

OMB APPROVAL

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

File No. SR - 2008 - 013
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
☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

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

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

Date

By
(Name)

(Title)

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

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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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

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

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

Add

Remove

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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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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

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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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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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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 SR-FINRA-2008-013 to address the comments the Commission received in response to the publication of the proposed rule change in the Federal Register² and to reflect recently approved changes to the rule text. The text of the proposed rule change is attached as Exhibit 5 to this rule filing. The text of the proposed rule change replaces and supersedes in its entirety the rule text filed on April 4, 2008.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on July 19, 2006, the FINRA Board of Governors authorized the filing of the rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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 90 days following publication of the Regulatory Notice announcing Commission approval.

¹ 15 U.S.C. 78s(b)(1).

² See Exchange Act Release No. 57720 (April 25, 2008), 73 FR 24332 (May 2, 2008) (notice of filing of SR-FINRA-2008-013).

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

(a) Purpose

On April 4, 2008, FINRA filed with the SEC proposed rule change SR-FINRA-2008-013 to amend NASD Rule 2220 (Options Communications with the Public) to better address current needs for regulating options communications practices and to promote consistency across the options communications rules of other self-regulatory organizations (“SROs”). On April 25, 2008, the SEC published the proposed rule change for comment in the Federal Register.³ The comment period closed on May 23, 2008, and the SEC received one comment letter in response to the Federal Register publication.⁴

In general, SIFMA supported the proposed rule change noting, among other things, that it was better aligned with the other FINRA communications rules. Most of SIFMA’s substantive comments addressed the requirements in NASD Rule 2860 (Options) to deliver the Options Disclosure Document (“ODD”) and recent supplements thereto. These comments, which include a request to consider a “notice-equals-delivery” standard for ODD supplements, are outside the scope of the proposed rule change, which is limited to NASD Rule 2220, and therefore, are not addressed in this filing. Nevertheless, FINRA supports the general concept of “notice-equals-delivery” for ODD supplements.

³ See id.

⁴ The SEC received a comment letter from Melissa MacGregor, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association (“SIFMA”), dated May 22, 2008.

With respect to proposed rule change, SIFMA opposed limitations on the types of options communications that can be made prior to delivery of the ODD because all customers must receive the ODD at or prior to the time an options account is opened. SIFMA believes that the requirement to distribute the ODD prior to certain types of options communications is unnecessary and duplicative, and limits firms to sending to prospective customers generalized materials that do not provide the necessary information for analyzing potential options investments.

This issue was considered by FINRA and other SROs governing options prior to filing the proposed rule change. FINRA and the other SROs believe that the *subsequent* delivery of the ODD would not aid an investor in understanding or evaluating options communications, and therefore decided to maintain the existing limitations on the types of options communications that may precede delivery of the ODD. FINRA notes that delivery of the ODD can be effected by a hyperlink to the ODD,⁵ so the requirement that the ODD either precede or accompany these options communications poses virtually no burden with respect to electronic communications that would be considered sales literature or advertisements.⁶

⁵ Delivery of the ODD for purposes of NASD Rule 2860(b)(11) also can be satisfied by a hyperlink to the ODD. See Notice to Members 98-03 (January 1998) (members may electronically transmit documents that they are required or permitted to furnish to customers under NASD Rules, including the delivery of the ODD required by NASD Rule 2860(b)(11)); see also Exchange Act Release No. 39356 (November 25, 1997); 62 FR 64421 (December 5, 1997) (order approving Notice to Members 98-03).

⁶ The SEC's 1995 and 1996 releases on the use of electronic media for delivery of information provide that a hyperlink contained in sales literature is sufficient for electronic delivery of a prospectus (or other required information) as it is analogous to an investor selecting an envelope containing a paper prospectus and sales literature from a display at an office of a broker-dealer. See Securities Act

SIFMA also opposed the requirement to deliver the full text of the ODD to prospective customers during a seminar or a similar in-person meeting. SIFMA suggested that instead of providing the full ODD, firms should provide information on how to access the ODD. FINRA believes the requirement to deliver the ODD to prospective customers during a seminar or in-person meeting should be maintained as it also posts virtually no burden and makes the disclosures to a prospective customer as accessible as options communications.

