

OMB APPROVAL

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Page 1 of 41

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2007 - 035
Amendment No. 1

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

Initial ☐	Amendment ☒	Withdrawal ☐	Section 19(b)(2) ☒	Section 19(b)(3)(A) ☐	Section 19(b)(3)(B) ☐
			Rule		
Pilot ☐	Extension of Time Period for Commission Action ☐	Date Expires 	☐ 19b-4(f)(1) ☐ 19b-4(f)(2) ☐ 19b-4(f)(3)	☐ 19b-4(f)(4) ☐ 19b-4(f)(5) ☐ 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
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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 Kathryn Last Name Moore
Title Assistant General Counsel
E-mail kathryn.moore@finra.org
Telephone (202) 974-2974 Fax (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 04/17/2008

By Gary L. Goldsholle
(Name)

Vice President and Associate 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.

Gary Goldsholle,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

Add

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View

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

Exhibit 1 - Notice of Proposed Rule Change

Add

Remove

View

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

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add

Remove

View

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 Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

Add

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View

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 Sent As Paper Document

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Exhibit 4 - Marked Copies

Add

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add

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View

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

Partial Amendment

Add

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View

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 1 to a proposed rule change to amend NASD Rule 1022 (Categories of Principal Registration), NASD Rule 2220 (Options Communications with the Public) and NASD Rule 2860 (Options) to eliminate the requirement for separate designations of Senior Registered Options Principal (“SROP”) and Compliance Registered Options Principal (“CROP”) and require a member to integrate the responsibility for supervision of its public customer options business into its overall supervisory and compliance program. Amendment No. 1 to SR-FINRA-2007-035 replaces and supersedes in its entirety the original rule filing filed on December 18, 2007.

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

* * * * *

1022. Categories of Principal Registration

(a) through (e) No Change.

(f) Limited Principal – Registered Options and Security Futures

(1) Every member of [the Association]NASD that is engaged in, or that intends to engage in transactions in security futures or [put or call] options with

¹ 15 U.S.C. 78s(b)(1).

the public shall have at least one Registered Options and Security Futures Principal who shall have satisfied the requirements of this subparagraph. [As to options transactions, each member shall also designate a Senior Registered Options Principal and a Compliance Registered Options Principal in accordance with the provisions of Rule 2860(b)(20) and identify such persons to the Association.] Every person engaged in the supervision of options and security futures sales practices, including a person designated pursuant to Rule 3010(a)(2) [the management of the day-to-day options or security futures activities of a member] shall [also] be registered as a Registered Options and Security Futures Principal.

(2) through (5) No Change.

(g) through (h) No Change.

2220. Options Communications with the Public

(a) No Change.

(b) Approval by [Compliance]a Registered Options and Security Futures Principal and Recordkeeping

All advertisements, sales literature (except completed worksheets), and educational material issued by a member or member organization pertaining to options shall be approved in advance by [the Compliance Registered Options Principal or designee]a Registered Options and Security Futures Principal designated by the member's written supervisory procedures. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein,

shall be retained by the member or member organization and be kept at an easily accessible place for examination by [the Association]NASD for a period of three years.

(c) through (d) No Change.

2860. Options

(a) No Change.

(b) Requirements

(1) through (15) No Change.

(16) Opening of Accounts

(A) through (D) No Change.

(E) Uncovered Short Option Contracts

Each member transacting business with the public in writing uncovered short option contracts shall develop, implement and maintain specific written procedures governing the conduct of such business which shall include, at least, the following:

(i) through (ii) No Change.

(iii) Designation of [the Senior Registered Options

Principal and/or Compliance Registered Options Principal] a

specific Registered Options and Security Futures Principal(s) as

[the person] responsible for approving customer accounts that do

not meet the specific criteria and standards for writing uncovered

short option transactions and for maintaining written records of the

reasons for every account so approved;

(iv) through (v) No Change.

(17) No Change.

(18) Discretionary Accounts

(A) Authorization and Approval

(i) No Change.

