

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"/>
			Rule		
			<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).

Proposed Rule Change to Adopt FINRA Rules 2262 (Disclosure of Control Relationship with Issuer), 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) 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 proposed rule change.

First Name	<input type="text" value="Adam"/>	Last Name	<input type="text" value="Arkel"/>
Title	<input type="text" value="Assistant General Counsel"/>		
E-mail	<input type="text" value="adam.arkel@finra.org"/>		
Telephone	<input type="text" value="(202) 728-6961"/>	Fax	<input type="text" value="(202) 728-8264"/>

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

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

Date	<input type="text" value="06/29/2009"/>
By	<input type="text" value="Patrice Gliniecki"/>
	(Name)
	<input type="text" value="Senior Vice President and Deputy General Counsel"/>
	(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 (“Exchange Act” or “SEA”),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 without material change NASD Rules 2240 (Disclosure of Control Relationship with Issuer), 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) in the consolidated FINRA rulebook and to delete Incorporated NYSE Rules 312(f)(1) through 312(f)(3) and 321.24. The proposed rule change would renumber NASD Rules 2240, 2250 and 3340 as FINRA Rules 2262, 2269 and 5260, respectively, 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 and Incorporated NYSE rules, or sections thereof, 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 rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

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.

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”),² FINRA is proposing to adopt without material change NASD Rules 2240 (Disclosure of Control Relationship with Issuer), 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as FINRA rules in the Consolidated FINRA Rulebook and to delete NYSE Rules 312(f)(1) through 312(f)(3) and 321.24. The proposed rule change would renumber NASD Rules 2240, 2250 and 3340 as FINRA Rules 2262, 2269 and 5260, respectively, in the Consolidated FINRA Rulebook.

A. Proposed FINRA Rules 2262 and 2269

1. Background

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 member firms, 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).

Both NASD and NYSE Rules³ address disclosures or notifications that member firms must provide to customers in connection with certain securities transactions.

NASD Rules 2240 and 2250 set forth requirements that apply to transactions with or for a customer in any market.⁴ In short:

- **Disclosure of control relationship:** NASD Rule 2240 provides that a member controlled by, controlling, or under common control with the issuer of any security must, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to the customer the existence of such control; if such disclosure is not made in writing, it must be supplemented by written disclosure at or before the completion of the transaction;⁵

³ For convenience, the Incorporated NYSE Rules are referred to as the “NYSE Rules.”

⁴ NASD Rules 2240 and 2250 (formerly designated, respectively, as Sections 13 and 14 of the Rules of Fair Practice) were adopted in 1939 as part of FINRA’s original rulebook. See Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939). The requirements of NASD Rules 2240 and 2250 duplicate almost word-for-word SEA Rules 15c1-5 (Disclosure of Control) and 15c1-6 (Disclosure of Interest in Distributions), respectively. See Securities Exchange Act Release No. 1330 (August 4, 1937) (“Release No. 1330”).

⁵ SEA Rule 15c1-5 defines “manipulative, deceptive, or other fraudulent device or contrivance,” as used in Section 15(c)(1) of the Exchange Act, to include failure to provide the required disclosure. Section 15(c)(1) provides, in part, that no broker or dealer “shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security . . . otherwise than on a national securities exchange of which it is a member . . . by means of any manipulative, deceptive, or other fraudulent device or contrivance.” See also Release No. 1330.

- **Disclosure of participation or interest in distribution:** Rule 2250 provides that if a member is acting as a broker for a customer, or is acting for both the customer and some other person, or is acting as a dealer and receives or has promise of receiving a fee from a customer for advising the customer with respect to securities, then the member must, at or before the completion of any transaction for or with the customer in any security in the primary or secondary distribution of which the member is participating or is otherwise financially interested, give the customer written notification of the existence of such participation or interest.⁶

NYSE Rules 312(f)(2) and 321.24 address disclosures or notifications to customers in somewhat different fashion than NASD Rules 2240 and 2250:

- NYSE Rule 312(f)(2) is similar to NASD Rule 2240, except that Rule 312(f)(2)'s requirement to disclose the control relationship between the issuer and the member is triggered in the context of making a recommendation to a customer. Specifically, Rule 312(f)(2) requires that any member organization that makes any recommendation of any equity or non-investment grade debt security issued by any person controlled by or under common control with such member organization (other than a Material Associated Person⁷) must promptly disclose to the customer the existence and nature of such control at

⁶ Under SEA Rule 15c1-6, like Rule 15c1-5, failure to provide the required notification is a fraudulent act. Rule 15c1-6, like Rule 15c1-5, is limited by the scope of Section 15(c)(1) of the Exchange Act. See supra note 5.

