

OMB APPROVAL

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

File No. SR - 2008 - 062

Amendment No.

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)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 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).

Proposed Rule Change to Adopt FINRA Rule 2267 (Investor Education and Protection) in the Consolidated FINRA Rulebook

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.

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

☐

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 (“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”) a proposed rule change to adopt new FINRA Rule 2267 (Investor Education and Protection) based on NASD Rule 2280. The proposed rule change would require member firms, with certain exceptions, to provide customers with FINRA’s Web site address and information regarding FINRA’s BrokerCheck program at least once every calendar year. The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

(b) Upon Commission approval and implementation by FINRA of the proposed rule change, the corresponding NASD rule will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on April 17, 2008, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),² FINRA is proposing to adopt a new FINRA rule based on NASD Rule 2280 (Investor Education and Protection). The proposed rule would require member firms, with certain exceptions, to provide customers with FINRA’s Web site address and information regarding FINRA’s BrokerCheck program at least once every calendar year.

NASD Rule 2280 currently applies to all member firms that carry customer accounts and hold customer funds or securities. The Rule requires that each such member firm provide its customers with the following information in writing not less than once every calendar year: (1) the “Public Disclosure Program” hotline number; (2) the NASD Regulation Web site address; and (3) a statement regarding the availability of an investor brochure that includes information describing the “Public Disclosure Program.” There is no comparable Incorporated NYSE Rule.

The proposed rule would apply to all member firms, with two general exceptions: (1) a firm that does not have customers or (2) an introducing firm that is party to a carrying agreement where the carrying firm member complies with the Rule.

² The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

Unlike NASD Rule 2280, the proposed rule would apply to member firms that conduct a limited business with customers, such as mutual fund distributors and member firms that deal solely with direct participation programs (“DPPs”). These member firms would be required to comply with the rule and provide the disclosures to their customers at least once every calendar year. To the extent such firms are parties to a carrying agreement and the carrying firm member complies on their behalf, these firms would be excepted from the requirements of the proposed rule.

In December 2003, FINRA announced that its “Public Disclosure Program” would thereafter be known as “BrokerCheck.” Accordingly, the proposed rule would include references to “BrokerCheck” rather than the “Public Disclosure Program.” Additionally, the proposed rule would include references to the FINRA Web site address rather than the NASD Regulation Web site address. Lastly, the proposed rule would clarify that the information required under the rule may be provided electronically to customers.³

As noted in Item 2 of this filing, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following 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,⁴ which requires, among other things, that FINRA rules

³ See NASD Notice to Members 98-3 (Electronic Delivery of Information Between Members and Their Customers). This Notice sets forth the policy applicable to electronic delivery of information between member firms and their customers as permitted or required by NASD rules.

⁴ 15 U.S.C. 78o-3(b)(6).

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, by adopting the investor education and protection rule as a FINRA rule, the proposed rule change will help to ensure that customers continue to receive written information regarding FINRA's BrokerCheck program.

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

In May 2008, FINRA published Regulatory Notice 08-26 (Proposed Consolidated FINRA Rule Addressing Investor Education and Protection) requesting comment on the proposed rule change. A copy of the Regulatory Notice is attached as Exhibit 2a to this rule filing. The comment period expired on June 13, 2008. Nine comment letters were received in response to the Regulatory Notice. Copies of the comment letters, and a list of the commenters, are attached as Exhibit 2b to this rule filing.⁵

Certain commenters believe that the proposed rule should not apply to institutional customers of a member. One commenter⁶ notes that the proposed rule would continue to benefit retail investors but an exception should be provided for member firms that predominately transact business with institutional investors because these customers

⁵ All references to commenters under this Item are to the commenters as listed in Exhibit 2b.

⁶ UBS.

do not require the same levels of disclosure as retail investors. If FINRA pursues the rule change as currently proposed, the commenter requests that the required disclosures be made to institutional investors only at the time of account opening instead of once every calendar year. A second commenter⁷ requests that the proposed rule state expressly that member firms are not required to provide such items of information to "institutional accounts" as defined in NASD Rule 3110(c)(4) or any successor rule thereto. Another commenter,⁸ a small introducing broker doing business solely with "sophisticated municipal market professionals" and without any retail customers, requests clarification as to whether the rule applies to its business.

