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

File No. SR - 2009 - 016

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

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☐ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

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 Relating to the Adoption of FINRA Rule 2080, FINRA Rule 2310, FINRA Rule 4551, and FINRA Rule 2266 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: Stan   Last Name: Macel

Title: Assistant General Counsel

E-mail: stan.macel@finra.org

Telephone: (202) 728-8056   Fax: (202) 728-8264

Signature

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

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

Date: 03/25/2009

By: Patrice Gliniecki (Name)

Senior Vice President and Deputy General Counsel (Title)

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

Patrice Gliniecki,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View 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 Add Remove View 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 Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	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 (1) adopt NASD Rules 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), 2810 (Direct Participation Programs) and 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook without material change; and (2) adopt NASD Rule 2342 (SIPC Information) in the consolidated FINRA rulebook without material change and to delete Incorporated NYSE Rule 409A (SIPC Disclosures). The proposed rule change would renumber NASD Rule 2130 as FINRA Rule 2080, NASD Rule 2810 as FINRA Rule 2310, NASD Rule 3115 as FINRA Rule 4551 and NASD Rule 2342 as FINRA Rule 2266 in the consolidated FINRA rulebook.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

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

(c) Not applicable.

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[1] 15 U.S.C. 78s(b)(1).

2. Procedures of the Self-Regulatory Organization

At its meeting on September 16, 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.

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 (1) adopt FINRA Rules 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System), 2310 (Direct Participation Programs) and 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook; and (2) adopt FINRA Rule 2266 (SIPC Information) in the consolidated

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[2] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) 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"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

FINRA rulebook and delete the corresponding provisions in Incorporated NYSE Rule 409A.

1. Proposed FINRA Rule 2080

FINRA is proposing to adopt NASD Rule 2130 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2080. NASD Rule 2130 addresses the expungement of customer dispute information from the Central Registration Depository ("CRD®") system. The CRD system is an online registration and licensing system that is used by the securities industry, state and federal regulators and self-regulatory organizations. It contains information regarding members and registered persons, specifically administrative information (e.g., personal, educational and employment history) and disclosure information (e.g., criminal matters, regulatory and disciplinary actions, civil judicial actions and information relating to customer disputes). Although public investors do not have access to the CRD system, much of the information in that system is available to investors through FINRA BrokerCheck and individual state disclosure programs.[3] FINRA recognizes that accurate and complete reporting in the CRD system is an important component of investor protection.

FINRA operates the CRD system pursuant to policies developed jointly with the North American Securities Administrators Association ("NASAA"). FINRA works with the SEC, NASAA, other members of the regulatory community and member firms to establish policies and procedures reasonably designed to ensure that information submitted to and maintained in the CRD system is accurate and complete. These

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3 FINRA BrokerCheck is a free online tool to help investors check the background of current and former FINRA-registered securities firms and brokers.

procedures, among other things, cover expungement of information from the CRD system.

In January 1999, after consultation with NASAA, FINRA imposed a moratorium on arbitrator-ordered expungement of customer dispute information from the CRD system.[4] Under the moratorium, FINRA would expunge such information from the CRD system only when a court of competent jurisdiction confirmed an arbitrator's directive to expunge customer dispute information. During this moratorium, however, FINRA continued to expunge information from the CRD system based on expungement directives in arbitration awards rendered in disputes between firms and current or former registered persons, in which arbitrators awarded such relief based on the defamatory nature of the information.

After imposing the moratorium, FINRA began considering how to craft an approach to expungement that would allow FINRA effectively to challenge expungement directives that might diminish or impair the integrity of the CRD system and to ensure the maintenance of essential information for regulators and investors. In December 2003, the SEC approved NASD Rule 2130,[5] which contains additional standards and procedures

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4 See Notice to Members 99-09 (February 1999) and Notice to Members 99-54 (July 1999).

5 See Securities Exchange Act Release No. 48933 (December 16, 2003), 68 FR 74667 (December 24, 2003). FINRA Rule 2080, as with NASD Rule 2130, would apply to any request made to a court of competent jurisdiction to expunge customer dispute information from the CRD system that has its basis in an arbitration or civil lawsuit filed on or after April 12, 2004. See Notice to Members 04-16 (March 2004).

for expungement of customer dispute information[6] from the CRD system. Rule 2130 continues the requirement started with the 1999 moratorium that a court of competent jurisdiction must order or confirm all expungement directives before FINRA will expunge customer dispute information from the CRD system.[7] It also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award containing an order of expungement.

Upon request, however, FINRA may waive the requirement to be named as a party if it determines that the expungement relief is based on an affirmative judicial or arbitral finding that: (1) the claim, allegation or information is factually impossible or clearly erroneous; (2) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (3) the claim, allegation or information is false. If the expungement relief is based on judicial or arbitral findings other than those enumerated immediately above, FINRA also may waive the requirement to be named as a party if FINRA determines, in its sole discretion and under extraordinary circumstances, that the expungement relief and accompanying findings on which it is based are meritorious and the expungement relief

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6 For purposes of Rule 2130, "customer dispute information" includes customer complaints, arbitration claims and court filings made by customers, and the arbitration awards or court judgments that may result from those claims or filings. See Notice to Members 04-16 (March 2004).

7 Under Rule 2130, FINRA may continue to expunge information from the CRD system – without the need for judicial intervention – for expungement directives contained in intra-industry arbitration awards that involve registered persons and firms based on the defamatory nature of the information ordered expunged.

would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

Upon receipt of a waiver request, FINRA staff will notify the States (directly or through NASAA) where the individual is registered or seeking registration of the expungement notice/waiver request. FINRA staff will then examine the basis on which the fact finder ordered expungement to determine whether the expungement was based on one or more of the standards in Rule 2130.[8] If FINRA staff determines that the expungement was not based on one or more of the standards in Rule 2130, it will advise the parties that FINRA will not waive the requirement to be named as a party in the court confirmation process. The parties would then name FINRA as a party, and FINRA would have the opportunity to oppose the expungement in the court proceeding.

FINRA recommends that NASD Rule 2130 be transferred without material change into the Consolidated FINRA Rulebook. NASD Rule 2130 was the product of notice and comment rulemaking. FINRA solicited comment on proposed approaches regarding expungement of information in Notices to Members issued in July 1999 and October 2001.[9] FINRA staff drafted the proposed rule taking into account the comments

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8 In October 2008, the SEC approved a FINRA rule change (File No. SR-FINRA-2008-10), which became effective January 26, 2009, establishing new procedures that arbitrators must follow when considering requests for expungement relief, including requiring arbitrators to: (1) consider the terms of a settlement agreement in settled matters; (2) hold a recorded hearing regarding the appropriateness of expungement; and (3) provide a brief written explanation of the reason(s) for ordering expungement. See Securities Exchange Act Release No. 58886 (October 30, 2008), 73 FR 66086 (November 6, 2008). See also Regulatory Notice 08-79 (December 2008).

9 See Notice to Members 99-54 (July 1999) and Notice to Members 01-65 (October 2001).

received and following discussions with NASAA. Subsequently, the SEC published the proposal for comment in the Federal Register in March 2003, and the final rule reflects additional changes based on the comments received by the SEC. NASD Rule 2130 serves to enhance the integrity of information in the CRD system and to further ensure that investor protection is not compromised when arbitrators order expungement of information from a CRD record. Moreover, the new procedures that arbitrators must follow when considering requests for expungement will add transparency and procedural safeguards designed to ensure that the extraordinary relief of expungement is granted only under appropriate circumstances.

2. Proposed FINRA Rule 2310

FINRA is proposing to adopt NASD Rule 2810 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310. NASD Rule 2810 addresses underwriting terms and arrangements in public offerings of direct participation programs ("DPPs") and unlisted real estate investment trusts ("REITs") (collectively, "Investment Programs"). A DPP is a business venture designed to let investors participate directly in the cash flow and tax benefits of an underlying investment. REITs are investment vehicles for income-generating real estate that benefit from the tax advantages of a trust if they satisfy certain criteria in the Internal Revenue Code. Rule 2810 requires that members participating in a public offering of an Investment Program meet certain requirements regarding underwriting compensation, fees and expenses, perform due diligence on the Investment Program, follow specific guidelines on suitability, and adhere to limits on non-cash compensation.

NASD Rule 2810 requires that, prior to participating in a public offering of an Investment Program, a member or a participating firm on its behalf must file information regarding the offering with the FINRA Corporate Financing Department and receive an opinion from the Department that it has no objections to the proposed underwriting terms and arrangements (a "no objections" opinion). Among the terms and arrangements that are reviewed by FINRA staff are the level of organization and offering expenses ("O&O expenses"). Rule 2810 limits the amount of O&O expenses for an Investment Program (which includes issuer expenses, underwriting compensation and due diligence expenses) to 15 percent of the gross proceeds of the offering. The rule also requires a member to perform due diligence about an Investment Program prior to participating in a public offering. The member must have reasonable grounds to believe, based on information in the prospectus, that all material facts, including those regarding compensation, physical properties, tax, financial stability and experience of the sponsor, and conflicts, are adequately and accurately disclosed and provide a basis for evaluating the Investment Program.

