

OMB APPROVAL

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

File No. SR - 2008 - 055
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.

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

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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 November 4, 2008, FINRA filed with the Securities and Exchange Commission (“SEC” or “Commission”) SR-FINRA-2008-055, a proposed rule change to adopt NASD Rule 2315 (Recommendations to Customers in OTC Equity Securities) as FINRA Rule 2114, with certain modifications. Among other things, the proposed rule change would require a Series 24 principal to conduct or supervise a review of current financial statements and current material business information before a member could recommend the purchase of an OTC Equity Security. In response to comments received by the Commission, FINRA is amending the proposed rule change to permit the required review, or supervision thereof, alternatively to be conducted by a person qualified as a General Securities Sales Supervisor (Series 8 or 9/10) – a limited principal registration category for individuals who supervise securities sales activity.

The amendment to the proposed rule change is set forth below. FINRA is including with this Partial Amendment an Exhibit 4 that shows the changes from the original rule text set forth in the proposed rule change. Exhibit 5 shows the changes from the current rule. Proposed new language is underlined; proposed deletions are bracketed.

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed additions in this Partial Amendment No. 1 appear underlined; proposed deletions in this Partial Amendment No. 1 appear in [brackets].

* * * * *

**Tex of the Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 2315;
NASD Rule 2315 to be Deleted in its Entirety from the Transitional Rulebook)**

* * * * *

2100. TRANSACTIONS WITH CUSTOMERS

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2110. Recommendations

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2114. Recommendations to Customers in OTC Equity Securities

Preliminary Note: The requirements of this Rule are in addition to other existing member obligations under FINRA rules and the federal securities laws, including obligations to determine suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. This Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under FINRA rules and the federal securities laws.

(a) through (d) No Change.

(c) Compliance Requirements

(1) A member shall designate a registered person to conduct the review required by this Rule. In making such designation, the member must ensure that:

(A) Either the person is registered as a General Securities Principal or General Securities Sales Supervisor [Series 24 principal], or the designated person's conduct in complying with the provisions of this Rule is appropriately supervised by a General Securities Principal or General Securities Sales Supervisor [Series 24 principal]; and

(B) Such designated person has the requisite skills, background and knowledge to conduct the review required under this Rule.

(2) The member shall document the information reviewed, the date of the review, and the name of the person performing the review of the required information. In the event that the person designated to perform the review is not registered as a General Securities Principal or General Securities Sales Supervisor [Series 24 principal], the member also shall document the name of the General Securities Principal or General Securities Sales Supervisor [Series 24 principal] who supervised the designated person.

(d) through (e) No Change.

EXHIBIT 5

Below is 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 2315;
NASD Rule 2315 to be Deleted in its Entirety from the Transitional Rulebook)**

* * * * *

2100. [GENERAL STANDARDS]TRANSACTIONS WITH CUSTOMERS

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2110. [Standards of Commercial Honor and Principles of Trade]Recommendations

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[2315]2114. Recommendations to Customers in OTC Equity Securities

Preliminary Note: The requirements of this Rule are in addition to other existing member obligations under [NASD] FINRA rules and the federal securities laws, including obligations to determine suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. This Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under [NASD] FINRA rules [or] and the federal securities laws.

(a) Review Requirement

No member or person associated with a member shall recommend that a customer purchase or sell short any OTC Equity Security [equity security that is published or quoted in a quotation medium and that either (1) is not listed on Nasdaq or on a national securities exchange or (2) is listed on a regional securities exchange and does not qualify

for dissemination of transaction reports via the Consolidated Tape], unless the member has reviewed the current financial statements of the issuer, current material business information about the issuer, and made a determination that such information, and any other information available, provides a reasonable basis under the circumstances for making the recommendation.

(b) Definitions

(1) For purposes of this Rule, the term “current financial statements” shall include:

(A) For issuers that are not foreign private issuers,

(i) a balance sheet as of a date less than 15 months before the date of the recommendation;

(ii) a statement of profit and loss for the 12 months preceding the date of the balance sheet;

(iii) if the balance sheet is not as of a date less than 6 months before the date of the recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 6 months before the date of the recommendation;

(iv) publicly available financial statements and other financial reports filed during the 12 months preceding the date of the recommendation and up to the date of the recommendation with the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the [Commission]

SEC, foreign regulatory authorities, and bank and insurance regulators; and

(v) all publicly available financial information filed with the [Commission] SEC during the 12 months preceding the date of the recommendation contained in registration statements or SEC Regulation A filings.