⁷ The indicia for determining status as a Material Associated Person are set forth in SEA Rule 17h-1T(a)(2). See NYSE Rule 312(f)(1).

the time of recommendation and, if the disclosure is not made in writing, must provide it in writing prior to the completion of the transaction;⁸

- NYSE Rule 321.24, like NASD Rule 2250, requires disclosure of interest in securities, except that the provisions of Rule 321.24 apply in contexts involving securities underwritten, distributed or sold by a subsidiary of the member. Specifically, Rule 321.24 requires that, in connection with any transactions which the member or member organization may have had with its customers, or any recommendation which the member or member organization may make to its customers, involving securities underwritten, distributed or sold by the subsidiary, full disclosure must be made by the member or member organization to its customers of the interest of the subsidiary in the securities at that time.

2. Proposal

FINRA proposes to transfer NASD Rules 2240 and 2250 unchanged into the Consolidated FINRA Rulebook. Though the substantive requirements of both rules are

⁸ Note that NYSE Rules 312(f)(1), (f)(2) and (f)(3) were, prior to revisions adopted in 2006, combined together as former Rule 312(f). NYSE Rule 312(f)(1) prohibits member organizations, after completion of a distribution, from effecting any transaction (except on an unsolicited basis) for the account of any customer in the equity or non-investment grade debt of the member organization itself, any parent entity, or any Material Associated Person. Rule 312(f)(3), among other things, requires a member corporation with publicly held securities outstanding to obtain the NYSE's approval to acquire such securities for its own account or the account of any corporation controlling, controlled by or under common control with the member corporation. The rule provides that the NYSE will approve such acquisition unless it determines that such action will impair the financial responsibility or operational capability of the member corporation. For further discussion of NYSE Rule 312(f), see NYSE Information Memo 06-65 (September 11, 2006).

duplicated, almost word-for-word, in SEA Rules 15c1-5 and 15c1-6, the two NASD rules provide broad protection to customers because their scope extends to transactions with or for a customer in any market, not just over-the-counter transactions.

FINRA proposes to repeal NYSE Rules 312(f)(1) through (f)(3) and 321.24 because the purposes they serve are addressed by proposed FINRA Rules 2262 and 2269, other existing or proposed FINRA rules, and SEC rules. With respect to NYSE Rule 312(f)(1), FINRA notes that making a recommendation or effecting a transaction such as set forth in the rule raises concerns that are within the purview of current anti-manipulation rules (*e.g.*, FINRA Rule 2020 and SEA Rule 10b-5). Further, FINRA notes that customers would be protected by the disclosure that the proposed rules require with respect to the conflicts of interest that the NYSE rule addresses. Moreover, members must comply with FINRA's suitability rule when recommending securities transactions to their customers. With respect to NYSE Rule 312(f)(2), FINRA notes that the proposed FINRA rules would operate to protect customers without regard to whether a member recommends a security to a customer. With respect to NYSE Rule 312(f)(3), FINRA believes that the customer protections provided by the proposed rules and the anti-manipulation rules, in combination, would render the NYSE rule redundant. Further, FINRA maintains a set of rules specifically addressing financial responsibility requirements for members and is separately proposing to adopt consolidated financial responsibility rules.⁹ Lastly, with respect to NYSE Rule 321.24, FINRA notes that the disclosure required by the proposed FINRA rules is not limited to situations involving securities underwritten, distributed or sold by a member's subsidiary.

