

OMB APPROVAL

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

File No. SR - 2008 - 067

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



Exhibit 3 Sent As Paper Document

**Description**

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

Contact Information

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

First Name Last Name
Title
E-mail
Telephone Fax

Signature

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

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

Date By
(Name)

(Title)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

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

Exhibit 1 - Notice of Proposed Rule Change

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

On December 29, 2008, FINRA filed with the Securities and Exchange Commission (“SEC” or “Commission”) SR-FINRA-2008-067, a proposed rule change to adopt a set of financial responsibility rules (the “proposed rules”) for purposes of the consolidated FINRA rulebook.¹ On June 17, 2009, FINRA filed Partial Amendment No. 1 to SR-FINRA-2008-067 to make a clarifying change to the text of proposed FINRA Rule 4110(c).

FINRA is filing this Partial Amendment No. 2 to SR-FINRA-2008-067 to make additional clarifying changes to the proposed rules with respect to members that operate pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i). As FINRA explained in the original rule filing, all requirements set forth in the proposed rules that would apply to firms that clear or carry customer accounts would also apply to firms that operate pursuant to the exemptive provisions of Rule 15c3-3(k)(2)(i).² In response to commenter requests for clarification, FINRA further explained in the original rule filing that a firm “operates” pursuant to the exemptive provisions of Rule 15c3-3(k)(2)(i), and is therefore included as a clearing or carrying member for purposes of the proposed rules, if it either holds customer funds in a bank account established pursuant to Rule 15c3-3(k)(2)(i) or clears customer transactions through such an account.³ As additional clarification, FINRA is amending each of proposed FINRA Rules 4110, 4120 and 4521 to add Supplementary Material providing that, for purposes of each of these Rules, all

¹ FINRA proposes to adopt FINRA Rules 4110 (Capital Compliance), 4120 (Regulatory Notification and Business Curtailment), 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties), 4140 (Audit) and 4521 (Notifications, Questionnaires and Reports) in the consolidated FINRA rulebook and to delete NASD Rules 3130 and 3131, NASD IM-3130, Incorporated NYSE Rules 312(h), 313(d), 325, 326, 328, 416.20, 418, 420, 421 and NYSE Rule Interpretations 313(d)/01, 313(d)/02, 325(c)(1), 325(c)(1)/01 and 416/01. FINRA also proposes to revise FINRA Rule 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series). Lastly, FINRA proposes to make conforming revisions to Section 4(g) of Schedule A to the FINRA By-Laws.

² See Securities Exchange Act Release No. 59273 (January 22, 2009), 74 FR 4992, 4993 n. 7 (January 28, 2009) (Notice of Filing of Proposed Rule Change; File No. SR-FINRA-2008-067). FINRA noted that “operating” pursuant to the exemptive provisions of Rule 15c3-3(k)(2)(i) is not meant to include firms that have *elected* the exemption but do not operate as such. See 74 FR 4997 n. 32.

³ See 74 FR 4997. FINRA addressed additional commenter concerns in a Response to Comments. See Letter from Adam H. Arkel, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, dated April 14, 2009, available at: <<http://www.finra.org/Industry/Regulation/RuleFilings/2008/P117647>>.

requirements that apply to a member that clears or carries customer accounts shall also apply to any member that, operating pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder.⁴ With this Partial Amendment No. 2, FINRA is including: (1) Exhibit 4, which shows the text of the changes proposed in this Partial Amendment No. 2 to SR-FINRA-2008-067, with the proposed changes in the original filing and Partial Amendment No.1 thereto shown as if adopted; and (2) Exhibit 5, which shows the proposed rule change, as amended by this Partial Amendment No. 2.

⁴

See Exhibit 4.

EXHIBIT 4

Exhibit 4 shows the text of the changes proposed in this Partial Amendment No. 2 to SR-FINRA-2008-067, with the proposed changes in the original filing and Partial Amendment No.1 thereto shown as if adopted. Proposed additions in this Partial Amendment No. 2 are underlined; proposed deletions are in brackets.¹

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

4100. FINANCIAL CONDITION

4110. Capital Compliance

(a) When necessary for the protection of investors or in the public interest, FINRA may, at any time or from time to time with respect to a particular carrying or clearing member or all carrying or clearing members, pursuant to authority exercised by FINRA's Executive Vice President charged with oversight for financial responsibility, or his or her written officer delegate, prescribe greater net capital or net worth requirements than those otherwise applicable, including more stringent treatment of items in computing net capital or net worth, or require such member to restore or increase its net capital or net worth. In any such instance, FINRA shall issue a notice pursuant to Rule 9557.

¹ The text of Proposed FINRA Rules 9557 and 9559 as set forth in this Exhibit reflects amendments adopted pursuant to proposed rule change SR-FINRA-2008-021. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-021). The text of Incorporated NYSE Rule 421 as set forth in this Exhibit reflects amendments adopted pursuant to proposed rule change SR-FINRA-2008-033, which was approved by the Commission. See Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-033). The amendments to FINRA Rule 9557, FINRA Rule 9559 and Incorporated NYSE Rule 421 went into effect on December 15, 2008. See FINRA Regulatory Notice 08-57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

(b) (1) Unless otherwise permitted by FINRA, a member shall suspend all business operations during any period in which it is not in compliance with applicable net capital requirements set forth in SEA Rule 15c3-1.

(2) FINRA may issue a notice pursuant to Rule 9557 directing a member that is not in compliance with applicable net capital requirements set forth in SEA Rule 15c3-1 to suspend all or a portion of its business.

(c) (1) No equity capital of a member may be withdrawn for a period of one year from the date such equity capital is contributed, unless otherwise permitted by FINRA in writing. Subject to the requirements of paragraph (c)(2) of this Rule, this paragraph shall not preclude a member from withdrawing profits earned.

(2) A carrying or clearing member shall not, without the prior written approval of FINRA, withdraw capital, pay a dividend or effect a similar distribution that would reduce such member's equity, or make any unsecured advance or loan to a stockholder, partner, sole proprietor, employee or affiliate, where such withdrawals, payments, reductions, advances or loans in the aggregate, in any 35 rolling calendar day period, on a net basis, exceeds 10% of its excess net capital.

(d) Sale-And-Leasebacks, Factoring, Financing, Loans and Similar Arrangements

(1) (A) No carrying or clearing member shall consummate a sale-and-leaseback arrangement with respect to any of its assets, or a sale, factoring, or financing arrangement with respect to any unsecured accounts receivable, where any such arrangement would increase the member's tentative net capital by 10% or more, without the prior written authorization of FINRA.

(B) No carrying member shall consummate any arrangement concerning the sale or factoring of customer debit balances, irrespective of amount, without the prior written authorization of FINRA.

(2) Any loan agreement entered into by a carrying or clearing member, the proceeds of which exceed 10% of such member's tentative net capital and which is intended to reduce the deduction in computing net capital for fixed assets and other assets which cannot be readily converted into cash under SEA Rule 15c3-1(c)(2)(iv), must be submitted to and be acceptable to FINRA, prior to such reduction becoming effective.

(3) Members subject to paragraphs (d)(1)(A), (d)(1)(B) or (d)(2), shall not consummate any arrangement pursuant to such paragraph(s) if the aggregate of all such arrangements outstanding would exceed 20% of such member's tentative net capital, without the prior written authorization of FINRA.

(4) Any agreement relating to a determination of a "ready market" for securities based upon the securities being accepted as collateral for a loan by a bank under SEA Rule 15c3-1(c)(11)(ii), must be submitted to and be acceptable to FINRA before the securities may be deemed to have a "ready market."

(e) Subordinated Loans, Notes Collateralized by Securities and Capital Borrowings

(1) All subordinated loans or notes collateralized by securities shall meet such standards as FINRA may require to ensure the continued financial stability and operational capability of the member, in addition to those specified in Appendix D of SEA Rule 15c3-1.

(2) Unless otherwise permitted by FINRA, each member partnership whose general partner enters into any secured or unsecured borrowing, the proceeds of which will be contributed to the capital of the member, shall submit the following for approval in order for such proceeds to qualify as capital acceptable for inclusion in the computation of the net capital of the member:

A signed copy of the loan agreement which must:

- (A) have at least a 12 month duration; and
- (B) provide non-recourse to the assets of the member.

Additional documents may be required, the nature of which will vary, depending upon the legal status of the lender e.g. an individual, bank, estate, trust, corporation, partnership, etc.

• • • **Supplementary Material:** -----

.01 Compliance with Applicable Law. For purposes of paragraph (e)(1), the member shall assure itself that any applicable provisions of the Securities Act of 1933 and/or State Blue Sky laws have been satisfied and may be required to submit evidence thereof to FINRA prior to approval of the subordinated loan agreement.

.02 Members Operating Pursuant to the Exemptive Provisions of SEA Rule 15c3-3(k)(2)(i). For purposes of this Rule, all requirements that apply to a member that clears or carries customer accounts shall also apply to any member that, operating pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder.