(B) For foreign private issuers,

(i) a balance sheet as of a date less than 18 months before the date of the recommendation;

(ii) a statement of profit and loss for the 12 months preceding the date of the balance sheet;

(iii) if the balance sheet is not as of a date less than 9 months before the date of the recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 9 months before the date of the recommendation, if any such statements have been prepared by the issuer; and

(iv) publicly available financial statements and other financial reports filed during the 12 months preceding the date of the recommendation and up to the date of the recommendation with the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the [Commission]

SEC, foreign regulatory authorities, and bank and insurance regulators.

(2) For purposes of this Rule, the term “current material business information” shall include information that is ascertainable through the reasonable exercise of professional diligence and that a reasonable person would take into account in reaching an investment decision.

[(2)](3) For purposes of this Rule, the term “OTC Equity Security” shall have the meaning described in Rule 6420. [“quotation medium” shall mean any:]

[(A) System of general circulation to brokers or dealers that regularly disseminates quotations or indications of interest of identified brokers or dealers; or]

[(B) Publication, alternative trading system or other device that is used by brokers or dealers to disseminate quotations or indications of interest to others.]

(c) Compliance Requirements

(1) A member shall designate a registered person to conduct the review required by this Rule. In making such designation, the member must ensure that:

(A) Either the person is registered as a General Securities Principal or General Securities Sales Supervisor [Series 24 principal], or the designated person's conduct in complying with the provisions of this Rule is appropriately supervised by a General Securities Principal or General Securities Sales Supervisor [Series 24 principal]; and

(B) Such designated person has the requisite skills, background and knowledge to conduct the review required under this Rule.

(2) The member shall document the information reviewed, the date of the review, and the name of the person performing the review of the required information. In the event that the person designated to perform the review is not registered as a General Securities Principal or General Securities Sales Supervisor, the member shall also document the name of the General Securities Principal or General Securities Sales Supervisor who supervised the designated person.

(d) Additional Review Requirement for Delinquent Filers

If an issuer has not made current filings required by the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the [Commission] SEC, foreign regulatory authorities, or bank and insurance regulators, such review must include an inquiry into the circumstances concerning the failure to make current filings, and a determination, based on all the facts and circumstances, that the recommendation is appropriate under the circumstances. Such a determination must be made in writing and maintained by the member.

(e) Exemptions

(1) The requirements of this Rule shall not apply to:

(A) Transactions that meet the requirements of Rule 504 of SEC Regulation D [under the Securities Act of 1933 (“Securities Act”)] and transactions with an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act;

(B) Transactions with or for an account that qualifies as an “institutional account” under Rule [3110] 4512(c)[(4)] or with a customer that is a “qualified institutional buyer” under Securities Act Rule 144A [promulgated under the Securities Act] or “qualified purchaser” under Section 2(a)(51) of the Investment Company Act[of 1940];

(C) Transactions in an issuer's securities if the issuer has at least \$50 million in total assets and \$10 million in shareholder's equity as stated in the issuer's most recent audited current financial statements, as defined in this Rule;

(D) Transactions in securities of a bank as defined in Section 3(a)(6) of the [Securities] Exchange Act[of 1934] and/or insurance company subject to regulation by a state or federal bank or insurance regulatory authority; or

[(E) A security with a worldwide average daily trading volume value of at least \$100,000 during each month of the six full calendar months immediately before the date of the recommendation;]

[(F) A convertible security, if the underlying security meets the requirement of Section (e)(1)(E) of this Rule];

[(G)](E) A security that has a bid price, as published in a quotation medium, of at least \$50 per share. If the security is a unit composed of one or more securities, the bid price of the unit divided by the number of shares of the unit that are not warrants, options, rights, or similar securities must be at least \$50[; or].

(2) Pursuant to the Rule 9600 Series, [NASD] FINRA, for good cause shown after taking into consideration all relevant factors, may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, either unconditionally or on specified terms, from any or all of the requirements of this Rule if it determines that such exemption is consistent with the purpose of this Rule, the protection of investors, and the public interest.

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