In addition, NASD Rule 2810 contains an exception from the disclosure requirements for offerings of certain Investment Programs that are listed, or approved for listing, on a national securities exchange. This exception, currently in paragraph 2810(b)(1), would be moved to paragraph (b)(3)(D) of the new rule, the section of the rule addressing disclosures.

The rule also imposes specific suitability standards on recommended transactions to take account of the risks and lack of liquidity of Investment Programs. Further, it requires members and associated persons to ensure, prior to participating in a public

offering of an Investment Program, that all material facts are adequately and accurately disclosed, including pertinent facts relating to the liquidity and marketability of the Investment Program. In addition, under Rule 2810, members cannot accept or make non-cash gifts in connection with the sale or distribution of an Investment Program in excess of $100 per year, nor can any non-cash entertainment (such as an occasional meal) raise any question of propriety or be conditioned on the achievement of a sales target. Finally, the non-cash provisions of the rule prohibit payments for an associated person to attend training or educational meetings unless the associated person obtains the member's prior approval and such training and entertainment is not based upon the associated person achieving a sales target. Collectively, these non-cash provisions are aimed at preventing Investment Program sponsors from using non-cash compensation as a means to circumvent the limits on underwriting compensation.

NASD Rule 2810 was adopted in 1980 to address issues arising from members' participation in oil and gas programs and real estate syndications in the 1970s.[10] It has been amended periodically to include additional programs and procedures,[11] including

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10 See Securities Exchange Act Release No. 16967 (July 8, 1980), 45 FR 47294 (July 14, 1980).

11 For example, some significant amendments to Rule 2810 include the following: in 1982, amendments to include suitability, due diligence and disclosure requirements; see Securities Exchange Act Release No. 19054 (September 16, 1982), 47 FR 42226 (September 24, 1982); in 1984, to require that sales incentives be in cash; see Securities Exchange Act Release No. 20844 (April 11, 1984), 49 FR 15041 (April 16, 1984); in 1986, to exempt certain secondary offerings; see Securities Exchange Act Release No. 23619 (September 15, 1986), 51 FR 33968 (September 24, 1986); in 1994, to apply to limited partnership rollup transactions; see Securities Exchange Act Release No. 34533 (August 15, 1994), 59 FR 43147 (August 22, 1994); and in 2003, to modify the non-cash compensation provisions; see Securities Exchange Act Release No. 47697 (April 18, 2003), 68 FR 20191 (April 24, 2003).

greater limitations on sales incentive compensation and members' participation in limited partnership rollup transactions.[12] These amendments were adopted to address new developments regarding members' participation in Investment Programs, and were the product of extensive notice and comment rulemaking over a period of several years.[13] The most recent amendments to the rule, which became effective on August 6, 2008, address O&O expenses and enhanced investor disclosures regarding the liquidity of Investment Programs.[14]

FINRA believes that the rule as currently drafted is well-understood by the sponsors of Investment Programs and the broker-dealers that sell them, and is providing significant investor protections. As a result, FINRA recommends that NASD Rule 2810 be transferred without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310.

3. Proposed FINRA Rule 4551

FINRA is proposing to adopt NASD Rule 3115 without material change into the Consolidated FINRA Rulebook as FINRA Rule 4551. NASD Rule 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) requires alternative trading systems ("ATSs")[15] that

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12 A limited partnership rollup transaction either reorganizes an existing limited partnership or combines multiple limited partnerships into a new entity to take advantage of larger asset pools and economies of scale.

13 See supra note 11.

14 See Securities Exchange Act Release No. 57803 (May 8, 2008), 73 FR 27869 (May 14, 2008).

15 ATSs generally are registered broker-dealers that provide or maintain a marketplace for bringing together purchasers and sellers of securities or otherwise

accept orders for security futures[16] to record and report to FINRA certain information regarding those orders, including the date and time the order was received, the security future product name and symbol, the details of the order, and the date and time that the order was executed. The rule thus provides FINRA with an audit trail of orders for security futures placed on an ATS.

NASD Rule 3115 was adopted in 2003 following the amendments to the Act included in the Commodity Futures Modernization Act of 2000.[17] Section 6(h)(5) of the Act, which was added as part of those amendments, prohibits a person other than a national securities association or national securities exchange from maintaining or providing a marketplace or facilities for bringing together purchasers and sellers of security futures products unless it is a member of a national securities association or national securities exchange that has: (1) procedures for coordinated surveillance; (2) rules to require an audit trail necessary or appropriate to facilitate coordinated surveillance; and (3) rules to require such person to coordinate trading halts with markets trading the securities underlying the security futures products and other markets trading related securities.[18] FINRA adopted NASD Rule 3115 as part of a package of rules to meet these requirements and thus allow ATSs that are FINRA members to provide a

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perform the functions commonly performed by a securities exchange but do not perform self-regulatory functions.

[16] A security future is a contract of sale for future delivery of a single security or of a narrow-based security index. Security futures are defined as "securities" under the Act; consequently, the federal securities laws are generally applicable to security futures. See 15 U.S.C. 78c(a)(10).

[17] See Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003).

marketplace for security futures. Specifically, NASD Rule 3115 satisfies the requirement that a national securities association have "rules to require an audit trail necessary or appropriate to facilitate coordinated surveillance."[19]

Because NASD Rule 3115 is necessary to allow ATSs to provide trading facilities for security futures, the proposed rule change would transfer NASD Rule 3115 into the Consolidated FINRA Rulebook as FINRA Rule 4551 without material change. This would allow ATSs to continue to provide trading facilities for security futures and would ensure FINRA receives information to maintain an audit trail regarding the trading of security futures.

4. Proposed FINRA Rule 2266

FINRA is proposing to adopt NASD Rule 2342 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2266 and to delete comparable Incorporated NYSE Rule 409A. NASD Rule 2342 and Incorporated NYSE Rule 409A were adopted in response to a May 2001 report issued by the Government Accountability Office ("GAO"), entitled "Securities Investor Protection: Steps Needed to Better

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[18] 15 U.S.C. 78f(h)(5).

[19] In the same rule filing adopting NASD Rule 3115, FINRA also amended NASD Rule 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) to satisfy the requirement that a national securities association have "rules to require such person to coordinate trading halts with markets trading the securities underlying the security futures products and other markets trading related securities." See Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003). The proposed rule change does not address NASD Rule 3340.

Disclose SIPC Policies to Investors."[20] In that report, the GAO made recommendations to the SEC and the Securities Investor Protection Corporation ("SIPC") about ways to improve the information available to the public about SIPC and the Securities Investor Protection Act of 1970 ("SIPA"). Among other things, the GAO recommended that self-regulatory organizations explore ways to encourage broader dissemination of the SIPC brochure to customers so that they can become more aware of the scope of coverage of SIPA.

In May 2007, the SEC approved NASD Rule 2342 setting forth requirements for providing SIPC information to customers. Rule 2342 requires all FINRA members, except those members (1) that are excluded from membership in SIPC and are not SIPC members; or (2) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, to advise all new customers that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Such members also must provide SIPC's Web site address and telephone number. Members must provide this disclosure to new customers, in writing, at the opening of an account and also must provide customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

Incorporated NYSE Rule 409A is substantially similar to NASD Rule 2342; however, the Incorporated NYSE rule does not contain the exclusions set forth in NASD

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[20] See U.S. Government Accountability Office, "Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors," Publication GAO-01-653 (May 25, 2001).

Rule 2342 because NYSE member organizations generally would not qualify for those exclusions.

FINRA believes that the approach in NASD Rule 2342, which excludes non-SIPC members and members that sell exclusively non-SIPC eligible securities from the rule's requirements, is the more appropriate rule for the FINRA membership. Accordingly, the proposed rule change would transfer NASD Rule 2342 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2266 and delete Incorporated NYSE Rule 409A.

As noted above, 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,[21] 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 transferring NASD Rule 2130 into the Consolidated FINRA Rulebook will ensure that its standards and procedures regarding expungement of customer dispute information from the CRD system continue to be reasonably designed to ensure that information submitted to and maintained in the CRD system is accurate and complete. FINRA believes that transferring NASD Rule 2810 into the Consolidated FINRA Rulebook will ensure that policies and procedures regarding members'

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[21] 15 U.S.C. 78o–3(b)(6).

participation in public offerings of Investment Programs continue to meet statutory mandates. FINRA believes that transferring NASD Rule 3115 into the Consolidated FINRA Rulebook will continue to allow ATSs to provide trading facilities for security futures while also ensuring that FINRA will receive sufficient information to maintain an audit trail regarding the trading of security futures on ATSs. Finally, FINRA believes that transferring NASD Rule 2342 into the Consolidated FINRA Rulebook will continue to ensure that SIPC information is provided to customers effectively. The proposed rule change makes non-material changes to rules that have proven effective in meeting the statutory mandates.

