

OMB APPROVAL

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

File No. SR - 2008 - 045
Amendment No. 1

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

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

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
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Description

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

Contact Information

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

First Name 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.

Patrice Gliniecki,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),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-2008-045, a proposed rule change to amend the FINRA Rule 9520 Series, which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws.

This Amendment No. 1 to SR-FINRA-2008-045 makes technical changes to the original filing filed on September 8, 2008. The text of the proposed rule change is attached as Exhibit 5 to this filing.² The proposed rule change replaces and supersedes the proposed rule change filed on September 8, 2008 in its entirety, except with regard to Exhibit 2, a proposed Regulatory Notice that details the proposed related eligibility procedures.³

(b) Not applicable.

¹ 15 U.S.C. 78s(b)(1).

² The text of the proposed rule change to the FINRA Rule 9520 Series as set forth in Exhibit 5 reflects amendments adopted pursuant to proposed rule change SR-FINRA-2008-021, which was approved by the Commission but has not yet been implemented. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-021). The FINRA Rule 9520 Series, as set forth in SR-FINRA-2008-021, will take effect on December 15, 2008. See FINRA Regulatory Notice 08-57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

³ FINRA would issue the proposed Regulatory Notice upon the Commission’s approval of the proposed rule change; the Regulatory Notice is written in a manner that assumes such approval.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on November 21, 2006, the Board of Governors of FINRA (then known as NASD) authorized the filing of the proposed rule change with the SEC. The proposed rule change also has been approved by the General Counsel of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

The effective date will be 90 days following Commission approval of the proposed rule change.

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

(a) Purpose

In light of FINRA's obligation to enforce the federal securities laws, and as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. and the formation of FINRA, FINRA adopted by Board and membership vote a revised By-Law definition of disqualification that is consistent with the federal securities laws, such that any person subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act also is subject to disqualification under Article III, Section 4 of the FINRA By-Laws.⁴ Consequently, as further detailed in the proposed Regulatory

⁴ See Securities Exchange Act Release No. 55495 (March 20, 2007); 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023). See also Securities Exchange Act Release No. 56145 (July 26, 2007); 72 FR 42169 (August 1, 2007) (SEC Order Approving SR-NASD-2007-023), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008). See also NASD, SEC No-Action Letter, 2007 SEC No-Act. LEXIS 540 (July 27, 2007).

Notice (see Exhibit 2), FINRA's revised definition of disqualification incorporates three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations with certain other persons subject to disqualification.

Absent the proposed rule change, all persons subject to any of the added categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. The proposed rule change would both amend the text of the FINRA Rule 9520 Series generally to reflect the amended definition of disqualification in the By-Laws, as well as include the proposed Regulatory Notice that outlines in detail the applicable eligibility procedures. The amended FINRA Rule 9520 Series would incorporate by reference the procedures set forth in the Regulatory Notice. As further detailed in the Regulatory Notice, the need for a member to file an application with FINRA for approval notwithstanding the disqualification would depend on (1) the type of the disqualification; (2) the date of the disqualification; and (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

The proposed rule change would amend FINRA Rule 9522 to address the initiation of eligibility proceedings and the authority of FINRA's Department of Member Regulation ("Member Regulation") to approve disqualification applications, where the disqualification arises from findings or orders specified in Exchange Act Section 15(b)(4)(D), (E) or (H) or arises under Exchange Act Section 3(a)(39)(E) (i.e., the added categories of disqualification). Currently, FINRA Rule 9522(a)(1) provides, among other things, that if FINRA staff has reason to believe that a disqualification exists, FINRA

staff will issue a written notice to the member or applicant for membership under NASD Rule 1013, specifying the grounds for such disqualification. The proposed amendments to FINRA Rule 9522(a)(1) provide that FINRA staff would issue such written notice with respect to the added categories of disqualification only when the member or applicant is required to file an application pursuant to the Regulatory Notice. Similarly, the proposed rule change would amend FINRA Rule 9522(b) to require a member to file an application with FINRA with respect to the added categories of disqualification only when instructed to submit one by the Regulatory Notice.