(ii) [The Senior Registered Options Principal] Each firm shall designate specific Registered Options and Security Futures Principals to review discretionary accounts. A Registered Options and Security Futures Principal other than the Registered Options and Security Futures Principal who accepted the account shall review the acceptance of each discretionary account to determine that the Registered Options and Security Futures Principal accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed, and shall maintain a record of the basis for such determination. [Each discretionary order shall be approved and initialed on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, such approval shall be confirmed within a reasonable time by a Registered Options Principal. Each] Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by [the Compliance Registered Options

Principal]a Registered Options and Security Futures Principal who is not exercising the discretionary authority. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled instructions issued on a “not held” basis. Any exercise of time and price discretion must be reflected on the order ticket.

(iii) Any member that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary activity must establish and implement procedures to require specific Registered Options and Security Futures Principals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered.

(B) through (C) No Change.

(19) No Change.

(20) Supervision of Accounts

(A) Duty to Supervise[; Senior Registered Options Principal]

[Every member shall develop and implement a written program providing for the diligent supervision of all of its customer accounts, and all orders in such accounts, to the extent such accounts and orders relate to options contracts, by a general partner (in the case of a partnership) or officer (in the case of a corporation) of the member who is a Registered Options Principal and who has been specifically identified to the Association as the member's Senior Registered Options Principal. A Senior Registered Options Principal, in meeting his responsibilities for supervision of customer accounts and orders, may delegate to qualified employees (including other Registered Options Principals) responsibility and authority for supervision and control of each branch office handling transactions in option contracts, provided that the Senior Registered Options Principal shall have overall authority and responsibility for establishing appropriate procedures of supervision and control over such employees. Every such member shall also develop and implement specific written procedures concerning the manner of supervision of customer accounts maintaining uncovered short option positions and specifically providing for frequent supervisory review of such accounts.]Each member that conducts a public customer options business shall ensure that its written supervisory system policies and procedures pursuant to Rules 3010, 3012, and 3013 adequately address the member's public customer options business.

[(B) Compliance Registered Options Principal]

[Every member shall designate and specifically identify to the Association a Compliance Registered Options Principal (CROP), who may be the Senior Registered Options Principal, who shall have no sales functions and who shall be responsible to review and to propose appropriate action to secure the member's compliance with securities laws and regulations and Association Rules in respect of its options business. The CROP shall regularly furnish reports directly to the Compliance officer (if the CROP is not himself the Compliance officer) and to other senior management of the member. The requirement that the CROP have no sales functions shall not apply to a member that has received less than \$1,000,000 in gross commissions on options business for either of the preceding two fiscal years or that currently has ten or fewer registered representatives.]

[(C)](B) Branch Offices

No branch office of a member shall transact an options business unless the principal supervisor of such branch office accepting options transactions has been qualified as either a Registered Options and Security Futures Principal or a Limited Principal—General Securities Sales Supervisor; provided that this requirement shall not apply to branch offices in which no more than three registered representatives are located, so long as the options activities of such branch offices are appropriately

supervised by either a Registered Options and Security Futures Principal or a Limited Principal—General Securities Sales Supervisor.

[(D)](C) Headquarters Review of Accounts

Each member shall maintain at the principal supervisory office having jurisdiction over the office servicing customer accounts, or have readily accessible and promptly retrievable, information to permit review of each customer's options account on a timely basis to determine:

(i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved;

(ii) the size and frequency of options transactions;

(iii) commission activity in the account;

(iv) profit or loss in the account;

(v) undue concentration in any options class or classes,

and

(vi) compliance with the provisions of Regulation T of the

Federal Reserve Board.

(21) through (24) No Change.

(c) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change has been approved by the General Counsel of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the Regulatory Notice announcing Commission approval.

