

OMB APPROVAL

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

File No. SR - 2008 - 032
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
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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) 728-2974 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 10/08/2008

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 EFFT website.

Form 19b-4 Information

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

Exhibit 1 - Notice of Proposed Rule Change

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

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

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Exhibit Sent As Paper Document

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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 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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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 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

On July 29, 2008, Financial Industry Regulatory Authority, Inc. or “FINRA” (f/k/a the National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (the “SEC”) proposed rule change SR-FINRA-2008-032 to adopt NASD Rules 2840 through 2853 regarding Trading in Index Warrants, Currency Index Warrants and Currency Warrants, 2860 (Options), and 2865 (Security Futures) as FINRA Rules in the consolidated FINRA rulebook. The proposed rule change would renumber NASD Rules 2840 through 2853 as FINRA Rules 2350 through 2359, NASD Rule 2860 as FINRA Rule 2360 and NASD Rule 2865 as FINRA Rule 2370 in the consolidated FINRA rulebook. The proposed rule change was published for comment in the Federal Register on August 15, 2008.¹ The comment period closed September 5, 2008. The SEC received one comment letter to the proposed rule change.² FINRA is filing this Partial Amendment to respond to the comment letter and to propose to amend the rule text of the proposed rule change to FINRA Rule 2360 (Options) as described below.

SIFMA supported the proposal, but requested one change and one clarification in the area of options discretionary accounts under proposed FINRA Rule 2360(b)(18). The proposed rule, as is the case today in NASD Rule 2860(b)(18), requires that a Registered Options Principal (“ROP”)³ other than the ROP who accepted the account review the acceptance of each discretionary account to determine that the ROP 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.⁴ SIFMA states that the review of the acceptance of the discretionary account is not necessary in light of the frequent supervisory review of the activity in the account by a ROP who is not exercising the discretionary authority.⁵ SIFMA requested in the event FINRA continues to believe that the review of the acceptance of the discretionary account is required, that FINRA would permit the acceptance of the discretionary account as well as the review of the acceptance of the discretionary account to be performed by either a ROP (Series 4) or a Limited Principal-General Securities Sales Supervisor (“LP-GSSS”) (Series 9/10). Further, SIFMA seeks clarification in FINRA Rule 2360(b)(18) that the frequent supervisory

¹ See Securities Exchange Act Release No. 58333 (August 8, 2008), 73 FR 47991 (August 15, 2008).

² See Letter from Melissa MacGregor, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association (“SIFMA”), to Florence E. Harmon, Acting Secretary, SEC, dated September 4, 2008.

³ While NASD Rule 2860 refers to “Registered Options and Security Futures Principal,” FINRA proposes in SR-FINRA2008-032 to change such term to “Registered Options Principal” to promote consistency with the rules of the options exchanges all of which use the term ROP.

⁴ See proposed FINRA Rule 2360(b)(18)(A)(ii).

⁵ Id.

review by a ROP who is not exercising the discretionary authority may be performed by a LP-GSSS (Series 9/10) in addition to a ROP (Series 4).

FINRA does not agree that the review of the acceptance of a discretionary options account is “unnecessary to protect investors.”⁶ SIFMA is commenting on provisions that were the subject of recent amendments as part of FINRA’s overall revisions to options supervision.⁷ The proposed rule change simply moves over into the FINRA consolidated rulebook the current NASD provisions, which are generally consistent across the options exchanges.⁸ FINRA continues to believe heightened supervision in the form of requiring a review of the acceptance of a discretionary options account is both appropriate and necessary. However, consistent with the rules of the Chicago Board Options Exchange (“CBOE”),⁹ FINRA proposes to amend FINRA Rule 2360(b)(18) to permit greater flexibility and allow a LP-GSSS (Series 9/10) in addition to a ROP (Series 4) to accept the discretionary options account. FINRA believes, consistent with the CBOE provision, that the review of the acceptance of a discretionary options account must be performed by a ROP (Series 4). FINRA believes this review function should be executed by individuals who have demonstrated their in-depth knowledge about options by becoming a ROP (Series 4).

Similarly, FINRA believes that the “frequent appropriate supervisory review by a ROP who is not exercising the discretionary authority” should be performed by a ROP (Series 4). Prior to the changes in SR-FINRA-2007-035, the supervisory review was required to be performed by the Compliance Registered Options Principal, which required the Series 4. FINRA believes that maintaining the same level of qualifications for the supervisory review is appropriate.

With the exception of the amendment to FINRA Rule 2360(b)(18) discussed above, the rest of the proposed rule change as contained in the original rule filing, remains unchanged. The text of the proposed rule change to FINRA Rule 2360 only is attached as Exhibit 4 to this Partial Amendment.

⁶ See SIFMA letter at 2.

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

⁸ See also CBOE Rule 9.10, AMEX Rule 924, NASDAQ OMX PHLX Rule 1027, BOX Chapter XI Section 12. The ISE (SR-ISE-2008-21) has filed a proposed rule change with the SEC to make conforming changes. FINRA believes that the NOM and NYSE Arca will propose similar changes.

⁹ See CBOE Rule 9.2.02 that specifies that the review of the acceptance of a discretionary account must be performed by a Series 4 qualified individual.

EXHIBIT 4

Below is the text of the proposed rule change with the changes proposed in the initial filing shown as though approved. New language proposed in this amendment is underlined.

* * * * *

2300. SPECIAL PRODUCTS

* * * * *

2360. Options

(a) No Change.

(b) Requirements

(1) through (17) No Change.

(18) Discretionary Accounts

(A) Authorization and Approval

(i) No Change

(ii) Each firm shall designate specific Registered Options

Principals or Limited Principal—General Securities Sales

Supervisors as described below to review discretionary accounts. A

Registered Options Principal other than the Registered Options

Principal or Limited Principal—General Securities Sales Supervisor

who accepted the account shall review the acceptance of each

discretionary account to determine that the Registered Options

Principal or Limited Principal—General Securities Sales Supervisor

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 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 NASD 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) No Change

(B) through (C) No Change.

(19) through (24) No Change.

(c) No Change.

• • • **Supplementary Material:** ----- No Change.

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