4120. Regulatory Notification and Business Curtailment

(a) Notification

(1) Each carrying or clearing member shall promptly, but in any event within 24 hours, notify FINRA in writing if its net capital falls below the following percentages:

(A) the member's net capital is less than 150 percent of its minimum dollar net capital requirement or such greater percentage thereof as may from time to time be designated by FINRA;

(B) the member is subject to the aggregate indebtedness requirement of SEA Rule 15c3-1, and its aggregate indebtedness is more than 1,000 percent of its net capital;

(C) the member elects to use the alternative method of computing net capital pursuant to SEA Rule 15c3-1(a)(1)(ii), and its net capital is less than the level specified in SEA Rule 17a-11(c)(2);

(D) the member is approved to use the alternative method of computing net capital pursuant to SEA Rule 15c3-1e, and

(i) its tentative net capital as defined in SEA Rule 15c3-1(c)(15) is less than 50 percent of the early warning notification amount required by SEA Rule 15c3-1(a)(7)(ii), or

(ii) its net capital is less than \$1.25 billion;

(E) the member is registered as a Futures Commission Merchant pursuant to the Commodity Exchange Act, and its net capital is less than 120% of the minimum risk-based capital requirements of Commodity Exchange Act Rule 1.17; or

(F) the member's deduction of capital withdrawals, which it anticipates making, whether voluntarily or as a result of a commitment, including maturities of subordinated liabilities entered into pursuant to Appendix D of SEA Rule 15c3-1, during the next six months, would result in any one of the conditions described in paragraph (a)(1)(A) through (E) of this Rule.

(b) Restrictions on Business Expansion

(1) Except as otherwise permitted by FINRA in writing, a member that carries customer accounts or clears transactions shall not expand its business during any period in which any of the conditions described in paragraph (a)(1) continue to exist for more than 15 consecutive business days, provided that such condition(s) has been known to FINRA or the member for at least five consecutive business days. FINRA may issue a notice pursuant to Rule 9557 directing any such member not to expand its business; however, FINRA's authority to issue such notice does not negate the member's obligation not to expand its business in accordance with this paragraph (b)(1).

(2) No member may expand its business during any period in which FINRA restricts the member from expanding its business for any financial or operational reason. In any such instance, FINRA shall issue a notice pursuant to Rule 9557.

(3) For purposes of paragraph (b) of this Rule, the term "expansion of business" may include:

(A) net increase in the number of registered representatives or other producing personnel;

(B) exceeding average capital commitments over the previous three months for market making or block positioning;

(C) initiation of market making in new securities or any new proprietary trading or other commitment in securities or commodities in which a market is not made (other than riskless trades associated with customer orders);

(D) exceeding average commitments over the previous three months for underwritings;

(E) opening of new branch offices;

(F) entering any new line of business or deliberately promoting or expanding any present lines of business;

(G) making unsecured or partially secured loans, advances, drawings, guarantees or other similar receivables; and

(H) such other activities as FINRA deems appropriate under the circumstances, in the public interest or for the protection of investors.

(c) Reduction of Business

(1) Except as otherwise permitted by FINRA in writing, a member that carries customer accounts or clears transactions is obligated to reduce its business to a point enabling its available capital to exceed the standards set forth in paragraph (a)(1)(A) through (F) of this Rule, when any of the following conditions continue to exist for more than 15 consecutive business days, provided that such condition(s) has been known to FINRA or the member for at least five consecutive business days:

(A) the member's net capital is less than 125 percent of its minimum dollar net capital requirement or such greater percentage thereof as may from time to time be designated by FINRA;

(B) the member is subject to the aggregate indebtedness requirement of SEA Rule 15c3-1, and its aggregate indebtedness is more than 1,200 percent of its net capital;

(C) the member elects to use the alternative method of computing net capital pursuant to SEA Rule 15c3-1(a)(1)(ii), and its net capital is less than one percentage point below the level specified in SEA Rule 17a-11(c)(2);

(D) the member is approved to use the alternative method of computing net capital pursuant to SEA Rule 15c3-1e, and

(i) its tentative net capital as defined in SEA Rule 15c3-1(c)(15) is less than 40 percent of the early warning notification amount required by SEA Rule 15c3-1(a)(7)(ii), or

(ii) its net capital is less than \$1 billion;

(E) the member is registered as a Futures Commission Merchant pursuant to the Commodity Exchange Act, and its net capital is less than 110% of the minimum risk-based capital requirements of Commodity Exchange Act Rule 1.17; or

(F) the member's deduction of capital withdrawals, including maturities of subordinated liabilities entered into pursuant to Appendix D of SEA Rule 15c3-1, scheduled during the next six months, would result in any

one of the conditions described in paragraph (c)(1)(A) through (E) of this Rule.

FINRA may issue a notice pursuant to Rule 9557 directing any such member to reduce its business to a point enabling its available capital to exceed the standards set forth in paragraph (a)(1)(A) through (F) of this Rule; however, FINRA's authority to issue such notice does not negate the member's obligation to reduce its business in accordance with this paragraph (c)(1).

(2) A member must reduce its business as directed by FINRA for any financial or operational reason. In any such instance, FINRA shall issue a notice pursuant to Rule 9557.

(3) For purposes of paragraph (c) of this Rule, the term "business reduction" shall mean reducing or eliminating parts of a member's business in order to reduce the amount of capital required, which may include:

(A) promptly paying all or a portion of free credit balances to customers;

(B) promptly effecting delivery to customers of all or a portion of fully paid securities in the member's possession or control;

(C) introducing all or a portion of its business to another member on a fully disclosed basis;

(D) reducing the size or modifying the composition of its inventory and reducing or ceasing market making;

(E) closing of one or more existing branch offices;

- (F) collecting unsecured or partially secured loans, advances, drawings, guarantees or other similar receivables;
- (G) accepting no new customer accounts;
- (H) restricting the payment of salaries or other sums to partners, officers, directors, shareholders, or associated persons of the member;
- (I) effecting liquidating or closing customer and/or proprietary transactions;
- (J) accepting only unsolicited customer orders; and
- (K) such other activities as FINRA deems appropriate under the circumstances in the public interest or for the protection of investors.

• • • **Supplementary Material:** -----

.01 Exercise of Discretion by FINRA. The following are examples of the conditions under which FINRA may exercise its discretion pursuant to paragraphs (b)(2) or (c)(2) above:

- (a) The member has experienced a substantial change in the manner in which it processes its business, which, in the view of FINRA, increases the potential risk of loss to customers or other members;
- (b) The member's books and records are not maintained in accordance with the provisions of SEA Rules 17a-3 or 17a-4;
- (c) The member is not in compliance, or is unable to demonstrate compliance, with applicable net capital requirements;
- (d) The member is not in compliance, or is unable to demonstrate compliance, with SEA Rule 15c3-3 (Customer Protection – Reserves and Custody of Securities);
- (e) The member is unable to clear and settle transactions promptly; or

(f) The member's overall business operations are in such condition, given the nature of its business that, notwithstanding the absence of any of the conditions enumerated in paragraphs (a) through (e), a determination of financial or operational difficulty should be made.

.02 Correspondent Firms. The Rule contemplates that any restrictions or conditions imposed on a carrying or clearing member's business under this Rule may require that member to restrict the business activities of one or more correspondent firms for which the member clears, insofar as such business would be handled by such carrying or clearing member.

.03 Members Operating Pursuant to the Exemptive Provisions of SEA Rule 15c3-

3(k)(2)(i). For purposes of this Rule, all requirements that apply to a member that clears or carries customer accounts shall also apply to any member that, operating pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder.

4130. Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties

(a) Application — For purposes of this Rule, the term "member" shall be limited to any member of FINRA registered with the SEC pursuant to Section 15C of the Exchange Act that is not designated to another self-regulatory organization by the SEC for financial responsibility pursuant to Section 17 of the Exchange Act and SEA Rule 17d-1.

(b) Each member subject to Section 402.2 of the rules of the Treasury Department shall comply with the capital requirements prescribed therein and with the provisions of this Rule.

(c) A member, when so directed by FINRA shall not expand its business during any period in which:

(1) Any of the following conditions continue to exist for more than 15 consecutive business days:

(A) the member's liquid capital is less than 150 percent of the total haircuts or such greater percentage thereof as may from time to time be prescribed by FINRA;

(B) the member's liquid capital minus total haircuts is less than 150 percent of its minimum dollar capital requirement; or

(C) the deduction of ownership equity and maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in (A) or (B) of this subparagraph (1); or

(2) FINRA restricts the member for any other financial or operational reason.

(d) A member, when so directed by FINRA, shall forthwith reduce its business:

(1) To a point at which the member would not be subject to a prohibition against expansion of its business as set forth in paragraphs (c)(1)(A), (B), or (C) of this Rule if any of the following conditions continue to exist for more than 15 consecutive business days:

(A) the member's liquid capital is less than 125 percent of total haircuts or such greater percentage thereof as may from time to time be prescribed by FINRA;

(B) the member's liquid capital minus total haircuts is less than 125 percent of its minimum dollar capital requirement; or

(C) the deduction of ownership equity and maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in (A) or (B) of this subparagraph (1); and

(2) As required by FINRA when it restricts a member for any other financial or operational reason.

(e) A member shall suspend all business operations during any period of time when the member is not in compliance with applicable liquid capital requirements as set forth in Section 402.2 of the rules of the Treasury Department. FINRA staff may issue a notice to such member directing it to suspend all business operations; however, the member's obligation to suspend all business operations arises from its obligations under Section 402.2 of the rules of the Treasury Department and is not dependent on any notice that may be issued by FINRA staff.

(f) Any notice directing a member to limit or suspend its business operations shall be issued by FINRA staff pursuant to Rule 9557.

