

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"/>		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 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).

**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  Senior Vice President and Deputy General Counsel  
 (Name) (Title)

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

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**

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

**Partial Amendment**

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

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> 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 NASD Interpretive Material 2830-1 (“IM-2830-1”) (“Breakpoint” Sales) as a FINRA rule in the consolidated FINRA rulebook with minor changes. The proposed rule change would renumber NASD IM-2830-1 as FINRA Rule 2342 in the consolidated FINRA rulebook.

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

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

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

At its meeting on February 11, 2009, 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 implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

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

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

(a) Purpose

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),<sup>2</sup> FINRA is proposing to adopt NASD IM-2830-1 into the Consolidated FINRA Rulebook with minor changes discussed below. The proposed rule change would renumber NASD IM-2830-1 as FINRA Rule 2342. NASD IM-2830-1 prohibits sales of mutual fund shares in amounts below a “breakpoint” if such sales are made “so as to share in the higher sales charges.” In the context of mutual fund sales, a “breakpoint” is that point at which the sales charge is reduced for quantity purchases of fund shares.

The application of the standard in NASD IM-2830-1 depends on the facts and circumstances of particular transactions to determine whether a member executed a transaction for the purpose of earning a higher sales charge. In 1998, NASD IM-2830-1 was amended to address the use of modern portfolio investment strategies that utilize many different mutual funds with varying investment objectives.<sup>3</sup> The amendments

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

<sup>3</sup> See Securities Exchange Act Release No. 40659 (Nov. 10, 1998), 63 FR 64136 (Nov. 18, 1998) (Order Approving Proposed Rule Change Relating to Mutual Fund Breakpoint Sales).

specify more precisely those facts and circumstances that FINRA will consider when examining whether trades that miss breakpoints, but are made pursuant to bona fide asset allocation programs, may have violated NASD IM-2830-1. In making such determination, the rule provides that FINRA will consider, among other things, whether a member has retained records that demonstrate that the trade was executed in accordance with a bona fide asset allocation program that the member offers to its customers which is designed to meet their diversification needs and investment goals; and under which the member discloses to its customers that they may not qualify for breakpoint reductions that are otherwise available.

Breakpoint issues have been of concern to the regulatory community. On December 23, 2002, FINRA issued Special Notice to Members 02-85, which reminded firms of their obligation to apply correctly breakpoint discounts to front-end sales load mutual fund transactions.<sup>4</sup> In 2003, the staffs of FINRA, the SEC, and the NYSE conducted examinations of broker-dealers to assess their ability to deliver breakpoint discounts and memorialized the findings of those examinations in a joint report.<sup>5</sup> Concurrently, FINRA staff and industry members formed a joint task force to consider issues regarding breakpoints. The joint task force issued a report in July 2003 containing

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<sup>4</sup> NASD Special Notice to Members 02-85, NASD Requires Immediate Member Firm Action Regarding Mutual Fund Purchases and Breakpoint Schedules (December 2002).

<sup>5</sup> See Joint SEC/NASD/NYSE Report of Examinations of Broker/Dealers Regarding Discounts on Front-End Sales Charges on Mutual Funds (March 2003), available at <http://www.finra.org/Industry/Issues/Breakpoints/P006438>.

recommendations for the industry to facilitate the accurate delivery of breakpoint discounts.<sup>6</sup>

FINRA proposes to adopt NASD IM-2830-1 as FINRA Rule 2342 as it believes this rule continues to be an important tool in regulating members' sales of mutual fund shares to ensure that they are not sold in dollar amounts just below breakpoints so as to share in higher sales charges. FINRA proposes to eliminate references to "just and equitable principles of trade" and make other minor changes to the text to reflect that it would be a stand-alone rule, rather than Interpretive Material, and to eliminate certain redundant text that is inconsistent with a more rules-based format.

As noted above, FINRA will announce the implementation 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,<sup>7</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would continue to provide FINRA with an important tool in regulating members' sales of mutual fund shares, consistent with the goals of protecting investors and the public interest.

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

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<sup>6</sup> See Report of the Joint NASD/Industry Task Force on Breakpoints (July 2003), available at <http://www.finra.org/Industry/Issues/Breakpoints/P006422>.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

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.<sup>8</sup>

**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.

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2009-018)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt IM-2830-1 (“Breakpoint” Sales) in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) (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 NASD Interpretive Material 2830-1 (“IM-2830-1”) (“Breakpoint” Sales) as a FINRA rule in the consolidated FINRA rulebook with minor changes. The proposed rule change would renumber NASD IM-2830-1 as FINRA Rule 2342 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

<sup>2</sup> 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"),<sup>3</sup> FINRA is proposing to adopt NASD IM-2830-1 into the Consolidated FINRA Rulebook with minor changes discussed below. The proposed rule change would renumber NASD IM-2830-1 as FINRA Rule 2342. NASD IM-2830-1 prohibits sales of mutual fund shares in amounts below a "breakpoint" if such sales are made "so as to share in the higher sales charges." In the context of mutual fund sales, a "breakpoint" is that point at which the sales charge is reduced for quantity purchases of fund shares.