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

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 Act.[22]

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

Not applicable.

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[22] 15 U.S.C. 78s(b)(2).

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 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-016)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Adoption of FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), FINRA Rule 2310 (Direct Participation Programs), FINRA Rule 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) and FINRA Rule 2266 (SIPC Information) 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 (1) adopt NASD Rules 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), 2810 (Direct Participation Programs) and 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook without material change; and (2) adopt NASD Rule 2342 (SIPC Information) in the consolidated

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

FINRA rulebook without material change and to delete Incorporated NYSE Rule 409A (SIPC Disclosures). The proposed rule change would renumber NASD Rule 2130 as FINRA Rule 2080, NASD Rule 2810 as FINRA Rule 2310, NASD Rule 3115 as FINRA Rule 4551 and NASD Rule 2342 as FINRA Rule 2266 in the consolidated FINRA rulebook. The text of the proposed rule change is available on FINRA's Web site at http://www.finra.org, at the principal office of FINRA and at the Commission's Public Reference Room.

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 (1) adopt FINRA Rules 2080 (Obtaining an

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[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) 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"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System), 2310 (Direct Participation Programs) and 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook; and (2) adopt FINRA Rule 2266 (SIPC Information) in the consolidated FINRA rulebook and delete the corresponding provisions in Incorporated NYSE Rule 409A.

1. Proposed FINRA Rule 2080

FINRA is proposing to adopt NASD Rule 2130 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2080. NASD Rule 2130 addresses the expungement of customer dispute information from the Central Registration Depository ("CRD®") system. The CRD system is an online registration and licensing system that is used by the securities industry, state and federal regulators and self-regulatory organizations. It contains information regarding members and registered persons, specifically administrative information (e.g., personal, educational and employment history) and disclosure information (e.g., criminal matters, regulatory and disciplinary actions, civil judicial actions and information relating to customer disputes). Although public investors do not have access to the CRD system, much of the information in that system is available to investors through FINRA BrokerCheck and individual state disclosure programs.[4] FINRA recognizes that accurate and complete reporting in the CRD system is an important component of investor protection.

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[4] FINRA BrokerCheck is a free online tool to help investors check the background of current and former FINRA-registered securities firms and brokers.

FINRA operates the CRD system pursuant to policies developed jointly with the North American Securities Administrators Association ("NASAA"). FINRA works with the SEC, NASAA, other members of the regulatory community and member firms to establish policies and procedures reasonably designed to ensure that information submitted to and maintained in the CRD system is accurate and complete. These procedures, among other things, cover expungement of information from the CRD system.

In January 1999, after consultation with NASAA, FINRA imposed a moratorium on arbitrator-ordered expungement of customer dispute information from the CRD system.[5] Under the moratorium, FINRA would expunge such information from the CRD system only when a court of competent jurisdiction confirmed an arbitrator's directive to expunge customer dispute information. During this moratorium, however, FINRA continued to expunge information from the CRD system based on expungement directives in arbitration awards rendered in disputes between firms and current or former registered persons, in which arbitrators awarded such relief based on the defamatory nature of the information.

After imposing the moratorium, FINRA began considering how to craft an approach to expungement that would allow FINRA effectively to challenge expungement directives that might diminish or impair the integrity of the CRD system and to ensure the maintenance of essential information for regulators and investors. In December 2003, the

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5 See Notice to Members 99-09 (February 1999) and Notice to Members 99-54 (July 1999).

SEC approved NASD Rule 2130,[6] which contains additional standards and procedures for expungement of customer dispute information[7] from the CRD system. Rule 2130 continues the requirement started with the 1999 moratorium that a court of competent jurisdiction must order or confirm all expungement directives before FINRA will expunge customer dispute information from the CRD system.[8] It also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award containing an order of expungement.

Upon request, however, FINRA may waive the requirement to be named as a party if it determines that the expungement relief is based on an affirmative judicial or arbitral finding that: (1) the claim, allegation or information is factually impossible or clearly erroneous; (2) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (3) the claim, allegation or information is false. If the expungement relief is based on judicial or arbitral findings other than those enumerated immediately above, FINRA also

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6 See Securities Exchange Act Release No. 48933 (December 16, 2003), 68 FR 74667 (December 24, 2003). FINRA Rule 2080, as with NASD Rule 2130, would apply to any request made to a court of competent jurisdiction to expunge customer dispute information from the CRD system that has its basis in an arbitration or civil lawsuit filed on or after April 12, 2004. See Notice to Members 04-16 (March 2004).

7 For purposes of Rule 2130, "customer dispute information" includes customer complaints, arbitration claims and court filings made by customers, and the arbitration awards or court judgments that may result from those claims or filings. See Notice to Members 04-16 (March 2004).

8 Under Rule 2130, FINRA may continue to expunge information from the CRD system – without the need for judicial intervention – for expungement directives contained in intra-industry arbitration awards that involve registered persons and firms based on the defamatory nature of the information ordered expunged.

may waive the requirement to be named as a party if FINRA determines, in its sole discretion and under extraordinary circumstances, that the expungement relief and accompanying findings on which it is based are meritorious and the expungement relief would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

Upon receipt of a waiver request, FINRA staff will notify the States (directly or through NASAA) where the individual is registered or seeking registration of the expungement notice/waiver request. FINRA staff will then examine the basis on which the fact finder ordered expungement to determine whether the expungement was based on one or more of the standards in Rule 2130.[9] If FINRA staff determines that the expungement was not based on one or more of the standards in Rule 2130, it will advise the parties that FINRA will not waive the requirement to be named as a party in the court confirmation process. The parties would then name FINRA as a party, and FINRA would have the opportunity to oppose the expungement in the court proceeding.

FINRA recommends that NASD Rule 2130 be transferred without material change into the Consolidated FINRA Rulebook. NASD Rule 2130 was the product of notice and comment rulemaking. FINRA solicited comment on proposed approaches regarding expungement of information in Notices to Members issued in July 1999 and

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[9] In October 2008, the SEC approved a FINRA rule change (File No. SR-FINRA-2008-10), which became effective January 26, 2009, establishing new procedures that arbitrators must follow when considering requests for expungement relief, including requiring arbitrators to: (1) consider the terms of a settlement agreement in settled matters; (2) hold a recorded hearing regarding the appropriateness of expungement; and (3) provide a brief written explanation of the reason(s) for ordering expungement. See Securities Exchange Act Release No. 58886 (October 30, 2008), 73 FR 66086 (November 6, 2008). See also Regulatory Notice 08-79 (December 2008).

October 2001.[10] FINRA staff drafted the proposed rule taking into account the comments received and following discussions with NASAA. Subsequently, the SEC published the proposal for comment in the Federal Register in March 2003, and the final rule reflects additional changes based on the comments received by the SEC. NASD Rule 2130 serves to enhance the integrity of information in the CRD system and to further ensure that investor protection is not compromised when arbitrators order expungement of information from a CRD record. Moreover, the new procedures that arbitrators must follow when considering requests for expungement will add transparency and procedural safeguards designed to ensure that the extraordinary relief of expungement is granted only under appropriate circumstances.

2. Proposed FINRA Rule 2310

FINRA is proposing to adopt NASD Rule 2810 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310. NASD Rule 2810 addresses underwriting terms and arrangements in public offerings of direct participation programs ("DPPs") and unlisted real estate investment trusts ("REITs") (collectively, "Investment Programs"). A DPP is a business venture designed to let investors participate directly in the cash flow and tax benefits of an underlying investment. REITs are investment vehicles for income-generating real estate that benefit from the tax advantages of a trust if they satisfy certain criteria in the Internal Revenue Code. Rule 2810 requires that members participating in a public offering of an Investment Program meet certain requirements regarding underwriting compensation, fees and expenses, perform due

[10] See Notice to Members 99-54 (July 1999) and Notice to Members 01-65 (October 2001).

diligence on the Investment Program, follow specific guidelines on suitability, and adhere to limits on non-cash compensation.

NASD Rule 2810 requires that, prior to participating in a public offering of an Investment Program, a member or a participating firm on its behalf must file information regarding the offering with the FINRA Corporate Financing Department and receive an opinion from the Department that it has no objections to the proposed underwriting terms and arrangements (a "no objections" opinion). Among the terms and arrangements that are reviewed by FINRA staff are the level of organization and offering expenses ("O&O expenses"). Rule 2810 limits the amount of O&O expenses for an Investment Program (which includes issuer expenses, underwriting compensation and due diligence expenses) to 15 percent of the gross proceeds of the offering. The rule also requires a member to perform due diligence about an Investment Program prior to participating in a public offering. The member must have reasonable grounds to believe, based on information in the prospectus, that all material facts, including those regarding compensation, physical properties, tax, financial stability and experience of the sponsor, and conflicts, are adequately and accurately disclosed and provide a basis for evaluating the Investment Program.