4140. Audit

(a) FINRA may at any time, due to concerns regarding the accuracy or integrity of a member's financial statements, books and records or prior audited financial statements, direct any member to cause an audit to be made by an independent public accountant of its

accounts, or cause an examination to be made in accordance with attestation, review or consultation standards prescribed by the AICPA. Such audit or examination shall be directed pursuant to authority exercised by FINRA's Executive Vice President charged with oversight for financial responsibility, or his or her written officer delegate, and shall be made in accordance with such requirements as FINRA may prescribe.

(b) Any member failing to file an audited financial and/or operational report or examination report under this Rule in the prescribed time shall be subject to a late fee as set forth in Schedule A Section 4(g)(1) to the FINRA By-Laws.

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4500. BOOKS, RECORDS AND REPORTS

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4520. Financial Records and Reporting Requirements

4521. Notifications, Questionnaires and Reports

(a) Each carrying or clearing member shall submit to FINRA, or its designated agent, at such times as may be designated, or on an ongoing basis, in such form and within such time period as may be prescribed, such financial and operational information regarding the member or any of its correspondents as FINRA deems essential for the protection of investors and the public interest.

(b) Every member approved by the SEC pursuant to SEA Rule 15c3-1 to use the alternative method of computing net capital contained in Appendix E to that Rule shall file such supplemental and alternative reports as may be prescribed by FINRA.

(c) Each carrying or clearing member shall notify FINRA in writing, no more than 48 hours after its tentative net capital as computed pursuant to SEA Rule 15c3-1 has declined 20

percent or more from the amount reported in its most recent FOCUS Report or, if later, the most recent such notification filed with FINRA. For purposes of this paragraph, “tentative net capital as computed pursuant to SEA Rule 15c3-1” shall exclude withdrawals of capital previously approved by FINRA.

(d) (1) Unless otherwise permitted by FINRA in writing, members carrying margin accounts for customers are required to submit, on a settlement date basis, the information specified in paragraphs (d)(2)(A) and (d)(2)(B) of this Rule as of the last business day of the month. If a member has no information to submit, a report should be filed with a notation thereon to that effect. Reports are due as promptly as possible after the last business day of the month, but in no event later than the sixth business day of the following month. Members shall use such form as FINRA may prescribe for these reporting purposes.

(2) Each member carrying margin accounts for customers shall submit reports containing the following customer information:

(A) Total of all debit balances in securities margin accounts; and

(B) Total of all free credit balances in all cash accounts and all margin accounts.

(3) For purposes of this paragraph (d):

(A) Only free credit balances in cash and margin accounts shall be included in the member’s report. Balances in short accounts and in Special Memorandum Accounts (as defined in Section 2.2 of Regulation T under the Exchange Act) shall not be considered as free credit balances.

(B) Reported debit or credit balance information shall not include the accounts of other organizations that are FINRA members, or of the associated persons of the member submitting the report where such associated person's account is excluded from the definition of customer pursuant to SEA Rule 15c3-3.

(e) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file any report, notification or information pursuant to this Rule, a late fee as set forth in Schedule A Section 4(g)(1) to the FINRA By-Laws.

(f) For purposes of this Rule, any report filed pursuant to this Rule containing material inaccuracies shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

• • • Supplementary Material: -----

.01 Members Operating Pursuant to the Exemptive Provisions of SEA Rule 15c3-

3(k)(2)(i). For purposes of this Rule, all requirements that apply to a member that clears or carries customer accounts shall also apply to any member that, operating pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder.

* * * * *

9000. CODE OF PROCEDURE

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9500. OTHER PROCEEDINGS

* * * * *

9557. Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties

(a) Notice of Requirements and/or Restrictions; FINRA Action

FINRA staff may issue a notice directing a member to comply with the provisions of Rule 4110, 4120 or 4130 or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Rule 4110, 4120 or 4130, if FINRA staff has reason to believe that a condition specified in Rule 4110, 4120 or 4130 exists. A notice served under this Rule shall constitute FINRA action.

(b) No Change.

(c) Contents of Notice

A notice issued under this Rule shall:

- (1) state the specific grounds and include the factual basis for the FINRA action;
- (2) specify the date of the notice and the requirements and/or restrictions being imposed by the notice;
- (3) state that the requirements and/or restrictions imposed by the notice are immediately effective;
- (4) specify the conditions for complying with and, where applicable, avoiding or terminating the requirements and/or restrictions imposed by the notice;
- (5) inform the member that, pursuant to paragraph (f) of this Rule, the failure to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from FINRA staff, to result in automatic and immediate suspension unless FINRA staff issues a letter of withdrawal

of all requirements and/or restrictions imposed by the notice pursuant to paragraph (g)(2) of this Rule;

(6) explain that the member may make a request for a letter of withdrawal of the notice pursuant to paragraph (e) of this Rule;

(7) state that, in addition to making a request for a letter of withdrawal of the notice, the member may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559;

(8) inform the member of the applicable deadline for filing a request for a hearing and state that a request for a hearing must set forth with specificity any and all defenses to the FINRA action; and

(9) explain that, pursuant to Rule 9559(n), a Hearing Panel may approve or withdraw the requirements and/or restrictions imposed by the notice, and that if the Hearing Panel approves the requirements and/or restrictions imposed by the notice and finds that the member has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the member.

(d) Effectiveness of the Requirements and/or Restrictions

The requirements and/or restrictions imposed by a notice issued and served under this Rule are immediately effective, except that a timely request for a hearing shall stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other members. Such a determination by FINRA's Chief Executive Officer (or

such other senior officer as the Chief Executive Officer may designate) cannot be appealed. An extension of the stay period is not permitted. Where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), the notice shall not be deemed to have taken effect during that entire period.

Any requirements and/or restrictions imposed by an effective notice shall remain in effect unless FINRA staff shall remove or reduce the requirements and/or restrictions pursuant to a letter of withdrawal of the notice issued as set forth in paragraph (g)(2) of this Rule.

(e) Request for a Letter of Withdrawal of the Notice; Request for a Hearing

A member served with a notice under this Rule may request from FINRA staff a letter of withdrawal of the notice pursuant to paragraph (g)(2) of this Rule and/or file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559.

(1) A request for a letter of withdrawal of the notice may be made at any time after service of a notice under this Rule. The member making the request must demonstrate to the satisfaction of FINRA staff that the requirements and/or restrictions imposed by the notice should be removed or reduced. If such a request is denied by FINRA staff, the member shall not be precluded from making a subsequent request or requests.

(2) A request for a hearing shall be made within two business days after service of a notice under this Rule. A request for a hearing must set forth with specificity any and all defenses to the FINRA action. A request for a hearing may seek to contest:

(A) the validity of the requirements and/or restrictions imposed by the notice (as the same may have been reduced by a letter of withdrawal pursuant to paragraph (g)(2) of this Rule, where applicable); and/or

(B) FINRA staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the member.

(f) Enforcement of Notice

A member that has failed to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from FINRA staff, automatically and immediately suspended. Such suspension shall remain in effect unless FINRA staff shall issue a letter, pursuant to paragraph (g)(2) of this Rule, stating that the suspension is lifted.

(g) Additional Requirements and/or Restrictions or the Removal or Reduction of Requirements and/or Restrictions; Letter of Withdrawal of the Notice

(1) Additional Requirements and/or Restrictions

If a member continues to experience financial or operational difficulty specified in Rule 4110 or 4120 or 4130, notwithstanding an effective notice, FINRA staff may impose additional requirements and/or restrictions by serving an additional notice under paragraph (b) of this Rule. The additional notice shall inform the member that it may apply for relief from the additional requirements and/or restrictions by filing a written request for a letter of withdrawal of the notice and/or a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such additional notice.

(2) Removal or Reduction of Requirements and/or Restrictions and/or Lifting of Suspension; Letter of Withdrawal

(A) Removal or Reduction of Requirements and/or Restrictions

If, upon the member's demonstration to the satisfaction of FINRA staff, FINRA staff determines that any requirements and/or restrictions imposed by a notice under this Rule should be removed or reduced, FINRA staff shall serve the member, pursuant to paragraph (b) of this Rule, a written letter of withdrawal that shall, in the sole discretion of FINRA staff, withdraw the notice in whole or in part. A notice that is withdrawn in part shall remain in force, unless FINRA staff shall remove the remaining requirements and/or restrictions.

(B) Lifting of Suspension

If, upon the member's demonstration to the satisfaction of FINRA staff, FINRA staff determines that a suspension imposed by a notice under this Rule should be lifted, FINRA staff shall serve the member, pursuant to paragraph (b) of this Rule, a letter that shall, in the sole discretion of FINRA staff, lift the suspension. Where all or some of the requirements and/or restrictions imposed by a notice issued under this Rule remain in force, the letter shall state that the member's failure to continue to comply with those requirements and/or restrictions that remain effective shall result in the member being immediately suspended.

(h) FINRA Staff

For purposes of this Rule, "FINRA staff" shall mean:

(1) the head of the FINRA department or office that issued the notice, or his or her written officer delegate; or

(2) if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the FINRA department or office that is so designated, or his or her written officer delegate.

(i) Notice to Membership

FINRA shall provide notice of any suspension pursuant to this Rule in the next notice of Disciplinary and Other FINRA Actions.

* * * * *

9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) No Change.

(b) Computation of Time

Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through 9558, unless otherwise specified.

