Proposal met these objectives. Although Form 19b–4 requires that a proposed rule change be accurate, consistent, and complete, including the information necessary for the Commission's review, the Form does not require SROs to anticipate and respond in advance to each of the points that commenters may raise in opposition to a proposed rule change. With this Order, the Commission has determined that the points raised by the commenter do not provide a basis to decline to approve the Proposal.

Finally, commenters raised concerns regarding the contract terms that will govern the distribution of ArcaBook data.[264] In particular, one notes that NYSE Arca has not filed its vendor distribution agreement with the Commission for public notice and comment and Commission approval.[265]

NYSE Arca has stated, however, that it plans to use the vendor and subscriber agreements used by CTA and CQ Plan Participants (the ''CTA/CQ Vendor and Subscriber Agreements'') to govern the distribution of NYSE Arca Data. According to the Exchange, the CTA/CQ Vendor and Subscriber Agreements ''are drafted as generic one-size-fits-all agreements and explicitly apply to the receipt and use of certain market data that individual exchanges make available in the same way that they apply to data made available under the CTA and CQ Plans,'' and the contracts need not be amended to cause them to govern the receipt and use of the Exchange's data.[266] The Exchange maintains that because ''the terms and conditions of the CTA/CQ contracts *do not* change in any way with the addition of the Exchange's market data * * * there are no changes for the industry or Commission to review.'' [267]

The Commission believes that the Exchange may use the CTA/CQ Vendor and Subscriber Agreements to govern the distribution of NYSE Arca Data.[268] It notes that the NYSE used the CTA Vendor Agreement to govern the distribution of its OpenBook and Liquidity Quote market data products.[269] Moreover, the Exchange represents that, following consultations with vendors and end-users, and in response to client demand:

> [The Exchange] chose to fold itself into an existing contract and administration system rather than to burden clients with another set of market data agreements and another market data reporting system, both of which would require clients to commit additional legal and technical resources to support the Exchange's data products.[270]

In addition, the Exchange has represented that it is ''not imposing restrictions on the use or display of its data beyond those set forth'' in the existing CTA/CQ Vendor and Subscriber Agreements.[271] The Commission therefore does not believe that the Exchange is amending or adding to such agreements.

A commenter also stated that the Exchange has not recognized the rights of a broker or dealer, established in Regulation NMS, to distribute its order information, subject to the condition that it does so on terms that are fair and reasonable and not unreasonably discriminatory.[272] In response, the Exchange states that the CTA/CQ Vendor and Subscriber Agreements do not prohibit a broker-dealer member of an SRO participant in a Plan from making available to the public information relating to the orders and transaction reports that it provides to the SRO participant.[273] Accordingly, the Commission believes that the Exchange has acknowledged the rights of a broker or dealer to distribute its market information, subject to the requirements of Rule 603(a) of Regulation NMS.

A commenter also stated that the Exchange has failed to consider the administrative burdens that the proposal would impose, including the need for broker-dealers to develop system controls to track ArcaBook access and usage.[274] In response, the Exchange represents that it has communicated with its customers to ensure system readiness and is using ''a long-standing, well-known, broadly-used administrative system'' to minimize the amount of development effort required to meet the administrative requirements associated with the proposal.[275] Accordingly, the Commission believes that NYSE Arca has reasonably addressed the administrative requirements associated with the Proposal.

VI. Conclusion

It is therefore ordered that the earlier action taken by delegated authority, Securities Exchange Act Release No. 54597 (October 12, 2006) 71 FR 62029 (October 20, 2006), is set aside and, pursuant to section 19(b)(2) of the Exchange Act, the Proposal (SR–NYSEArca–2006–21) is approved.

By the Commission.

[FR Doc. E8–12928 Filed 6–9–08; 8:45 am]

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[264] *See* section III.A.7 above.

