However, interpositioning that is unnecessary or violates a member's general best execution obligations—either because of unnecessary costs to the customer or improperly delayed executions—would still be prohibited.

The effective date of the proposed rule change will be the date of Commission approval. FINRA will announce the approval in a *Regulatory Notice* within 30 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,[5] 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 will allow for a determination of best execution to be based on all of the facts and circumstances surrounding an order rather than a singular focus on one aspect of the transaction.

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–2007–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2007–024. 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 publicly available. All submissions should refer to File Number SR–FINRA–2007–024 and should be submitted on or before May 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

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favorable as possible under prevailing market conditions.'' However, other FINRA rules also apply when handling customer orders. For example, NASD Rule 2440 and FINRA Rule 2010 prohibit members from charging customers more than a fair commission or service charge, taking into consideration all relevant circumstances. If a member interposes a third party that charges a commission or service charge, the member must ensure that the total resulting commissions or service charges paid by the customer are fair. Consequently, unnecessarily interposing a third party in a transaction and passing on to a customer a fee charged by that third party would violate NASD Rule 2440 and FINRA Rule 2010.

[5] 15 U.S.C. 78o–3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59784; File No. SR–FINRA–2009–019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 1010 (Electronic Filing Requirements for Uniform Forms) and 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) in the Consolidated FINRA Rulebook

April 17, 2009.

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 April 7, 2009, 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, subject to certain amendments, NASD Rules 1140 (Electronic Filing Rules) and 3080 (Disclosure to Associated Persons When Signing Form U–4) as FINRA rules in the consolidated FINRA rulebook. The proposed rule change would renumber NASD Rule 1140 as FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms) and NASD Rule 3080 as FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) in the consolidated FINRA rulebook.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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.

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, subject to certain amendments, NASD Rule 1140 (Electronic Filing Rules) as new FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms) and NASD Rule 3080 (Disclosure to Associated Persons When Signing Form U–4) as new FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4). The details of the proposed rule change are described below.

Proposed FINRA Rule 1010

Web CRD is an interactive, web-based registration system that maintains the qualification, employment and disclosure information, fingerprint requirements, registration fees and renewal fees for more than half a million registered persons.[4] NASD Rule 1140 supports the information reported to Web CRD by requiring each member to file its Forms U4, U5, BR, BDW, and BD amendments (referred to collectively as ''Uniform Forms'')[5] via electronic process or such other process as FINRA may prescribe to Web CRD.[6] NASD Rule 1140 also requires that the member retain and provide upon regulatory request every original, signed initial and transfer Form U4 that form the basis of the member's electronically filed Forms U4 and every record of the member's electronically filed initial and amended Forms U5.[7]

Additionally, NASD Rule 1140 requires each member to identify a registered principal(s) or corporate officer(s) who has a position of authority over registration functions to be responsible for supervising the firm's electronic filings. Also, the registered principal(s) or corporate officer(s) who has the responsibility to review and approve the electronically filed forms must acknowledge, electronically, that he is filing the information on behalf of the member and the member's associated persons. Finally, the rule permits a member to use third-party providers to submit electronic filings; however, the member remains ultimately responsible for the timeliness and content of the filings.[8]

The proposed rule change amends these rule requirements in several respects. First, the proposed rule change codifies FINRA's position that every initial and transfer electronic Form U4 must be based on an original, manually signed Form U4 provided to the member by the person on whose behalf the Form U4 is being filed.[9] While the current rule specifies that an electronic initial and transfer Form U4 must be based on a signed Form U4, it does not expressly state that such signatures be manual. FINRA believes it is important to have clear evidence of the associated person's execution of the initial and transfer Form U4s, including his or her agreement to the attestations set forth in the form.