(c) Stays

(1) Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 9551 through 9556, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by FINRA or a member thereof under Rule 9555 with respect to services to

which the member or person does not have access shall not be stayed by a request for a hearing.

(2) A timely request for a hearing shall stay the effectiveness of a notice issued under Rule 9557 for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that a notice under Rule 9557 shall not be stayed. Where a notice under Rule 9557 is stayed by a request for a hearing, such stay shall remain in effect only for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less) and shall not be extended.

(3) A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9558, unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown.

(d) Appointment and Authority of Hearing Officer and/or Hearing Panel

(1) For proceedings initiated under Rules 9553 and 9554, the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 9551, 9552, 9555, 9556, 9557 and 9558, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. For proceedings initiated under Rules 9551, 9552, 9555, 9556 and 9558, the Chief Hearing Officer shall select as Panelists persons who meet the qualifications

delineated in Rules 9231 and 9232. For proceedings initiated under Rule 9557, the Chief Hearing Officer shall select as Panelists current or former members of the FINRA Financial Responsibility Committee.

(3) Rules 9231(e), 9233 and 9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.

(4) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 9235 and 9280.

(5) Hearings under the Rule 9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.

(6) For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

(e) Consolidation or Severance of Proceedings

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under a Rule that does not permit a stay of the effectiveness of the notice or where FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate), in the case of Rule

9557, or Hearing Officer, in the case of Rule 9558(d), determines that a request for a hearing shall not stay the effectiveness of the notice, the limitation, prohibition, condition, requirement, restriction, or suspension specified in the notice shall not be stayed pending resolution of the case. Where one of the consolidated matters includes an action brought under Rule 9557 that is stayed for up to ten business days, the requirement and/or restriction specified in the notice shall not be further stayed.

(f) Time of Hearing

(1) A hearing shall be held within five business days after a respondent subject to a notice issued under Rule 9557 files a written request for a hearing with the Office of Hearing Officers.

(2) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 and 9558 files a written request for a hearing with the Office of Hearing Officers.

(3) A hearing shall be held within 60 days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(4) The timelines established by paragraphs (f)(1) through (f)(3) confer no substantive rights on the parties.

(g) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

(1) At least two business days prior to the hearing in the case of an action brought pursuant to Rule 9557;

(2) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 and 9558; and

(3) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9551 through 9555.

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than seven days before the hearing in an action brought under Rules 9556 and 9558, and not less than 40 days before the hearing in an action brought under Rules 9551 through 9555, FINRA staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by FINRA until the date upon which FINRA serves a final decision or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556 and 9558, and not less than 14 days before the hearing in an action brought under Rules 9551 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.

(i) through (m) No Change.

(n) Sanctions, Costs and Remands

(1) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9557, the Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and, pursuant to Rule 8310(a), may also impose any other fitting sanction.

(2) In an action brought under Rule 9557, the Hearing Panel shall approve or withdraw the requirements and/or restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds that the respondent has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless FINRA staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 9557(g)(2).

(3) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330 regarding all actions brought under the Rule 9550 Series.

(4) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9557, the Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

(o) Timing of Decision

(1) Proceedings initiated under Rules 9553 and 9554

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision and provide it to the National Adjudicatory Council's Review Subcommittee.

(2) Proceedings initiated under Rules 9556 and 9558

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(3) Proceedings initiated under Rules 9551, 9552 and 9555

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(4) Proceedings initiated under Rule 9557

(A) Written Order

Within two business days of the date of the close of the hearing, the Office of Hearing Officers shall issue a written order that reflects the Hearing Panel's summary determinations, as decided by majority vote, and shall serve the Hearing Panel's written order on the Parties. The Hearing Panel's written order under Rule 9557 is effective when issued. The Hearing Panel's written order will be followed by a written decision explaining the reasons for the Hearing Panel's summary determinations, as required by paragraphs (o)(4)(B) and (p) of this Rule.

(B) Written Decision

Within seven days of the issuance of the Hearing Panel's written order, the Office of Hearing Officers shall issue a written decision that complies with

the requirements of paragraph (p) of this Rule and shall serve the Hearing Panel's written decision on the Parties.

(5) If not timely called for review by the National Adjudicatory Council's Review Subcommittee pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final FINRA action. For decisions issued under Rules 9551 through 9556 and 9558, the Office of Hearing Officers shall promptly serve the decision of the Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each FINRA member with which the respondent is associated.

(6) The timelines established by paragraphs (o)(1) through (5) confer no substantive rights on the parties.

(p) Contents of Decision

The decision, which for purposes of Rule 9557 means the written decision issued under paragraph (o)(4)(B) of this Rule, shall include:

(1) a statement describing the investigative or other origin of the notice issued under the Rule 9550 Series;

(2) the specific statutory or rule provision alleged to have been violated or providing the authority for the FINRA action;

(3) a statement setting forth the findings of fact with respect to any act or practice the respondent was alleged to have committed or omitted or any condition specified in the notice;

(4) the conclusions of the Hearing Officer or, if applicable, Hearing Panel regarding the alleged violation or condition specified in the notice;

(5) a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction, requirement, restriction or limitation imposed, the reasons therefore, and the date upon which such sanction, requirement, restriction or limitation shall become effective.

(q) Call for Review by the National Adjudicatory Council

(1) For proceedings initiated under the Rule 9550 Series (other than Rule 9557), the National Adjudicatory Council's Review Subcommittee may call for review a proposed decision prepared by a Hearing Officer or, if applicable, Hearing Panel within 21 days after receipt of the decision from the Office of Hearing Officers. For proceedings initiated under Rule 9557, the National Adjudicatory Council's Review Subcommittee may call for review a written decision issued under paragraph (o)(4)(B) of this Rule by a Hearing Panel within 14 days after receipt of the written decision from the Office of Hearing Officers. Rule 9313(a) is incorporated herein by reference.

(2) No Change.

(3) For good cause shown, or with the consent of all of the parties to a proceeding, the Review Subcommittee, the National Adjudicatory Council Subcommittee or the National Adjudicatory Council may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

(4) through (6) No Change.

(r) through (s) No Change.

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**Text of Proposed Changes to Section 4 of Schedule A
to the FINRA By-Laws**

SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

Section 1 through Section 3 No Change.

Section 4 — Fees

(a) through (f) No Change.

(g) (1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph (“Designated Reports”), a fee of \$100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days.

Requests for such extension of time must be submitted to FINRA at least three business days prior to the due date; and

(2) Any report filed pursuant to this Rule containing material inaccuracies or filed incompletely shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

(3) List of Designated Reports:

(A) SEA Rule 17a-5 — Monthly and quarterly FOCUS reports and annual audit reports;

(B) SEA Rule 17a-10 — Schedule I;

(C) FINRA Rule 4140 — any audited financial and/or operational report or examination report required pursuant to Rule 4140; and

(D) FINRA Rule 4521 — any report, notification or information required pursuant to Rule 4521.

(h) No Change.

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**Text of Incorporated NYSE Rules to Remain
in the Transitional Rulebook**

Incorporated NYSE Rules

* * * * *

Rule 312. Changes Within Member Organizations

(a) through (g) No Change.

(h) Reserved.

(i) through (j) No Change.

Rule 313. Submission of Partnership Articles—Submission of Corporate Documents

(a) through (c) No Change.

(d) Reserved

(e) through (f) No Change.

• • • Supplementary Material: -----

Information Regarding Partnership Articles

.10 through **.12** No Change.

Information Regarding Member Corporations

.20 through **.23** No Change.

* * * * *

Rule 416. Questionnaires and Reports

(a) No Change.

(b) No Change.

(c) No Change.

• • • Supplementary Material: -----

.10 No Change.

.20 Reserved.

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EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change.¹ Proposed new language is underlined; deletions are in brackets.

* * * * *

**Text of Proposed New FINRA Rules 4110, 4120, 4130, 4140, 4521, 9557 and 9559
(Proposed FINRA Rules 9557 and 9559 Are Marked to Show Changes from FINRA
Rules 9557 and 9559, Respectively)**

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

4100. FINANCIAL CONDITION

4110. Capital Compliance

(a) When necessary for the protection of investors or in the public interest,
FINRA may, at any time or from time to time with respect to a particular carrying or
clearing member or all carrying or clearing members, pursuant to authority exercised by
FINRA's Executive Vice President charged with oversight for financial responsibility, or
his or her written officer delegate, prescribe greater net capital or net worth requirements
than those otherwise applicable, including more stringent treatment of items in computing

¹ The text of Proposed FINRA Rules 9557 and 9559 as set forth in this Exhibit reflects amendments adopted pursuant to proposed rule change SR-FINRA-2008-021. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-021). The text of Incorporated NYSE Rule 421 as set forth in this Exhibit reflects amendments adopted pursuant to proposed rule change SR-FINRA-2008-033, which was approved by the Commission. See Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-033). The amendments to FINRA Rule 9557, FINRA Rule 9559 and Incorporated NYSE Rule 421 went into effect on December 15, 2008. See FINRA Regulatory Notice 08-57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

net capital or net worth, or require such member to restore or increase its net capital or net worth. In any such instance, FINRA shall issue a notice pursuant to Rule 9557.

(b) (1) Unless otherwise permitted by FINRA, a member shall suspend all business operations during any period in which it is not in compliance with applicable net capital requirements set forth in SEA Rule 15c3-1.