[265] SIFMA I at 7. In this regard, the commenter states that, procedurally, the Exchange ''is amending and adding to the CTA vendor agreement without first submitting its contractual changes through the CTA's processes, which are subject to industry input through the new Advisory Committee mandated by Regulation NMS.'' SIFMA I at 8.

[266] NYSE Arca Response I at 3.

[267] NYSE Arca Response I at 3 (emphasis in original).

[268] The Commission is not approving the CTA/CQ Vendor and Subscriber Agreements, which the CTA and CQ Plan Participants filed with the Commission as amendments to the CTA and CQ Plans that were effective on filing with the Commission pursuant to Rule 608(b)(3)(iii) of Regulation NMS (previously designated as Exchange Act Rule 11Aa3–2(c)(3)(iii)). *See, e.g.*, Securities Exchange Act Release No. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990) (File No. 4–2811) (notice of filing and immediate effectiveness of amendments to the CTA Plan and the CQ Plan). Rule 608(b)(3)(iii) of Regulation NMS (previously designated as Exchange Act Rule 11Aa3–2(c)(3)(iii)) allows a proposed amendment to a national market system plan to be put into effect upon filing with the Commission if the plan sponsors designate the proposed amendment as involving solely technical or ministerial matters.

[269] Securities Exchange Act Release Nos. 53585 (March 31, 2006), 71 FR 17934 (April 7, 2006) (order approving File Nos. SR–NYSE–2004–43 and NYSE–2005–32) (relating to OpenBook); and 51438 (March 28, 2005), 70 FR 17137 (April 4, 2005) (order approving File No. SR–NYSE–2004–32) (relating to Liquidity Quote). For both the OpenBook and Liquidity Quote products, the NYSE attached to the CTA Vendor Agreement an Exhibit C containing additional terms governing the distribution of those products, which the Commission specifically approved. NYSE Arca is not including additional contract terms in the Proposal.

[270] NYSE Arca Response I at 4.

[271] NYSE Arca Response I at 3.

[272] SIFMA I at 7.

[273] NYSE Arca Response I at 4.

[274] SIFMA I at 8.

[275] NYSE Arca Response I at 4–5.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57920; File No. SR–FINRA–2008–019]

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities

June 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''SEA'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2008, 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

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

[2] 17 CFR 240.19b–4.

in Items I, II, and III below, which Items have been prepared substantially 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 amend certain provisions of NASD Rule 2821.[3] Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

2821. Members' Responsibilities Regarding Deferred Variable Annuities

(a) General Considerations

(1) Application

This Rule applies to *recommended* [the] purchase*s* [or] *and* exchange*s* of [a] deferred variable annuit[y]*ies* and *recommended initial* [the] subaccount allocations. This Rule does not apply to reallocations [of] *among* subaccounts made or to funds paid after the initial purchase or exchange of a deferred variable annuity. This Rule also does not apply to deferred variable annuity transactions made in connection with any tax-qualified, employer-sponsored retirement or benefit plan that either is defined as a ''qualified plan'' under Section 3(a)(12)(C) of the [Securities] Exchange Act [of 1934] or meets the requirements of Internal Revenue Code Sections 403(b), 457(b), or 457(f), unless, in the case of any such plan, a member or person associated with a member makes recommendations to an individual plan participant regarding a deferred variable annuity, in which case the Rule would apply as to the individual plan participant to whom the member or person associated with the member makes such recommendations.

(2) No change.

(3) No change.

(b) Recommendation Requirements

(1) No member or person associated with a member shall recommend to any customer the purchase or exchange of a deferred variable annuity unless such member or person associated with a member has a reasonable basis to believe

(A) that the transaction is suitable in accordance with Rule 2310 and, in particular, that there is a reasonable basis to believe that

(i) No change.

(ii) No change.

(iii) the particular deferred variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also is suitable) for the particular customer based on the information required by [sub]paragraph (b)(2) of this Rule; and

(B) in the case of an exchange of a deferred variable annuity, the exchange also is consistent with the suitability determination required by [sub]paragraph (b)(1)(A) of this Rule, taking into consideration whether

(i) No change.