Second, the proposed rule change modifies the signature requirement with respect to amendments to disclosure information in the Form U4. Currently, amendments to Form U4 that provide disclosure information must be signed by the associated person on whose behalf the filing is made. However, the new FINRA rule would permit a firm to file amendments to the Form U4 disclosure information without obtaining the registered person's manual signature if the firm uses reasonable efforts to (1) provide the registered person with a copy of the amended disclosure information prior to filing and (2) obtain the registered person's written acknowledgment (which may be electronic) prior to filing that the information has been received and reviewed. The proposed rule change also requires a member, as part of its recordkeeping requirements, to retain the written acknowledgment in accordance with SEA Rule 17a-4(e)(1) and make it available promptly upon regulatory request.[10]

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[3] 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).

[4] The Central Registration Depository (CRD®), which was developed jointly by FINRA and the North American Securities Administrators Association (NASAA), was first launched in 1981 to centralize the registration process for the securities industry. Over the past two decades, the system has been expanded and modified extensively to meet the evolving needs of FINRA's constituencies. CRD became an interactive, web-based registration system (Web CRD) on August 16, 1999. *See* NASD *Notice to Members* 99–63 (August 1999) (SEC Approves and Adopts Revised Forms and Electronic Filing Requirement; New Member Applicants Should Continue to File Paper Forms).

[5] The initial Form BD is also a Uniform Form. However, it is filed with the new membership application, pursuant to NASD Rule 1013 (New Member Application and Interview).

[6] *See* NASD Rule 1140(a) (requiring all forms required to be filed by Article IV, Sections 1 (Application for Membership), 7 (Transfer and Termination of Membership), and 8 (Registration of Branch Office) and Article V, Sections 2 (Application for Registration) and 3 (Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification) to be filed via electronic process or such other process as FINRA may prescribe); *see also* Securities Exchange Act Release No. 41575 (June 29, 1999), 64 FR 36728 (July 7, 1999) (Order Approving File No. SR–NASD–99–28); NASD *Notice to Members* 99–63 (August 1999) (informing members of revised Forms U4, U5, BD, and BDW and requirement that such forms and their amendments must be filed electronically pursuant to NASD Rule 1140).

[7] NASD Rule 1140 also addresses the continued submission of paper fingerprint cards in the Web CRD electronic filing environment by requiring a member, upon electronically filing a Form U4, to promptly submit the fingerprint information for the person named in the Form U4. Pursuant to NASD Rule 1140, FINRA may make a registration effective pending receipt of the fingerprint card and also place a person in an inactive status if FINRA does not receive the fingerprint card within 30 days of the filing of a Form U4.

[8] *See* Securities Exchange Act Release No. 41575 (June 29, 1999), 64 FR 36728, 36729 (July 7, 1999) (Order Approving File No. SR–NASD–99–28) (specifically noting that members may use service bureaus to submit their electronic filings required by NASD Rule 1140 but noting that the members remain ultimately responsible for the timeliness and content of the filings).

[9] Under the CRD system, the member submits the form on behalf of the associated person by typing the person's name into the signature box on the electronic form.

[10] In February 2008, at FINRA's request, the SEC staff issued a no-action letter regarding the ability of FINRA members to rely on Web CRD to satisfy their record retention requirements under SEA Rule 17a–4 with respect to certain Forms U4, U5 and BR filed in Web CRD. *See* Letter from Thomas K. McGowan, Assistant Director, Division of Trading and Markets, SEC, to Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, FINRA, dated February 19, 2008. In short, such relief extends to, among other things, Form U4 amendments that do not require the

Third, the proposed rule change clarifies that a member must submit disclosure information to [sic] which it has knowledge in those cases where the member is not able to obtain an associated person's manual signature or written acknowledgment of the amendment. FINRA believes it is important to codify the firm's obligation to submit such disclosure information, consistent with the obligation under Article V, Section 2 of the FINRA By-Laws that every Form U4 be kept current. Proposed supplementary material sets forth examples of reasons why a member may not be able to obtain the associated person's manual signature or written acknowledgment. They include, but are not limited to, the associated person refusing to acknowledge the information in writing, being on active military duty, or otherwise being unavailable during the period provided for filing the amendment. In such instances, the proposed supplementary material instructs a member to enter ''Representative Refused to Sign/Acknowledge'' or ''Representative Not Available'' or a substantially similar entry in the signature box to the electronic form. This instruction is generally consistent with current practice in instances where an associated person is unable or unavailable to sign a disclosure information amendment.[11]

Fourth, the proposed rule change incorporates Web CRD's current practice of permitting Form U4 administrative information to be amended without obtaining the associated person's signature (manual or otherwise).[12] Proposed supplementary material explains that such administrative information includes items such as the addition of state or self-regulatory organization registrations, exam scheduling, and updates to residential, business, and personal history.

