized illustrations that are sent to retail investors irrespective of whether a member distributes or makes them available to more than 25 retail investors within any 30 calendar-day period (qualifying the

³ See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Order Approving File No. SR-FINRA-2011-035). In addition, to the extent that a member distributed or made available a communication that qualified as an independently prepared reprint to more than 25 retail investors within a 30 calendar-day period, the communication also would fall under the definition of “retail communication.”

⁴ See Securities Exchange Act Release No. 64984 (July 28, 2011), 76 FR 46870 (August 3, 2011) (Notice of Filing File No. SR-FINRA-2011-035) (stating that communications that qualified as advertisements and sales literature generally would fall within the term “retail communication”).

communication as a “retail communication”) or 25 or fewer retail investors within any 30 calendar-day period (qualifying the communication as “correspondence”).

In addition, proposed FINRA Rule 2211 closely tracks the language of IM-2210-2 and makes only non-substantive, technical changes to the text of the NASD rule by, for instance, replacing the reference to a legacy NASD rule with the applicable FINRA rule.⁵

These proposed rule changes would correct references in IM-2210-2 for purposes of adopting it as a FINRA rule without changing the substantive meaning.

The proposed rule change also would replace all references to IM-2210-2 in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities) and 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)) with references to FINRA Rule 2211, accordingly.

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 filing.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

⁵ FINRA previously solicited comment on a proposal to move IM-2210-2 to the Consolidated FINRA Rulebook with substantive changes. See Regulatory Notice 08-39 (July 2008); see also Securities Exchange Act Release No. 61107 (December 3, 2009), 74 FR 65180 (December 9, 2009) (Notice of Filing File No. SR-FINRA-2009-070) (withdrawn on April 27, 2012). Given that FINRA would like to proceed with the rulebook consolidation process expeditiously to provide greater clarity and regulatory efficiency to FINRA members, FINRA is proposing to move IM-2210-2 to the Consolidated FINRA Rulebook without substantive changes at this time, but FINRA may consider proposing substantive changes to the rule as part of future rulemaking.

⁶ 15 U.S.C. 78q-3(b)(6).

just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change, which does not substantively change the rule, is consistent with the Act because it is being undertaken pursuant to the rulebook consolidation process, which is designed to provide additional clarity and regulatory efficiency to FINRA members by consolidating the applicable NASD, Incorporated NYSE, and FINRA rules into one rule set.

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. As noted above, the proposed rule change will not substantively change either the text or application of the rule. FINRA would like to proceed with the rulebook consolidation process expeditiously, which it believes will provide additional clarity and regulatory efficiency to members.

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 with respect to the proposed rule change to transfer IM-2210-2 into the Consolidated FINRA Rulebook without any substantive changes.⁷

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)

⁷ But see supra note 5.

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act⁸ and paragraph (f)(6) of Rule 19b-4 thereunder,⁹ in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing or such shorter time as the Commission may designate.

In accordance with Rule 19b-4(f)(6),¹⁰ FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Act.¹¹

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

Not applicable.

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

⁸ 15 U.S.C. 78s(b)(3).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

Federal Register.

Exhibit 5. Text of proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2016-036)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt NASD Interpretive Material 2210-2 as FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities) in the Consolidated FINRA Rulebook

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 adopt NASD Interpretive Material 2210-2 (Communications with the Public About Variable Life Insurance and Variable Annuities) as FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities) in the consolidated FINRA rulebook without any substantive

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

changes. FINRA also proposes to update cross-references within other FINRA rules accordingly.

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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),⁴ FINRA is proposing to transfer NASD Interpretive Material 2210-2 (Communications with the Public About Variable Life Insurance and Variable Annuities) ("NASD IM-2210-2") into the Consolidated FINRA Rulebook as FINRA Rule 2211

⁴ The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from New York Stock Exchange LLC ("NYSE") ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

(Communications with the Public About Variable Life Insurance and Variable Annuities) without any substantive changes.

As with NASD IM-2210-2, proposed FINRA Rule 2211 provides a set of guidelines (“Guidelines”) that must be considered—in addition to the standards governing communications with the public under FINRA Rule 2210 (Communications with the Public)—in preparing communications about variable life insurance and variable annuities.

NASD IM-2210-2 states that the Guidelines are applicable to “advertisements” and “sales literature” as defined in NASD Rule 2210, as well as “individualized communications such as personalized letters and computer generated illustrations, whether printed or made available on-screen.” The proposed rule change makes technical changes to NASD IM-2210-2 by replacing references to “advertisements,” “sales literature,” and “individualized communications” with the current corresponding terms defined in FINRA Rule 2210. In adopting FINRA Rule 2210, FINRA updated the definitions under NASD Rule 2210 by adopting the defined terms “retail communication,” for written communications that are distributed or made available to more than 25 retail investors within any 30 calendar-day period, and “correspondence” for written communications that are distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.”⁵ Accordingly, the proposed rule change would replace references in NASD IM-2210-2, where applicable, to the terms (1)

⁵ See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Order Approving File No. SR-FINRA-2011-035). In addition, to the extent that a member distributed or made available a communication that qualified as an independently prepared reprint to more than 25 retail investors within a 30 calendar-day period, the communication also would fall under the definition of “retail communication.”