(2) FINRA may issue a notice pursuant to Rule 9557 directing a member that is not in compliance with applicable net capital requirements set forth in SEA Rule 15c3-1 to suspend all or a portion of its business.

(c) (1) No equity capital of a member may be withdrawn for a period of one year from the date such equity capital is contributed, unless otherwise permitted by FINRA in writing. Subject to the requirements of paragraph (c)(2) of this Rule, this paragraph shall not preclude a member from withdrawing profits earned.

(2) A carrying or clearing member shall not, without the prior written approval of FINRA, withdraw capital, pay a dividend or effect a similar distribution that would reduce such member's equity, or make any unsecured advance or loan to a stockholder, partner, sole proprietor, employee or affiliate, where such withdrawals, payments, reductions, advances or loans in the aggregate, in any 35 rolling calendar day period, on a net basis, exceeds 10% of its excess net capital.

(d) Sale-And-Leasebacks, Factoring, Financing, Loans and Similar Arrangements

(1) (A) No carrying or clearing member shall consummate a sale-and-leaseback arrangement with respect to any of its assets, or a sale,

factoring, or financing arrangement with respect to any unsecured accounts receivable, where any such arrangement would increase the member's tentative net capital by 10% or more, without the prior written authorization of FINRA.

(B) No carrying member shall consummate any arrangement concerning the sale or factoring of customer debit balances, irrespective of amount, without the prior written authorization of FINRA.

(2) Any loan agreement entered into by a carrying or clearing member, the proceeds of which exceed 10% of such member's tentative net capital and which is intended to reduce the deduction in computing net capital for fixed assets and other assets which cannot be readily converted into cash under SEA Rule 15c3-1(c)(2)(iv), must be submitted to and be acceptable to FINRA, prior to such reduction becoming effective.

(3) Members subject to paragraphs (d)(1)(A), (d)(1)(B) or (d)(2), shall not consummate any arrangement pursuant to such paragraph(s) if the aggregate of all such arrangements outstanding would exceed 20% of such member's tentative net capital, without the prior written authorization of FINRA.

(4) Any agreement relating to a determination of a "ready market" for securities based upon the securities being accepted as collateral for a loan by a bank under SEA Rule 15c3-1(c)(11)(ii), must be submitted to and be acceptable to FINRA before the securities may be deemed to have a "ready market."

(e) Subordinated Loans, Notes Collateralized by Securities and Capital Borrowings

(1) All subordinated loans or notes collateralized by securities shall meet such standards as FINRA may require to ensure the continued financial stability and operational capability of the member, in addition to those specified in Appendix D of SEA Rule 15c3-1.

(2) Unless otherwise permitted by FINRA, each member partnership whose general partner enters into any secured or unsecured borrowing, the proceeds of which will be contributed to the capital of the member, shall submit the following for approval in order for such proceeds to qualify as capital acceptable for inclusion in the computation of the net capital of the member:

A signed copy of the loan agreement which must:

(A) have at least a 12 month duration; and

(B) provide non-recourse to the assets of the member.

Additional documents may be required, the nature of which will vary, depending upon the legal status of the lender e.g. an individual, bank, estate, trust, corporation, partnership, etc.

• • • Supplementary Material: -----

.01 Compliance with Applicable Law. For purposes of paragraph (e)(1), the member shall assure itself that any applicable provisions of the Securities Act of 1933 and/or State Blue Sky laws have been satisfied and may be required to submit evidence thereof to FINRA prior to approval of the subordinated loan agreement.

.02 Members Operating Pursuant to the Exemptive Provisions of SEA Rule 15c3-3(k)(2)(i). For purposes of this Rule, all requirements that apply to a member that clears or carries customer accounts shall also apply to any member

that, operating pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder.

4120. Regulatory Notification and Business Curtailment

(a) Notification

(1) Each carrying or clearing member shall promptly, but in any event within 24 hours, notify FINRA in writing if its net capital falls below the following percentages:

(A) the member's net capital is less than 150 percent of its minimum dollar net capital requirement or such greater percentage thereof as may from time to time be designated by FINRA;

(B) the member is subject to the aggregate indebtedness requirement of SEA Rule 15c3-1, and its aggregate indebtedness is more than 1,000 percent of its net capital;

(C) the member elects to use the alternative method of computing net capital pursuant to SEA Rule 15c3-1(a)(1)(ii), and its net capital is less than the level specified in SEA Rule 17a-11(c)(2);

(D) the member is approved to use the alternative method of computing net capital pursuant to SEA Rule 15c3-1e, and

(i) its tentative net capital as defined in SEA Rule 15c3-1(c)(15) is less than 50 percent of the early warning notification amount required by SEA Rule 15c3-1(a)(7)(ii), or

(ii) its net capital is less than \$1.25 billion;

(E) the member is registered as a Futures Commission Merchant pursuant to the Commodity Exchange Act, and its net capital is less than 120% of the minimum risk-based capital requirements of Commodity Exchange Act Rule 1.17; or

(F) the member's deduction of capital withdrawals, which it anticipates making, whether voluntarily or as a result of a commitment, including maturities of subordinated liabilities entered into pursuant to Appendix D of SEA Rule 15c3-1, during the next six months, would result in any one of the conditions described in paragraph (a)(1)(A) through (E) of this Rule.

(b) Restrictions on Business Expansion

(1) Except as otherwise permitted by FINRA in writing, a member that carries customer accounts or clears transactions shall not expand its business during any period in which any of the conditions described in paragraph (a)(1) continue to exist for more than 15 consecutive business days, provided that such condition(s) has been known to FINRA or the member for at least five consecutive business days. FINRA may issue a notice pursuant to Rule 9557 directing any such member not to expand its business; however, FINRA's authority to issue such notice does not negate the member's obligation not to expand its business in accordance with this paragraph (b)(1).

(2) No member may expand its business during any period in which FINRA restricts the member from expanding its business for any financial or

operational reason. In any such instance, FINRA shall issue a notice pursuant to Rule 9557.

(3) For purposes of paragraph (b) of this Rule, the term “expansion of business” may include:

(A) net increase in the number of registered representatives or other producing personnel;

(B) exceeding average capital commitments over the previous three months for market making or block positioning;

(C) initiation of market making in new securities or any new proprietary trading or other commitment in securities or commodities in which a market is not made (other than riskless trades associated with customer orders);

(D) exceeding average commitments over the previous three months for underwritings;

(E) opening of new branch offices;

(F) entering any new line of business or deliberately promoting or expanding any present lines of business;

(G) making unsecured or partially secured loans, advances, drawings, guarantees or other similar receivables; and

(H) such other activities as FINRA deems appropriate under the circumstances, in the public interest or for the protection of investors.

(c) Reduction of Business

(1) Except as otherwise permitted by FINRA in writing, a member that carries customer accounts or clears transactions is obligated to reduce its business to a point enabling its available capital to exceed the standards set forth in paragraph (a)(1)(A) through (F) of this Rule, when any of the following conditions continue to exist for more than 15 consecutive business days, provided that such condition(s) has been known to FINRA or the member for at least five consecutive business days:

(A) the member's net capital is less than 125 percent of its minimum dollar net capital requirement or such greater percentage thereof as may from time to time be designated by FINRA;

(B) the member is subject to the aggregate indebtedness requirement of SEA Rule 15c3-1, and its aggregate indebtedness is more than 1,200 percent of its net capital;

(C) the member elects to use the alternative method of computing net capital pursuant to SEA Rule 15c3-1(a)(1)(ii), and its net capital is less than one percentage point below the level specified in SEA Rule 17a-11(c)(2);

(D) the member is approved to use the alternative method of computing net capital pursuant to SEA Rule 15c3-1e, and

(i) its tentative net capital as defined in SEA Rule 15c3-1(c)(15) is less than 40 percent of the early warning notification amount required by SEA Rule 15c3-1(a)(7)(ii), or

(ii) its net capital is less than \$1 billion;

(E) the member is registered as a Futures Commission Merchant pursuant to the Commodity Exchange Act, and its net capital is less than 110% of the minimum risk-based capital requirements of Commodity Exchange Act Rule 1.17; or

(F) the member's deduction of capital withdrawals, including maturities of subordinated liabilities entered into pursuant to Appendix D of SEA Rule 15c3-1, scheduled during the next six months, would result in any one of the conditions described in paragraph (c)(1)(A) through (E) of this Rule.

FINRA may issue a notice pursuant to Rule 9557 directing any such member to reduce its business to a point enabling its available capital to exceed the standards set forth in paragraph (a)(1)(A) through (F) of this Rule; however, FINRA's authority to issue such notice does not negate the member's obligation to reduce its business in accordance with this paragraph (c)(1).

(2) A member must reduce its business as directed by FINRA for any financial or operational reason. In any such instance, FINRA shall issue a notice pursuant to Rule 9557.

(3) For purposes of paragraph (c) of this Rule, the term "business reduction" shall mean reducing or eliminating parts of a member's business in order to reduce the amount of capital required, which may include:

(A) promptly paying all or a portion of free credit balances to customers;

(B) promptly effecting delivery to customers of all or a portion of fully paid securities in the member's possession or control;

(C) introducing all or a portion of its business to another member on a fully disclosed basis;

(D) reducing the size or modifying the composition of its inventory and reducing or ceasing market making;

(E) closing of one or more existing branch offices;

(F) collecting unsecured or partially secured loans, advances, drawings, guarantees or other similar receivables;

(G) accepting no new customer accounts;

(H) restricting the payment of salaries or other sums to partners, officers, directors, shareholders, or associated persons of the member;

(I) effecting liquidating or closing customer and/or proprietary transactions;

(J) accepting only unsolicited customer orders; and

(K) such other activities as FINRA deems appropriate under the circumstances in the public interest or for the protection of investors.