NASD Rule 2280 does not provide an exemption for institutional customers, and FINRA continues to believe that institutional customers may benefit from the receipt of the information required by the proposed rule. Thus, at this time, FINRA has not included an institutional exemption in the proposed FINRA rule.

One commenter⁹ objects to the scope of the proposed rule stating that the rule should not apply to firms that do not carry customer accounts and do not hold customer funds or securities. The commenter fails to see the benefit of providing this information to customers who have no funds or securities being held with the member firm and believes the proposed rule is unclear in its application to firms that do not carry customer funds or securities. The commenter requests that FINRA retain the exemption in current NASD Rule 2280(b) for these types of firms. If FINRA pursues the rule change as

⁷ Baum.

⁸ Gilboy.

⁹ Kinkade.

currently proposed, the commenter requests that FINRA clarify which offerees or purchasers of DPPs must receive the annual disclosures. The commenter suggests an alternative proposal to require the disclosures in the subscription documents for future DPPs without an annual requirement or a look-back to any closed offerings.

FINRA understands the noted concerns and believes that if the customer relationship does not extend beyond the offering, then a subsequent annual notice is not needed. However, in such instances, the member must provide the customer with the disclosures during the time a customer relationship exists.

One commenter¹⁰ notes that variable annuity issuers typically distribute their products through a principal underwriter (a registered broker-dealer) that enters into selling agreements with other member firms (“selling firms”). The commenter believes that the purchaser of the variable annuity contract should only be viewed as a customer of the selling firm and that the principal underwriter should be able to rely on the exception in the proposed rule for a firm with “no customers.” The commenter further seeks clarification as to whether a selling firm may rely on appropriate disclosure in a variable annuity prospectus.

FINRA agrees that a purchaser of a variable annuity contract generally may be viewed as the customer of the selling firm and not of the principal underwriter, for purposes of complying with the proposed rule. However, although the rule does not prescribe the manner in which the annual disclosures must be provided to customers, the selling firm would not be permitted to provide such disclosures in the variable annuity prospectus. FINRA does not believe that such manner of delivery is sufficiently

¹⁰ Sutherland.

prominent so as to provide customers with the requisite information regarding BrokerCheck. In contrast, in response to a separate commenter,¹¹ FINRA believes that such disclosures may be included on periodic account statements and/or trade confirmations.

According to one commenter,¹² the proposed rule is unnecessary because customers do not value receiving such information. The commenter questions the usefulness of providing this notice to customers. FINRA, however, believes that the proposed rule, like its predecessor NASD Rule 2280, serves an important regulatory purpose as it provides customers with information regarding the availability and purpose of the BrokerCheck program.

Another commenter¹³ requests that the proposed rule have an effective date beginning in January 2009 to avoid the administrative costs of sending a separate all-client mailing at the end of the 2008 calendar year. The commenter notes that a January 1, 2009 effective date for the proposed rule would allow member firms to combine the proposed disclosures in a mailing with the required SIPC written disclosures for 2009,¹⁴ since most member firms have already sent the SIPC disclosures for the 2008 calendar year. In this regard, FINRA notes that the proposed rule change would not become effective prior to January 1, 2009. Further, it is FINRA's view that any firm subject to NASD Rule 2280 that complies with its annual (calendar year) mailing requirement on or

¹¹ Baum.

¹² FFSI.

¹³ MMLISI.

¹⁴ See NASD Rule 2342.

after January 1, 2009 but prior to the effective date of the proposed rule change (i.e., the effective date of FINRA Rule 2267) will be deemed to have complied with FINRA Rule 2267 for the 2009 calendar year.

Two commenters¹⁵ submitted letters that are outside the scope of the proposed rule change.

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.¹⁶

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 2a. FINRA Regulatory Notice 08-26 (May 2008)

Exhibit 2b. Comments received in response to FINRA Regulatory Notice 08-26.

Exhibit 5. Text of proposed rule change.

¹⁵ FSI and Wachovia.

