

OMB APPROVAL

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

File No. SR - 2009 - 008
Amendment No. 2

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

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

Exhibit 2 Sent As Paper Document
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Exhibit 3 Sent As Paper Document
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Description

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

Contact Information

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

First Name Last Name
Title
E-mail
Telephone Fax

Signature

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

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

Date

By
(Name)

(Title)

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

Patrice Gliniecki,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

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

Exhibit 1 - Notice of Proposed Rule Change

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

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

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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 Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

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Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

On March 6, 2009, FINRA filed with the Securities and Exchange Commission (“SEC” or “Commission”) SR-FINRA-2009-008, a proposed rule change to amend the Uniform Application for Securities Industry Registration or Transfer (“Form U4”) and the Uniform Termination Notice for Securities Industry Registration (“Form U5”) (together, the “Forms”) as well as FINRA Rule 8312 (FINRA BrokerCheck Disclosure).¹ The proposed rule change would, among other things, revise the questions on the Forms to enable FINRA and other regulators to identify more readily individuals and firms subject to statutory disqualification pursuant to Section 15(b)(4)(D) or (E) of the Exchange Act (referred to as “willful violations”). Specifically, FINRA proposes to add regulatory disclosure questions to Form U4 regarding willful violations (the “willful violations questions”).²

FINRA is filing this Partial Amendment No. 2 to SR-FINRA-2009-008 to further describe proposed implementation of the proposed rule change, particularly with respect to the willful violations questions.

As noted in the original filing, FINRA anticipates including the proposed changes in a software release to the Central Registration Depository (“CRD”® or “CRD system”) in the second quarter of 2009. FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. Assuming SEC approval of the proposed rule change, the referenced software release, or “effective date” for the proposed rule change, is currently scheduled for May 18, 2009.

As noted in the original filing, FINRA appreciates that adding the willful violations questions to Form U4 requires firms to amend such forms for all of their registered persons. Firms have represented that this requirement will place a significant administrative burden on firms. To help alleviate this burden, FINRA plans, among other things, to delay the effective date solely for the willful violations questions until 180 days from the effective date of the remainder of the proposed rule change. Thus, the effective date for the proposed rule change (i.e., the Forms changes and the amendment to FINRA Rule 8312), with the exception of the willful violations questions, will be the date of the software release (the “release date”), as announced in a Regulatory Notice; the effective date of the willful violations questions will be 180 days from the release date. This schedule will provide firms with up to 180 days from the release date to answer the willful violations questions.

In addition, FINRA will allow firms, at their discretion, to file provisional “no” answers to the willful violations questions during the 180-day period between the release

¹ On May 7, 2009, FINRA filed Partial Amendment No. 1 to SR-FINRA-2009-008 to make a technical change to the text of FINRA Rule 8312(b)(3).

² For purposes of this Partial Amendment No. 2, the “willful violations questions” consist of Questions 14C(6), (7), and (8), and 14E(5), (6), and (7) on the Form U4.

date and the effective date of the willful violations questions.³ During this time, the willful violation questions will appear (in the CRD system) in a manner designed to help denote that such questions are not effective until 180 days from the release date and that any answers provided in response to such questions are provisional until such time as those questions become effective (namely, 180 days from the release date). Any “no” answers filed in response to the willful violation questions during such 180-day period that are not amended before the 180-day period expires will become final, and the firm and subject registered person will be deemed to have represented that the person has not been the subject of any finding addressed by the question(s).

Furthermore, FINRA will provide firms with the ability to upload a “batch” file of Form U4 amendments into the CRD system for all of their registered persons for purposes of filing “no” answers to all of the new willful violations questions. This feature will enable firms to submit a single batch (or bulk) file for the purposes of filing such “no” answers to the new questions on behalf of multiple registered persons.⁴

³ The CRD system will process Form U4 filings as follows: answers to current Questions 14C and 14E will be transferred without change to Questions 14C(1) through (5) and 14E(1) through (4), respectively. In addition, all registered persons will have “null” values in the willful violations questions, *i.e.*, new Questions 14C(6), (7), and (8), and 14E(5), (6), and (7). In other words, answers to the willful violations questions will be blank (*i.e.*, not populated with either a “yes” or “no” answer). Firms must affirmatively answer these new questions by clicking the appropriate “yes” or “no” radio buttons. If a firm does not affirmatively answer the new questions for registered persons, the filing of any amendments to the Form will fail the CRD-system completeness check and will not be successfully submitted to the CRD system.

⁴ FINRA will provide additional specific details regarding this feature to firms that elect to utilize it. However, in short, the feature will enable firms to sign onto Web CRD and file “no” answers for as many as 65,000 registered persons at one time. The feature will be available to all firms upon the implementation of the new Forms, and throughout the 180-day period preceding the effective date for the willful violations questions. The feature will be disabled when the willful violations questions become effective. Similarly, when the willful violations questions become effective, FINRA will disable the presentation in the CRD system designed to help denote the delayed effective date for such questions and that any answers provided in response to such questions are provisional until such time as those questions become effective.