Finally, FINRA is proposing several technical changes to reflect recently approved changes in the current rule text and to change the term “Registered Options and Security Futures Principal” to “Registered Options Principal.” The term Registered Options Principal (“ROP”) was recently changed to Registered Options and Security Futures Principal (“ROSP”).⁷ However, FINRA believes that the change to ROSFP has generated confusion among the members and believes that reverting to ROP will alleviate these issues. In addition, FINRA believes that using the term ROP would promote consistency with the rules of the options exchanges all of which use the term ROP.⁸ Those changes are reflected in Exhibit 5 of this amendment.

Release No. 7233 (October 6, 1995); 60 FR 53458 (October 13, 1995); see also Securities Act Release No. 7288 (May 9, 1996); 61 FR 24644, n.16 (May 15, 1996) (recognizing that the ability to jump via hyperlink from the sales literature to view and download the prospectus would be sufficient to comply with Securities Act Section 5(b) requiring sales literature to be preceded or accompanied by a final prospectus).

⁷ See Securities Exchange Act Release No. 57775 (May 5, 2008), 73 FR 26453 (May 9, 2008) (SR-FINRA-2007-035).

⁸ See Exchange Act Release No. 58333 (August 8, 2008); 73 FR 47991 (August 15, 2008) (notice of filing of SR-FINRA-2008-032) (proposing the same term change for related options rules).

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 90 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,⁹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change promotes just and equitable principles of trade and protects investors and the public interest by providing the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity by promoting harmonization between FINRA's and other SROs' options communications rules.

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

⁹ 15 U.S.C. 78o-3(b)(6).

The Commission published the proposed rule change for comment in the Federal Register on April 25, 2008. The comment period closed on May 23, 2008, and the SEC received one comment letter. The comment letter is summarized above.

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.¹⁰

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

Not applicable.

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

Other options SROs will be proposing similar rule changes in this area.

9. Exhibits

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

Exhibit 5. Text of the proposed rule change.

¹⁰ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-013)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating To Amending NASD Rule 2220 (Options Communications with the Public)

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 the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend SR-FINRA-2008-013 (amending NASD Rule 2220) to address the comments the Commission received in response to the publication of the proposed rule change in the Federal Register³ and to reflect recently approved changes to the rule text. The text of the proposed rule change is attached as Exhibit 5 to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 57720 (April 25, 2008), 73 FR 24332 (May 2, 2008) (notice of filing of SR-FINRA-2008-013).

this rule filing. The text of the proposed rule change replaces and supersedes in its entirety the rule text filed on April 4, 2008.

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

On April 4, 2008, FINRA filed with the SEC proposed rule change SR-FINRA-2008-013 to amend NASD Rule 2220 (Options Communications with the Public) to better address current needs for regulating options communications practices and to promote consistency across the options communications rules of other self-regulatory organizations ("SROs"). On April 25, 2008, the SEC published the proposed rule change for comment in the Federal Register.⁴ The comment period closed on May 23, 2008, and the SEC received one comment letter in response to the Federal Register publication.⁵

In general, SIFMA supported the proposed rule change noting, among other things, that it was better aligned with the other FINRA communications rules. Most of

⁴ See id.

⁵ The SEC received a comment letter from Melissa MacGregor, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated May 22, 2008.

SIFMA's substantive comments addressed the requirements in NASD Rule 2860 (Options) to deliver the Options Disclosure Document ("ODD") and recent supplements thereto. These comments, which include a request to consider a "notice-equals-delivery" standard for ODD supplements, are outside the scope of the proposed rule change, which is limited to NASD Rule 2220, and therefore, are not addressed in this filing. Nevertheless, FINRA supports the general concept of "notice-equals-delivery" for ODD supplements.