⁹ See, e.g., Securities Exchange Act Release No. 59273 (January 22, 2009), 74 FR 4992 (January 28, 2009) (Notice of Filing File No. SR-FINRA-2008-067).

B. Proposed FINRA Rule 5260

1. Background

NASD Rule 3340 prohibits members from, directly or indirectly, effecting transactions or publishing quotations or indications of interest (“IOIs”) in (1) any security with respect to which a trading halt is in effect; or (2) any security future when there is a regulatory trading halt in effect with respect to the underlying security.

The trading and quoting conduct prohibited by Rule 3340 is triggered only when a trading halt is in effect. The rule also provides that, in the event that FINRA halts over-the-counter trading and quoting in NMS stocks because the Alternative Display Facility (“ADF”) or a Trade Reporting Facility (“TRF”) is unable to transmit real-time information to the applicable Securities Information Processor, members are not prohibited from trading through other markets for which trading is not halted.

NASD Rule 3340 was originally approved by the SEC in 1988.¹⁰ The rule was subsequently amended in 2001, 2002, 2003 and 2006. The 2001 amendments expressly prohibited members from publishing quotations and IOIs during a trading halt (the rule in its form prior to the 2001 amendments prohibited members from effecting a transaction but did not expressly address quotations and IOIs).¹¹ The 2002 and 2006 amendments to Rule 3340 provided that, if the ADF or a TRF were unable to transmit real-time information to the applicable Securities Information Processor, members would not be

¹⁰ NASD Rule 3340 was originally adopted as Section 42 of Article III of the Rules of Fair Practice.

¹¹ See Securities Exchange Act Release No. 44390 (June 5, 2001), 66 FR 31262 (June 11, 2001) (Order Approving File No. SR-NASD-2000-33).

prohibited from trading through other markets for which trading is not halted.¹² The 2003 amendments to the rule added a provision to prohibit member firms, including Alternate Trading Systems (“ATs”), from trading or publishing quotes or IOIs in any security future when a regulatory trading halt is in effect with respect to the underlying security. Specifically, Rule 3340 was amended to apply to a future for a single security when a regulatory trading halt is in effect for the underlying security or a future on a narrow-based securities index when a regulatory trading halt is in effect for one or more underlying securities that constitute 50% or more of the market capitalization of the index.¹³

In 2002, FINRA published a set of frequently asked questions in response to members’ requests for guidance on the application of NASD Rule 3340 to particular scenarios.¹⁴

2. Proposal

FINRA believes that Rule 3340 is well understood by its members and has proven effective. Accordingly, FINRA proposes that the rule be transferred without material change into the Consolidated FINRA Rulebook as FINRA Rule 5260.¹⁵

¹² See Securities Exchange Act Release No.46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (Order Approving File No. SR-NASD-2002-97) (approving the 2002 amendments to NASD Rule 3340); Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (Order Approving File No. SR-NASD-2005-087) (approving the 2006 amendments to NASD Rule 3340).

¹³ See Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003) (Order Approving File No. SR-NASD-2001-047).

¹⁴ See NASD Notice to Members 02-82 (December 2002) (Frequently Asked Questions Relating to Trading Halts).

¹⁵ On December 30, 2008, FINRA filed with the SEC a proposed rule change to amend NASD Rule 3340 to create a limited exception to permit members to route

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,¹⁶ 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 further the purposes of the Act because, as part of the Consolidated FINRA Rulebook, the proposed rule change will protect investors and the public interest by addressing disclosures or notifications in connection with certain securities transactions and by addressing certain trading and quoting conduct when a trading halt is in effect.

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.

unsolicited customer orders for execution outside the United States while a trading halt is in effect in the United States. See SR-FINRA-2008-069. Assuming Commission approval of this proposed rule change prior to Commission approval of SR-FINRA-2008-069, FINRA will amend SR-FINRA-2008-069, as necessary, to reflect such approval. Similarly, in the event the Commission approves SR-FINRA-2008-069 prior to approval of this proposed rule change, FINRA will amend this proposed rule change, as necessary, to reflect such approval.

¹⁶ 15 U.S.C. 78q-3(b)(6).