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

(a) Purpose

FINRA is proposing to amend its options rules to integrate the responsibility for supervision of a member's public customer options business into its overall supervisory and compliance program. The proposed rule change is substantively similar to recent amendments by the Chicago Board Options Exchange ("CBOE"), which were approved by the Commission.² As part of these changes, FINRA proposes to eliminate the requirement that a firm must designate a SROP and CROP to be responsible for the overall supervision and compliance programs, respectively, for a member's public customer options activities. FINRA believes that the supervisory and compliance function of a member's public customer options activities would be better integrated into

² See Securities Exchange Act Release No. 56971 (December 14, 2007), 72 FR 72804 (December 21, 2007) (Approval Order for File No. SR-CBOE-2007-106).

the matrix of a firm's overall supervisory and compliance functions rather than separately vested in a SROP and CROP.

FINRA does not believe that eliminating the SROP and CROP requirements would lead to a reduction in supervision, as firms have an obligation to designate appropriately registered principal(s) to supervise their public customer options activities pursuant to NASD Rule 3010(a)(2).³ The proposed rule change would provide firms greater flexibility to incorporate supervision into existing, firm-wide supervisory structures.

The proposed rule change would amend NASD Rule 1022 (Categories of Principal Registration) to delete the reference to the SROP and CROP and clarify that if a person is engaged in the supervision of options and security futures sales practices, including a person designated pursuant to NASD Rule 3010(a)(2), then such person must be registered as a Registered Options and Security Futures Principal ("ROSEFP").

The proposed rule change also makes a few technical changes. All references to "Registered Options Principal" would be changed to "Registered Options and Security Futures Principal" to reflect the change in title when rules governing security futures were adopted.⁴ All references to "the Association" would be changed to "NASD" for ease of reference while the rules continue to be part of the legacy NASD rulebook until such time as the legacy NASD and incorporated NYSE rules are consolidated into the

³ NASD Rule 3010(a)(2) requires that members designate "an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required."

⁴ See Securities Exchange Act Release No. 46663 (October 15, 2002), 67 FR 64944 (October 22, 2002) (Approval Order for File No. SR-NASD-2002-040).

FINRA rule book when all references to “NASD” will be changed to “FINRA.” Finally, all references to “put and call” would be deleted before options and “options” will mean all types of options.

The proposed rule change would amend NASD Rule 2220(b) (Options Communications with the Public) to delete the reference to the CROP and instead require that all advertisements, sales literature (except completed worksheets), and educational material issued by a member pertaining to options be approved in advance by a ROSFP designated by the member’s written supervisory procedures.

In addition, the proposed rule change would amend NASD Rule 2860 (Options) in several respects. First, paragraph (b)(16)(E)(iii) would be amended to delete the reference to the SROP and CROP and require that a specific ROSFP(s) be designated to be responsible for approving customer accounts that do not meet the specific criteria and standards for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved. The proposed rule change would allow members the flexibility to assign this responsibility, which formerly rested with the SROP and/or CROP, to a specific ROSFP(s).

Second, the proposed rule change would amend paragraph (b)(18) and the treatment of options discretionary accounts. Specifically, under the proposed rule change, each firm must designate specific ROSFPs to review discretionary accounts.⁵ A ROSFP other than the ROSFP who accepted the account would review the acceptance of each

⁵ Under the existing rule, the SROP must review the acceptance of each discretionary account and the CROP must perform frequency supervisory review of such accounts.

discretionary account to determine that the ROSFP accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transactions proposed and must maintain a record of the basis for such determination.

In addition, the proposed rule change would eliminate the requirement in paragraph (b)(18) that discretionary options orders be approved and initialed on the day of entry by a branch office manager or authorized ROSFP or confirmed within a reasonable time by a ROSFP if a branch office manager is not a ROSFP, if a firm uses computerized surveillance tools. Under the proposed rule change, discretionary orders must receive frequent supervisory review by a ROSFP who is not exercising discretionary authority (instead of a CROP) and be reviewed in accordance with a member's written supervisory procedures. The proposed rule change would ensure that supervisory responsibilities are assigned to specific ROSFP-qualified individuals, thereby enhancing the quality of supervision. Firms that do not use computerized surveillance tools for the frequent and appropriate review of discretionary activity must establish and implement procedures to require ROSFPs who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered. FINRA believes that any member that does not use computerized tools for the frequent and adequate surveillance of options discretionary account activity should continue to be required to perform the daily manual review of discretionary orders.