With respect to the proposed rule change, SIFMA opposed limitations on the types of options communications that can be made prior to delivery of the ODD because all customers must receive the ODD at or prior to the time an options account is opened. SIFMA believes that the requirement to distribute the ODD prior to certain types of options communications is unnecessary and duplicative, and limits firms to sending to prospective customers generalized materials that do not provide the necessary information for analyzing potential options investments.

This issue was considered by FINRA and other SROs governing options prior to filing the proposed rule change. FINRA and the other SROs believe that the *subsequent* delivery of the ODD would not aid an investor in understanding or evaluating options communications, and therefore decided to maintain the existing limitations on the types of options communications that may precede delivery of the ODD. FINRA notes that delivery of the ODD can be effected by a hyperlink to the ODD,⁶ so the requirement that

⁶ Delivery of the ODD for purposes of NASD Rule 2860(b)(11) also can be satisfied by a hyperlink to the ODD. See Notice to Members 98-03 (January 1998) (members may electronically transmit documents that they are required or permitted to furnish to customers under NASD Rules, including the delivery of the ODD required by NASD Rule 2860(b)(11)); see also Exchange Act Release

the ODD either precede or accompany these options communications poses virtually no burden with respect to electronic communications that would be considered sales literature or advertisements.⁷

SIFMA also opposed the requirement to deliver the full text of the ODD to prospective customers during a seminar or a similar in-person meeting. SIFMA suggested that instead of providing the full ODD, firms should provide information on how to access the ODD. FINRA believes the requirement to deliver the ODD to prospective customers during a seminar or in-person meeting should be maintained as it also poses virtually no burden and makes the disclosures to a prospective customer as accessible as options communications.

Finally, FINRA is proposing several technical changes to reflect recently approved changes in the current rule text and to change the term “Registered Options and Security Futures Principal” to “Registered Options Principal.” The term Registered Options Principal (“ROP”) was recently changed to Registered Options and Security

No. 39356 (November 25, 1997); 62 FR 64421 (December 5, 1997) (order approving Notice to Members 98-03).

⁷ The SEC’s 1995 and 1996 releases on the use of electronic media for delivery of information provide that a hyperlink contained in sales literature is sufficient for electronic delivery of a prospectus (or other required information) as it is analogous to an investor’s selecting an envelope containing a paper prospectus and sales literature from a display at an office of a broker-dealer. See Securities Act Release No. 7233 (October 6, 1995); 60 FR 53458 (October 13, 1995); see also Securities Act Release No. 7288 (May 9, 1996); 61 FR 24644, n.16 (May 15, 1996) (recognizing that the ability to jump via hyperlink from the sales literature to view and download the prospectus would be sufficient to comply with Securities Act Section 5(b) requiring sales literature to be preceded or accompanied by a final prospectus).

Futures Principal (“ROSFP”).⁸ However, FINRA believes that the change to ROSFP has generated confusion among the members and believes that reverting to ROP will alleviate these issues. In addition, FINRA believes that using the term ROP would promote consistency with the rules of the options exchanges all of which use the term ROP.⁹ Those changes are reflected in Exhibit 5 of this amendment.

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 90 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,¹⁰ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change promotes just and equitable principles of trade and protects investors and the public interest by providing the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity by promoting harmonization between FINRA’s and other SROs’ options communications rules.

⁸ See Securities Exchange Act Release No. 57775 (May 5, 2008), 73 FR 26453 (May 9, 2008) (SR-FINRA-2007-035).

⁹ See Exchange Act Release No. 58333 (August 8, 2008); 73 FR 47991 (August 15, 2008) (notice of filing of SR-FINRA-2008-032) (proposing the same term change for related options rules).