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.¹⁷

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.

¹⁷ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2009-044)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rules 2262 (Disclosure of Control Relationship with Issuer), 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) 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 without material change NASD Rules 2240 (Disclosure of Control Relationship with Issuer), 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as FINRA rules in the Consolidated FINRA Rulebook and to delete NYSE Rules 312(f)(1) through 312(f)(3) and 321.24. The proposed rule change would renumber

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

NASD Rules 2240, 2250 and 3340 as FINRA Rules 2262, 2269 and 5260, respectively, 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.

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 without material change NASD Rules 2240 (Disclosure of Control Relationship with Issuer), 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 3340 (Prohibition on Transactions,

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 member firms, 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).

Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as FINRA rules in the Consolidated FINRA Rulebook and to delete NYSE Rules 312(f)(1) through 312(f)(3) and 321.24. The proposed rule change would renumber NASD Rules 2240, 2250 and 3340 as FINRA Rules 2262, 2269 and 5260, respectively, in the Consolidated FINRA Rulebook.

(A) Proposed FINRA Rules 2262 and 2269

(1) Background

Both NASD and NYSE Rules⁴ address disclosures or notifications that member firms must provide to customers in connection with certain securities transactions.

NASD Rules 2240 and 2250 set forth requirements that apply to transactions with or for a customer in any market.⁵ In short:

- Disclosure of control relationship: NASD Rule 2240 provides that a member controlled by, controlling, or under common control with the issuer of any security must, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to the customer the existence of such control; if such disclosure is not made in writing, it must be

⁴ For convenience, the Incorporated NYSE Rules are referred to as the “NYSE Rules.”

⁵ NASD Rules 2240 and 2250 (formerly designated, respectively, as Sections 13 and 14 of the Rules of Fair Practice) were adopted in 1939 as part of FINRA’s original rulebook. See Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939). The requirements of NASD Rules 2240 and 2250 duplicate almost word-for-word SEA Rules 15c1-5 (Disclosure of Control) and 15c1-6 (Disclosure of Interest in Distributions), respectively. See Securities Exchange Act Release No. 1330 (August 4, 1937) (“Release No. 1330”).

supplemented by written disclosure at or before the completion of the transaction;⁶

- Disclosure of participation or interest in distribution: Rule 2250 provides that if a member is acting as a broker for a customer, or is acting for both the customer and some other person, or is acting as a dealer and receives or has promise of receiving a fee from a customer for advising the customer with respect to securities, then the member must, at or before the completion of any transaction for or with the customer in any security in the primary or secondary distribution of which the member is participating or is otherwise financially interested, give the customer written notification of the existence of such participation or interest.⁷

NYSE Rules 312(f)(2) and 321.24 address disclosures or notifications to customers in somewhat different fashion than NASD Rules 2240 and 2250:

- NYSE Rule 312(f)(2) is similar to NASD Rule 2240, except that Rule 312(f)(2)'s requirement to disclose the control relationship between the issuer and the member is triggered in the context of making a recommendation to a customer. Specifically, Rule 312(f)(2) requires that any member organization

⁶ SEA Rule 15c1-5 defines “manipulative, deceptive, or other fraudulent device or contrivance,” as used in Section 15(c)(1) of the Exchange Act, to include failure to provide the required disclosure. Section 15(c)(1) provides, in part, that no broker or dealer “shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security . . . otherwise than on a national securities exchange of which it is a member . . . by means of any manipulative, deceptive, or other fraudulent device or contrivance.” See also Release No. 1330.