Paragraph (b)(18) also would be revised to limit the duration of the time and price discretionary authority to the end of the business day on which the customer granted such discretion, absent specific written contrary indication signed and dated by the customer. The limitation would not apply to time and price discretion exercised in an institutional account, as defined in NASD Rule 3110(c)(4), pursuant to Good-Till-Canceled instructions issued on a “not held” basis. The proposed rule change would require that any exercise of time and price discretion must be reflected on the order ticket. The proposed rule change mirrors the limitations to discretionary authority provided in NASD Rule 2510(d). FINRA believes that it is appropriate to have consistent treatment of discretionary orders for options as for all other securities.

Third, the proposed rule change would amend paragraph (b)(20) to delete the reference to the SROP and CROP and clarify that each member that conducts a public customer options business shall ensure that its written supervisory system policies and procedures pursuant to NASD Rules 3010, 3012, and 3013 adequately address the member’s public customer options business. Although the proposed rule change would eliminate entirely the positions and titles of the SROP and CROP, a member would still be required pursuant to NASD Rule 3010(a)(2) to designate “an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required” which would include designating a ROSFP to supervise a member’s public customer options activities.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days

following Commission approval. The effective date will be no later than 30 days following publication of the Regulatory Notice announcing 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,⁶ 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 supervisory and compliance function of a member's public customer options activities would be better integrated into the matrix of a firm's overall supervisory and compliance functions rather than separately vested in a SROP and CROP.

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.

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.⁷

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78s(b)(2).

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

FINRA requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act⁸ for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

Because FINRA believes that the supervisory and compliance function of a member's public customer options activities would be better integrated into the matrix of a firm's overall supervisory and compliance functions rather than separately vested in a SROP and CROP, FINRA requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register. FINRA also believes that accelerated effectiveness is appropriate because the proposed rule change is substantially similar to recent amendments by the CBOE, which were approved by the Commission.

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

The proposed rule change is substantially similar to recent amendments to CBOE Rule 9.2 (Registration of Options Principals), Rule 9.7 (Opening of Accounts), Rule 9.8 (Supervision of Accounts), and Rule 9.10 (Discretionary Accounts).

⁸ 15 U.S.C. 78s(b)(2).

9. Exhibits

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

Exhibit 4. Exhibit 4 shows the full text of the rule change marking changes from the originally filed proposed rule change, with the original language changes shown as if adopted and the new language marked to show additions and deletions.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2007-035)

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Options Supervision Requirements

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”) and amended on April 17, 2008³ 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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

FINRA is proposing to amend NASD Rule 1022 (Categories of Principal Registration), NASD Rule 2220 (Options Communications with the Public) and NASD Rule 2860 (Options) to eliminate the requirement for separate designations of Senior Registered Options Principal (“SROP”) and Compliance Registered Options Principal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 to SR-FINRA-2007-035 replaced and superseded the original rule filing filed on December 18, 2007.

(“CROP”) and require a member to integrate the responsibility for supervision of its public customer options business into its overall supervisory and compliance program.

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

* * * * *

1022. Categories of Principal Registration

(a) through (e) No Change.

(f) Limited Principal – Registered Options and Security Futures

(1) Every member of [the Association]NASD that is engaged in, or that intends to engage in transactions in security futures or [put or call] options with the public shall have at least one Registered Options and Security Futures Principal who shall have satisfied the requirements of this subparagraph. [As to options transactions, each member shall also designate a Senior Registered Options Principal and a Compliance Registered Options Principal in accordance with the provisions of Rule 2860(b)(20) and identify such persons to the Association.] Every person engaged in the supervision of options and security futures sales practices, including a person designated pursuant to Rule 3010(a)(2) [the management of the day-to-day options or security futures activities of a member] shall [also] be registered as a Registered Options and Security Futures Principal.