¹⁰ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Commission published the proposed rule change for comment in the Federal Register on April 25, 2008. The comment period closed on May 23, 2008, and the SEC received one comment letter. The comment letter is summarized above.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2008-013 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2008-013. 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-2008-013 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.¹¹

Florence Harmon

Acting Secretary

¹¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Amendment No. 1 supersedes and replaces in its entirety the proposed rule change as filed on April 4, 2008. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

2000. BUSINESS CONDUCT

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2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

* * * * *

2220. Options Communications [with the Public]

(a) Definitions

For purposes of this Rule and any interpretation thereof:

(1) “Options communications” consist of:

(A) “Advertisement.” Any “Advertisement” as defined in Rule 2210(a)(1) concerning options.[shall include any material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video device, telecommunications device, billboards, signs or through written sales communications to customers or the public that are not required to be accompanied or preceded by one or more current options disclosure documents.]

[(2) “Educational material” shall include any explanatory material distributed or made generally available to customers or the public that is

limited to information describing the general nature of the standardized options markets or one or more strategies.]

[(3)](B) “Sales literature.” Any “Sales Literature” as defined in Rule 2210(a)(2) concerning options including worksheet templates.[shall include any written communication (not defined as an “advertisement” or as “educational material”) distributed or made generally available to customers or the public that contains any analysis, performance report, projection or recommendation with respect to options, underlying securities or market conditions, any standard forms of worksheets, or any seminar text which pertains to options and which is communicated to customers or the public at seminars, lectures or similar such events.]

(C) “Correspondence.” Any “Correspondence” as defined in Rule 2211(a)(1) concerning options.

(D) “Institutional sales material.” Any “Institutional Sales Material” as defined in Rule 2211(a)(2) concerning options.

(E) “Public appearance.” Any participation in a seminar, forum (including an interactive electronic forum), radio, television or print media interview, or other public speaking activity, or the writing of a print media article, concerning options.

(F) “Independently prepared reprint.” Any “Independently Prepared Reprint” as defined in Rule 2210(a)(6)(A) concerning options.

(2) “Existing retail customer” as is defined in Rule 2211(a)(4).

(3) “Standardized option.” means any option contract issued, or subject to issuance, by The Options Clearing Corporation, that has standardized terms for the strike price, expiration date, and amount of the underlying security, and is traded on a national securities exchange registered pursuant to section 6(a) of the Act.

(4) “Options” as is defined in Rule 2860(a).

(5) “Options disclosure document” has the same meaning as the term “disclosure document” as defined in Rule 2860(b)(2)(T).

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

(1) Advertisements, Sales Literature, and Independently Prepared Reprints. All advertisements, sales literature (except completed worksheets), [and educational material] and independently prepared reprints issued by a member [or member organization pertaining to] concerning options shall be approved in advance by a Registered Options[and Security Futures] Principal designated by the member’s written supervisory procedures.

(2) Correspondence. Correspondence need not be approved by a Registered Options Principal prior to use, unless such correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise

promotes a product or service of the member. All correspondence is subject to the supervision and review requirements of Rule 3010(d).

(3) Institutional Sales Material. Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by a Registered Options Principal of institutional sales material used by the member and its registered representatives as described in Rule 2211(b)(1)(B).

(4) Copies [thereof] of the options communications shall be retained by the member in accordance with SEC Rule 17a-4 of the Act. [, together with t]The names of the persons who prepared the options communications [material], the names of the persons who approved the options communications [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 NASD for a period of three years] in the form and for the time period required for options communications by SEC Rule 17a-4 of the Act.

(c) Association Approval Requirements and Review Procedures

(1) In addition to the approval required by paragraph (b) of this Rule, [every] all advertisements, [and all educational material] sales literature, and independently prepared reprints [of] issued by a member [or member organization pertaining to] concerning standardized options used prior to delivery of the applicable current options disclosure document or prospectus shall be submitted

to the Advertising [/Investment Companies] Regulation Department of the Association [*](the “Department”) at least ten calendar days prior to use (or such shorter period as the [Association] Department may allow in particular instances) for approval and, if changed or expressly disapproved by the [Association] Department, shall be withheld from circulation until any changes specified by the [Association] Department have been made or, in the event of disapproval, until such options communication [the advertisement or educational material] has been resubmitted for, and has received, [Association] Department approval.