Moreover, under the current rules, Member Regulation is responsible for evaluating applications for relief from a disqualification filed by a disqualified member or sponsoring member. In certain circumstances, Member Regulation is authorized to approve the application, while in other cases, Member Regulation must make a recommendation to either approve or deny the applications to the National Adjudicatory Council (“NAC”). The proposed amendments to FINRA Rule 9522 would authorize Member Regulation to approve applications based on the added categories of disqualification. In the event Member Regulation does not approve these applications, the disqualified member or sponsoring member would have the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.

In addition, if Member Regulation determines that an application relating to a disqualification that arises from findings or orders specified in Exchange Act Section 15(b)(4)(D), (E), or (H) or arises under Exchange Act Section 3(a)(39)(E) should be approved, but with specific supervisory requirements that have the consent of the

disqualified member or sponsoring member, then proposed FINRA Rule 9523(b) would authorize Member Regulation to approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NAC. Consistent with the current rule regarding the submission of supervisory plans,⁵ proposed FINRA Rule 9523(b)(1) would provide that, by submitting an executed letter consenting to a supervisory plan, a disqualified member, sponsoring member and/or disqualified person waive the following (in summary):

- (a) the right to a hearing and any right of appeal to challenge the validity of the supervisory plan;
- (b) the right to claim bias or prejudgment by Member Regulation or the General Counsel regarding the supervisory plan; and
- (c) the right to claim a violation of the ex parte prohibitions or the separation of functions provisions of FINRA Rules 9143 and 9144, respectively, in connection with participation in the supervisory plan.

If the parties cannot agree on a supervisory plan, the disqualified member or sponsoring member would have the right to proceed under FINRA Rule 9524.

The proposed rule change also would make several technical amendments. For example, the proposed rule change would amend FINRA Rule 9522(c) to allow a member that has filed a statutory disqualification application to withdraw that application after the start of a hearing but prior to the issuance of a decision by the NAC by filing a written notice with FINRA's Department of Registration and Disclosure ("RAD") and the Office of General Counsel. In addition, for purposes of clarity and consistency, the

⁵ See FINRA Rule 9523(b)(1) (to be renumbered to FINRA Rule 9523(a)(1)).

proposed rule change would amend FINRA Rule 9522(e) to replace references that Member Regulation “may grant” or “may approve” certain matters to “is authorized to approve” such matters.

As noted in Item 2 of this filing, the effective date will be 90 days following Commission approval of the proposed rule change.

(b) 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’s rules 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 is consistent with the provisions of the Exchange Act noted above in that amendments to FINRA Rule 9520 Series are necessitated by the adoption of a revised definition of statutory disqualification, so that the FINRA By-Law definition of disqualification is consistent with Section 3(a)(39) of the Exchange Act. The proposed rule change also should allow FINRA to integrate filings mandated by the revised definition of disqualification into established programs that monitor subject persons and allow FINRA and the Commission to focus resources on filings that raise important investor protection concerns.

⁶ 15 U.S.C. 78o-3(b)(6).

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 Exchange Act.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Exchange Act.⁷

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

Not applicable.

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

Not applicable.

9. Exhibits

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

Exhibit 2. Proposed FINRA Regulatory Notice. (See original filing dated September 8, 2008).

Exhibit 5. Text of the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-045)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amend the FINRA Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

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 -----³ 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 the FINRA Rule 9520 Series, which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws.