(2) through (5) No Change.

(g) through (h) No Change.

2220. Options Communications with the Public

(a) No Change.

(b) Approval by [Compliance]a Registered Options and Security Futures

Principal and Recordkeeping

All advertisements, sales literature (except completed worksheets), and educational material issued by a member or member organization pertaining to options shall be approved in advance by [the Compliance Registered Options Principal or designee]a Registered Options and Security Futures Principal designated by the member's written supervisory procedures. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the member or member organization and be kept at an easily accessible place for examination by [the Association]NASD for a period of three years.

(c) through (d) No Change.

2860. Options

(a) No Change.

(b) Requirements

(1) through (15) No Change.

(16) Opening of Accounts

(A) through (D) No Change.

(E) Uncovered Short Option Contracts

Each member transacting business with the public in writing uncovered short option contracts shall develop, implement and maintain

specific written procedures governing the conduct of such business which shall include, at least, the following:

(i) through (ii) No Change.

(iii) Designation of [the Senior Registered Options Principal and/or Compliance Registered Options Principal] a specific Registered Options and Security Futures Principal(s) as [the person] responsible for approving customer accounts that do not meet the specific criteria and standards for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved;

(iv) through (v) No Change.

(17) No Change.

(18) Discretionary Accounts

(A) Authorization and Approval

(i) No Change.

(ii) [The Senior Registered Options Principal] Each firm shall designate specific Registered Options and Security Futures Principals to review discretionary accounts. A Registered Options and Security Futures Principal other than the Registered Options and Security Futures Principal who accepted the account shall review the acceptance of each discretionary account to determine that the Registered Options and Security Futures Principal accepting the account had a reasonable basis for believing that the

customer was able to understand and bear the risk of the strategies or transactions proposed, and shall maintain a record of the basis for such determination. [Each discretionary order shall be approved and initialed on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, such approval shall be confirmed within a reasonable time by a Registered Options Principal. Each] Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by [the Compliance Registered Options Principal] a Registered Options and Security Futures Principal who is not exercising the discretionary authority. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled

instructions issued on a “not held” basis. Any exercise of time and price discretion must be reflected on the order ticket.

(iii) Any member that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary activity must establish and implement procedures to require specific Registered Options and Security Futures Principals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered.

(B) through (C) No Change.

(19) No Change.

(20) Supervision of Accounts

(A) Duty to Supervise[; Senior Registered Options Principal]

[Every member shall develop and implement a written program providing for the diligent supervision of all of its customer accounts, and all orders in such accounts, to the extent such accounts and orders relate to options contracts, by a general partner (in the case of a partnership) or officer (in the case of a corporation) of the member who is a Registered Options Principal and who has been specifically identified to the Association as the member's Senior Registered Options Principal. A Senior Registered Options Principal, in meeting his responsibilities for supervision of customer accounts and orders, may delegate to qualified employees (including other Registered Options Principals) responsibility and authority for supervision and control of each branch office handling

transactions in option contracts, provided that the Senior Registered Options Principal shall have overall authority and responsibility for establishing appropriate procedures of supervision and control over such employees. Every such member shall also develop and implement specific written procedures concerning the manner of supervision of customer accounts maintaining uncovered short option positions and specifically providing for frequent supervisory review of such accounts.]Each member that conducts a public customer options business shall ensure that its written supervisory system policies and procedures pursuant to Rules 3010, 3012, and 3013 adequately address the member's public customer options business.