In addition, NASD Rule 2810 contains an exception from the disclosure requirements for offerings of certain Investment Programs that are listed, or approved for listing, on a national securities exchange. This exception, currently in paragraph 2810(b)(1), would be moved to paragraph (b)(3)(D) of the new rule, the section of the rule addressing disclosures.

The rule also imposes specific suitability standards on recommended transactions to take account of the risks and lack of liquidity of Investment Programs. Further, it requires members and associated persons to ensure, prior to participating in a public offering of an Investment Program, that all material facts are adequately and accurately disclosed, including pertinent facts relating to the liquidity and marketability of the Investment Program. In addition, under Rule 2810, members cannot accept or make non-cash gifts in connection with the sale or distribution of an Investment Program in excess of $100 per year, nor can any non-cash entertainment (such as an occasional meal) raise any question of propriety or be conditioned on the achievement of a sales target. Finally, the non-cash provisions of the rule prohibit payments for an associated person to attend training or educational meetings unless the associated person obtains the member's prior approval and such training and entertainment is not based upon the associated person achieving a sales target. Collectively, these non-cash provisions are aimed at preventing Investment Program sponsors from using non-cash compensation as a means to circumvent the limits on underwriting compensation.

NASD Rule 2810 was adopted in 1980 to address issues arising from members' participation in oil and gas programs and real estate syndications in the 1970s.[11] It has been amended periodically to include additional programs and procedures,[12] including

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[11] See Securities Exchange Act Release No. 16967 (July 8, 1980), 45 FR 47294 (July 14, 1980).

[12] For example, some significant amendments to Rule 2810 include the following: in 1982, amendments to include suitability, due diligence and disclosure requirements; see Securities Exchange Act Release No. 19054 (September 16, 1982), 47 FR 42226 (September 24, 1982); in 1984, to require that sales incentives be in cash; see Securities Exchange Act Release No. 20844 (April 11, 1984), 49 FR 15041 (April 16, 1984); in 1986, to exempt certain secondary offerings; see Securities Exchange Act Release No. 23619 (September 15, 1986),

greater limitations on sales incentive compensation and members' participation in limited partnership rollup transactions.[13] These amendments were adopted to address new developments regarding members' participation in Investment Programs, and were the product of extensive notice and comment rulemaking over a period of several years.[14] The most recent amendments to the rule, which became effective on August 6, 2008, address O&O expenses and enhanced investor disclosures regarding the liquidity of Investment Programs.[15]

FINRA believes that the rule as currently drafted is well-understood by the sponsors of Investment Programs and the broker-dealers that sell them, and is providing significant investor protections. As a result, FINRA recommends that NASD Rule 2810 be transferred without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310.

3. Proposed FINRA Rule 4551

FINRA is proposing to adopt NASD Rule 3115 without material change into the Consolidated FINRA Rulebook as FINRA Rule 4551. NASD Rule 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution

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51 FR 33968 (September 24, 1986); in 1994, to apply to limited partnership rollup transactions; see Securities Exchange Act Release No. 34533 (August 15, 1994), 59 FR 43147 (August 22, 1994); and in 2003, to modify the non-cash compensation provisions; see Securities Exchange Act Release No. 47697 (April 18, 2003), 68 FR 20191 (April 24, 2003).

[13] A limited partnership rollup transaction either reorganizes an existing limited partnership or combines multiple limited partnerships into a new entity to take advantage of larger asset pools and economies of scale.

[14] See supra note 12.

[15] See Securities Exchange Act Release No. 57803 (May 8, 2008), 73 FR 27869 (May 14, 2008).

Information for Security Futures) requires alternative trading systems ("ATSs")[16] that accept orders for security futures[17] to record and report to FINRA certain information regarding those orders, including the date and time the order was received, the security future product name and symbol, the details of the order, and the date and time that the order was executed. The rule thus provides FINRA with an audit trail of orders for security futures placed on an ATS.

NASD Rule 3115 was adopted in 2003 following the amendments to the Act included in the Commodity Futures Modernization Act of 2000.[18] Section 6(h)(5) of the Act, which was added as part of those amendments, prohibits a person other than a national securities association or national securities exchange from maintaining or providing a marketplace or facilities for bringing together purchasers and sellers of security futures products unless it is a member of a national securities association or national securities exchange that has: (1) procedures for coordinated surveillance; (2) rules to require an audit trail necessary or appropriate to facilitate coordinated surveillance; and (3) rules to require such person to coordinate trading halts with markets trading the securities underlying the security futures products and other markets trading

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16 ATSs generally are registered broker-dealers that provide or maintain a marketplace for bringing together purchasers and sellers of securities or otherwise perform the functions commonly performed by a securities exchange but do not perform self-regulatory functions.

17 A security future is a contract of sale for future delivery of a single security or of a narrow-based security index. Security futures are defined as "securities" under the Act; consequently, the federal securities laws are generally applicable to security futures. See 15 U.S.C. 78c(a)(10).

18 See Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003).

related securities.[19] FINRA adopted NASD Rule 3115 as part of a package of rules to meet these requirements and thus allow ATSs that are FINRA members to provide a marketplace for security futures. Specifically, NASD Rule 3115 satisfies the requirement that a national securities association have "rules to require an audit trail necessary or appropriate to facilitate coordinated surveillance."[20]

Because NASD Rule 3115 is necessary to allow ATSs to provide trading facilities for security futures, the proposed rule change would transfer NASD Rule 3115 into the Consolidated FINRA Rulebook as FINRA Rule 4551 without material change. This would allow ATSs to continue to provide trading facilities for security futures and would ensure FINRA receives information to maintain an audit trail regarding the trading of security futures.

4. Proposed FINRA Rule 2266

FINRA is proposing to adopt NASD Rule 2342 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2266 and to delete comparable Incorporated NYSE Rule 409A. NASD Rule 2342 and Incorporated NYSE Rule 409A were adopted in response to a May 2001 report issued by the Government Accountability Office ("GAO"), entitled "Securities Investor Protection: Steps Needed to Better

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[19] 15 U.S.C. 78f(h)(5).

[20] In the same rule filing adopting NASD Rule 3115, FINRA also amended NASD Rule 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) to satisfy the requirement that a national securities association have "rules to require such person to coordinate trading halts with markets trading the securities underlying the security futures products and other markets trading related securities." See Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003). The proposed rule change does not address NASD Rule 3340.

Disclose SIPC Policies to Investors."[21] In that report, the GAO made recommendations to the SEC and the Securities Investor Protection Corporation ("SIPC") about ways to improve the information available to the public about SIPC and the Securities Investor Protection Act of 1970 ("SIPA"). Among other things, the GAO recommended that self-regulatory organizations explore ways to encourage broader dissemination of the SIPC brochure to customers so that they can become more aware of the scope of coverage of SIPA.

In May 2007, the SEC approved NASD Rule 2342 setting forth requirements for providing SIPC information to customers. Rule 2342 requires all FINRA members, except those members (1) that are excluded from membership in SIPC and are not SIPC members; or (2) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, to advise all new customers that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Such members also must provide SIPC's Web site address and telephone number. Members must provide this disclosure to new customers, in writing, at the opening of an account and also must provide customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

Incorporated NYSE Rule 409A is substantially similar to NASD Rule 2342; however, the Incorporated NYSE rule does not contain the exclusions set forth in NASD

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[21] See U.S. Government Accountability Office, "Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors," Publication GAO-01-653 (May 25, 2001).

Rule 2342 because NYSE member organizations generally would not qualify for those exclusions.

FINRA believes that the approach in NASD Rule 2342, which excludes non-SIPC members and members that sell exclusively non-SIPC eligible securities from the rule's requirements, is the more appropriate rule for the FINRA membership. Accordingly, the proposed rule change would transfer NASD Rule 2342 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2266 and delete Incorporated NYSE Rule 409A.

As noted above, 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,[22] 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 transferring NASD Rule 2130 into the Consolidated FINRA Rulebook will ensure that its standards and procedures regarding expungement of customer dispute information from the CRD system continue to be reasonably designed to ensure that information submitted to and maintained in the CRD system is accurate and complete. FINRA believes that transferring NASD Rule 2810 into the Consolidated FINRA Rulebook will ensure that policies and procedures regarding members'

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[22] 15 U.S.C. 78o–3(b)(6).

participation in public offerings of Investment Programs continue to meet statutory mandates. FINRA believes that transferring NASD Rule 3115 into the Consolidated FINRA Rulebook will continue to allow ATSs to provide trading facilities for security futures while also ensuring that FINRA will receive sufficient information to maintain an audit trail regarding the trading of security futures on ATSs. Finally, FINRA believes that transferring NASD Rule 2342 into the Consolidated FINRA Rulebook will continue to ensure that SIPC information is provided to customers effectively. The proposed rule change makes non-material changes to rules that have proven effective in meeting the statutory mandates.