This Amendment No. 1 to SR-FINRA-2008-045 makes technical changes to the original filing filed on September 8, 2008. The text of the proposed rule change is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 to SR-FINRA-2008-045 replaced and superseded the original rule filing submitted to the Commission on September 8, 2008.

attached as Exhibit 5 to this filing.⁴ The proposed rule change replaces and supersedes the proposed rule change filed on September 8, 2008 in its entirety, except with regard to Exhibit 2, a proposed Regulatory Notice that details the proposed related eligibility procedures.⁵

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

In light of FINRA's obligation to enforce the federal securities laws, and as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. and the formation of FINRA, FINRA adopted by Board and membership

⁴ The text of the proposed rule change to the FINRA Rule 9520 Series as set forth in Exhibit 5 reflects amendments adopted pursuant to proposed rule change SR-FINRA-2008-021, which was approved by the Commission but has not yet been implemented. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-021). The FINRA Rule 9520 Series, as set forth in SR-FINRA-2008-021, will take effect on December 15, 2008. See FINRA Regulatory Notice 08-57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

⁵ FINRA would issue the proposed Regulatory Notice upon the Commission's approval of the proposed rule change; the Regulatory Notice is written in a manner that assumes such approval.

vote a revised By-Law definition of disqualification that is consistent with the federal securities laws, such that any person subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act also is subject to disqualification under Article III, Section 4 of the FINRA By-Laws.⁶ Consequently, as further detailed in the proposed Regulatory Notice (see Exhibit 2), FINRA's revised definition of disqualification incorporates three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations with certain other persons subject to disqualification.

Absent the proposed rule change, all persons subject to any of the added categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. The proposed rule change would both amend the text of the FINRA Rule 9520 Series generally to reflect the amended definition of disqualification in the By-Laws, as well as include the proposed Regulatory Notice that outlines in detail the applicable eligibility procedures. The amended FINRA Rule 9520 Series would incorporate by reference the procedures set forth in the Regulatory Notice. As further detailed in the Regulatory Notice, the need for a member to file an application with FINRA for approval notwithstanding the disqualification would depend on (1) the type of the disqualification; (2) the date of the disqualification; and (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

⁶ See Securities Exchange Act Release No. 55495 (March 20, 2007); 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023). See also Securities Exchange Act Release No. 56145 (July 26, 2007); 72 FR 42169 (August 1, 2007) (SEC Order Approving SR-NASD-2007-023), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008). See also NASD, SEC No-Action Letter, 2007 SEC No-Act. LEXIS 540 (July 27, 2007).

The proposed rule change would amend FINRA Rule 9522 to address the initiation of eligibility proceedings and the authority of FINRA's Department of Member Regulation ("Member Regulation") to approve disqualification applications, where the disqualification arises from findings or orders specified in Exchange Act Section 15(b)(4)(D), (E) or (H) or arises under Exchange Act Section 3(a)(39)(E) (i.e., the added categories of disqualification). Currently, FINRA Rule 9522(a)(1) provides, among other things, that if FINRA staff has reason to believe that a disqualification exists, FINRA staff will issue a written notice to the member or applicant for membership under NASD Rule 1013, specifying the grounds for such disqualification. The proposed amendments to FINRA Rule 9522(a)(1) provide that FINRA staff would issue such written notice with respect to the added categories of disqualification only when the member or applicant is required to file an application pursuant to the Regulatory Notice. Similarly, the proposed rule change would amend FINRA Rule 9522(b) to require a member to file an application with FINRA with respect to the added categories of disqualification only when instructed to submit one by the Regulatory Notice.

Moreover, under the current rules, Member Regulation is responsible for evaluating applications for relief from a disqualification filed by a disqualified member or sponsoring member. In certain circumstances, Member Regulation is authorized to approve the application, while in other cases, Member Regulation must make a recommendation to either approve or deny the applications to the National Adjudicatory Council ("NAC"). The proposed amendments to FINRA Rule 9522 would authorize Member Regulation to approve applications based on the added categories of disqualification. In the event Member Regulation does not approve these applications,

the disqualified member or sponsoring member would have the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.

