

OMB APPROVAL

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Page 1 of 25

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

File No. SR - 2009 - 039

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 to Adopt FINRA Rule 3310 Anti-Money Laundering Compliance Program in the Consolidated
FINRA Rulebook

Contact Information

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

First Name Last Name
Title
E-mail
Telephone Fax

Signature

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

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

Date

By
(Name)

(Title)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

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

Exhibit 1 - Notice of Proposed Rule Change

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

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

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Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt (1) NASD Rule 3011 (Anti-Money Laundering Compliance Program) as FINRA Rule 3310 (Anti-Money Laundering Compliance Program), without substantive change; (2) NASD IM-3011-1 (Independent Testing Requirements) as supplementary material to proposed FINRA Rule 3310, subject to certain amendments; and (3) NASD IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information) as supplementary material to proposed FINRA Rule 3310, without substantive change. The proposed rule change would delete Incorporated NYSE Rule 445 (Anti-Money Laundering Compliance Program) in its entirety as duplicative.

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 and Incorporated NYSE rules will be eliminated from the current FINRA rulebook.

(c) Not applicable.

¹ 15 U.S.C. 78s(b)(1).

2. Procedures of the Self-Regulatory Organization

At its meeting on April 16, 2009, 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 adopt (1) NASD Rule 3011 (Anti-Money Laundering Compliance Program) as FINRA Rule 3310 (Anti-Money Laundering Compliance Program), without substantive change; (2) NASD IM-3011-1 (Independent Testing Requirements) as supplementary material to proposed FINRA Rule 3310, subject to certain amendments; and (3) NASD IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information) as supplementary material to proposed FINRA Rule 3310, without substantive change. The proposed rule change would delete Incorporated

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).

NYSE Rule 445 in its entirety (Anti-Money Laundering Compliance Program) as duplicative. The proposed rule change is discussed in further detail below.

Background

NASD Rule 3011 (Anti-Money Laundering Compliance Program) and Incorporated NYSE Rule 445 (Anti-Money Laundering Compliance Program) are substantially similar rules requiring members to develop and implement a written anti-money laundering (“AML”) program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (“BSA”)³ and the implementing regulations promulgated by the Department of Treasury. Each member’s AML compliance program must be approved, in writing, by a member of senior management.

The rules require that each AML compliance program, must, at a minimum: (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or a qualified outside party;⁴ (4) designate and identify to FINRA an individual or individuals

³ See 31 U.S.C. 5311, et seq.

⁴ Both rules permit a member to conduct the independent testing every two years (on a calendar-year basis) if it does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading, or conducts business only with other broker-dealers). Incorporated NYSE Rule 445 uses slightly different terminology, specifically providing that a member may conduct independent testing every two years (on a calendar-year basis) if it “does not

(i.e., AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML compliance program and provide prompt notification to FINRA of any changes to the designation; and (5) provide on-going training for appropriate persons.

NASD IM-3011-1 (Independent Testing Requirements) and supplementary material to Incorporated NYSE Rule 445 also contain substantially similar provisions clarifying that: (1) members should undertake more frequent testing than required if circumstances warrant; (2) the person conducting the independent test must have a working knowledge of applicable requirements under the BSA and its implementing regulations; and (3) the testing cannot be conducted by the AML compliance person(s), by any person who performs the functions being tested, or by any person who reports to any of these persons.

NASD IM-3011-1, however, permits the AML compliance program testing to be conducted by persons who report to either the AML compliance person or persons performing the functions being tested if: (1) the member has no other qualified internal personnel to conduct the test; (2) the member establishes written policies and procedures to address conflicts that may arise from allowing the test to be conducted by a person who reports to the person(s) whose activities he or she is testing (e.g., anti-retaliation procedures); (3) to the extent possible, the person conducting the test reports the results of the test to someone who is senior to the AML compliance person or persons performing the functions being tested; and (4) the member documents its rationale, which

engage in a public business (e.g., engages solely in proprietary trading, or conducts business only with other broker-dealers).”

must be reasonable, for determining there is no other alternative than to comply in this manner. In addition, if the person does not report the results consistent with (3) above, the member must document a reasonable explanation for not doing so. Incorporated NYSE Rule 445 does not have a comparable provision.

Finally, NASD IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information) requires each member to identify, review, and if necessary, update the information regarding its AML compliance person in the manner prescribed in NASD Rule 1160.⁵

Proposed FINRA Rule 3310 and Related Supplementary Material

The proposed rule change would adopt NASD Rule 3011 without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 3310 (Anti-Money Laundering Compliance Program). In addition, the proposed rule change would adopt NASD IM-3011-2, without substantive change, as supplementary material to proposed FINRA Rule 3310.