[(B) Compliance Registered Options Principal]

[Every member shall designate and specifically identify to the Association a Compliance Registered Options Principal (CROP), who may be the Senior Registered Options Principal, who shall have no sales functions and who shall be responsible to review and to propose appropriate action to secure the member's compliance with securities laws and regulations and Association Rules in respect of its options business. The CROP shall regularly furnish reports directly to the Compliance officer (if the CROP is not himself the Compliance officer) and to other senior management of the member. The requirement that the CROP have no sales functions shall not apply to a member that has received less than \$1,000,000 in gross commissions on options business for either of the

preceding two fiscal years or that currently has ten or fewer registered representatives.]

[(C)](B) Branch Offices

No branch office of a member shall transact an options business unless the principal supervisor of such branch office accepting options transactions has been qualified as either a Registered Options and Security Futures Principal or a Limited Principal—General Securities Sales Supervisor; provided that this requirement shall not apply to branch offices in which no more than three registered representatives are located, so long as the options activities of such branch offices are appropriately supervised by either a Registered Options and Security Futures Principal or a Limited Principal—General Securities Sales Supervisor.

[(D)](C) Headquarters Review of Accounts

Each member shall maintain at the principal supervisory office having jurisdiction over the office servicing customer accounts, or have readily accessible and promptly retrievable, information to permit review of each customer's options account on a timely basis to determine:

- (i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved;
- (ii) the size and frequency of options transactions;
- (iii) commission activity in the account;
- (iv) profit or loss in the account;

(v) undue concentration in any options class or classes, and

(vi) compliance with the provisions of Regulation T of the

Federal Reserve Board.

(21) through (24) No Change.

(c) No Change.

* * * * *

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

FINRA is proposing to amend its options rules to integrate the responsibility for supervision of a member's public customer options business into its overall supervisory and compliance program. The proposed rule change is substantively similar to recent amendments by the Chicago Board Options Exchange ("CBOE"), which were approved by the Commission.⁴ As part of these changes, FINRA proposes to eliminate the requirement that a firm must designate a SROP and CROP to be responsible for the overall supervision and compliance programs, respectively, for a member's public

⁴ See Securities Exchange Act Release No. 56971 (December 14, 2007), 72 FR 72804 (December 21, 2007) (Approval Order for File No. SR-CBOE-2007-106).

customer options activities. FINRA believes that the supervisory and compliance function of a member's public customer options activities would be better integrated into the matrix of a firm's overall supervisory and compliance functions rather than separately vested in a SROP and CROP.

FINRA does not believe that eliminating the SROP and CROP requirements would lead to a reduction in supervision, as firms have an obligation to designate appropriately registered principal(s) to supervise their public customer options activities pursuant to NASD Rule 3010(a)(2).⁵ The proposed rule change would provide firms greater flexibility to incorporate supervision into existing, firm-wide supervisory structures.

The proposed rule change would amend NASD Rule 1022 (Categories of Principal Registration) to delete the reference to the SROP and CROP and clarify that if a person is engaged in the supervision of options and security futures sales practices, including a person designated pursuant to NASD Rule 3010(a)(2), then such person must be registered as a Registered Options and Security Futures Principal ("ROSFP").

The proposed rule change also makes a few technical changes. All references to "Registered Options Principal" would be changed to "Registered Options and Security Futures Principal" to reflect the change in title when rules governing security futures were adopted.⁶ All references to "the Association" would be changed to "NASD" for

⁵ NASD Rule 3010(a)(2) requires that members designate "an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required."

⁶ See Securities Exchange Act Release No. 46663 (October 15, 2002), 67 FR 64944 (October 22, 2002) (Approval Order for File No. SR-NASD-2002-040).

ease of reference while the rules continue to be part of the legacy NASD rulebook until such time as the legacy NASD and incorporated NYSE rules are consolidated into the FINRA rule book when all references to “NASD” will be changed to “FINRA.” Finally, all references to “put and call” would be deleted before options and “options” will mean all types of options.

The proposed rule change would amend NASD Rule 2220(b) (Options Communications with the Public) to delete the reference to the CROP and instead require that all advertisements, sales literature (except completed worksheets), and educational material issued by a member pertaining to options be approved in advance by a ROSFP designated by the member’s written supervisory procedures.