(ii) No change.

(iii) the customer[']s account] has had another deferred variable annuity exchange within the preceding 36 months.

The determinations required by this paragraph shall be documented and signed by the associated person recommending the transaction.

(2) No change.

(3) Promptly after receiving information necessary to prepare a complete and correct application package for a deferred variable annuity, a person associated with a member who recommends the deferred variable annuity shall transmit the complete and correct application package to an office of supervisory jurisdiction of the member.

(c) Principal Review and Approval

Prior to transmitting a customer's application for a deferred variable annuity to the issuing insurance company for processing, but no later than seven business days after [the customer signs the application] *an office of supervisory jurisdiction of the member receives a complete and correct application package,* a registered principal shall review and determine whether he or she approves of the *recommended* purchase or exchange of the deferred variable annuity.

[Subject to the exception in this paragraph, and treating all transactions as if they have been recommended for purposes of this principal review, a] *A* registered principal shall approve the *recommended* transaction only if *he or she* [the registered principal] has determined that there is a reasonable basis to believe that the transaction would be suitable based on the factors delineated in paragraph (b) of this Rule. [Notwithstanding the foregoing, a registered principal may authorize the processing of the transaction if the registered principal determines that the transaction was not recommended and that the customer, after being informed of the reason why the registered principal has not approved the transaction, affirms that he or she wants to proceed with the purchase or exchange of the deferred variable annuity.]

The determinations required by this paragraph shall be documented and signed by the registered principal who reviewed and *then* approved[,] *or* rejected[, or authorized] the transaction.

(d) No change.

(e) Training

Members shall develop and document specific training policies or programs reasonably designed to ensure that associated persons who effect and registered principals who review transactions in deferred variable annuities comply with the requirements of this Rule and that they understand the material features of deferred variable annuities, including those described in [sub]paragraph (b)(1)(A)(i) of this Rule.

Supplementary Material:

.01 Under Rule 2821, a member that is permitted to maintain customer funds under SEA Rules 15c3–1 and 15c3–3 may, prior to the member's principal approval of the deferred variable annuity, deposit and maintain customer funds for a deferred variable annuity in an account that meets the requirements of SEA Rule 15c3–3.

.02 If a customer provides a member that is permitted to hold customer funds with a lump sum or single check made payable to the member (as opposed to being made payable to the insurance company) and requests that a portion of the funds be applied to the purchase of a deferred variable annuity and the rest of the funds be applied to other types of products, Rule 2821 would not prohibit the member from promptly applying those portions designated for purchasing products other than a deferred variable annuity to such use. A member that is not permitted to hold customer funds can comply with such requests only through its clearing firm that will maintain customer funds for the intended deferred variable annuity purchase in an account that meets the requirements of SEA Rule 15c3–3. In such circumstances, the checks would need to be made payable to the clearing firm.

[3] On March 17, 2008, FINRA filed a separate proposed rule change, which became effective upon filing, to delay the effective date of paragraphs (c) and (d) of NASD Rule 2821 until 180 days following the Commission's approval or rejection of this substantive proposed rule change. *See* FINRA Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Effective Date of Certain FINRA Rule Changes Approved in SR–NASD–2004–183, Securities Exchange Act Release No. 57769 (May 2, 2008), 73 FR 26176 (May 8, 2008) (SR–FINRA–2008–015). Paragraphs (a), (b), and (e) of NASD Rule 2821, as approved in SR–NASD–2004–183, became effective as originally scheduled on May 5, 2008.

