

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to adopt IM-2110-5 (Anti-Intimidation/Coordination) as FINRA Rule 5240 in the consolidated FINRA rulebook without material change

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
 Title
 E-mail
 Telephone Fax

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

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

Date
 By Vice President and Director of Capital Markets Policy
 (Name) (Title)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

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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 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

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt Interpretive Material (“IM”) 2110-5 (Anti-Intimidation/Coordination) as a FINRA rule in the consolidated FINRA rulebook without material change. The proposed rule change would renumber IM-2110-5 as FINRA Rule 5240 in the consolidated FINRA rulebook.

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

(b) Upon Commission approval and implementation of the proposed rule change, the corresponding NASD rule will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 16, 2008, 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 will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

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 adopt IM-2110-5 as FINRA Rule 5240 without material change.

In 1996, the SEC issued a report pursuant to Section 21(a) of the Act³ regarding NASD, the Nasdaq market, and the activities of certain Nasdaq market makers that impeded price competition in the Nasdaq market.⁴ In conjunction with the report, the SEC also issued an order pursuant to Section 19(h)(1) of the Act⁵ that made findings regarding the activities and imposed remedial sanctions on FINRA (then NASD).⁶ As part of that order, FINRA agreed to certain undertakings, including an undertaking to “propose a rule or rule interpretation for Commission approval which expressly makes unlawful the coordination by or among market makers of their quotes, trades and trade reports, and which prohibits retribution or retaliatory conduct for competitive actions of

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

³ 15 U.S.C. 78u(a).

⁴ See Report pursuant to Section 21(a) of the Exchange Act regarding NASD and The Nasdaq Stock Market, Inc., Securities Exchange Act Release No. 37542 (August 8, 1996).

⁵ 15 U.S.C. 78s(h)(1).

⁶ See In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3-9056, Securities Exchange Act Release No. 37538 (August 8, 1996).

another market maker or other market participant.” To comply with this undertaking, FINRA proposed IM-2110-5, which was approved by the SEC on July 17, 1997.⁷

IM-2110-5 identifies three general types of conduct that are inconsistent with just and equitable principles of trade:⁸ (1) coordinating activities by members involving quotations, prices, trades, and trade reporting (e.g., agreements to report trades inaccurately or maintain certain minimum spreads); (2) “directing or requesting” another member to alter prices or quotations; and (3) engaging in conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. The IM also sets forth seven specific exclusions that identify bona fide commercial activity that is permitted (e.g., bona fide negotiations and unilateral decisions regarding spreads).

Because FINRA adopted IM-2110-5 to fulfill part of its 1996 settlement agreement with the SEC, the proposed rule change would transfer IM-2110-5 into the Consolidated FINRA Rulebook as FINRA Rule 5240. Although FINRA is not proposing material changes to the rule, one of the minor changes FINRA is proposing is to add the phrase “or other person” to paragraphs (a)(1) and (a)(3) of the rule to clarify that coordination with or intimidation of a non-FINRA member would be covered by the rule.

⁷ See Securities Exchange Act Release No. 38845 (July 17, 1997), 62 FR 39564 (July 23, 1997).

⁸ NASD Rule 2110 requires members to “observe high standards of commercial honor and just and equitable principles of trade.” On September 25, 2008, the Commission approved adopting NASD Rule 2110 into the Consolidated FINRA Rulebook as FINRA Rule 2010 without substantive change. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008). That rule change will take effect on December 15, 2008. See FINRA Regulatory Notice 08-57 (October 2008).

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ 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. In addition, FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act,¹⁰ which requires, among other things, that FINRA rules must be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. FINRA believes that the rule properly emphasizes certain types of misconduct that can impair the fair and orderly functioning of the market and thus serves as an important provision to help ensure the integrity of information placed into the market. The rule being adopted as part of the Consolidated FINRA Rulebook previously has been found to meet the statutory requirements, and FINRA believes the rule has since proven effective in achieving the statutory mandates.

4. Self-Regulatory Organization's Statement on Burden on Competition

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78o-3(b)(11).

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

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.¹¹

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

Not applicable.

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

Not applicable.

9. Exhibits

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

Exhibit 5. Text of the proposed rule change.

¹¹ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-061)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Adopt FINRA Rule 5240 (Anti-Intimidation/Coordination) 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”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to adopt Interpretive Material (“IM”) 2110-5 (Anti-Intimidation/Coordination) as a FINRA rule in the consolidated FINRA rulebook without material change. The proposed rule change would renumber IM-2110-5 as FINRA Rule 5240 in the consolidated FINRA rulebook.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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”),³ FINRA is proposing to adopt IM-2110-5 as FINRA Rule 5240 without material change.

In 1996, the SEC issued a report pursuant to Section 21(a) of the Act⁴ regarding NASD, the Nasdaq market, and the activities of certain Nasdaq market makers that impeded price competition in the Nasdaq market.⁵ In conjunction with the report, the

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⁴ 15 U.S.C. 78u(a).

⁵ See Report pursuant to Section 21(a) of the Exchange Act regarding NASD and The Nasdaq Stock Market, Inc., Securities Exchange Act Release No. 37542 (August 8, 1996).