In addition, the proposed rule change would amend NASD Rule 2860 (Options) in several respects. First, paragraph (b)(16)(E)(iii) would be amended to delete the reference to the SROP and CROP and require that a specific ROSFP(s) be designated to be responsible for approving customer accounts that do not meet the specific criteria and standards for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved. The proposed rule change would allow members the flexibility to assign this responsibility, which formerly rested with the SROP and/or CROP, to a specific ROSFP(s).

Second, the proposed rule change would amend paragraph (b)(18) and the treatment of options discretionary accounts. Specifically, under the proposed rule change, each firm must designate specific ROSFPs to review discretionary accounts.⁷ A

⁷ Under the existing rule, the SROP must review the acceptance of each discretionary account and the CROP must perform frequency supervisory review of such accounts.

ROSFP other than the ROSFP who accepted the account would review the acceptance of each discretionary account to determine that the ROSFP accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transactions proposed and must maintain a record of the basis for such determination.

In addition, the proposed rule change would eliminate the requirement in paragraph (b)(18) that discretionary options orders be approved and initialed on the day of entry by a branch office manager or authorized ROSFP or confirmed within a reasonable time by a ROSFP if a branch office manager is not a ROSFP, if a firm uses computerized surveillance tools. Under the proposed rule change, discretionary orders must receive frequent supervisory review by a ROSFP who is not exercising discretionary authority (instead of a CROP) and be reviewed in accordance with a member's written supervisory procedures. The proposed rule change would ensure that supervisory responsibilities are assigned to specific ROSFP-qualified individuals, thereby enhancing the quality of supervision. Firms that do not use computerized surveillance tools for the frequent and appropriate review of discretionary activity must establish and implement procedures to require ROSFPs who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered. FINRA believes that any member that does not use computerized tools for the frequent and adequate surveillance of options discretionary account activity should continue to be required to perform the daily manual review of discretionary orders.

Paragraph (b)(18) also would be revised to limit the duration of the time and price discretionary authority to the end of the business day on which the customer granted such

discretion, absent specific written contrary indication signed and dated by the customer. The limitation would not apply to time and price discretion exercised in an institutional account, as defined in NASD Rule 3110(c)(4), pursuant to Good-Till-Canceled instructions issued on a “not held” basis. The proposed rule change would require that any exercise of time and price discretion must be reflected on the order ticket. The proposed rule change mirrors the limitations to discretionary authority provided in NASD Rule 2510(d). FINRA believes that it is appropriate to have consistent treatment of discretionary orders for options as for all other securities.

Third, the proposed rule change would amend paragraph (b)(20) to delete the reference to the SROP and CROP and clarify that each member that conducts a public customer options business shall ensure that its written supervisory system policies and procedures pursuant to NASD Rules 3010, 3012, and 3013 adequately address the member’s public customer options business. Although the proposed rule change would eliminate entirely the positions and titles of the SROP and CROP, a member would still be required pursuant to NASD Rule 3010(a)(2) to designate “an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required” which would include designating a ROSFP to supervise a member’s public customer options activities.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the Regulatory Notice announcing 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,⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the supervisory and compliance function of a member's public customer options activities would be better integrated into the matrix of a firm's overall supervisory and compliance functions rather than separately vested in a SROP and CROP.

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.

⁸ 15 U.S.C. 78o-3(b)(6).

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

FINRA has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act⁹ for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that the proposed rule change is substantially similar to recent amendments by the CBOE, which were approved by the Commission.

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:

⁹ 15 U.S.C. 78s(b)(2).

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-2007-035 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2007-035. 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. 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-2007-035 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.¹⁰

Nancy M. Morris

Secretary

¹⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Exhibit 4 shows the changes to previously filed rule language as proposed in Amendment No. 1. The changes proposed in the initial filing are shown as if previously adopted, and the new language proposed in Amendment No. 1 is underlined; proposed deletions in Amendment No. 1 are bracketed.