With respect to NASD IM-3011-1, the proposed rule change would adopt its provisions as supplementary material to proposed FINRA Rule 3310, but would eliminate the provision that currently allows, subject to specified conditions, the AML compliance program testing to be conducted by persons who report to either the AML compliance person or persons performing the functions being tested (referred to as the “independent testing exception”). The Financial Crimes Enforcement Network (“FinCEN”), which is

⁵ FINRA is proposing to replace NASD Rule 1160 with FINRA Rule 4540 (Member Information and Data Reporting and Filing Requirements). See Regulatory Notice 09-02 (January 2009).

responsible for administering the BSA and its implementing regulations, has stated that the independent audit provision of the BSA precludes AML program testing by personnel with an interest in the outcome of the testing and that an independent testing exception, such as the one in NASD IM-3011-1, is inconsistent with this BSA provision and FinCEN's interpretive guidance on the BSA's independent audit requirement.⁶ Accordingly, to comply with FinCEN's guidance, FINRA is proposing to eliminate the independent testing exception in connection with its adoption of proposed FINRA Rule 3310.

Finally, as stated previously, the proposed rule change would delete Incorporated NYSE Rule 445 and its related supplementary material as duplicative.

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,⁷ 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

⁶ See Letter from Jamal El-Hindi, Associate Director, Regulatory Policy & Programs Division, FinCEN, to Nancy M. Morris, Secretary, SEC (August 22, 2007). FinCEN submitted the letter to the SEC in response to the NYSE's "omnibus filing," a rule filing that sought to achieve greater harmonization between the NYSE and NASD rules, including the AML compliance program rules (SR-NYSE-2007-22).

⁷ 15 U.S.C. 78o-3(b)(6).

interest. FINRA believes that the proposed rule change will continue to assist members in identifying and preventing money laundering abuses that can affect the integrity of the U.S. capital markets.

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.⁸

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

Not applicable.

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

Not applicable.

9. Exhibits

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

Exhibit 5. Text of the proposed rule change.

⁸ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-039)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 3310 (Anti-Money Laundering Compliance Program) in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt (1) NASD Rule 3011 (Anti-Money Laundering Compliance Program) as FINRA Rule 3310 (Anti-Money Laundering Compliance Program), without substantive change; (2) NASD IM-3011-1 (Independent Testing Requirements) as supplementary material to proposed FINRA Rule 3310, subject to certain amendments; and (3) NASD IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information) as supplementary material to proposed FINRA Rule 3310, without substantive change. The proposed rule change would delete Incorporated

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

NYSE Rule 445 (Anti-Money Laundering Compliance Program) in its entirety as duplicative.

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 adopt (1) NASD Rule 3011 (Anti-Money Laundering Compliance Program) as FINRA Rule 3310 (Anti-Money Laundering

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).

Compliance Program), without substantive change; (2) NASD IM-3011-1 (Independent Testing Requirements) as supplementary material to proposed FINRA Rule 3310, subject to certain amendments; and (3) NASD IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information) as supplementary material to proposed FINRA Rule 3310, without substantive change. The proposed rule change would delete Incorporated NYSE Rule 445 in its entirety (Anti-Money Laundering Compliance Program) as duplicative. The proposed rule change is discussed in further detail below.

Background

NASD Rule 3011 (Anti-Money Laundering Compliance Program) and Incorporated NYSE Rule 445 (Anti-Money Laundering Compliance Program) are substantially similar rules requiring members to develop and implement a written anti-money laundering (“AML”) program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (“BSA”)⁴ and the implementing regulations promulgated by the Department of Treasury. Each member’s AML compliance program must be approved, in writing, by a member of senior management.

The rules require that each AML compliance program, must, at a minimum: (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide for annual (on a calendar-year basis)

⁴ See 31 U.S.C. 5311, et seq.

independent testing for compliance to be conducted by member personnel or a qualified outside party;⁵ (4) designate and identify to FINRA an individual or individuals (i.e., AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML compliance program and provide prompt notification to FINRA of any changes to the designation; and (5) provide on-going training for appropriate persons.