⁷ Under SEA Rule 15c1-6, like Rule 15c1-5, failure to provide the required notification is a fraudulent act. Rule 15c1-6, like Rule 15c1-5, is limited by the scope of Section 15(c)(1) of the Exchange Act. See supra note 6.

that makes any recommendation of any equity or non-investment grade debt security issued by any person controlled by or under common control with such member organization (other than a Material Associated Person⁸) must promptly disclose to the customer the existence and nature of such control at the time of recommendation and, if the disclosure is not made in writing, must provide it in writing prior to the completion of the transaction;⁹

- NYSE Rule 321.24, like NASD Rule 2250, requires disclosure of interest in securities, except that the provisions of Rule 321.24 apply in contexts involving securities underwritten, distributed or sold by a subsidiary of the member. Specifically, Rule 321.24 requires that, in connection with any transactions which the member or member organization may have had with its customers, or any recommendation which the member or member organization may make to its customers, involving securities underwritten, distributed or sold by the subsidiary, full disclosure must be made by the

⁸ The indicia for determining status as a Material Associated Person are set forth in SEA Rule 17h-1T(a)(2). See NYSE Rule 312(f)(1).

⁹ Note that NYSE Rules 312(f)(1), (f)(2) and (f)(3) were, prior to revisions adopted in 2006, combined together as former Rule 312(f). NYSE Rule 312(f)(1) prohibits member organizations, after completion of a distribution, from effecting any transaction (except on an unsolicited basis) for the account of any customer in the equity or non-investment grade debt of the member organization itself, any parent entity, or any Material Associated Person. Rule 312(f)(3), among other things, requires a member corporation with publicly held securities outstanding to obtain the NYSE's approval to acquire such securities for its own account or the account of any corporation controlling, controlled by or under common control with the member corporation. The rule provides that the NYSE will approve such acquisition unless it determines that such action will impair the financial responsibility or operational capability of the member corporation. For further discussion of NYSE Rule 312(f), see NYSE Information Memo 06-65 (September 11, 2006).

member or member organization to its customers of the interest of the subsidiary in the securities at that time.

(2) Proposal

FINRA proposes to transfer NASD Rules 2240 and 2250 unchanged into the Consolidated FINRA Rulebook. Though the substantive requirements of both rules are duplicated, almost word-for-word, in SEA Rules 15c1-5 and 15c1-6, the two NASD rules provide broad protection to customers because their scope extends to transactions with or for a customer in any market, not just over-the-counter transactions.

FINRA proposes to repeal NYSE Rules 312(f)(1) through (f)(3) and 321.24 because the purposes they serve are addressed by proposed FINRA Rules 2262 and 2269, other existing or proposed FINRA rules, and SEC rules. With respect to NYSE Rule 312(f)(1), FINRA notes that making a recommendation or effecting a transaction such as set forth in the rule raises concerns that are within the purview of current anti-manipulation rules (*e.g.*, FINRA Rule 2020 and SEA Rule 10b-5). Further, FINRA notes that customers would be protected by the disclosure that the proposed rules require with respect to the conflicts of interest that the NYSE rule addresses. Moreover, members must comply with FINRA's suitability rule when recommending securities transactions to their customers. With respect to NYSE Rule 312(f)(2), FINRA notes that the proposed FINRA rules would operate to protect customers without regard to whether a member recommends a security to a customer. With respect to NYSE Rule 312(f)(3), FINRA believes that the customer protections provided by the proposed rules and the anti-manipulation rules, in combination, would render the NYSE rule redundant. Further, FINRA maintains a set of rules specifically addressing financial responsibility

requirements for members and is separately proposing to adopt consolidated financial responsibility rules.¹⁰ Lastly, with respect to NYSE Rule 321.24, FINRA notes that the disclosure required by the proposed FINRA rules is not limited to situations involving securities underwritten, distributed or sold by a member's subsidiary.

(B) Proposed FINRA Rule 5260

(1) Background

NASD Rule 3340 prohibits members from, directly or indirectly, effecting transactions or publishing quotations or indications of interest ("IOIs") in (1) any security with respect to which a trading halt is in effect; or (2) any security future when there is a regulatory trading halt in effect with respect to the underlying security.

The trading and quoting conduct prohibited by Rule 3340 is triggered only when a trading halt is in effect. The rule also provides that, in the event that FINRA halts over-the-counter trading and quoting in NMS stocks because the Alternative Display Facility ("ADF") or a Trade Reporting Facility ("TRF") is unable to transmit real-time information to the applicable Securities Information Processor, members are not prohibited from trading through other markets for which trading is not halted.