In addition, if Member Regulation determines that an application relating to a disqualification that arises from findings or orders specified in Exchange Act Section 15(b)(4)(D), (E), or (H) or arises under Exchange Act Section 3(a)(39)(E) should be approved, but with specific supervisory requirements that have the consent of the disqualified member or sponsoring member, then proposed FINRA Rule 9523(b) would authorize Member Regulation to approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NAC. Consistent with the current rule regarding the submission of supervisory plans,⁷ proposed FINRA Rule 9523(b)(1) would provide that, by submitting an executed letter consenting to a supervisory plan, a disqualified member, sponsoring member and/or disqualified person waive the following (in summary):

- (a) the right to a hearing and any right of appeal to challenge the validity of the supervisory plan;
- (b) the right to claim bias or prejudgment by Member Regulation or the General Counsel regarding the supervisory plan; and
- (c) the right to claim a violation of the ex parte prohibitions or the separation of functions provisions of FINRA Rules 9143 and 9144, respectively, in connection with participation in the supervisory plan.

⁷ See FINRA Rule 9523(b)(1) (to be renumbered to FINRA Rule 9523(a)(1)).

If the parties cannot agree on a supervisory plan, the disqualified member or sponsoring member would have the right to proceed under FINRA Rule 9524.

The proposed rule change also would make several technical amendments. For example, the proposed rule change would amend FINRA Rule 9522(c) to allow a member that has filed a statutory disqualification application to withdraw that application after the start of a hearing but prior to the issuance of a decision by the NAC by filing a written notice with FINRA's Department of Registration and Disclosure ("RAD") and the Office of General Counsel. In addition, for purposes of clarity and consistency, the proposed rule change would amend FINRA Rule 9522(e) to replace references that Member Regulation "may grant" or "may approve" certain matters to "is authorized to approve" such matters.

The effective date will be 90 days following Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,⁸ which requires, among other things, that FINRA's rules 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 is consistent with the provisions of the Exchange Act noted above in that amendments to FINRA Rule 9520 Series are necessitated by the adoption of a revised definition of statutory disqualification, so that the FINRA By-Law definition of disqualification is consistent

⁸ 15 U.S.C. 78o-3(b)(6).

with Section 3(a)(39) of the Exchange Act. The proposed rule change also should allow FINRA to integrate filings mandated by the revised definition of disqualification into established programs that monitor subject persons and allow FINRA and the Commission to focus resources on filings that raise important investor protection concerns.

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 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-2008-045 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-2008-045. 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-2008-045 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.⁹

Florence Harmon

Acting Secretary

⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

* * * * *

9500. OTHER PROCEEDINGS

* * * * *

9520. Eligibility Proceedings

* * * * *

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) Initiation by FINRA

(1) Issuance of Notice of Disqualification or Ineligibility

If FINRA staff has reason to believe that a disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of FINRA, FINRA staff shall issue a written notice to the member or applicant for membership under NASD Rule 1013. The notice shall specify the grounds for such disqualification or ineligibility. FINRA staff shall not issue such written notice to members or applicants for membership under NASD Rule 1013 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, unless the member or applicant for membership under NASD Rule 1013 is required to file an application pursuant to a Regulatory Notice entitled “Eligibility Proceedings: Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications” (the “SD Regulatory Notice”).

(2) through (4) No Change.

(b) Obligation of Member to Initiate Proceeding

(1) A member shall file an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, with RAD, if the member determines prior to receiving a notice under paragraph (a) that:

[(1)](A) it has become a disqualified member;

[(2)](B) a person associated with such member or whose association is proposed by an applicant for membership under NASD Rule 1013 has become a disqualified person; or

[(3)](C) the member or applicant for membership under NASD Rule 1013 wishes to sponsor the association of a person who is a disqualified person.

(2) For any disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, a member shall not file an application unless instructed to do so by the SD Regulatory Notice.