.03 Rule 2821 does not prohibit a member from forwarding a check made payable to the insurance company or, if the member is fully subject to SEA Rule 15c3–3, transferring funds for the purchase of a deferred variable annuity to the insurance company prior to the member's principal approval of the deferred variable annuity, as long as the member fulfills the following requirements: (1) the member must disclose to the customer the proposed transfer or series of transfers of the funds and (2) the member must enter into a written agreement with the insurance company under which the insurance company agrees to (a) segregate the member's customers' funds in a bank in an account equivalent to the deposit of those funds by a member into a ''Special Account for the Exclusive Benefit of Customers'' (set up as described in SEA Rules 15c3–3(k)(2)(i) and 15c3–3(f)) to ensure that the customers' funds will not be subject to any right, charge, security interest, lien, or claim of any kind in favor of the member, insurance company, or bank where the insurance company deposits such funds or any creditor thereof or person claiming through them and hold those funds either as cash or any instrument that a broker or dealer may deposit in its Special Reserve Account for the Exclusive Benefit of Customers, (b) not issue the variable annuity contract prior to the member's principal approval, and (c) promptly to return the funds to each customer at the customer's request prior to the member's principal approval or upon the member's rejection of the application.

.04 A member is not prohibited from forwarding a check provided by the customer for the purpose of purchasing a deferred variable annuity and made payable to an IRA custodian for the benefit of the customer (or, if the member is fully subject to SEA Rule 15c3–3, funds) to the IRA custodian prior to the member's principal approval of the deferred variable annuity transaction, as long as the member enters into a written agreement with the IRA custodian under which the IRA custodian agrees (a) to forward the funds to the insurance company to complete the purchase of the deferred variable annuity contract only after it has been informed that the member's principal has approved the transaction and (b), if the principal rejects the transaction, to inform the customer, seek immediate instructions from the customer regarding alternative disposition of the funds (e.g., asking whether the customer wants to transfer the funds to another IRA custodian, purchase a different investment, or provide other instructions), and promptly implement the customer's instructions.

.05 Rule 2821 requires that the member or person associated with a member consider whether the customer has had another deferred variable annuity exchange within the preceding 36 months. Under this provision, a member or person associated with a member must determine whether the customer has had such an exchange at the member and must make reasonable efforts to ascertain whether the customer has had an exchange at any other broker-dealer within the preceding 36 months. An inquiry to the customer as to whether the customer has had an exchange at another broker-dealer within 36 months would constitute a ''reasonable effort'' in this context. Members shall document in writing both the nature of the inquiry and the response from the customer.

.06 Rule 2821 requires principal review and approval ''[p]rior to transmitting a customer's application for a deferred variable annuity to the issuing insurance company for processing * * .'' In circumstances where an insurance company and its affiliated broker-dealer share office space and/or employees who carry out both the principal review and the issuance process, FINRA will consider the application ''transmitted'' to the insurance company only when the broker-dealer's principal, acting as such, has approved the transaction, provided that the affiliated broker-dealer and the insurance company have agreed that the insurance company will not issue the contract prior to principal approval by the broker-dealer.*

07 Rule 2821 does not prohibit using the information required for principal review and approval in the issuance process, provided that the broker-dealer and the insurance company have agreed that the insurance company will not issue the contract prior to principal approval by the broker-dealer. For instance, the rule does not prohibit a broker-dealer from inputting information used as part of its suitability review into a shared database (irrespective of the media used for that database, i.e., paper or electronic) that the insurance company uses for the issuance process, provided that the broker-dealer and the insurance company have agreed that the insurance company will not issue the contract prior to principal approval by the broker-dealer.

* * * * *

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 NASD Rule 2821 to modify the rule's scope and the timing of principal review. FINRA also is proposing to clarify various issues that commenters have raised through a ''Supplementary Material'' section following the rule text. Reasons for these changes are discussed below.

Limit Application of the Rule To Recommended Transactions

As approved by the Commission, NASD Rule 2821(c) requires principals to treat ''all transactions as if they have been recommended for purposes of this principal review.'' Following the Commission's approval of the rule, however, numerous commenters asked the SEC and FINRA to reconsider this approach. Some of the commenters asserted that applying the rule to non-recommended transactions would have the unintended and harmful consequence of essentially forcing some firms that offer low-priced alternatives and do not allow recommendations or use transaction-based compensation out of the deferred variable annuities business. Still other commenters believed that, absent a recommendation, a customer should be completely free to invest in a deferred variable annuity without interference or second guessing from a broker-dealer.