NASD IM-3011-1 (Independent Testing Requirements) and supplementary material to Incorporated NYSE Rule 445 also contain substantially similar provisions clarifying that: (1) members should undertake more frequent testing than required if circumstances warrant; (2) the person conducting the independent test must have a working knowledge of applicable requirements under the BSA and its implementing regulations; and (3) the testing cannot be conducted by the AML compliance person(s), by any person who performs the functions being tested, or by any person who reports to any of these persons.

NASD IM-3011-1, however, permits the AML compliance program testing to be conducted by persons who report to either the AML compliance person or persons performing the functions being tested if: (1) the member has no other qualified internal

⁵ Both rules permit a member to conduct the independent testing every two years (on a calendar-year basis) if it does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading, or conducts business only with other broker-dealers). Incorporated NYSE Rule 445 uses slightly different terminology, specifically providing that a member may conduct independent testing every two years (on a calendar-year basis) if it “does not engage in a public business (e.g., engages solely in proprietary trading, or conducts business only with other broker-dealers).”

personnel to conduct the test; (2) the member establishes written policies and procedures to address conflicts that may arise from allowing the test to be conducted by a person who reports to the person(s) whose activities he or she is testing (e.g., anti-retaliation procedures); (3) to the extent possible, the person conducting the test reports the results of the test to someone who is senior to the AML compliance person or persons performing the functions being tested; and (4) the member documents its rationale, which must be reasonable, for determining there is no other alternative than to comply in this manner. In addition, if the person does not report the results consistent with (3) above, the member must document a reasonable explanation for not doing so. Incorporated NYSE Rule 445 does not have a comparable provision.

Finally, NASD IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information) requires each member to identify, review, and if necessary, update the information regarding its AML compliance person in the manner prescribed in NASD Rule 1160.⁶

Proposed FINRA Rule 3310 and Related Supplementary Material

The proposed rule change would adopt NASD Rule 3011 without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 3310 (Anti-Money Laundering Compliance Program). In addition, the proposed rule change would adopt NASD IM-3011-2, without substantive change, as supplementary material to proposed FINRA Rule 3310.

⁶ FINRA is proposing to replace NASD Rule 1160 with FINRA Rule 4540 (Member Information and Data Reporting and Filing Requirements). See Regulatory Notice 09-02 (January 2009).

With respect to NASD IM-3011-1, the proposed rule change would adopt its provisions as supplementary material to proposed FINRA Rule 3310, but would eliminate the provision that currently allows, subject to specified conditions, the AML compliance program testing to be conducted by persons who report to either the AML compliance person or persons performing the functions being tested (referred to as the “independent testing exception”). The Financial Crimes Enforcement Network (“FinCEN”), which is responsible for administering the BSA and its implementing regulations, has stated that the independent audit provision of the BSA precludes AML program testing by personnel with an interest in the outcome of the testing and that an independent testing exception, such as the one in NASD IM-3011-1, is inconsistent with this BSA provision and FinCEN’s interpretive guidance on the BSA’s independent audit requirement.⁷ Accordingly, to comply with FinCEN’s guidance, FINRA is proposing to eliminate the independent testing exception in connection with its adoption of proposed FINRA Rule 3310.

Finally, as stated previously, the proposed rule change would delete Incorporated NYSE Rule 445 and its related supplementary material as duplicative.

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.

⁷ See Letter from Jamal El-Hindi, Associate Director, Regulatory Policy & Programs Division, FinCEN, to Nancy M. Morris, Secretary, SEC (August 22, 2007). FinCEN submitted the letter to the SEC in response to the NYSE’s “omnibus filing,” a rule filing that sought to achieve greater harmonization between the NYSE and NASD rules, including the AML compliance program rules (SR-NYSE-2007-22).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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 the proposed rule change will continue to assist members in identifying and preventing money laundering abuses that can affect the integrity of the U.S. capital markets.

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

⁸ 15 U.S.C. 78o-3(b)(6).

(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 insert SR-FINRA-2009-039 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 insert SR-FINRA-2009-039. 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 insert SR-FINRA-2009-039 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon

Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

* * * * *

**Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 3011, NASD IM-3011-1, and NASD IM-3011-2; NASD Rule 3011, NASD IM-3011-1, and NASD IM-3011-2 to be Deleted in their Entirety from the Transitional Rulebook)**

* * * * *

3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

* * * * *

3300. ANTI-MONEY LAUNDERING

* * * * *

[3011]3310. Anti-Money Laundering Compliance Program

[On or before April 24, 2002, e]Each member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member's anti-money laundering program must be approved, in writing, by a member of senior management. The anti-money laundering programs required by this Rule shall, at a minimum,

(a) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(b) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

(c) Provide for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or by a qualified outside party, unless the member does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading or conducts business only with other broker-dealers), in which case such "independent testing" is required every two years (on a calendar-year basis);

(d) Designate and identify to [NASD]FINRA (by name, title, mailing address, e-mail address, telephone number, and facsimile number) an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program (such individual or individuals must be an associated person of the member) and provide prompt notification to [NASD]FINRA regarding any change in such designation(s); and

(e) Provide ongoing training for appropriate personnel.