• • • Supplementary Material: -----

.01 Exercise of Discretion by FINRA. The following are examples of the conditions under which FINRA may exercise its discretion pursuant to paragraphs (b)(2) or (c)(2) above:

(a) The member has experienced a substantial change in the manner in which it processes its business, which, in the view of FINRA, increases the potential risk of loss to customers or other members;

(b) The member's books and records are not maintained in accordance with the provisions of SEA Rules 17a-3 or 17a-4;

(c) The member is not in compliance, or is unable to demonstrate compliance, with applicable net capital requirements;

(d) The member is not in compliance, or is unable to demonstrate compliance, with SEA Rule 15c3-3 (Customer Protection – Reserves and Custody of Securities);

(e) The member is unable to clear and settle transactions promptly; or

(f) The member's overall business operations are in such condition, given the nature of its business that, notwithstanding the absence of any of the conditions enumerated in paragraphs (a) through (e), a determination of financial or operational difficulty should be made.

.02 Correspondent Firms. The Rule contemplates that any restrictions or conditions imposed on a carrying or clearing member's business under this Rule may require that member to restrict the business activities of one or more correspondent firms for which the member clears, insofar as such business would be handled by such carrying or clearing member.

.03 Members Operating Pursuant to the Exemptive Provisions of SEA Rule 15c3-3(k)(2)(i). For purposes of this Rule, all requirements that apply to a member that clears or carries customer accounts shall also apply to any member that, operating pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i),

either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder.

4130. Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties

(a) Application — For purposes of this Rule, the term "member" shall be limited to any member of FINRA registered with the SEC pursuant to Section 15C of the Exchange Act that is not designated to another self-regulatory organization by the SEC for financial responsibility pursuant to Section 17 of the Exchange Act and SEA Rule 17d-1.

(b) Each member subject to Section 402.2 of the rules of the Treasury Department shall comply with the capital requirements prescribed therein and with the provisions of this Rule.

(c) A member, when so directed by FINRA shall not expand its business during any period in which:

(1) Any of the following conditions continue to exist for more than 15 consecutive business days:

(A) the member's liquid capital is less than 150 percent of the total haircuts or such greater percentage thereof as may from time to time be prescribed by FINRA;

(B) the member's liquid capital minus total haircuts is less than 150 percent of its minimum dollar capital requirement; or

(C) the deduction of ownership equity and maturities of subordinated debt scheduled during the next six months would result in

any one of the conditions described in (A) or (B) of this subparagraph (1);

or

(2) FINRA restricts the member for any other financial or operational reason.

(d) A member, when so directed by FINRA, shall forthwith reduce its business:

(1) To a point at which the member would not be subject to a prohibition against expansion of its business as set forth in paragraphs (c)(1)(A), (B), or (C) of this Rule if any of the following conditions continue to exist for more than 15 consecutive business days:

(A) the member's liquid capital is less than 125 percent of total haircuts or such greater percentage thereof as may from time to time be prescribed by FINRA;

(B) the member's liquid capital minus total haircuts is less than 125 percent of its minimum dollar capital requirement; or

(C) the deduction of ownership equity and maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in (A) or (B) of this subparagraph (1);

and

(2) As required by FINRA when it restricts a member for any other financial or operational reason.

(e) A member shall suspend all business operations during any period of time when the member is not in compliance with applicable liquid capital requirements as set forth in Section 402.2 of the rules of the Treasury Department. FINRA staff may issue a

notice to such member directing it to suspend all business operations; however, the member's obligation to suspend all business operations arises from its obligations under Section 402.2 of the rules of the Treasury Department and is not dependent on any notice that may be issued by FINRA staff.

(f) Any notice directing a member to limit or suspend its business operations shall be issued by FINRA staff pursuant to Rule 9557.

4140. Audit

(a) FINRA may at any time, due to concerns regarding the accuracy or integrity of a member's financial statements, books and records or prior audited financial statements, direct any member to cause an audit to be made by an independent public accountant of its accounts, or cause an examination to be made in accordance with attestation, review or consultation standards prescribed by the AICPA. Such audit or examination shall be directed pursuant to authority exercised by FINRA's Executive Vice President charged with oversight for financial responsibility, or his or her written officer delegate, and shall be made in accordance with such requirements as FINRA may prescribe.

(b) Any member failing to file an audited financial and/or operational report or examination report under this Rule in the prescribed time shall be subject to a late fee as set forth in Schedule A Section 4(g)(1) to the FINRA By-Laws.

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4500. BOOKS, RECORDS AND REPORTS

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4520. Financial Records and Reporting Requirements

4521. Notifications, Questionnaires and Reports

(a) Each carrying or clearing member shall submit to FINRA, or its designated agent, at such times as may be designated, or on an ongoing basis, in such form and within such time period as may be prescribed, such financial and operational information regarding the member or any of its correspondents as FINRA deems essential for the protection of investors and the public interest.

(b) Every member approved by the SEC pursuant to SEA Rule 15c3-1 to use the alternative method of computing net capital contained in Appendix E to that Rule shall file such supplemental and alternative reports as may be prescribed by FINRA.

(c) Each carrying or clearing member shall notify FINRA in writing, no more than 48 hours after its tentative net capital as computed pursuant to SEA Rule 15c3-1 has declined 20 percent or more from the amount reported in its most recent FOCUS Report or, if later, the most recent such notification filed with FINRA. For purposes of this paragraph, “tentative net capital as computed pursuant to SEA Rule 15c3-1” shall exclude withdrawals of capital previously approved by FINRA.

(d) (1) Unless otherwise permitted by FINRA in writing, members carrying margin accounts for customers are required to submit, on a settlement date basis, the information specified in paragraphs (d)(2)(A) and (d)(2)(B) of this Rule as of the last business day of the month. If a member has no information to submit, a report should be filed with a notation thereon to that effect. Reports are due as promptly as possible after the last business day of the month, but in no event later than the sixth business day of the following month. Members shall use such form as FINRA may prescribe for these reporting purposes.

(2) Each member carrying margin accounts for customers shall submit reports containing the following customer information:

(A) Total of all debit balances in securities margin accounts; and

(B) Total of all free credit balances in all cash accounts and all margin accounts.

(3) For purposes of this paragraph (d):

(A) Only free credit balances in cash and margin accounts shall be included in the member's report. Balances in short accounts and in Special Memorandum Accounts (as defined in Section 2.2 of Regulation T under the Exchange Act) shall not be considered as free credit balances.

(B) Reported debit or credit balance information shall not include the accounts of other organizations that are FINRA members, or of the associated persons of the member submitting the report where such associated person's account is excluded from the definition of customer pursuant to SEA Rule 15c3-3.

(e) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file any report, notification or information pursuant to this Rule, a late fee as set forth in Schedule A Section 4(g)(1) to the FINRA By-Laws.

(f) For purposes of this Rule, any report filed pursuant to this Rule containing material inaccuracies shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

• • • Supplementary Material: -----

.01 Members Operating Pursuant to the Exemptive Provisions of SEA Rule

15c3-3(k)(2)(i). For purposes of this Rule, all requirements that apply to a member that clears or carries customer accounts shall also apply to any member that, operating pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder.

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9000. CODE OF PROCEDURE

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9500. OTHER PROCEEDINGS

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9557. Procedures for Regulating Activities Under [NASD] Rules 4110, [3130] 4120 and 4130 [3131] Regarding a Member Experiencing Financial or Operational Difficulties

(a) Notice of Requirements and/or Restrictions; FINRA Action

FINRA staff may issue a notice directing a member to comply with the provisions of Rule 4110, 4120 or 4130 or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Rule 4110, 4120 or 4130, if FINRA staff has reason to believe that a condition specified in [NASD] Rule 4110, 4120 [3130] or 4130 [Rule 3131] exists. A notice served under this Rule shall constitute FINRA action.

(b) No Change.

(c) Contents of Notice

A notice issued under this Rule shall;

(1) state the specific grounds and include the factual basis for the FINRA action[.];

(2) specify the date of the notice and the requirements and/or restrictions being imposed by the notice;

(3) [The notice shall] state [when the FINRA action will take effect and] that the requirements and/or restrictions imposed by the notice are immediately effective;

(4) specify [explain what the respondent must do to avoid such action] the conditions for complying with and, where applicable, avoiding or terminating the requirements and/or restrictions imposed by the notice[.];

(5) inform the member that, pursuant to paragraph (f) of this Rule, the failure to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from FINRA staff, to result in automatic and immediate suspension unless FINRA staff issues a letter of withdrawal of all requirements and/or restrictions imposed by the notice pursuant to paragraph (g)(2) of this Rule;

(6) explain that the member may make a request for a letter of withdrawal of the notice pursuant to paragraph (e) of this Rule;

(7) [The notice shall] state that, in addition to making a request for a letter of withdrawal of the notice, the [respondent] member may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559[.];

(8) [The notice also shall] inform the [respondent] member of the applicable deadline for filing a request for a hearing and [shall] state that a request

for a hearing must set forth with specificity any and all defenses to the FINRA action[.]; and

(9) [In addition, the notice shall] explain that, pursuant to Rule[s] 8310(a) and] 9559(n), a [Hearing Officer or, if applicable,] Hearing Panel[,] may approve[, modify] or withdraw the requirements and/or restrictions [any and all sanctions or limitations] imposed by the notice, and [may impose any other fitting sanction] that if the Hearing Panel approves the requirements and/or restrictions imposed by the notice and finds that the member has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the member.