After further reflection, FINRA is proposing to limit the rule's application to recommended transactions. This approach is consistent with that taken by FINRA's general suitability rule, Rule 2310. This change, moreover, should not detract from the effectiveness of Rule NASD 2821 in providing additional protection to investors in deferred variable annuities. For instance, brokers recommend the vast majority of purchases and exchanges of

deferred variable annuities. Thus, the rule would continue to cover most transactions. FINRA emphasizes, moreover, that members must implement reasonable measures to detect and correct circumstances when brokers mischaracterize recommended transactions as non-recommended. Where the transaction truly is initiated by the customer and not recommended by the broker, there generally is less of a concern regarding potential or actual conflicts of interest and less of a need for heightened sales practice requirements. In addition, this change would promote competition by allowing a wide variety of business models to exist, including those premised on keeping costs low by, in part, eliminating the need for a sales force and large numbers of principals.

Modifying the Starting Point for the Seven-Business-Day Review Period

NASD Rule 2821(c) requires principal review and approval ''[p]rior to transmitting a customer's application for a deferred variable annuity to the issuing insurance company for processing, but no later than seven business days after the customer signs the application.'' A number of firms asserted that seven business days beginning from the time when the customer signs the application may not allow for a thorough principal review in all cases. These firms provided examples of situations where a principal might not be able to complete the required review within the allotted time, such as when a customer inadvertently omits information from the application, when information provided by a customer on the application needs clarification, when a customer signs the application but does not mail it for several days after signature, and when a customer mails the application by regular U.S. mail.

FINRA is proposing to modify the beginning of the period within which the principal must review and determine whether to approve or reject the application. Under the proposal, the period would begin to run not from the date of the customer's signature but from the date when the firm's office of supervisory jurisdiction (OSJ) receives a complete and correct copy of the application.[4] This period should be sufficient to permit a principal to conduct an appropriate review, building in time for readily foreseeable delays, while still maintaining a definite period within which the principal must make a final decision.

To help ensure that the process remains efficient from the beginning, the proposal also would require the associated person who recommended the annuity to promptly transmit the complete and correct application package to the OSJ. However, that latter provision, proposed paragraph (b)(3) of NASD Rule 2821, would not preclude the customer from transmitting the complete and correct application package to the OSJ. For instance, there may be occasions where the application package is technically complete and correct but the customer wants to take it home and consider the purchase or exchange some more before sending the application to the OSJ. Proceeding in such a manner would not be inconsistent with the proposed provision.

Clarification of Issues Through Supplementary Material

Commenters have raised a number of additional issues requiring clarification. A ''Supplementary Material'' section following the rule's text examines those issues that were raised by multiple groups and that potentially could have a significant impact on how members sell or process deferred variable annuities. FINRA refuted, for instance, the misconception that firms generally allowed to handled and carry customer funds under Exchange Act Rules 15c3–1 and 15c3–3 could not deposit funds for a deferred variable annuity prior to principal approval.

FINRA also reconsidered the question of whether members could forward funds to insurance companies for deposit in the companies' ''suspense accounts'' prior to principal approval. FINRA modified its earlier position rejecting such a process, discussed in *Regulatory Notice 07–53* (Nov. 2007), and proposed to allow such action under certain conditions, including, inter alia, that the insurance company segregate the funds in a manner equivalent to that required of a member under Exchange Act Rule 15c3–3.