Fifth, the proposed rule change proposes supplementary material expressly permitting the registered principal(s) or corporate officer(s) who is responsible for supervising a firm's electronic filings to delegate to another associated person (who need not be registered) the electronic filing of the member's forms via Web CRD. The delegatee may also acknowledge, electronically, that he is making the filing on behalf of the member and the member's associated person. The proposed supplementary material makes clear, however, that the principal(s) or corporate officer(s) may not delegate any of his or her supervision, review and approval responsibilities and must take reasonable and appropriate action to ensure that all delegated electronic filing functions are properly executed and supervised.

Sixth, the staff proposes to retain, but relocate to supplementary material, the provision allowing firms to enter into third-party agreements for the electronic filing of the required forms. The supplementary material makes clear that the firm remains responsible for complying with the requirements of the rule.

Finally, the staff proposes to make other technical changes, such as making clarifying rule cross-references, replacing the reference to fingerprint ''cards'' with fingerprint ''information,''[13] and noting the applicable retention periods for the forms under SEA Rule 17a–4.[14]

Proposed FINRA Rule 2263

NASD Rule 3080 (Disclosure to Associated Persons When Signing Form U4) requires members to provide each associated person, whenever the associated person is asked to sign a new or amended Form U4, with certain written disclosures regarding the nature and process of arbitration proceedings. The associated person agrees to be bound by this process upon signing a Form U4. The disclosures required by NASD Rule 3080 may be given by the same member firm to the same associated person on more than one occasion during that person's employment, if the associated person has reason to re-sign the Form U4. NASD Rule 3080 does not address any private arbitration agreements that the associated person might enter into with the member firm.

The disclosure language in NASD Rule 3080 explains that the Form U4 contains a predispute arbitration clause, indicates in which Item of the Form U4 the clause is located[15] and advises the associated person to read the predispute arbitration clause. Rule 3080 was modeled on the disclosure given to customers when signing predispute arbitration agreements with member firms, as contained in NASD Rule 3110(f).[16]

Specifically, NASD Rule 3080 provides that, before signing a Form U4, an associated person should understand the following (1) the associated person is giving up the right to sue a member, customer or another associated person in court, except as provided by the rules of the arbitration forum in which a claim is to be filed; (2) there is an exception to the arbitration requirement for claims of statutory employment discrimination[17] (such a claim may be arbitrated at FINRA only if the parties have agreed to arbitrate it); (3) arbitration awards are generally final and binding; (4) discovery is generally more limited in arbitration than in court; (5) arbitrators do not have to explain the reasons for their awards; (6) the panel of arbitrators may include either public or industry arbitrators; and

registered person's signature. Because FINRA's request for no-action relief excluded Form U4 amendments that provide or update disclosure information (on the basis that such amendments required the registered person's signature), FINRA sought clarification from SEC staff on the extent of the relief in light of the proposed rule change. The SEC staff has affirmed in a conversation with FINRA staff that, if the proposed rule change is approved, the no-action relief provided in the February 19, 2008 letter will extend to Form U4 amendments that provide or update disclosure information that are submitted pursuant to the proposed rule change without obtaining the registered person's manual signature. Telephone conversation between Thomas K. McGowan, Assistant Director, Division of Trading and Markets, SEC, and Patrice Gliniecki, Senior Vice President & Deputy General Counsel and Richard E. Pullano, Associate Vice President & Chief Counsel, Registration and Disclosure, FINRA, dated March 5, 2009.