(d) Effectiveness [Date] of the Requirements and/or Restrictions

The requirements and/or restrictions imposed by a notice issued and served under this Rule are immediately effective, except that a timely request for a hearing shall stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other members. Such a determination by FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) cannot be appealed. An extension of the stay period is not permitted. Where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), the notice shall not be deemed to have taken effect during that entire period. [The restrictions referenced in a notice issued and served

under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.]

Any requirements and/or restrictions imposed by an effective notice shall remain in effect unless FINRA staff shall remove or reduce the requirements and/or restrictions pursuant to a letter of withdrawal of the notice issued as set forth in paragraph (g)(2) of this Rule.

(e) Request for a Letter of Withdrawal of the Notice; Request for a Hearing

A member served with a notice under this Rule may request from FINRA staff a letter of withdrawal of the notice pursuant to paragraph (g)(2) of this Rule and/or file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559.

(1) A request for a letter of withdrawal of the notice may be made at any time after service of a notice under this Rule. The member making the request must demonstrate to the satisfaction of FINRA staff that the requirements and/or restrictions imposed by the notice should be removed or reduced. If such a request is denied by FINRA staff, the member shall not be precluded from making a subsequent request or requests.

(2) A request for a hearing shall be made within two business days after service of a notice under this Rule [before the effective date of the notice, as indicated in paragraph (d) of this Rule]. A request for a hearing must set forth with specificity any and all defenses to the FINRA action. A request for a hearing may seek to contest:

(A) the validity of the requirements and/or restrictions imposed by the notice (as the same may have been reduced by a letter of withdrawal pursuant to paragraph (g)(2) of this Rule, where applicable); and/or

(B) FINRA staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the member.

(f) [Failure to Request Hearing]

[If a member does not timely request a hearing, the restrictions specified in the notice shall become effective seven days after service of the notice. The restrictions specified in the notice shall remain in effect until the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the FINRA department or office that is so designated reduces or removes the restrictions pursuant to paragraph (h) of this Rule.]

[(g) Order to] Enforcement of [Sanctions] Notice

[If FINRA staff determines that a] A member that has failed to comply with the [any] requirements and/or restrictions imposed by [a decision or] an effective notice under this Rule shall be deemed, without further notice from FINRA staff, automatically and immediately suspended [that have not been stayed, FINRA staff shall issue an order imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. The order shall inform the member that it may apply for relief from the sanctions imposed by the order by filing a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this

Rule shall be applicable]. Such suspension shall remain in effect unless FINRA staff shall issue a letter, pursuant to paragraph (g)(2) of this Rule, stating that the suspension is lifted.

[(h)] (g) Additional Requirements and/or Restrictions or the Removal or Reduction [or Removal] of Requirements and/or Restrictions; Letter of Withdrawal of the Notice

(1) Additional Requirements and/or Restrictions

If a member continues to experience financial or operational difficulty specified in [NASD] Rule 4110 or 4120 [3130] or 4130 [3131], notwithstanding an effective notice[, order or decision under this Rule], FINRA staff may impose additional requirements and/or restrictions by [issuing] serving [a] an additional notice under paragraph (b) of this Rule. The additional notice shall inform the member that it may apply for relief from the additional requirements and/or restrictions by filing a written request for a letter of withdrawal of the notice and/or a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such [a] additional notice.

(2) [Reduction or] Removal or Reduction of Requirements and/or Restrictions and/or Lifting of Suspension; Letter of Withdrawal

(A) Removal or Reduction of Requirements and/or Restrictions

If, upon the member's demonstration to the satisfaction of FINRA staff, FINRA staff determines that any requirements and/or restrictions

[previously] imposed by a notice under this Rule should be [reduced or] removed or reduced, FINRA staff shall serve the member, pursuant to paragraph (b) of this Rule, a written letter of withdrawal that shall, in the sole discretion of FINRA staff, withdraw the notice in whole or in part [on the member pursuant to Rule 9134]. A notice that is withdrawn in part shall remain in force, unless FINRA staff shall remove the remaining requirements and/or restrictions.

(B) Lifting of Suspension

If, upon the member's demonstration to the satisfaction of FINRA staff, FINRA staff determines that a suspension imposed by a notice under this Rule should be lifted, FINRA staff shall serve the member, pursuant to paragraph (b) of this Rule, a letter that shall, in the sole discretion of FINRA staff, lift the suspension. Where all or some of the requirements and/or restrictions imposed by a notice issued under this Rule remain in force, the letter shall state that the member's failure to continue to comply with those requirements and/or restrictions that remain effective shall result in the member being immediately suspended.

(h) FINRA Staff

For purposes of this Rule, "FINRA staff" shall mean:

(1) the head of the FINRA department or office that issued the notice, or his or her written officer delegate; or

(2) if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the FINRA department or office that is so designated, or his or her written officer delegate.

(i) Notice to Membership

FINRA shall provide notice of any suspension [final FINRA action taken] pursuant to this Rule in the next notice of Disciplinary and Other FINRA Actions.

* * * * *

9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) No Change.

(b) Computation of Time

Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through 9558, unless otherwise specified.

(c) Stays

(1) Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 9551 through 9556[7], except that the effectiveness of a notice of a limitation or prohibition on access to services offered by FINRA or a member thereof under Rule 9555 with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing.

(2) A timely request for a hearing shall stay the effectiveness of a notice issued under Rule 9557 for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that a notice under Rule 9557 shall not be stayed. Where a notice under Rule 9557 is stayed by a request for a hearing, such stay shall remain in effect only for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less) and shall not be extended.

(3) A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9558, unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown.

(d) Appointment and Authority of Hearing Officer and/or Hearing Panel

(1) For proceedings initiated under Rules 9553 and 9554, the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 9551, 9552, 9555, 9556, 9557 and 9558, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. For proceedings initiated under Rules 9551, 9552, 9555, 9556 and 9558, [T]he Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 9231 and 9232. For proceedings initiated

under Rule 9557, the Chief Hearing Officer shall select as Panelists current or former members of the FINRA Financial Responsibility Committee.

(3) Rules 9231(e), 9233 and 9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.

(4) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 9235 and 9280.

(5) Hearings under the Rule 9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.

(6) For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

(e) Consolidation or Severance of Proceedings

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under a Rule [9558] that does not permit a stay of the effectiveness of the notice or where FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may

designate), in the case of Rule 9557, or Hearing Officer, in the case of Rule 9558(d), determines that a request for a hearing shall not stay the effectiveness of the notice, the limitation, prohibition, condition, requirement, restriction, or suspension specified in the notice shall not be stayed pending resolution of the case [unless the Chief Hearing Officer or Hearing Officer assigned to the matter orders otherwise for good cause shown. Where one of the consolidated matters includes an action brought under Rule 9555 with respect to services to which the member or person does not have access, the effectiveness of a notice of a limitation or prohibition on access to services offered by FINRA or a member thereof shall not be stayed pending resolution of the case]. Where one of the consolidated matters includes an action brought under Rule 9557 that is stayed for up to ten business days, the requirement and/or restriction specified in the notice shall not be further stayed.

(f) Time of Hearing

(1) A hearing shall be held within five business days after a respondent subject to a notice issued under Rule 9557 files a written request for a hearing with the Office of Hearing Officers.

((1)2) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 [through] and 9558 files a written request for a hearing with the Office of Hearing Officers.

((2)3) A hearing shall be held within 60 days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(~~3~~4) The timelines established by paragraphs (f)(1) [and] through (~~f~~)(~~2~~)(3) confer no substantive rights on the parties.

(g) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

(1) At least two business days prior to the hearing in the case of an action brought pursuant to Rule 9557;

(~~1~~2) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 [through] and 9558; and

(~~2~~3) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9551 through 9555.

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than seven days before the hearing in an action brought under Rules 9556 [through] and 9558, and not less than 40 days before the hearing in an action brought under Rules 9551 through 9555, FINRA staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by FINRA until the date upon which FINRA serves a final decision or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556 [through] and 9558, and not less than 14 days before the hearing in an action brought under Rules 9551 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.

(i) through (m) No Change.

(n) Sanctions, Costs and Remands

(1) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9557, [T]the Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice[. The Hearing Officer or, if applicable, the Hearing Panel] and, pursuant to Rule 8310(a), [also] may also impose any other fitting sanction[, pursuant to Rule 8310(a)].

(2) In an action brought under Rule 9557, the Hearing Panel shall approve or withdraw the requirements and/or restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds that the respondent has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless FINRA staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 9557(g)(2).

(3) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330 regarding all actions brought under the Rule 9550 Series.

([3]4) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9557, [T]the Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

(o) Timing of Decision

(1) Proceedings initiated under Rules 9553 and 9554

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision and provide it to the National Adjudicatory Council's Review Subcommittee.