NASD Rule 3340 was originally approved by the SEC in 1988.¹¹ The rule was subsequently amended in 2001, 2002, 2003 and 2006. The 2001 amendments expressly prohibited members from publishing quotations and IOIs during a trading halt (the rule in its form prior to the 2001 amendments prohibited members from effecting a transaction

¹⁰ See, e.g., Securities Exchange Act Release No. 59273 (January 22, 2009), 74 FR 4992 (January 28, 2009) (Notice of Filing File No. SR-FINRA-2008-067).

¹¹ NASD Rule 3340 was originally adopted as Section 42 of Article III of the Rules of Fair Practice.

but did not expressly address quotations and IOIs).¹² The 2002 and 2006 amendments to Rule 3340 provided that, if the ADF or a TRF were unable to transmit real-time information to the applicable Securities Information Processor, members would not be prohibited from trading through other markets for which trading is not halted.¹³ The 2003 amendments to the rule added a provision to prohibit member firms, including Alternate Trading Systems (“ATs”), from trading or publishing quotes or IOIs in any security future when a regulatory trading halt is in effect with respect to the underlying security. Specifically, Rule 3340 was amended to apply to a future for a single security when a regulatory trading halt is in effect for the underlying security or a future on a narrow-based securities index when a regulatory trading halt is in effect for one or more underlying securities that constitute 50% or more of the market capitalization of the index.¹⁴

In 2002, FINRA published a set of frequently asked questions in response to members’ requests for guidance on the application of NASD Rule 3340 to particular scenarios.¹⁵

¹² See Securities Exchange Act Release No. 44390 (June 5, 2001), 66 FR 31262 (June 11, 2001) (Order Approving File No. SR-NASD-2000-33).

¹³ See Securities Exchange Act Release No.46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (Order Approving File No. SR-NASD-2002-97) (approving the 2002 amendments to NASD Rule 3340); Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (Order Approving File No. SR-NASD-2005-087) (approving the 2006 amendments to NASD Rule 3340).

¹⁴ See Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003) (Order Approving File No. SR-NASD-2001-047).

¹⁵ See NASD Notice to Members 02-82 (December 2002) (Frequently Asked Questions Relating to Trading Halts).

(2) Proposal

FINRA believes that Rule 3340 is well understood by its members and has proven effective. Accordingly, FINRA proposes that the rule be transferred without material change into the Consolidated FINRA Rulebook as FINRA Rule 5260.¹⁶

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,¹⁷ 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 further the purposes of the Act because, as part of the Consolidated FINRA Rulebook, the proposed rule change will protect investors and the public interest by addressing disclosures or notifications in connection with certain securities transactions and by addressing certain trading and quoting conduct when a trading halt is in effect.

¹⁶ On December 30, 2008, FINRA filed with the SEC a proposed rule change to amend NASD Rule 3340 to create a limited exception to permit members to route unsolicited customer orders for execution outside the United States while a trading halt is in effect in the United States. See SR-FINRA-2008-069. Assuming Commission approval of this proposed rule change prior to Commission approval of SR-FINRA-2008-069, FINRA will amend SR-FINRA-2008-069, as necessary, to reflect such approval. Similarly, in the event the Commission approves SR-FINRA-2008-069 prior to approval of this proposed rule change, FINRA will amend this proposed rule change, as necessary, to reflect such approval.

¹⁷ 15 U.S.C. 78q-3(b)(6).

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-2009-044 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-2009-044. 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-2009-044 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.¹⁸

Florence E. Harmon

Deputy Secretary

¹⁸ 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 Rules
(Marked to Show Changes from NASD Rules 2240, 2250 and 3340; NASD Rules 2240, 2250 and 3340 to be Deleted in their Entirety from the Transitional Rulebook)**

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2000. DUTIES AND CONFLICTS

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2200. COMMUNICATIONS AND DISCLOSURES

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2260. Disclosures

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[2240]2262. Disclosure of Control Relationship with Issuer

A member controlled by, controlling, or under common control with, the issuer of any security, shall, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to such customer the existence of such control, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

[2250]2269. Disclosure of Participation or Interest in Primary or Secondary Distribution

A member who is acting as a broker for a customer or for both such customer and some other person, or a member who is acting as a dealer and who receives or has promise of receiving a fee from a customer for advising such customer with respect to

securities, shall, at or before the completion of any transaction for or with such customer in any security in the primary or secondary distribution of which such member is participating or is otherwise financially interested, give such customer written notification of the existence of such participation or interest.