SEC also issued an order pursuant to Section 19(h)(1) of the Act⁶ that made findings regarding the activities and imposed remedial sanctions on FINRA (then NASD).⁷ As part of that order, FINRA agreed to certain undertakings, including an undertaking to “propose a rule or rule interpretation for Commission approval which expressly makes unlawful the coordination by or among market makers of their quotes, trades and trade reports, and which prohibits retribution or retaliatory conduct for competitive actions of another market maker or other market participant.” To comply with this undertaking, FINRA proposed IM-2110-5, which was approved by the SEC on July 17, 1997.⁸

IM-2110-5 identifies three general types of conduct that are inconsistent with just and equitable principles of trade:⁹ (1) coordinating activities by members involving quotations, prices, trades, and trade reporting (e.g., agreements to report trades inaccurately or maintain certain minimum spreads); (2) “directing or requesting” another member to alter prices or quotations; and (3) engaging in conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. The IM also sets forth seven specific exclusions that

⁶ 15 U.S.C. 78s(h)(1).

⁷ See In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3-9056, Securities Exchange Act Release No. 37538 (August 8, 1996).

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⁹ NASD Rule 2110 requires members to “observe high standards of commercial honor and just and equitable principles of trade.” On September 25, 2008, the Commission approved adopting NASD Rule 2110 into the Consolidated FINRA Rulebook as FINRA Rule 2010 without substantive change. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008). That rule change will take effect on December 15, 2008. See FINRA Regulatory Notice 08-57 (October 2008).

identify bona fide commercial activity that is permitted (e.g., bona fide negotiations and unilateral decisions regarding spreads).

Because FINRA adopted IM-2110-5 to fulfill part of its 1996 settlement agreement with the SEC, the proposed rule change would transfer IM-2110-5 into the Consolidated FINRA Rulebook as FINRA Rule 5240. Although FINRA is not proposing material changes to the rule, one of the minor changes FINRA is proposing is to add the phrase “or other person” to paragraphs (a)(1) and (a)(3) of the rule to clarify that coordination with or intimidation of a non-FINRA member would be covered by the rule.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ 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. In addition, FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act,¹¹ which requires, among other things, that FINRA rules must be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. FINRA believes that the rule properly emphasizes certain types of misconduct that can impair the fair and orderly functioning

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78o-3(b)(11).

of the market and thus serves as an important provision to help ensure the integrity of information placed into the market. The rule being adopted as part of the Consolidated FINRA Rulebook previously has been found to meet the statutory requirements, and FINRA believes the rule has since proven effective in achieving the statutory mandates.

B. Self-Regulatory Organization's Statement on Burden on Competition

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

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2008-061 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-061. 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 Web site (<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 inspection and copying 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-2008-061 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

Florence Harmon

Acting Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

**Text of Proposed New FINRA Rule 5240
(marked to show changes from IM-2110-5;
IM-2110-5 to be deleted in its entirety from the Transitional Rulebook)**

* * * * *

5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

* * * * *

5200. QUOTATION AND TRADING OBLIGATIONS AND PRACTICES

* * * * *

[IM-2110-5]5240. Anti-Intimidation/Coordination

(a) [The Board of Governors is issuing this interpretation to codify a longstanding policy. It is conduct inconsistent with just and equitable principles of trade for any] No member or person associated with a member shall:

(1) [to] coordinate the prices (including quotations), trades[,] or trade reports of such member with any other member or person associated with a member, or any other person;

(2) [to] direct or request another member to alter a price (including a quotation);
or

(3) [to] engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates[,] or otherwise attempts improperly to influence another member, a [or] person associated with a member, or any other person.

This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or quotation, whether displayed on any facility operated by [NASD]FINRA or otherwise, or refusals to trade or other conduct that retaliates against or discourages the competitive activities of another market maker or market participant.

(b) Provided that the conduct in subparagraphs (1) through (7) below is otherwise in compliance with all applicable law, [N]nothing in this [interpretation]Rule respecting coordination of quotes, trades[,], or trade reports shall be deemed to limit, constrain[,], or otherwise inhibit the freedom of a member or person associated with a member to:

(1) set unilaterally its own bid or ask in any security, the prices at which it is willing to buy or sell any security, and the quantity of shares of any security that it is willing to buy or sell;

(2) set unilaterally its own dealer spread, quote increment[,], or quantity of shares for its quotations (or set any relationship between or among its dealer spread, inside spread, or the size of any quote increment) in any security;

(3) communicate its own bid or ask, or the prices at or the quantity of shares in which it is willing to buy or sell any security to any person, for the purpose of exploring the possibility of a purchase or sale of that security, and to negotiate for or agree to such purchase or sale;

(4) communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any security, to any person for the purpose of retaining such person as an agent or subagent for the member or for a customer of the member (or

for the purpose of seeking to be retained as an agent or subagent), and to negotiate for or agree to such purchase or sale;

(5) engage in any underwriting (or any syndicate for the underwriting) of securities to the extent permitted by the federal securities laws;

(6) take any unilateral action or make any unilateral decision regarding the market makers with which it will trade and the terms on which it will trade unless such action is prohibited by [the second and third sentences] paragraph (a) of this [Interpretation] Rule; and

(7) deliver an order to another member for handling[.],

[provided, however, that the conduct described in (1) through (7) is otherwise in compliance with all applicable law.]