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

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-2009-016 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2009-016. 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-2009-016 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.[23]

Florence E. Harmon

Deputy Secretary

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[23] 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.

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Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 2130;
NASD Rule 2130 to be Deleted in its Entirety from the Transitional Rulebook)

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2000. DUTIES AND CONFLICTS

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[2130]2080. Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System[)]

(a) Members or associated persons seeking to expunge information from the CRD system arising from disputes with customers must obtain an order from a court of competent jurisdiction directing such expungement or confirming an arbitration award containing expungement relief.

(b) Members or associated persons petitioning a court for expungement relief or seeking judicial confirmation of an arbitration award containing expungement relief must name [NASD] FINRA as an additional party and serve [NASD] FINRA with all appropriate documents unless this requirement is waived pursuant to subparagraph (1) or (2) below.

(1) Upon request, [NASD] FINRA may waive the obligation to name [NASD] FINRA as a party if [NASD] FINRA determines that the expungement relief is based on affirmative judicial or arbitral findings that:

(A) the claim, allegation or information is factually impossible or clearly erroneous;

(B) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation[,] or conversion of funds; or

(C) the claim, allegation[,] or information is false.

(2) If the expungement relief is based on judicial or arbitral findings other than those described above, [NASD] <u>FINRA</u>, in its sole discretion and under extraordinary circumstances, also may waive the obligation to name [NASD] <u>FINRA</u> as a party if it determines that:

(A) the expungement relief and accompanying findings on which it is based are meritorious; and

(B) the expungement would have no material adverse effect on investor protection, the integrity of the CRD system[,] or regulatory requirements.

(c) For purposes of this [r]<u>R</u>ule, the terms “sales practice violation,” “investment-related,” and “involved” shall have the meanings set forth in the Uniform Application for Securities Industry Registration or Transfer (“Form U4”) in effect at the time of issuance of the subject expungement order.

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**Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 2810;
NASD Rule 2810 to be Deleted in its Entirety from the Transitional Rulebook)**

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2300. SPECIAL PRODUCTS

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[2810]2310. Direct Participation Programs

(a) Definitions

For the purposes of this Rule, the following terms shall have the stated meanings:

(1) Affiliate — when used with respect to a member or sponsor, shall mean any person which controls, is controlled by, or is under common control with, such member or sponsor and includes:

(A) any partner, officer or director (or person performing similar functions) of (i) such member or sponsor, or (ii) a person which beneficially owns 50% or more of the equity interest in, or has the power to vote 50% or more of the voting interest in, such member or sponsor;

(B) any person which beneficially owns or has the right to acquire 10% or more of the equity interest in or has the power to vote 10% or more of the voting interest in (i) such member or sponsor, or (ii) a person which beneficially owns 50% or more of the equity interest in, or has the power to vote 50% or more of the voting interest in, such member or sponsor;

(C) any person with respect to which such member or sponsor, the persons specified in subparagraph (A) or (B), and the immediate families of partners, officers or directors (or persons performing similar functions)

specified in subparagraph (A), or other person specified in subparagraph (B), in the aggregate beneficially own or have the right to acquire 10% or more of the equity interest or have the power to vote 10% or more of the voting interest;

(D) any person an officer of which is also a person specified in subparagraph (A) or (B) and any person a majority of the board of directors of which is comprised of persons specified in subparagraph (A) or (B); or

(E) any person controlled by a person or persons specified in subparagraphs (A), (B), (C)[,] or (D).

(2) Cash available for distribution — cash flow less amount set aside for restoration or creation of reserves.

(3) Cash flow — cash funds provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements.

(4) Direct participation program (program) — a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when

used herein and in any rules or regulations adopted pursuant hereto the term shall mean each of the separate entities or programs making up the overall program and/or the overall program itself. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code, and any company including separate accounts, registered pursuant to the Investment Company Act [of 1940].

(5) Dissenting limited partner — a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by [the Association] FINRA, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under [the] FINRA [R]rules [of the Association] during the period in which the offer is outstanding. Such objection in writing shall be filed with the party responsible for tabulating the votes or tenders.

(6) Equity interest — when used with respect to a corporation, means common stock and any security convertible into, exchangeable or exercisable for common stock, and, when used with respect to a partnership, means an interest in the capital or profits or losses of the partnership.

(7) Fair market net worth — total assets computed at fair market value less total liabilities.

(8) Limited partner or investor in a limited partnership — the purchaser of an interest in a direct participation program that is a limited partnership who is not involved in the day-to-day management of the limited partnership and bears limited liability.

(9) Limited partnership — an unincorporated association that is a direct participation program organized as a limited partnership whose partners are one or more general partners and one or more limited partners, which conforms to the provisions of the Revised Uniform Limited Partnership Act or the applicable statute that regulates the organization of such partnership.

(10) Limited partnership rollup transaction — a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which:

(A) some or all of the investors in any of such limited partnerships will receive new securities, or securities in another entity, that will be reported under a transaction reporting plan declared effective before January 1, 1991, by the [Commission] SEC under Section 11A of the Exchange Act.[[*]]

[[*] Transaction reporting plans under Section 11A were declared effective prior to January 1, 1991 for the Nasdaq National Market System, the New York Stock Exchange, and the American Stock Exchange.]

(B) any of the investors' limited partnership securities are not, as of the date of the filing, reported under a transaction reporting plan declared effective before January 1, 1991, by the [Commission] SEC under Section 11A of the Exchange Act.[**]

(C) investors in any of the limited partnerships involved in the transaction are subject to a significant adverse change with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; and

(D) any of such investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue. Notwithstanding the foregoing definition, a "limited partnership rollup transaction" does not include:

(i) a transaction that involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the [Commission] SEC determines appropriate;

(ii) a transaction involving only limited partnerships wherein the interests of the limited partners are repurchased, recalled or exchanged pursuant to the terms of the pre-existing

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[** Transaction reporting plans under Section 11A were declared effective prior to January 1, 1991 for the Nasdaq National Market System, the New York Stock Exchange, and the American Stock Exchange.]

limited partnership agreements for securities in an operating company specifically identified at the time of the formation of the original limited partnership;

(iii) a transaction in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act [of 1933];

(iv) a transaction that involves only issuers that are not required to register or report under Section 12 of the Exchange Act, both before and after the transaction;

(v) a transaction, except as the [Commission] SEC may otherwise provide for by rule for the protection of investors, involving the combination or reorganization of one or more limited partnerships in which a non-affiliated party succeeds to the interests of the general partner or sponsor, if:

a. such action is approved by not less than 66 2/3 percent of the outstanding units of each of the participating limited partnerships; and

b. as a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the pre-existing partnership agreements; or

(vi) a transaction, except as the [Commission] SEC may otherwise provide for by rule for the protection of investors, in

which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared effective before January 1, 1991, by the [Commission] SEC under Section 11A of the Exchange Act;[*] if:

a. such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; and

b. the securities of that entity issued to investors in the transaction do not exceed 20 percent of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity.

(vii) a transaction involving only entities registered under the Investment Company Act [of 1940] or any Business Development Company as defined in Section 2(a)(48) of that Act.

(11) Management fee — a fee paid to the sponsor, general partner(s), their affiliates, or other persons for management and administration of a direct participation program.

(12) Organization and offering expenses — expenses incurred in preparing a direct participation program for registration and subsequently offering interests in the program to the public, including all forms of compensation paid to

underwriters, broker[/]-dealers, or affiliates thereof in connection with the offering of the program.

(13) Participant — the purchaser of an interest in a direct participation program.

(14) Person — any natural person, partnership, corporation, association or other legal entity.

(15) Prospectus — a prospectus as defined by Section 2(10) of the Securities Act [of 1933], as amended, an offering circular as described in Securities Act[SEC] Rule 256 [under the Securities Act of 1933,] or, in the case of an intrastate offering, any document utilized for the purpose of announcing the offer and sale of securities to the public.

(16) Registration statement — a registration statement as defined by Section 2(8) of the Securities Act [of 1933], as amended, a notification on Form 1-A filed with the [Commission]SEC pursuant to the provisions of Securities Act[SEC] Rule 255 [under the Securities Act of 1933] and, in the case of an intrastate offering, any document initiating a registration or similar process for an issue of securities which is required to be filed by the laws or regulations of any state.