(2) Proceedings initiated under Rules 9556 [through] and 9558

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(3) Proceedings initiated under Rules 9551, 9552 and 9555

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(4) Proceedings initiated under Rule 9557

(A) Written Order

Within two business days of the date of the close of the hearing, the Office of Hearing Officers shall issue a written order that reflects the Hearing Panel's summary determinations, as decided by majority vote, and shall serve the Hearing Panel's written order on the Parties. The Hearing Panel's written order under Rule 9557 is effective when issued. The Hearing Panel's written order will be followed by a written decision explaining the reasons for the Hearing Panel's summary determinations, as required by paragraphs (o)(4)(B) and (p) of this Rule.

(B) Written Decision

Within seven days of the issuance of the Hearing Panel's written order, the Office of Hearing Officers shall issue a written decision that complies with the requirements of paragraph (p) of this Rule and shall serve the Hearing Panel's written decision on the Parties.

(5) If not timely called for review by the National Adjudicatory Council's Review Subcommittee pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final FINRA action. For decisions issued under Rules 9551 through 9556 and 9558, [T]he Office of Hearing Officers shall promptly serve the decision of the Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each FINRA member with which the respondent is associated.

[(5)6] The timelines established by paragraphs (o)(1) through [(4)](5) confer no substantive rights on the parties.

(p) Contents of Decision

The decision, which for purposes of Rule 9557 means the written decision issued under paragraph (o)(4)(B) of this Rule, shall include:

(1) a statement describing the investigative or other origin of the notice issued under the Rule 9550 Series;

(2) the specific statutory or rule provision[s that were] alleged to have been violated or providing the authority for the FINRA action;

(3) a statement setting forth the findings of fact with respect to any act or practice the respondent was alleged to have committed or omitted or any condition specified in the notice;

(4) the conclusions of the Hearing Officer or, if applicable, Hearing Panel regarding the alleged violation or condition specified in the notice [as to whether the respondent violated any provision alleged in the notice];

(5) a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction, requirement, restriction or limitation imposed, the reasons therefore, and the date upon which such sanction, requirement, restriction or limitation shall become effective.

(q) Call for Review by the National Adjudicatory Council

(1) For proceedings initiated under the Rule 9550 Series (other than Rule 9557), [T]the National Adjudicatory Council's Review Subcommittee may call for review a proposed decision [issued] prepared by a Hearing Officer or, if applicable, Hearing Panel [under the Rule 9550 Series] within 21 days after

receipt of the decision from the Office of Hearing Officers. For proceedings initiated under Rule 9557, the National Adjudicatory Council's Review Subcommittee may call for review a written decision issued under paragraph (o)(4)(B) of this Rule by a Hearing Panel within 14 days after receipt of the written decision from the Office of Hearing Officers. Rule 9313(a) is incorporated herein by reference.

(2) No Change.

(3) For good cause shown, or with the consent of all of the parties to a proceeding, the Review Subcommittee, the National Adjudicatory Council Subcommittee or the National Adjudicatory Council may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

(4) through (6) No Change.

(r) through (s) No Change.

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**Text of Proposed Changes to Section 4 of Schedule A
to the FINRA By-Laws**

SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

Section 1 through Section 3 No Change.

Section 4 — Fees

(a) through (f) No Change.

(g) (1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph ("Designated Reports"), a fee of \$100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business

days. Requests for such extension of time must be submitted to FINRA at least three business days prior to the due date; and

(2) Any report filed pursuant to this Rule containing material inaccuracies or filed incompletely shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

(3) List of Designated Reports:

(A) SE[C]A Rule 17a-5 — Monthly and quarterly FOCUS reports and annual audit reports; [and]

(B) SE[C]A Rule 17a-10 — Schedule I[.];

(C) FINRA Rule 4140 — any audited financial and/or operational report or examination report required pursuant to Rule 4140; and

(D) FINRA Rule 4521 — any report, notification or information required pursuant to Rule 4521.

(h) No Change.

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Text of Incorporated NYSE Rules to Remain in the Transitional Rulebook

Incorporated NYSE Rules

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Rule 312. Changes Within Member Organizations

(a) through (g) No Change.

(h) **Reserved.** [No member corporation subject to Rule 325 shall, without the prior written consent of the Exchange, redeem or repurchase any shares of its stock on less than six months notice given to the Exchange no sooner than six months after the

original issuance of such shares (or any predecessor shares). Each member corporation shall promptly notify the Exchange if any redemption or repurchase of any of its stock is postponed because prohibited under the provisions of Exchange Act Rule 15c3-1 (see 15c3-1(e)).]

(i) through (j) No Change.

Rule 313. Submission of Partnership Articles—Submission of Corporate Documents

(a) through (c) No Change.

(d) Reserved. [Whenever a member organization shall offer or sell any security, as defined under the Securities Act of 1933, as amended, or the General Rules and Regulations thereunder (the 1933 Act), or under the “blue sky” law or the regulations thereunder of any state in which it is proposed that the security be offered, which security is issued by the member organization for the purpose of raising capital under Rules 325 and 326 of the Board of Directors of the Exchange, the member organization must furnish the Exchange with an opinion of counsel in form and substance satisfactory to the Exchange as to whether or not the securities being offered or sold need be registered under the 1933 Act and a survey of the type customarily prepared in respect of the underwriting of securities, but not an opinion, as to what action, if any, need be taken with respect to such offer or sale under any applicable state “blue sky” law. If, in counsel's opinion, the securities need not be registered under the 1933 Act, his opinion shall state the exemption from the registration requirements of the 1933 Act upon which he is relying and the basis for such reliance. If the securities are required to be registered under the 1933 Act counsel's opinion shall include, in addition to such other statements as

the Exchange in any particular case may require, a statement substantially to the effect that at the time the registration statement became effective, the registration statement and the prospectus (other than the financial statements contained therein) complied as to form in all material respects with the requirements of the 1933 Act (and with the Trust Indenture Act of 1939, as amended, if applicable) and nothing has come to counsel's attention that would lead counsel to believe that the registration statement at the time it became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the prospectus at the time the registration statement became effective or at the time of sale of the security contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.]

[Prior to the consummation of the sale of the security, counsel shall furnish a statement to the Exchange as to the action taken in order to comply with the state "blue sky" law of any state in which the security is offered or sold.]

[Without limiting the generality of the foregoing, counsel, among other things, is expected to give appropriate consideration to (a) any other transactions pursuant to which the member organization has raised capital in the past, or expects to do so in the future, (b) the disclosure of material information regarding the member organization to offerees of the security, and (c) the need for representation by the purchaser of the securities as to his intention to hold the securities for investment.]

(e) through (f) No Change.

• • • **Supplementary Material:** -----

Information Regarding Partnership Articles

.10 through .12 No Change.

[.14A-B-C agreements.—[Rescinded by NYSE-2005-77].]

[.18 Sole board member provision.—[Removed by NYSE-2005-77].]

Information Regarding Member Corporations

.20 through .23 No Change.

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Rule 416. Questionnaires and Reports

(a) No Change.

(b) No Change.

(c) No Change.

• • • Supplementary Material: -----

.10 No Change.

.20 **Reserved.** [Each member and member organization shall, on an ongoing basis and in such format as the Exchange may require, submit to the Exchange, or its designated agent, prescribed data of the member or member organization, and of any broker-dealer that is a party to a carrying agreement with a member or member organization pursuant to NYSE Rule 382.]

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Text of NASD Rules to be Deleted in Their Entirety from the Transitional Rulebook

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3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

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[3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties]

Entire text deleted.

[IM-3130. Restrictions on a Member's Activity]

Entire text deleted.

[3131. Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties]

Entire text deleted.

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Text of Incorporated NYSE Rules and NYSE Rule Interpretations to be Deleted in Their Entirety from the Transitional Rulebook

Incorporated NYSE Rules

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[Rule 325. Capital Requirements Member Organizations]

Entire text deleted.

[Rule 326(a). Growth Capital Requirement]

Entire text deleted.

[Rule 326(b). Business Reduction Capital Requirement]

Entire text deleted.

[Rule 326(c). Unsecured Loans and Advances]

Entire text deleted.

[Rule 326(d). Reduction of Elimination of Loans and Advances]

Entire text deleted.

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[Rule 328. Sale-And-Leasebacks, Factoring, Financing and Similar Arrangements]

Entire text deleted.

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[Rule 418. Audit]

Entire text deleted.

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[Rule 420. Reports of Borrowings and Subordinate Loans For Capital Purposes]

Entire text deleted.

[Rule 421. Periodic Reports]

Entire text deleted.

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NYSE RULE INTERPRETATION

[NYSE Rule 313 SUBMISSION OF PARTNERSHIP ARTICLES]

[SUBMISSION OF CORPORATE DOCUMENTS]

[(d) OPINION OF COUNSEL]

[/01 Loans, Demand Notes and Partners' Contributions]

Entire text deleted.

[/02 Independent Counsel]

Entire text deleted.

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[Rule 325 CAPITAL REQUIREMENTS]

[(c)(1) Long Put or Call Options]

Entire text deleted.

[/01 SEC no-action letter to NYSE dated January 31, 1990 provides interim conditions for recognition of long unlisted options, for U.S. Government debt securities endorsed or guaranteed by a limited group of narrowly defined issuers.]

Entire text deleted.

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[Rule 416 QUESTIONNAIRES AND REPORTS]

[/01 Gold and Silver Offerings]

Entire text deleted.

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