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1022. Categories of Principal Registration

(a) through (e) No Change.

(f) Limited Principal – Registered Options and Security Futures

(1) Every member of NASD that is engaged in, or that intends to engage in transactions in security futures or options with the public shall have at least one Registered Options and Security Futures Principal who shall have satisfied the requirements of this subparagraph. Every person engaged in the supervision of options and security futures sales practices, including a person designated pursuant to Rule 3010(a)(2) shall be registered as a Registered Options and Security Futures Principal.

(2) through (5) No Change.

(g) through (h) No Change.

2220. Options Communications with the Public

(a) No Change.

(b) Approval by a Registered Options and Security Futures Principal and Recordkeeping

All advertisements, sales literature (except completed worksheets), and educational material issued by a member or member organization pertaining to options shall be approved in advance by a Registered Options and Security Futures Principal designated by the member's written supervisory procedures. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the member or member organization and be kept at an easily accessible place for examination by NASD for a period of three years.

(c) through (d) No Change.

2860. Options

(a) No Change.

(b) Requirements

(1) through (15) No Change.

(16) Opening of Accounts

(A) through (D) No Change.

(E) Uncovered Short Option Contracts

Each member transacting business with the public in writing uncovered short option contracts shall develop, implement and maintain specific written procedures governing the conduct of such business which shall include, at least, the following:

(i) through (ii) No Change.

(iii) Designation of [one or more] a specific Registered Options and Security Futures Principal(s) as responsible for approving customer accounts that do not meet the specific criteria and standards for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved;

(iv) through (v) No Change.

(17) No Change.

(18) Discretionary Accounts

(A) Authorization and Approval

(i) No Change.

(ii) Each firm shall designate [one or more] specific Registered Options and Security Futures Principals to review discretionary accounts. [In a firm with more than one Registered Options and Security Futures Principal, a] A Registered Options and Security Futures Principal other than the Registered Options and Security Futures Principal who accepted the account shall review the acceptance of each discretionary account to determine that the Registered Options and Security Futures Principal accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed, and shall maintain a record of the basis for such determination. Every discretionary order shall be

identified as discretionary on the order at the time of entry.

Discretionary accounts shall receive frequent appropriate supervisory review by a Registered Options and Security Futures Principal who is not exercising the discretionary authority [if the firm has more than one Registered Options and Security Futures Principal]. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled instructions issued on a “not held” basis. Any exercise of time and price discretion must be reflected on the order ticket.

(iii) Any member that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary activity must establish and implement procedures to require [one or more] specific Registered Options and Security Futures Principals who have been designated to review

discretionary accounts to approve and initial each discretionary order on the day entered.

(B) through (C) No Change.

(19) No Change.

(20) Supervision of Accounts

(A) Duty to Supervise

Each member that conducts a public customer options business shall ensure that its written supervisory system policies and procedures pursuant to Rules 3010, 3012, and 3013 adequately address the member's public customer options business.

(B) Branch Offices

No branch office of a member shall transact an options business unless the principal supervisor of such branch office accepting options transactions has been qualified as either a Registered Options and Security Futures Principal or a Limited Principal—General Securities Sales Supervisor; provided that this requirement shall not apply to branch offices in which no more than three registered representatives are located, so long as the options activities of such branch offices are appropriately supervised by either a Registered Options and Security Futures Principal or a Limited Principal—General Securities Sales Supervisor.

(C) Headquarters Review of Accounts

Each member shall maintain at the principal supervisory office having jurisdiction over the office servicing customer accounts, or have

readily accessible and promptly retrievable, information to permit review of each customer's options account on a timely basis to determine:

(i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved;

(ii) the size and frequency of options transactions;

(iii) commission activity in the account;

(iv) profit or loss in the account;

(v) undue concentration in any options class or classes, and

(vi) compliance with the provisions of Regulation T of the

Federal Reserve Board.

(21) through (24) No Change.

(c) No Change.

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