“advertisements” and “sales literature” with the term “retail communications,”⁶ (2) “individualized communications” with the term “correspondence,” and (3) “communications” with the term “retail communications and correspondence,” as such terms are defined in FINRA Rule 2210. The proposed rule change also would amend paragraph (b)(5) of NASD IM-2210-2 by replacing the heading “sales literature and personalized illustrations” with “retail communications and correspondence,” and by replacing the term “sales literature” in paragraph (b)(5)(B) with the term “retail communications and correspondence,” to reflect the current intent and scope of this provision to include communications containing personalized illustrations that are sent to retail investors irrespective of whether a member distributes or makes them available to more than 25 retail investors within any 30 calendar-day period (qualifying the communication as a “retail communication”) or 25 or fewer retail investors within any 30 calendar-day period (qualifying the communication as “correspondence”).

In addition, proposed FINRA Rule 2211 closely tracks the language of IM-2210-2 and makes only non-substantive, technical changes to the text of the NASD rule by, for instance, replacing the reference to a legacy NASD rule with the applicable FINRA rule.⁷

⁶ See Securities Exchange Act Release No. 64984 (July 28, 2011), 76 FR 46870 (August 3, 2011) (Notice of Filing File No. SR-FINRA-2011-035) (stating that communications that qualified as advertisements and sales literature generally would fall within the term “retail communication”).

⁷ FINRA previously solicited comment on a proposal to move IM-2210-2 to the Consolidated FINRA Rulebook with substantive changes. See Regulatory Notice 08-39 (July 2008); see also Securities Exchange Act Release No. 61107 (December 3, 2009), 74 FR 65180 (December 9, 2009) (Notice of Filing File No. SR-FINRA-2009-070) (withdrawn on April 27, 2012). Given that FINRA would like to proceed with the rulebook consolidation process expeditiously to provide greater clarity and regulatory efficiency to FINRA members, FINRA is proposing to move IM-2210-2 to the Consolidated FINRA Rulebook without substantive

These proposed rule changes would correct references in IM-2210-2 for purposes of adopting it as a FINRA rule without changing the substantive meaning.

The proposed rule change also would replace all references to IM-2210-2 in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities) and 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)) with references to FINRA Rule 2211, accordingly.

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

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change, which does not substantively change the rule, is consistent with the Act because it is being undertaken pursuant to the rulebook consolidation process, which is designed to provide additional clarity and regulatory efficiency to FINRA members by consolidating the applicable NASD, Incorporated NYSE, and FINRA rules into one rule set.

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

changes at this time, but FINRA may consider proposing substantive changes to the rule as part of future rulemaking.

⁸ 15 U.S.C. 78q-3(b)(6).

Act. As noted above, the proposed rule change will not substantively change either the text or application of the rule. FINRA would like to proceed with the rulebook consolidation process expeditiously, which it believes will provide additional clarity and regulatory efficiency to members.

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 with respect to the proposed rule change to transfer IM-2210-2 into the Consolidated FINRA Rulebook without any substantive changes.⁹

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

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

⁹ But see supra note 7.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

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-2016-036 on the subject line.

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-2016-036. 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-2016-036 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.¹²

Brent J. Fields
Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

* * * * *

**Text of Proposed New FINRA Rule
(Marked to show changes from NASD IM-2210-2; NASD IM-2210-2 to be Deleted in
its Entirety from the Transitional Rulebook)**

* * * * *

2000. DUTIES AND CONFLICTS

* * * * *

2200. COMMUNICATIONS AND DISCLOSURES

* * * * *

**[IM-2210-2]2211. Communications with the Public About Variable Life Insurance
and Variable Annuities**

The standards governing communications with the public are set forth in Rule 2210. In addition to those standards, the following guidelines must be considered in preparing [advertisements and sales literature]retail communications and correspondence, as defined in Rule 2210, about variable life insurance and variable annuities. [The guidelines are applicable to advertisements and sales literature as defined in Rule 2210, as well as individualized communications such as personalized letters and computer generated illustrations, whether printed or made available on-screen.]