(17) Solicitation expenses — direct marketing expenses incurred by a member, in connection with a limited partnership rollup transaction such as telephone calls, broker[/]-dealer fact sheets, members' legal and other fees related to the solicitation, as well as direct solicitation compensation to members.

(18) Sponsor — a person who directly or indirectly provides management services for a direct participation program whether as general partner, pursuant to contract or otherwise.

(19) Transaction costs — costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business or solicitation expenses.

(b) Requirements

(1) Application

No member or person associated with a member shall participate in a public offering of a direct participation program, a limited partnership rollup transaction or, where expressly provided below, a real estate investment trust as defined in NASD Rule 2340(d)(4) ("REIT"), except in accordance with this paragraph (b)[, provided however, this paragraph (b) shall not apply to an initial or secondary public offering of or a secondary market transaction in a unit, depositary receipt or other interest in a direct participation program that complies with subparagraph (2)(D)].

(2) Suitability

(A) A member or person associated with a member shall not underwrite or participate in a public offering of a direct participation program unless standards of suitability have been established by the program for participants therein and such standards are fully disclosed in the prospectus and are consistent with the provisions of subparagraph (B).

(B) In recommending to a participant the purchase, sale or exchange of an interest in a direct participation program, a member or person associated with a member shall:

(i) have reasonable grounds to believe, on the basis of information obtained from the participant concerning his investment objectives, other investments, financial situation and needs, and any other information known by the member or associated person, that:

a. the participant is or will be in a financial position appropriate to enable him to realize to a significant extent the benefits described in the prospectus, including the tax benefits where they are a significant aspect of the program;

b. the participant has a fair market net worth sufficient to sustain the risks inherent in the program, including loss of investment and lack of liquidity; and

c. the program is otherwise suitable for the participant; and

(ii) maintain in the files of the member documents disclosing the basis upon which the determination of suitability was reached as to each participant.

(C) Notwithstanding the provisions of subparagraphs (A) and (B) hereof, no member shall execute any transaction in direct participation program in a discretionary account without prior written approval of the transaction by the customer.

(D) Subparagraphs (A) and (B), and, only in situations where the member is not affiliated with the direct participation program, subparagraph (C) shall not apply to:

(i) a secondary public offering of or a secondary market transaction in a unit, depositary receipt, or other interest in a direct participation program that is listed on a national securities exchange; or

(ii) an initial public offering of a unit, depositary receipt or other interest in a direct participation program for which an application for listing on a national securities exchange has been approved by such exchange and the applicant makes a good faith representation that it believes such listing on an exchange will occur within a reasonable period of time following the formation of the program.

(3) Disclosure

(A) Prior to participating in a public offering of a direct participation program or REIT, a member or person associated with a member shall have reasonable grounds to believe, based on information made available to him by the sponsor through a prospectus or other materials, that all material facts are adequately and accurately disclosed and provide a basis for evaluating the program.

(B) In determining the adequacy of disclosed facts pursuant to subparagraph (A) hereof, a member or person associated with a member shall obtain information on material facts relating at a minimum to the following, if relevant in view of the nature of the program:

(i) items of compensation;

(ii) physical properties;

(iii) tax aspects;

(iv) financial stability and experience of the sponsor;

(v) the program's conflict and risk factors; and

(vi) appraisals and other pertinent reports.

(C) For purposes of subparagraphs (A) or (B) hereof, a member or person associated with a member may rely upon the results of an inquiry conducted by another member or members, provided that:

(i) the member or person associated with a member has reasonable grounds to believe that such inquiry was conducted with due care;

(ii) the results of the inquiry were provided to the member or person associated with a member with the consent of the member or members conducting or directing the inquiry; and

(iii) no member that participated in the inquiry is a sponsor of the program or an affiliate of such sponsor.

(D) Prior to executing a purchase transaction in a direct participation program or a REIT, a member or person associated with a member shall inform the prospective participant of all pertinent facts relating to the liquidity and marketability of the program or REIT during the term of the investment. Included in the pertinent facts shall be information regarding whether the sponsor has offered prior programs or REITs in which disclosed in the offering materials was a date or time period at which the program or REIT might be liquidated, and whether the prior program(s) or REIT(s) in fact liquidated on or around that date or during the time period; provided however, this subparagraph (D) shall not apply to an initial or secondary public offering of or a secondary market transaction in a unit, depositary receipt or other interest in a direct participation program that meets the criteria in paragraph (b)(2)(D)(i) or (ii).

(4) Organization and Offering Expenses

(A) No member or person associated with a member shall underwrite or participate in a public offering of a direct participation

program or REIT if the organization and offering expenses are not fair and reasonable, taking into consideration all relevant factors.

(B) In determining the fairness and reasonableness of organization and offering expenses that are deemed to be in connection with or related to the distribution of the public offering for purposes of subparagraph (A) hereof, the arrangements shall be presumed to be unfair and unreasonable if:

(i) organization and offering expenses, as defined in [sub]paragraph (b)(4)(C), in which a member or an affiliate of a member is a sponsor, exceed an amount that equals fifteen percent of the gross proceeds of the offering;

(ii) the total amount of all items of compensation from whatever source, including compensation paid from offering proceeds and in the form of "trail commissions," payable to underwriters, broker[/]-dealers, or affiliates thereof exceeds an amount that equals ten percent of the gross proceeds of the offering (excluding securities purchased through the reinvestment of dividends);

(iii) any compensation in connection with an offering is to be paid to underwriters, broker[/]-dealers, or affiliates thereof out of the proceeds of the offering prior to the release of such proceeds from escrow, provided, however, that any such payment from

sources other than proceeds of the offering shall be made only on the basis of bona fide transactions;

(iv) commissions or other compensation are to be paid or awarded either directly or indirectly, to any person engaged by a potential investor for investment advice as an inducement to such advisor to advise the purchaser of interests in a particular program or REIT, unless such person is a registered broker[/]-dealer or a person associated with such a broker[/]-dealer;

(v) the program or REIT provides for compensation of an indeterminate nature to be paid to members or persons associated with members for sales of the program or REIT, or for services of any kind rendered in connection with or related to the distribution thereof, including, but not necessarily limited to, the following: a percentage of the management fee, a profit sharing arrangement, brokerage commissions, an over-riding royalty interest, a net profits interest, a percentage of revenues, a reversionary interest, a working interest, a security or right to acquire a security having an indeterminate value, or other similar incentive items;

(vi) the program or REIT charges a sales load or commission on securities that are purchased through the reinvestment of dividends, unless the registration statement registering the securities under the Securities Act [of 1933] became effective prior to August 6, 2008; or

(vii) the member has received reimbursement for due diligence expenses that are not included in a detailed and itemized invoice, unless the amount of the reimbursement is included in the calculation of underwriting compensation as a non-accountable expense allowance, which when aggregated with all other such non-accountable expenses, does not exceed three percent of offering proceeds.

(C) The organization and offering expenses subject to the limitations in [sub]paragraph (b)(4)(B)(i) above include the following:

(i) issuer expenses that are reimbursed or paid for with offering proceeds, including overhead expenses, which issuer expenses include, but are not limited to, expenses for:

a. assembling, printing and mailing offering materials, processing subscription agreements, generating advertising and sales materials;

b. legal and accounting services provided to the sponsor or issuer;

c. salaries and non-transaction-based compensation paid to employees or agents of the sponsor or issuer for performing services for the issuer;

d. transfer agents, escrow holders depositories, engineers and other experts; and

e. registration and qualification of securities under federal and state law, including taxes and fees and [NASD] FINRA fees;

(ii) underwriting compensation, which includes but is not limited to items of compensation listed in Rule [27]5110(c)(3) including payments:

a. to any wholesaling or retailing firm that is engaged in the solicitation, marketing, distribution or sales of the program or REIT securities;

b. to any registered representative of a member who receives transaction-based compensation in connection with the offering, except to the extent that such compensation has been included in a. above;

c. to any registered representative who is engaged in the solicitation, marketing, distribution or sales of the program or REIT securities, except:

1. to the extent that such compensation has been included in a. above;

2. for a registered representative whose functions in connection with the offering are solely and exclusively clerical or ministerial; and

3. for a registered representative whose sales activities are de minimis and incidental to his or her clerical or ministerial job functions; or

d. for training and education meetings, legal services provided to a member in connection with the offering, advertising and sales material generated by the member and contributions to conferences and meetings held by non-affiliated members for their registered representatives.

(iii) due diligence expenses incurred when a member affirmatively discharges its responsibilities to ensure that all material facts pertaining to a program or REIT are adequately and accurately disclosed in the offering document.