¹⁶ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-062)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2267 (Investor Education and Protection) in the Consolidated FINRA Rulebook

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”) 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 adopt new FINRA Rule 2267 (Investor Education and Protection) based on NASD Rule 2280. The proposed rule change would require member firms, with certain exceptions, to provide customers with FINRA’s Web site address and information regarding FINRA’s BrokerCheck program at least once every calendar year. The text of the proposed rule change is attached as Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),³ FINRA is proposing to adopt a new FINRA rule based on NASD Rule 2280 (Investor Education and Protection). The proposed rule would require member firms, with certain exceptions, to provide customers with FINRA’s Web site address and information regarding FINRA’s BrokerCheck program at least once every calendar year.

NASD Rule 2280 currently applies to all member firms that carry customer accounts and hold customer funds or securities. The Rule requires that each such member firm provide its customers with the following information in writing not less than once every calendar year: (1) the “Public Disclosure Program” hotline number; (2)

³ The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

the NASD Regulation Web site address; and (3) a statement regarding the availability of an investor brochure that includes information describing the “Public Disclosure Program.” There is no comparable Incorporated NYSE Rule.

The proposed rule would apply to all member firms, with two general exceptions: (1) a firm that does not have customers or (2) an introducing firm that is party to a carrying agreement where the carrying firm member complies with the Rule.

Unlike NASD Rule 2280, the proposed rule would apply to member firms that conduct a limited business with customers, such as mutual fund distributors and member firms that deal solely with direct participation programs (“DPPs”). These member firms would be required to comply with the rule and provide the disclosures to their customers at least once every calendar year. To the extent such firms are parties to a carrying agreement and the carrying firm member complies on their behalf, these firms would be excepted from the requirements of the proposed rule.

In December 2003, FINRA announced that its “Public Disclosure Program” would thereafter be known as “BrokerCheck.” Accordingly, the proposed rule would include references to “BrokerCheck” rather than the “Public Disclosure Program.” Additionally, the proposed rule would include references to the FINRA Web site address rather than the NASD Regulation Web site address. Lastly, the proposed rule would clarify that the information required under the rule may be provided electronically to customers.⁴

⁴ See NASD Notice to Members 98-3 (Electronic Delivery of Information Between Members and Their Customers). This Notice sets forth the policy applicable to electronic delivery of information between member firms and their customers as permitted or required by NASD rules.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following 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,⁵ 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, by adopting the investor education and protection rule as a FINRA rule, the proposed rule change will help to ensure that customers continue to receive written information regarding FINRA's BrokerCheck program.

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

In May 2008, FINRA published Regulatory Notice 08-26 (Proposed Consolidated FINRA Rule Addressing Investor Education and Protection) requesting comment on the proposed rule change. A copy of the Regulatory Notice is attached as Exhibit 2a to this rule filing. The comment period expired on June 13, 2008. Nine comment letters were

⁵ 15 U.S.C. 78o-3(b)(6).

received in response to the Regulatory Notice. Copies of the comment letters, and a list of the commenters, are attached as Exhibit 2b to this rule filing.⁶

Certain commenters believe that the proposed rule should not apply to institutional customers of a member. One commenter⁷ notes that the proposed rule would continue to benefit retail investors but an exception should be provided for member firms that predominately transact business with institutional investors because these customers do not require the same levels of disclosure as retail investors. If FINRA pursues the rule change as currently proposed, the commenter requests that the required disclosures be made to institutional investors only at the time of account opening instead of once every calendar year. A second commenter⁸ requests that the proposed rule state expressly that member firms are not required to provide such items of information to "institutional accounts" as defined in NASD Rule 3110(c)(4) or any successor rule thereto. Another commenter,⁹ a small introducing broker doing business solely with "sophisticated municipal market professionals" and without any retail customers, requests clarification as to whether the rule applies to its business.

NASD Rule 2280 does not provide an exemption for institutional customers, and FINRA continues to believe that institutional customers may benefit from the receipt of

⁶ All references to commenters under this Item are to the commenters as listed in Exhibit 2b.

⁷ UBS.

⁸ Baum.

⁹ Gilboy.

the information required by the proposed rule. Thus, at this time, FINRA has not included an institutional exemption in the proposed FINRA rule.