(a) General Considerations

(1) Product Identification

In order to assure that investors understand exactly what security is being discussed, [all] retail communications and correspondence must clearly describe

the product as either a variable life insurance policy or a variable annuity, as applicable. Member firms may use proprietary names in addition to this description. In cases where the proprietary name includes a description of the type of security being offered, there is no requirement to include a generalized description. For example, if the material includes a name such as the "XYZ Variable Life Insurance Policy," it is not necessary to include a statement indicating that the security is a variable life insurance policy. Considering the significant differences between mutual funds and variable products, the presentation must not represent or imply that the product being offered or its underlying account is a mutual fund.

(2) through (3) No Change.

(b) Specific Considerations

(1) Fund Performance Predating Inclusion in the Variable Product

In order to show how an existing fund would have performed had it been an investment option within a variable life insurance policy or variable annuity, retail communications and correspondence may contain the fund's historical performance that predates its inclusion in the policy or annuity. Such performance may only be used provided that no significant changes occurred to the fund at the time or after it became part of the variable product. However, retail communications and correspondence may not include the performance of an existing fund for the purposes of promoting investment in a similar, but new, investment option (i.e., clone fund or model fund) available in a variable contract. The presentation of historical performance must conform to applicable

[NASD]FINRA and SEC standards. Particular attention must be given to including all elements of return and deducting applicable charges and expenses.

(2) Product Comparisons

A comparison of investment products may be used provided the comparison complies with applicable requirements set forth under Rule 2210. Particular attention must be paid to the specific standards regarding "comparisons" set forth in Rule 2210(d)(2)[(B)].

(3) Use of Rankings

A ranking which reflects the relative performance of the separate account or the underlying investment option may be included in [advertisements and sales literature]retail communications provided its use is consistent with the standards contained in [IM-2210-3]Rule 2212.

(4) Discussions Regarding Insurance and Investment Features of Variable Life Insurance

Retail [C]communications and correspondence on behalf of single premium variable life insurance may emphasize the investment features of the product provided an adequate explanation of the life insurance features is given. [Sales material]Such communications for other types of variable life insurance must provide a balanced discussion of these features.

(5) Hypothetical Illustrations of Rates of Return in Variable Life Insurance [Sales Literature and Personalized Illustrations]Retail Communications and Correspondence

(A) No Change.

(B) In [sales literature]retail communications and correspondence which include[s] hypothetical illustrations, member firms may provide a personalized illustration which reflects factors relating to the individual customer's circumstances. A personalized illustration may not contain a rate of return greater than 12% and must follow all of the standards set forth in subparagraph (A), above.

(C) No Change.

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Amendments to FINRA Rules

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0150. Application of Rules to Exempted Securities Except Municipal Securities

(a) through (b) No Change.

(c) Unless otherwise indicated within a particular Rule, the following FINRA and NASD rules are applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons: FINRA Rules 2010, 2020, 2060, 2111, 2122, 2150, 2210, 2211, 2212, 2261, 2268, 2269, 2320(g), 3110, 3220, 3270, 3280, 4120, 4130, 4210, 4311, 4330, 4360, 4510 Series, 4530, 5160, 5210, 5220, 5230, 5310, 5340, 8110, 8120, 8210, 8310, 8311, 8312, 8320, 8330 and 9552; NASD Rules [IM-2210-2,] 2340, 2510, 3050 and 3140.

(d) No Change.

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

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

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

- Article IV of the FINRA By-Laws — Failure to timely submit amendments to Form BD.
- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U4.
- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U5.
- Schedule A. Sec. 1(b) of the FINRA By-Laws — Failure to make accurate payment of Trading Activity Fee.
- Rule 1250 — Failure to comply with the continuing education requirements.

- Rules 2210, 2211, 2212, 2213, 2215, and 2216 — Communications with the public.
- Rule 2220 — Options Communications.
- Rule 2251(a) — Failure to timely forward proxy and other issuer-related materials.
- Rule 2266 — Failure to provide written notification of availability of SIPC information at account opening or annually thereafter.
- Rule 2360(b)(3) and (b)(4) — Failure to comply with options position and exercise limits.
- Rule 2360(b)(5) — Failure to report options positions.
- Rule 2360(b)(23) — Failure to comply with contrary exercise advice procedures.
- Rule 3110 — Failure to maintain adequate written supervisory procedures where the underlying conduct is subject to Rule 9217.
- Rule 3160(a)(1), (3), (4) and (5) — Standards of conduct for conducting broker-dealer services on or off the premises of a financial institution pursuant to a networking arrangement, but excluding the networking agreement requirements.
- Rule 3170 — Failure to timely file reports pursuant to the Taping Rule.
- Rule 4311(b) — Failure to obtain approval of carrying agreement.
- Rule 4360(b) — Failure to maintain adequate fidelity bond coverage.
- Rule 4370(a), (b), (c), (e) and (f) — Requirements to create, maintain and update a written business continuity plan and disclosure of such to customers.