(D) Notwithstanding [sub]paragraphs (b)(4)(C)(ii)b. and c. above, for every program or REIT filed with the Corporate Financing Department (the "Department") for review, the Department shall, based upon the information provided, make a determination as to whether some portion of a registered representative's non-transaction-based compensation should not be deemed to be underwriting compensation if the registered representative is either:

(i) a dual employee of a member and the sponsor, issuer or other affiliate with respect to a program or REIT with ten or fewer registered representatives engaged in wholesaling, in which

instance the Department may make such determination with respect to the ten or fewer registered representatives engaged in wholesaling; or

(ii) a dual employee of a member and the sponsor, issuer or other affiliate who is one of the top ten highest paid executives based on non-transaction-based compensation in any program or REIT.

(E) All items of compensation paid by the program or REIT directly or indirectly from whatever source to underwriters, brokers[/]-dealers, or affiliates thereof, including, but not limited to, sales commissions, wholesaling fees, due diligence expenses, other underwriter's expenses, underwriter's counsel's fees, securities or rights to acquire securities, rights of first refusal, consulting fees, finder's fees, investor relations fees, and any other items of compensation for services of any kind or description, which are deemed to be in connection with or related to the public offering, shall be taken into consideration in computing the amount of compensation for purposes of determining compliance with the provisions of subparagraphs (A) and (B).

(F) The determination of whether compensation paid to underwriters, broker[/]-dealers, or affiliates thereof is in connection with or related to a public offering, for purposes of this subparagraph (4), shall be made on the basis of such factors as the timing of the transaction, the consideration rendered, the investment risk, and the role of the member or

affiliate in the organization, management and direction of the enterprise in which the sponsor is involved.

(i) An affiliate of a member which acts or proposes to act as a general partner, associate general partner, or other sponsor of a program or REIT shall be presumed to be bearing investment risk for purposes of this paragraph (b) if the affiliate:

a. is subject to potential liability as a general partner to the same extent as any other general partner;

b. is not indemnified against potential liability as a general partner to any greater or different extent than any other general partner for its actions or those of any other general partner;

c. has a net worth equal to at least five percent of the net proceeds of the public offering or $1.0 million, whichever is less; provided, however, that the computation of the net worth shall not include an interest in the program offered but may include net worth applied to satisfy the requirements of this paragraph (b) with respect to other programs or REITs; and

d. agrees to maintain net worth as required by subparagraph c. above under its control until the earlier of the removal or withdrawal of the affiliate as a general

partner, associate general partner, or other sponsor, or the dissolution of the program or REIT.

(ii) For purposes of determining the factors to be utilized in computing compensation derived from securities received in connection with a public offering, the guidelines set forth in Rule [27]51 10 shall govern to the extent applicable.

(G) Subject to the limitations on direct and indirect non-cash compensation provided under subparagraph (C), no member shall accept any cash compensation unless all of the following conditions are satisfied:

(i) all compensation is paid directly to the member in cash and the distribution, if any, of all compensation to the member's associated persons is controlled solely by the member;

(ii) the value of all compensation to be paid in connection with an offering is included as compensation to be received in connection with the offering for purposes of subparagraph (B);

(iii) arrangements relating to the proposed payment of all compensation are disclosed in the prospectus or similar offering document;

(iv) the value of all compensation paid in connection with an offering is reflected on the books and records of the recipient member as compensation received in connection with the offering; and

(v) no compensation paid in connection with an offering is directly or indirectly related to any non-cash compensation or sales incentive items provided by the member to its associated persons.

(5) Valuation for Customer Account Statements

No member may participate in a public offering of direct participation program or REIT securities unless the general partner or sponsor of the program or REIT will disclose in each annual report distributed to investors pursuant to Section 13(a) of the Exchange Act a per share estimated value of the direct participation program securities, the method by which it was developed, and the date of the data used to develop the estimated value.

(6) Participation in Rollups

(A) No member or person associated with a member shall participate in the solicitation of votes or tenders from limited partners in connection with a limited partnership rollup transaction, irrespective of the form of the resulting entity (i.e., a partnership, real estate investment trust or corporation), unless any compensation received by the member:

(i) is payable and equal in amount regardless of whether the limited partner votes affirmatively or negatively in the proposed limited partnership rollup transaction;

(ii) in the aggregate, does not exceed 2% of the exchange value of the newly[-]created securities; and

(iii) is paid regardless of whether the limited partners reject the proposed limited partnership rollup transaction.

(B) No member or person associated with a member shall participate in the solicitation of votes or tenders from limited partners in connection with a limited partnership rollup transaction unless the general partner(s) or sponsor(s) proposing the limited partnership rollup transaction agrees to pay all solicitation expenses related to the limited partnership rollup transaction, including all preparatory work related thereto, in the event the limited partnership rollup transaction is rejected.

(C) No member or person associated with a member shall participate in any capacity in a limited partnership rollup transaction if the transaction is unfair or unreasonable.

(i) A limited partnership rollup transaction will be presumed not to be unfair or unreasonable if the limited partnership rollup transaction provides for the right of dissenting limited partners:

a. to receive compensation for their limited partnership units based on an appraisal of the limited partnership assets performed by an independent appraiser unaffiliated with the sponsor or general partner of the program that values the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of sale or refinancing and in a manner consistent with the appropriate industry practice. Compensation to dissenting limited partners of

limited partnership rollup transactions may be cash, secured debt instruments, unsecured debt instruments, or freely tradeable securities; provided, however, that:

1. limited partnership rollup transactions which utilize debt instruments as compensation must provide for a trustee and an indenture to protect the rights of the debt holders and provide a rate of interest equal to at least 120% of the applicable federal rate as determined in accordance with Section 1274 of the Internal Revenue Code of 1986;

2. limited partnership rollup transactions which utilize unsecured debt instruments as compensation, in addition to the requirements of subparagraph 1., must limit total leverage to 70% of the appraised value of the assets;

3. all debt securities must have a term no greater than 8 years and provide for prepayment with 80% of the net proceeds of any sale or refinancing of the assets previously owned by the partnership entitles subject to the limited partnership rollup transaction or any part thereof; and

4. freely tradeable securities used as compensation to dissenting limited partners must be previously listed on a national securities exchange prior to the limited partnership rollup transaction, and the number of securities to be received in return for limited partnership interests must be determined in relation to the average last sale price of the freely tradeable securities in the 20-day period following the date of the meeting at which the vote on the limited partnership rollup transaction occurs. If the issuer of the freely tradeable securities is affiliated with the sponsor or general partner, newly issued securities to be used as compensation to dissenting limited partners shall not represent more than 20 percent of the issued and outstanding shares of that class of securities after giving effect to the issuance. For purposes of the preceding sentence, a sponsor or general partner is "affiliated" with the issuer of the freely tradeable securities if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the limited partnership rollup transaction or the purchase of the general partner's interest; provided,

however, that nothing herein shall restrict the ability of a sponsor or general partner to receive any payment for its equity interests and compensation as otherwise provided by this subparagraph.

b. to receive or retain a security with substantially the same terms and conditions as the security originally held. Securities received or retained will be considered to have the same terms and conditions as the security originally held if:

1. there is no material adverse change to dissenting limited partners' rights with respect to the business plan or the investment, distribution and liquidation policies of the limited partnership; and

2. the dissenting limited partners receive substantially the same rights, preferences and priorities as they had pursuant to the security originally held; or

c. to receive other comparable rights including, but not limited to:

1. approval of the limited partnership rollup transaction by 75% of the outstanding units of each of the individual participating limited partnerships and the exclusion of any individual limited

partnership from the limited partnership rollup transaction which fails to reach the 75% threshold. The third-party appointed to tabulate votes and dissents pursuant to subparagraph (C)(ii)b.4. hereof shall submit the results of such tabulation to [the Association] FINRA;

2. review of the limited partnership rollup transaction by an independent committee of persons not affiliated with the general partner(s) or sponsor. Whenever utilized, the independent committee:

A. shall be approved by a majority of the outstanding securities of each of the participating partnerships;

B. shall have access to the books and records of the partnerships;

C. shall prepare a report to the limited partners subject to the limited partnership rollup transaction that presents its findings and recommendations, including any minority views;

D. shall have the authority to negotiate the proposed transaction with the general partner or sponsor on behalf of the

limited partners, but not the authority to approve the transaction on behalf of the limited partners;

E. shall not deliberate for a period longer than 60 days, although extensions will be permitted if unanimously agreed upon by the members of the independent committee or if approved by [the Association] FINRA;

F. may be compensated and reimbursed by the limited partnerships subject to the limited partnership rollup transaction and shall have the ability to retain independent counsel and financial advisors to represent all limited partners at the limited partnerships' expense provided the fees are reasonable; and

G. shall be entitled to indemnification to the maximum extent permitted by law from the limited partnerships subject to the limited partnership rollup transaction from claims, causes of action or lawsuits related to any

action or decision made in furtherance of their responsibilities; provided, however, that general partners or sponsors may also agree to indemnify the independent committee; or

3. any other comparable rights for dissenting limited partners proposed by general partners or sponsors, provided, however, that the general partner(s) or sponsor demonstrates to the satisfaction of [the Association] FINRA or, if [the Association] FINRA determines appropriate, to the satisfaction of an independent committee, that the rights proposed are comparable.