(2)(A) Notwithstanding the foregoing provision, the Department, upon review of a member's options [advertisements, educational material and/or sales literature] communications, and after determining that the member [will again] has departed from the standards of this Rule, may require that such member file some or all options [advertisements, educational material and/or sales literature,] communications or the portions of such member's [material] communications that [is] are related to options [any specific types or classes of securities or services,] with the Department, at least ten calendar days prior to use.

(B) The Department shall notify the member in writing of the types of options communications [material] to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 21

[* This Department located at 1735 K Street, N.W., Washington, D.C. 20006.]

calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.

(3) In addition to the foregoing requirements, every member's options [advertising and sales literature] communications shall be subject to a routine spot-check procedure. Upon written request from the [Association] Department, each member shall promptly submit the communications [material] requested. Members will not be required to submit communications [material] under this procedure that have[s] been previously submitted pursuant to one of the foregoing requirements.

(4) The requirements of this paragraph (c) shall not be applicable to:

(A) options communications [advertisements or educational material] submitted to another self-regulatory organization having comparable standards pertaining to such communications [advertisements or educational material, and];

(B) [advertisements] communications in which the only reference to options is contained in a listing of the services of [a] the member[organization.];

(C) the options disclosure document; and

(D) the prospectus.

[(5) Except as otherwise provided in subparagraphs (d)(2)(B) and (C), no written material respecting options may be disseminated to any

person who has not previously or contemporaneously received one or more current options disclosure documents.]

(d) Standards Applicable to Communications[with the Public]

**(1) [General Standards]Communications Regarding
Standardized Options used Prior to Delivery of Options Disclosure
Document**

(A) Options communications regarding standardized options
exempted under SEC Rule 238 under the Securities Act of 1933 used
prior to options disclosure document delivery:

(i) must be limited to general descriptions of the
options being discussed. The text may also contain a brief
description of options, including a statement that identifies
registered clearing agencies for options and a brief
description of the general attributes and method of operation
of the exchanges on which such options are traded, including
a discussion of how an option is priced;

(ii) must contain contact information for obtaining a
copy of the options disclosure document;

(iii) must not contain recommendations or past or
projected performance figures, including annualized rates of
return, or names of specific securities;

(iv) may include any statement required by any state
law or administrative authority;

(v) may include advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics, provided such material is not misleading; and

(B) Options communications regarding options not exempted under SEC Rule 238 under the Securities Act of 1933 used prior to delivery of a prospectus that meets the requirements of Section 10(a) of said Act must conform to SEC Rule 134 or 134a under said Act, as applicable.

(2) General Standards

(A) No member [or member organization] or associated person of the member [associated with a member] shall use[tilize any advertisement, educational material, sales literature,] any [or other] options communications [to any customer or member of the public concerning options] which:

[(A)](i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

[(B)](ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

[(C)](iii) contains [hedge clauses or disclaimers which are not legible, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such communication] cautionary statements or caveats that are not legible, are misleading, or are inconsistent with the content of the material;[or]

[(D)](iv) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act[.];

(v) contains statements suggesting the certain availability of a secondary market for options;

[(2) Specific Standards (A)](vi) fails to reflect
[T]he[special] risks attendant to options transactions and the complexities of certain options investment strategies [shall be reflected in any advertisement, educational material or sales literature which discusses the uses or advantages of options.];

(vii) [Such communications shall] fails to include a warning to the effect that options are not suitable for all investors or contains suggestions to the contrary[. In the preparation of written communications respecting options, the following guidelines shall be observed:]; or

(viii) fails to include a statement that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparison, recommendations, statistics, or other technical data, will be supplied upon request.

(B) Subparagraphs (vii) and (viii) above shall not apply to institutional sales material as defined in paragraph (a) of this Rule.