- Rule 4510 Series — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with FINRA rules.
- Rule 4517 — Failure to report, review or update executive representative designation and contact information.
- Rule 4521(d) — Failure to submit reports of cash and margin account balances.
- Rule 4524 — Failure to timely file or filing of incomplete reports or information.
- Rule 4530 — Failure to timely file reports.
- Rule 4560 — Failure to timely file reports of short positions on Form NS-1.
- Rule 5110(b) — Failure to timely file or filing of incomplete documents or information.
- Rule 5121(a) — Failure to prominently disclose conflict of interest.
- Rule 5121(b)(2) — Failure to give timely notification of termination or settlement of public offering, or failure to file net capital computation.
- Rule 5122(b)(2) — Failure to timely file private placement documents.
- Rule 5190 — Failure to give timely notification of participation in offerings.
- Rules 6282, 6380A, 6380B, 6550, 6622, 6730, 7130, 7160, 7230A, 7230B, 7260A, 7260B, 7330, and 7360 — Transaction reporting in equity and debt securities.
- Rules 6181 and 6623 — Failure to timely report transactions in NMS, OTC and restricted equity securities.
- Rules 6182 and 6624 — Failure to accurately mark short sale transactions in NMS and OTC equity securities.

- Rule 6250 — Failure to comply with quote and order access requirements for FINRA's Alternative Display Facility.
- Rule 6760 — Failure to give timely or complete notification concerning offerings of TRACE-Eligible Securities.
- Rule 7430 — Failure to synchronize business clocks used for recording date and time as required by applicable FINRA By-laws and rules.
- Rules 7440 and 7450 — Failure to submit data in accordance with the Order Audit Trail System ("OATS").
- Rules 8211 and 8213 — Failure to submit trading data as requested.
- Rule 11870 — Failure to abide by Customer Account Transfer Contracts.
- NASD Rules 1021(d) — Failure to timely register.
- [• NASD IM-2210-2 — Communications with the public.]
- Failure to provide or update contact information as required by FINRA or NASD rules.
- SEA Rules 17a-3(a) and 17a-4 — Record retention rule violations.
- SEA Rule 10b-10 — Confirmation of Transactions.
- SEA Rule 17a-5 — Failure to timely file FOCUS reports and annual audit reports.
- SEA Rule 17a-10 — Failure to timely file Schedule I.
- Rule 200(g) of SEC Regulation SHO — Failure to accurately mark sell orders of equity securities.
- Rule 602(b)(5) of SEC Regulation NMS — Failure to properly update published quotations in certain Electronic Communication Networks ("ECNs").
- Rule 604 of SEC Regulation NMS — Failure to properly display limit orders.

- Rule 605(a)(1) and (3) of SEC Regulation NMS — Failure to timely report or provide complete order execution information.
- Rule 606 of SEC Regulation NMS — Failure to timely disclose or provide complete order routing information.
- MSRB Rule A-12(c) and (f) — Failure to timely pay annual fee and failure to designate and update electronic mail contact information for communications with MSRB.
- MSRB Rules G-2 and G-3 (b)(ii)(D) and (c)(ii)(D) — Failure to timely register.
- MSRB Rule G-3(i) — Failure to comply with the continuing education requirements.
- MSRB Rule G-6 — Failure to maintain adequate fidelity bond coverage.
- MSRB Rules G-8 and G-9 — Record retention rule violations.
- MSRB Rule G-10(a) — Failure to deliver investor brochure to customers promptly.
- MSRB Rule G-12 — Failure to abide by uniform practice rules.
- MSRB Rule G-14 — Failure to submit reports.
- MSRB Rule G-21 — Advertising.
- MSRB Rule G-27(c) — Failure to maintain adequate written supervisory procedures where the underlying conduct is subject to Rule 9217.
- MSRB Rule G-32 — Failure to timely submit reports.
- MSRB Rule G-37 — Failure to timely submit reports for political contributions.
- NYSE Rules 312(a), (b) and (c), 313, 345.12, and 345.17— Reporting rule violations.

- NYSE Rule 312(i) — Failure to obtain approval rule violations.
- NYSE Rules 311(b)(5) and 344 — Failure of a member organization to have individuals responsible and qualified for the positions of Financial Principal, Operations Principal, Compliance Official, Branch Office Manager and Supervisory Analyst.
 - NYSE Rule 345(a) — Failure of a member organization to have individuals responsible and qualified for the positions of Securities Lending Supervisor and Securities Trader Supervisor.
 - NYSE Rule 407 — Requirements for transactions of employees of the Exchange, members or member organizations.
 - NYSE Rule 407A — Reporting and notification requirements for members.
 - NYSE Rule 408(a) — Requirement that written authorization be obtained for discretionary power in a customer's account.
 - NYSE Rule 416A — Failure to promptly provide or promptly update required membership profile information through the Electronic Filing Platform ("EFP"), or failure to electronically certify that required membership profile information is complete and accurate.

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