(ii) Regardless of whether a limited partnership rollup transaction is in compliance with subparagraph (C)(i), a limited partnership rollup transaction will be presumed to be unfair and unreasonable:

a. if the general partner(s):

1. converts an equity interest in any limited partnership(s) subject to a limited partnership rollup transaction for which consideration was not paid and which was not otherwise provided for in the limited partnership agreement and disclosed to

limited partners, into a voting interest in the new entity (provided, however, an interest originally obtained in order to comply with the provisions of Internal Revenue Service Revenue Proclamation 89-12 may be converted);

2. fails to follow the valuation provisions, if any, in the limited partnership agreements of the subject limited partnerships when valuing their limited partnership interests; or

3. utilizes a future value of their equity interest in the limited partnership rather than the current value of their equity interest, as determined by an appraisal conducted in a manner consistent with subparagraph (C)(i)a., when determining their interest in the new entity;

b. as to voting rights, if:

1. the voting rights in the entity resulting from a limited partnership rollup transaction do not generally follow the original voting rights of the limited partnerships participating in the limited partnership rollup transaction; provided, however, that changes to voting rights may be effected if [the Association] <u>FINRA</u> determines that such changes

are not unfair or if the changes are approved by an independent committee;

2. a majority of the interests in an entity resulting from a limited partnership rollup transaction may not, without concurrence by the sponsor, general partner(s), board of directors, trustee, or similar governing entity, depending on the form of entity and to the extent not inconsistent with applicable state law, vote to:

A. amend the limited partnership agreement, articles of incorporation or by-laws, or indenture;

B. dissolve the entity;

C. remove the general partner, board of directors, trustee or similar governing entity, and elect a new general partner, board of directors, trustee or similar governing entity; or

D. approve or disapprove the sale of substantially all of the assets of the entity;

3. the general partner(s) or sponsor(s) proposing a limited partnership rollup transaction do not provide each limited partner with a document

which instructs the limited partner on the proper procedure for voting against or dissenting from the transaction; or

4. the general partner(s) or sponsor(s) does not utilize an independent third party to receive and tabulate all votes and dissents in connection with the limited partnership rollup transaction, and require that the third party make the tabulation available to the general partner and any limited partner upon request at any time during and after voting occurs;

c. as to transaction costs, if:

1. transaction costs of a rejected limited partnership rollup transaction are not apportioned between general and limited partners of the subject limited partnerships according to the final vote on the proposed transaction as follows:

A. the general partner(s) or sponsor(s) bear all transaction costs in proportion to the total number of abstentions and votes to reject the limited partnership rollup transaction; and

B. limited partners bear transaction costs in proportion to the number of votes to approve the limited partnership rollup transaction; or

2. individual limited partnerships that do not approve a limited partnership rollup transaction are required to pay any of the transaction costs, and the general partner or sponsor is not required to pay the transaction costs on behalf of the non-approving limited partnerships, in a limited partnership rollup transaction in which one or more limited partnerships determines not to approve the transaction, but where the transaction is consummated with respect to one or more approving limited partnerships; or

d. as to fees of general partners, if:

1. general partners are not prevented from receiving both unearned management fees discounted to a present value (if such fees were not previously provided for in the limited partnership agreement and disclosed to limited partners) and new asset-based fees;

2. property management fees and other general partner fees are inappropriate, unreasonable and more than, or not competitive with, what would be paid to third parties for performing similar services; or

3. changes in fees which are substantial and adverse to limited partners are not approved by an independent committee according to the facts and circumstances of each transaction.

(c) Non-Cash Compensation

(1) Definitions

The terms "compensation," "non-cash compensation" and "offeror" [as used in this Section] for purposes of this paragraph (c) [of this Rule] shall have the following meanings:

(A) "Compensation" shall mean cash compensation and non-cash compensation.

(B) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of direct participation securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(C) "Offeror" shall mean an issuer, sponsor, an adviser to an issuer or sponsor, an underwriter and any affiliated person of such entities.

(2) Restriction on Non-Cash Compensation

In connection with the sale and distribution of direct participation program or REIT securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Non-cash compensation arrangements are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors[1] and are not conditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not conditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by [sub]paragraph (c)(2)(D);

(ii) the location is appropriate to the purpose of the meeting, which shall mean a United States office of the offeror or

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[1] The current annual amount fixed by the Board of Governors is $100.

the member holding the meeting, or a facility located in the vicinity of such office, or a United States regional location with respect to meetings of associated persons who work within that region or, with respect to meetings with direct participation programs or REITs, a United States location at which a significant or representative asset of the program or REIT is located;

(iii) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(iv) the payment or reimbursement by the offeror is not conditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by [sub]paragraph (c)(2)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a company that controls a member company and the member's associated persons, provided that no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in [sub]paragraph (c)(2)(D).

A member shall maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by [sub]paragraphs (c)(2)(C)–(E). The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with [sub]paragraph (c)(2)(C)–(E).

(d) Exemptions

Pursuant to the Rule 9600 Series, [the Association] FINRA may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

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Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 3115;
NASD Rule 3115 to be Deleted in its Entirety from the Transitional Rulebook)

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4000. FINANCIAL AND OPERATIONAL RULES

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4500. BOOKS, RECORDS AND REPORTS

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4550. ATS Reporting

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[3115]4551. Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures

(a) Alternative Trading Systems' Recording Requirements

(1) Each alternative trading system that accepts orders for security futures (as defined in [s]Section 3(a)(55) of the Exchange Act) shall record each item of information described in paragraph (b) of this Rule. For purposes of this Rule, the term "order" includes a broker[/]-dealer's proprietary quotes that are transmitted to an alternative trading system.

(2) Alternative trading systems shall record each item of information required to be recorded under this Rule in such manner and form as is prescribed by FINRA [the Association] from time to time.

(3) Maintaining and Preserving Records

(A) Each alternative trading system shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEA[C] Rule 17a-4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEA[C] Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEA[C] Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEA[C] Rule 17a-4(f) and may be maintained and preserved for the required time in that form.

(b) Information to be Recorded.

The records required pursuant to paragraph (a) of this Rule shall contain, at a minimum, the following information for every order:

(1) Date and time (expressed in terms of hours, minutes[,] and seconds) that the order was received;

(2) Security future product name and symbol;

(3) Number of contracts to which the order applies;

(4) An identification of the order as related to a program trade or an index arbitrage trade as defined in New York Stock Exchange Rule 132B [80A];

(5) The designation of the order as a buy or sell order;

(6) The designation of the order as a market order, limit order, stop order, stop limit order[,] or other type of order;

(7) Any limit or stop price prescribed by the order;

(8) The date on which the order expires and, if the time in force is less than one day, the time when the order expires;

(9) The time limit during which the order is in force;

(10) Any instructions to modify or cancel the order;

(11) Date and time (expressed in terms of hours, minutes[,] and seconds) that the order was executed;

(12) Unit price at which the order was executed; excluding commissions, mark-ups or mark-downs;

(13) Size of the order executed;

(14) Identity of the alternative trading system's subscribers that were intermediaries or parties in the transaction; and

(15) An account identifier that relates the order back to the account owner(s).

(c) Reporting Requirements

(1) General Requirement

Alternative trading systems shall report information required to be recorded under this Rule to FINRA [the Association] on the next business day following the date the alternative trading system accepted the order or executed the trade, or at such other time period as FINRA [the Association] shall specify.

(2) Method of Transmitting Data

Alternative trading systems shall transmit this information in such manner and form as prescribed by FINRA [the Association].

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Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 2342;
NASD Rule 2342 to be Deleted in its Entirety from the Transitional Rulebook)

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2200. [COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC]COMMUNICATIONS AND DISCLOSURES

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2260. Disclosures

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[2342]2266. SIPC Information

All members, except those members: (a) that pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (SIPA) are excluded from membership in the Securities Investor Protection Corporation (SIPC) and that are not SIPC members; or (b) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, shall advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC, and also shall provide the Web site address and telephone number of SIPC. In addition, such members shall provide all customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

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Text of Incorporated NYSE Rule to be Deleted in its Entirety from the Transitional Rulebook

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[**409A. SIPC Disclosures**]

[Member organizations must advise each customer in writing, upon the opening of an account and at least annually thereafter, that they may obtain information about the Securities Investor Protection Corporation (SIPC), including the SIPC Brochure, by contacting SIPC, and shall provide the Web site address and telephone number of SIPC.

If a clearing agreement pursuant to Rule 382 exists, the requirements of this rule may be delegated to either the introducing firm or the clearing firm.]

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