One commenter¹⁰ objects to the scope of the proposed rule stating that the rule should not apply to firms that do not carry customer accounts and do not hold customer funds or securities. The commenter fails to see the benefit of providing this information to customers who have no funds or securities being held with the member firm and believes the proposed rule is unclear in its application to firms that do not carry customer funds or securities. The commenter requests that FINRA retain the exemption in current NASD Rule 2280(b) for these types of firms. If FINRA pursues the rule change as currently proposed, the commenter requests that FINRA clarify which offerees or purchasers of DPPs must receive the annual disclosures. The commenter suggests an alternative proposal to require the disclosures in the subscription documents for future DPPs without an annual requirement or a look-back to any closed offerings.

FINRA understands the noted concerns and believes that if the customer relationship does not extend beyond the offering, then a subsequent annual notice is not needed. However, in such instances, the member must provide the customer with the disclosures during the time a customer relationship exists.

One commenter¹¹ notes that variable annuity issuers typically distribute their products through a principal underwriter (a registered broker-dealer) that enters into selling agreements with other member firms (“selling firms”). The commenter believes that the purchaser of the variable annuity contract should only be viewed as a customer of

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¹¹ Sutherland.

the selling firm and that the principal underwriter should be able to rely on the exception in the proposed rule for a firm with "no customers." The commenter further seeks clarification as to whether a selling firm may rely on appropriate disclosure in a variable annuity prospectus.

FINRA agrees that a purchaser of a variable annuity contract generally may be viewed as the customer of the selling firm and not of the principal underwriter, for purposes of complying with the proposed rule. However, although the rule does not prescribe the manner in which the annual disclosures must be provided to customers, the selling firm would not be permitted to provide such disclosures in the variable annuity prospectus. FINRA does not believe that such manner of delivery is sufficiently prominent so as to provide customers with the requisite information regarding BrokerCheck. In contrast, in response to a separate commenter,¹² FINRA believes that such disclosures may be included on periodic account statements and/or trade confirmations.

According to one commenter,¹³ the proposed rule is unnecessary because customers do not value receiving such information. The commenter questions the usefulness of providing this notice to customers. FINRA, however, believes that the proposed rule, like its predecessor NASD Rule 2280, serves an important regulatory purpose as it provides customers with information regarding the availability and purpose of the BrokerCheck program.

¹² Baum.

¹³ FFSI.

Another commenter¹⁴ requests that the proposed rule have an effective date beginning in January 2009 to avoid the administrative costs of sending a separate all-client mailing at the end of the 2008 calendar year. The commenter notes that a January 1, 2009 effective date for the proposed rule would allow member firms to combine the proposed disclosures in a mailing with the required SIPC written disclosures for 2009,¹⁵ since most member firms have already sent the SIPC disclosures for the 2008 calendar year. In this regard, FINRA notes that the proposed rule change would not become effective prior to January 1, 2009. Further, it is FINRA's view that any firm subject to NASD Rule 2280 that complies with its annual (calendar year) mailing requirement on or after January 1, 2009 but prior to the effective date of the proposed rule change (i.e., the effective date of FINRA Rule 2267) will be deemed to have complied with FINRA Rule 2267 for the 2009 calendar year.

Two commenters¹⁶ submitted letters that are outside the scope of the proposed rule change.

¹⁴ MMLISI.

¹⁵ See NASD Rule 2342.

¹⁶ FSI and Wachovia.

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-2008-062 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-2008-062. 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-2008-062 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.¹⁷

Florence Harmon
Acting Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

**Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 2280; NASD Rule 2280 to be Deleted in
its Entirety from the Transitional Rulebook)**

* * * * *

[2280] 2267. Investor Education and Protection

[(a)] Each member, except a member that does not have customers or is an introducing firm that is party to a carrying agreement where the carrying firm member complies with this Rule, shall[, with a frequency of not less than] once every calendar year[,] provide in writing (which may be electronic) to each customer the following items of information:

[(1)a] [NASD Regulation Public Disclosure Program]FINRA

BrokerCheck Hotline Number;

[(2)b] [NASD Regulation]FINRA Web [S]ite [A]address; and

[(3)c] A statement as to the availability to the customer of an investor

brochure that includes information describing [the Public Disclosure

Program]FINRA BrokerCheck.

[(b) Notwithstanding the requirement in paragraph (a) above, any member that does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of this Rule.]

* * * * *