[11] FINRA will consider future enhancements to the CRD system that may include incorporating a ''drop down'' menu, or some substantially similar method for recording the reason the registered person has not acknowledged the filing, to assist firms in completing the signature section in these circumstances.

[12] *See* Securities Exchange Act Release No. 41575 (June 29, 1999), 64 FR 36728, 36729 n.7 (July 7, 1999) (Order Approving File No. SR–NASD–99–28); *see also* Securities Exchange Act Release No. 37439 (July 15, 1996), 61 FR 37950 (July 22, 1996) (Order Approving File No. SR–NASD–96–21).

[13] This proposed change recognizes that recent technological improvements to FINRA's fingerprinting plan permit members to submit fingerprints and identifying information to FINRA using either paper fingerprint cards or by electronically sending a digitized image of the fingerprints. *See* Securities Exchange Act Release No. 53751 (May 2, 2006), 71 FR 27299 (May 10, 2006) (Order Approving [sic] NASD Fingerprint Plan). The document is entitled, ''Declaration of Effectiveness of the Fingerprint Plan of the National Association of Securities Dealers, Inc.''

[14] The proposed rule clarifies that initial and amendments to Forms U4 (and related acknowledgments) must be retained until at least three years after the registered person's employment and any other connection with the member has terminated. *See* SEA Rule 17a–4(e)(1). In addition, initial and amendments to Forms U5 must be retained for at least three years, the first two years in an easily accessible place. *See* SEA Rule 17a–4.

[15] The member is responsible for updating this item number on new disclosure statements if it changes in later versions of the Form U4. *See* Securities Exchange Act Release No. 42061 (October 27, 1999), 64 FR 59815, 59817 n.11 (November 3, 1999) (Order Approving File No. SR–NASD–99–08).

[16] FINRA is proposing to renumber NASD Rule 3110(f) as FINRA Rule 2268 (Requirements When Using Predispute Arbitration Agreements for Customer Accounts), a stand-alone rule in the disclosure section of the Consolidated FINRA Rulebook. *See* FINRA *Regulatory Notice* 08–25 (May 2008) (Proposed Consolidated FINRA Rules Governing Books and Records Requirements).

[17] *See* FINRA Rule 13201.

(7) the rules of some arbitration forums may impose time limits for bringing a claim in arbitration; in some cases, a claim that is ineligible for arbitration may be brought in court.

The proposed rule change transfers NASD Rule 3080 into the Consolidated FINRA Rulebook as FINRA Rule 2263 with several minor changes. First, the proposed rule change amends the current title ''Disclosure to Associated Person When Signing Form U–4'' to clarify that the rule relates to arbitration disclosures. Accordingly, the new proposed title is ''Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4.''

Second, proposed FINRA Rule 2263 clarifies that a member must provide the required arbitration disclosures whenever a member asks an associated person, pursuant to proposed FINRA Rule 1010 (as described above), to manually sign an initial or amended Form U4, or to otherwise provide written (which may be electronic) acknowledgement of an amendment to the Form.

Lastly, the proposed rule change updates the rule language to reflect recent amendments to FINRA's Code of Arbitration Procedure requiring arbitrators to provide an explained decision to the parties in eligible cases if there is a joint request by all parties at least 20 days before the first scheduled hearing date.[18]

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,[19] 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 changes to NASD Rule 1140 will clarify and streamline the Form U4 electronic filing and amendment requirements for both members and members' associated persons, consistent with the goals of investor protection. FINRA also believes that the proposed changes to NASD Rule 3080 will clarify the required arbitration disclosures and when members must provide those disclosures to their associated persons.

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–2009–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–019. 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–2009–019 and should be submitted on or before May 15, 2009

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

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[18] *See* Securities Exchange Act Release No. 59358 (Feb. 4, 2009), 74 FR 6928 (Feb. 11, 2009) (Order Approving File No. SR–FINRA–2008–051).

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved Information Collections and a new collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and