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5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

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5200. QUOTATION AND TRADING OBLIGATIONS AND PRACTICES

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[3340]5260. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

(a) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including “bid wanted” and “offer wanted” and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect. If [NASD] FINRA closes trading in a security pursuant to its authority under Rule [4633]6120(a)(3), [Rule 4120A(a)(3), or Rule 6431(a)(3)] members would not be prohibited from trading through other markets for which trading is not halted.

(b) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including “bid wanted” and “offer wanted” and name only

indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest, in:

(1) a future for a single security when the underlying security has a regulatory trading halt that is currently in effect; and

(2) a future on a narrow-based securities index when one or more underlying securities that constitute 50% or more of the market capitalization of the index has a regulatory trading halt that is currently in effect.

* * * * *

**Text of Incorporated NYSE Rules to Remain
in the Transitional Rulebook**

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312. Changes Within Member Organizations

(a) through (e) No Change.

(f) **Reserved.**

[(1) After the completion of a distribution of its equity or non-investment grade debt securities or those of any organization controlling the member organization or of any Material Associated Person (as used in Rule 17h-1T of the Securities Exchange Act of 1934, as amended) of the member organization, no member organization shall effect any transaction (except on an unsolicited basis) for the account of any customer in, or make any recommendation with respect to, any such security.]

[(2) Any member organization that makes any recommendation of any equity or non-investment grade debt security issued by any person controlled by or under common control with such member organization (other than a Material

Associated Person), shall promptly disclose to such customer the existence and nature of such control at the time of recommendation and, if this disclosure is not made in writing, shall provide this disclosure in writing prior to the completion of the transaction.]

[(3) No corporation which has any publicly held security outstanding shall, without the prior written approval of the Exchange, dispose of any such security for its own account and no member corporation shall acquire any such security for its own account or for the account of any corporation controlling, controlled by or under common control with such member corporation except with the prior written approval of the Exchange or pursuant to the terms and provisions of such security or of any agreement between the member corporation and the holder of such security, which agreement has previously been filed with and approved by the Exchange. The Exchange will approve such a disposition or acquisition of securities unless it determines that such action will impair the financial responsibility or operational capability of the member corporation.]

[This Paragraph (f) is subject to the provisions of Paragraph (c)(vii) of Rule 800 (Basket Trading: Applicability and Definitions).]

(g) No Change.

(h)¹ **Reserved.** [No member corporation subject to Rule 325 shall, without the prior written consent of the Exchange, redeem or repurchase any shares of its stock on less than six months notice given to the Exchange no sooner than six months after the

¹ FINRA has proposed to delete NYSE Rule 312(h) in connection with its proposal to adopt new, consolidated financial responsibility rules. See Securities Exchange Act Release No. 59273 (January 22, 2009), 74 FR 4992 (January 28, 2009) (Notice of Filing File No. SR-FINRA-2008-067).

original issuance of such shares (or any predecessor shares). Each member corporation shall promptly notify the Exchange if any redemption or repurchase of any of its stock is postponed because prohibited under the provisions of Exchange Act Rule 15c3-1 (see 15c3-1(e)).]

(i) through (j) No Change.

* * * * *

321. Formation or Acquisition of Subsidiaries

No Change.

••• **Supplementary Material:** -----

Information Regarding Subsidiary Companies of Member Organizations

.10 through .23 No Change.

.24 Reserved. [Disclosure. In connection with any transactions which the member or member organization may have had with its customers, or any recommendation which the member or member organization may make to its customers, involving securities underwritten, distributed or sold by its subsidiary, full disclosure shall be made by the member or member organization to its customers of the interest of the subsidiary in such securities at that time.]

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