(C)[(i)] Any statement in any options communications referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities [should] must be avoided. [Thus, a statement such as “with options, an investor has an opportunity to earn profits while limiting his risk of loss,” should be balanced by a statement such as “of course, an options investor may lose the entire amount committed to options in a relatively short period of time.”]

[(ii) It shall not be suggested that options are suitable for all investors.]

[(iii) Statements suggesting the certain availability of a secondary market for options shall not be made.]

[(B) Advertisements pertaining to options shall conform to the following standards:]

[(i) Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received one or more options disclosure documents) if the material meets the requirements of SEC Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current options disclosure document(s) may be obtained. Such advertisements may have the following characteristics:]

[a. The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is the Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of the Options Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);]

[b. The advertisement may include any statement required by any state law or administrative authority;]

[c. Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.]

[(ii) The use of recommendations or of past or projected performance figures, including annualized rates of return, is not permitted in any advertisement pertaining to options.]

[(C) Educational material, including advertisements, pertaining to options may be used if the material meets the requirements of SEC Rule 134A under the Securities Act of 1933. Those requirements are as follows:]

[(i) The potential risks related to options trading generally and to each strategy addressed are explained;]

[(ii) No past or projected performance figures, including annualized rates of return are used;]

[(iii) No recommendation to purchase or sell any option contract is made;]

[(iv) No specific security is identified other than:]

[a. a security which is exempt from registration under the Act, or an option on such exempt security;]

[b. an index option, including the component securities of the index; or]

[c. a foreign currency option; and]

[(v) The material contains the name and address of a person or persons from whom the appropriate current Options Disclosure Document(s), as defined in SEC Rule 9b-1 of the Act, may be obtained.]

[(D) Sales literature pertaining to options shall conform to the following standards:]

[(i) Sales literature shall state that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.]

[(ii) Such communications may contain projected performance figures (including projected annualized rates of return), provided that:]

(3) Projections

Options communications may contain projected performance figures (including projected annualized rates of return) provided that:

(A) all such communications regarding standardized options are accompanied or preceded by the options disclosure document;

(B)[a.] no suggestion of certainty of future performance is made;

(C)[b.] parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(D)[c.] all relevant costs, including commissions, fees, and interest charges ([if] as applicable[with regard to margin transactions]) are disclosed and reflected in the projections;

(E)[d.] such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(F)[e.] all material assumptions made in such calculations are clearly identified (e.g., “assume option expires,” “assume option unexercised,” “assume option exercised,” etc.);

(G)[f.] the risks involved in the proposed transactions are also disclosed; and

(H)[g.] in communications relating to annualized rates of return, that such returns are not based upon any less than a sixty-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the

annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

(4) Historical Performance

[(iii) Such]Options communications may feature records and statistics that portray the performance of past recommendations or of actual transactions, provided that:

(A) all such communications regarding standardized options are accompanied or preceded by the options disclosure document;

(B)[a.] any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific “universe” that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

(C)[b.] such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

(D)[c.] [such communications disclose] all relevant costs, including commissions, [and interest charges (if applicable with regard to margin transactions) and,] fees, and daily margin obligations (as applicable) are disclosed and reflected in the performance;

(E) whenever such communications contain annualized rates of return [are used], all material assumptions used in the process of annualization are disclosed;

(F)[d.] an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

(G)[e.] such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(H)[f.] a Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

(5) Options Programs

[(iv) In the case of]In communications regarding an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

[(v) Standard forms of options worksheets utilized by member organizations, in addition to complying with the requirements applicable to sales literature, must be uniform within a member organization.]

[(vi) If a member organization has adopted a standard form of worksheet for a particular options strategy, nonstandard worksheets for that strategy may not be used.]

[(vii) Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.]

(6) Violation of Other Rules

Any violation by a member or associated person of any rule or requirement of the SEC or any rule of the Securities Investor Protection Corporation applicable to member communications concerning options will be deemed a violation of this Rule 2220.

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