• • • Supplementary Material: -----

[IM-3011-1].01 Independent Testing Requirements.

(a) All members should undertake more frequent testing than required if circumstances warrant.

(b) Independent testing, pursuant to Rule [3011(c)]3310(c), must be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations.

(c) Independent testing may not be conducted by:

- (1) a person who performs the functions being tested,
- (2) the designated anti-money laundering compliance person, or
- (3) a person who reports to a person described in either subparagraphs (1)

or (2) above,], except that a member may allow the test to be conducted by a person who reports to a person described in (1) or (2) above if all four of the following conditions are met:]

[(A) the member has no other qualified internal personnel to conduct the test;]

[(B) the member establishes written policies and procedures to address conflicts that may arise from allowing the test to be conducted by a person who reports to the person(s) whose activities he or she is testing (e.g., anti-retaliation procedures);]

[(C) to the extent possible, the person conducting the test reports the results of the test to a person at the member who is senior to the persons described in (1) or (2) above; and]

[(D) the member must document its rationale, which must be reasonable, for determining that it has no other alternative than to comply in the manner set forth in the exception to this paragraph (3). In addition,

if the person does not report the results consistent with (C) above, the member must document a reasonable explanation for not doing so.]

[IM-3011-2].02 Review of Anti-Money Laundering Compliance Person Information

Each member must identify, review, and, if necessary, update the information regarding its anti-money laundering compliance person designated pursuant to Rule [3011]3310(d) in the manner prescribed by NASD Rule 1160.

* * * * *

**Text of Incorporated NYSE Rule 445
to be Deleted in its Entirety from the Transitional Rulebook**

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[Rule 445. Anti-Money Laundering Compliance Program]

[Each member organization and each member not associated with a member organization shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of Treasury. Each member organization's anti-money laundering program must be approved, in writing, by a member of senior management.]

[The anti-money laundering programs required by this Rule shall, at a minimum:]

[(1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;]

[(2) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;]

[(3) Provide for annual (i.e., on a calendar-year basis) independent testing for compliance to be conducted by member or member organization personnel or by a qualified outside party, unless the member or member organization does not conduct a public business (e.g., engages solely in proprietary trading, or conducts business only with other broker-dealers) in which case "independent testing" is required every two years (on a calendar-year basis);]

[(4) Designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number) a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s). Such person or persons must:]

[(A) be employed by each member or member organization for which they are designated pursuant to this paragraph, or]

[(B) be employed by an entity that directly or indirectly controls, or is controlled by, or is under common control with the member or member organization (i.e., a parent, affiliate, or subsidiary of the member or member organization).]

[(C) Except as provided by Supplementary Material paragraph .30, the prior written approval of the Exchange is required if an arrangement is structured pursuant to section (4)(B) of this rule. Further, each person designated pursuant to section (4)(B) must execute an attestation, acceptable to the Exchange, consenting to the supervision of each

member or member organization for which they are designated and to the jurisdiction of the Exchange. In addition, the member or member organization must execute an agreement, acceptable to the Exchange, acknowledging their responsibility to supervise, as an employee for all regulatory purposes, each such person designated by them; and]

[(5) Provide ongoing training for appropriate persons.]

[• • • **Supplementary Material:** -----]

[.10 All members and member organizations should undertake more frequent testing than required by Rule 445(3) if circumstances warrant.]

[.20 Independent testing pursuant to Rule 445(3) must be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations. Independent testing may not be conducted by a person who performs the functions being tested, or by the designated AML compliance officer, or by a person who reports to either.]

[.30 If a person designated pursuant to an arrangement structured under section 4(B) is to be replaced by another person, and such arrangement has previously been approved by the Exchange pursuant to section 4(C), then Exchange approval of the designation change is not required if the previously approved arrangement is otherwise substantively unchanged. However, prompt notification to the Exchange of the

designation change is still required under section (4), as is the execution of required documents pursuant to section 4(C).]

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