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

The application of the standard in NASD IM-2830-1 depends on the facts and circumstances of particular transactions to determine whether a member executed a transaction for the purpose of earning a higher sales charge. In 1998, NASD IM-2830-1 was amended to address the use of modern portfolio investment strategies that utilize many different mutual funds with varying investment objectives.<sup>4</sup> The amendments specify more precisely those facts and circumstances that FINRA will consider when examining whether trades that miss breakpoints, but are made pursuant to bona fide asset allocation programs, may have violated NASD IM-2830-1. In making such determination, the rule provides that FINRA will consider, among other things, whether a member has retained records that demonstrate that the trade was executed in accordance with a bona fide asset allocation program that the member offers to its customers which is designed to meet their diversification needs and investment goals; and under which the member discloses to its customers that they may not qualify for breakpoint reductions that are otherwise available.

Breakpoint issues have been of concern to the regulatory community. On December 23, 2002, FINRA issued Special Notice to Members 02-85, which reminded firms of their obligation to apply correctly breakpoint discounts to front-end sales load mutual fund transactions.<sup>5</sup> In 2003, the staffs of FINRA, the SEC, and the NYSE conducted examinations of broker-dealers to assess their ability to deliver breakpoint

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<sup>4</sup> See Securities Exchange Act Release No. 40659 (Nov. 10, 1998), 63 FR 64136 (Nov. 18, 1998) (Order Approving Proposed Rule Change Relating to Mutual Fund Breakpoint Sales).

<sup>5</sup> NASD Special Notice to Members 02-85, NASD Requires Immediate Member Firm Action Regarding Mutual Fund Purchases and Breakpoint Schedules (December 2002).

discounts and memorialized the findings of those examinations in a joint report.<sup>6</sup>

Concurrently, FINRA staff and industry members formed a joint task force to consider issues regarding breakpoints. The joint task force issued a report in July 2003 containing recommendations for the industry to facilitate the accurate delivery of breakpoint discounts.<sup>7</sup>

FINRA proposes to adopt NASD IM-2830-1 as FINRA Rule 2342 as it believes this rule continues to be an important tool in regulating members' sales of mutual fund shares to ensure that they are not sold in dollar amounts just below breakpoints so as to share in higher sales charges. FINRA proposes to eliminate references to "just and equitable principles of trade" and make other minor changes to the text to reflect that it would be a stand-alone rule, rather than Interpretive Material, and to eliminate certain redundant text that is inconsistent with a more rules-based format.

As noted above, FINRA will announce the implementation 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,<sup>8</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

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<sup>6</sup> See Joint SEC/NASD/NYSE Report of Examinations of Broker/Dealers Regarding Discounts on Front-End Sales Charges on Mutual Funds (March 2003), available at <http://www.finra.org/Industry/Issues/Breakpoints/P006438>.

<sup>7</sup> See Report of the Joint NASD/Industry Task Force on Breakpoints (July 2003), available at <http://www.finra.org/Industry/Issues/Breakpoints/P006422>.

<sup>8</sup> 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 would continue to provide FINRA with an important tool in regulating members' sales of mutual fund shares, consistent with the goals of protecting investors and the public interest.

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-018 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2009-018. 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-2009-018 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon

Deputy Secretary

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<sup>9</sup> 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  
(Marked to Show Changes from NASD IM-2830-1; NASD IM-2830-1 to be Deleted  
in its Entirety from the Transitional Rulebook)**

\* \* \* \* \*

**2000. DUTIES AND CONFLICTS**

\* \* \* \* \*

**2300. SPECIAL PRODUCTS**

\* \* \* \* \*

**2340. Investment Companies**

\* \* \* \* \*

**[IM-2830-1]2342. "Breakpoint" Sales**

(a) No member shall sell[The sale of] investment company shares in dollar amounts just below the point at which the sales charge is reduced on quantity transactions so as to share in the higher sales charges applicable on sales below the breakpoint[ is contrary to just and equitable principles of trade].

[Investment company underwriters and sponsors, as well as dealers, have a definite responsibility in such matters and failure to discourage and to discontinue such practices will not be countenanced.]

(b) For purposes of determining whether a sale in dollar amounts just below a breakpoint was made in order to share in a higher sales charge, [the Association]FINRA will consider the facts and circumstances, including, for example, whether a member has

retained records that demonstrate that the trade was executed in accordance with a bona fide asset allocation program that the member offers to its customers:

[•](1) which is designed to meet their diversification needs and investment goals; and

[•](2) under which the member discloses to its customers that they may not qualify for breakpoint reductions that are otherwise available.

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