(c) Withdrawal of Application

A member may withdraw its application or written request for relief prior to a hearing by filing a written notice with RAD pursuant to Rules 9135, 9136, and 9137. A member may withdraw its application after the start of a hearing but prior to the issuance of a decision by the National Adjudicatory Council [with prior written consent of the National Adjudicatory Council]by filing a written notice with RAD and the Office of General Counsel pursuant to Rules 9135, 9136, and 9137.

(d) No Change.

(e) Member Regulation Consideration

(1) Matters that may be Approved by the Department of Member Regulation without the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, [may grant] is authorized to approve a written request for relief from the eligibility requirements by a disqualified member or a sponsoring member without the filing of an application by such disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification:

(A) through (C) No Change.

(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, [may] is authorized to approve an application filed by a disqualified member or sponsoring member if [a]the disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in paragraph (e)(1)):

(A) through (C) No Change.

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the SEC will not institute a proceeding against such person pursuant to Section 15(b) or 15B of the Exchange Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed; [or]

(E) The disqualified person's functions are purely clerical and/or ministerial in nature[.]; or

(F) The disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arises under Section 3(a)(39)(E) of the Exchange Act.

(3) No Change.

9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEA Rule 19h-1

(a) With respect to all disqualifications, except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, [A]after an application is filed, the Department of Member Regulation may recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The

disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan.

[(b)](1) If a disqualified member, sponsoring member, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waive:

(A) through (C) No Change.

(2) If a recommendation or supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the waivers made under paragraph [(b)](a)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under this rule and Rule 9524, as applicable.

[(c)](3) If the disqualified member, sponsoring member, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the Office of General Counsel by the Department of Member Regulation with a proposed Notice under SEA Rule 19h-1, where required. The Office of General Counsel shall forward the supervisory plan and proposed Notice under SEA Rule 19h-1, if any, to the Chairman of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council. The Chairman of the Statutory Disqualification Committee may accept or reject the recommendation of the Department of Member Regulation and the

supervisory plan or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

[(d)](4) If the recommendation and supervisory plan is accepted by the National Adjudicatory Council or the Chairman of the Statutory Disqualification Committee, it shall be deemed final and, where required, the proposed Notice under SEA Rule 19h-1 will be filed by FINRA. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee or the National Adjudicatory Council, FINRA may take any other appropriate action with respect to the disqualified member, sponsoring member, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member, sponsoring member, and/or disqualified person shall not be prejudiced by the execution of the letter consenting to the supervisory plan under this paragraph (a) and the letter may not be introduced into evidence in any proceeding.

(b) With respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, in approving an application under Rule 9522(e)(2)(F), the Department of Member Regulation is authorized to accept the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified persons, as the case may be, consent to the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be,

shall execute a letter consenting to the imposition of the supervisory plan. The Department of Member Regulation shall prepare a proposed Notice under SEA Rule 19h-1, where required, and FINRA shall file such Notice.

(1) If a disqualified member, sponsoring member, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waive:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the National Adjudicatory Council, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;

(B) any right of the disqualified member, sponsoring member, and/or disqualified person to claim bias or prejudgment by the Department of Member Regulation or the General Counsel in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified member, sponsoring member, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the supervisory plan, or

other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan.

(2) If the supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the waivers made under paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under Rule 9524.

9524. National Adjudicatory Council Consideration

(a) No Change.

(b) Decision

(1) Decision of the National Adjudicatory Council

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the National Adjudicatory Council may grant or deny the request for relief, and, if relief is granted, impose conditions on the disqualified member, sponsoring member, and/or disqualified person, as the case may be. At any time prior to the issuance of its recommendation, the National Adjudicatory Council may order the Parties to supplement the record with any additional information that the National Adjudicatory Council deems necessary. Alternatively, the National Adjudicatory Council may remand the eligibility proceeding. The National Adjudicatory Council shall prepare a proposed written decision pursuant to [sub]paragraph (b)(2).

(2) through (3) No Change.

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