In addition, the Supplementary Material section discusses customers' lump sum payments for the purchase of deferred variable annuities and other products, the forwarding of customer checks or funds to an IRA custodian prior to principal approval, the timing of ''transmittal'' of the application where an insurance company and its affiliated broker-dealer share office space and/or employees, consideration of what constitutes a ''reasonable effort'' to determine whether a customer has had a recent exchange at another broker-dealer,[5] and the permissibility of using information required for principal review in the contract issuance process. These are all issues that commenters have raised on multiple occasions and that could broadly impact how broker-dealers sell, or process transactions in, deferred variable annuities.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange 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. The rule change will promote investor protection because it will allow firms to focus on recommended transactions, which generally have the potential to raise more significant sales-practice issues than do non-recommended transactions, and will provide firms with adequate time to perform an appropriately thorough principal review. It will also provide firms with

[4] As FINRA and the Commission previously have noted, ''Many broker-dealers are subject to lower net capital requirements under [Exchange Act] Rule 15c3–1 and are exempt from the requirement to establish and fund a customer reserve account under [Exchange Act] Rule 15c3–3 because they do not carry customer funds or securities.'' SEC Order Granting a Conditional Exemption to Broker-Dealers from Requirements in Rules 15c3–1 and 15c3–3 under the Securities Exchange Act of 1934 to Promptly Transmit Customer Checks for the purchase of deferred variable annuity contracts, Securities Exchange Act Release No. 56376 (Sept. 7, 2007), 72 FR 52400 (Sept. 13, 2007). Although some of these firms receive checks from customers made payable to third parties, the SEC does not deem a firm to be carrying customer funds if it ''promptly transmits'' the checks to third parties. The SEC has interpreted ''promptly transmits'' to mean that ''such transmission or delivery is made no later than noon of the next business day after receipt of such funds or securities.'' *Id.* In conjunction with its approval of NASD Rule 2821, the Commission provided an exemption to the ''promptly transmits'' requirement as long as, among other things, the ''principal has reviewed and determined whether he or she approves of the purchase or exchange of the deferred variable annuity within seven business days in accordance with [Rule 2821].'' *Id.* FINRA believes that the Commission's exemption order allows for the modification to the event that triggers the review period, discussed above.

[5] FINRA notes that the proposal also clarifies in NASD Rule 2821(b)(1)(B)(iii) that an analysis of whether the customer has had another recent exchange includes possible exchanges at other broker-dealers. The rule currently states that the member must consider whether ''the customer's account has had another deferred variable annuity exchange within the preceding 36 months.'' *Id.* As FINRA stated in *Regulatory Notice 07–53* (Nov. 2007), however, FINRA did not intend the use of the term ''account'' in that passage to limit the analysis only to exchanges at the member firm performing the review at issue. The proposal eliminates the term ''account'' to make this point even more clear.

[6] 15 U.S.C. 78o–3(b)(6).

guidance to clarify various issues with respect to the operation of the rule.

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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2008–019 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2008–019. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FINRA–2008–019 and should be submitted on or before July 1, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–12948 Filed 6–9–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57909; File No. SR–ISE–2008–41]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Odd-Lot and Mixed-Lot Orders

June 3, 2008.

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 May 28, 2008, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. 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

The ISE proposes to amend its rules governing equities to allow cross orders and the stock leg(s) of complex orders to be entered and executed in odd-lot or mixed-lot sizes. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, 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, the Exchange 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. The Exchange 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

The purpose of this filing is to amend ISE Rule 2105 (Order Entry) to allow cross orders,[5] and the stock leg(s) of complex orders,[6] to be entered and executed in odd-lot and mixed-lot sizes. Because cross orders are, by definition, two-sided orders, they are not eligible to interact with MidPoint Match orders.[7]

Currently, the System rejects odd-lot orders in their entirety and rejects the odd-lot component of a mixed-lot order subsequent to executing the round lot portion(s) of the mixed-lot order. The Exchange has recently adopted four new order types that allow Equity Electronic Access Members to enter various two-

[7] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* ISE Rule 2104(p), (q), (r), and (s).

[6] *See* ISE Rule 722(a).

[7] *See* ISE Rule 2107(b).