

OMB APPROVAL

OMB Number: 3235-0045
Expires: June 30, 2010
Estimated average burden
hours per response.....38

Page 1 of 27

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

File No. SR - 2009 - 058

Amendment No.

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

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

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

Proposed Rule Change to Adopt FINRA Rule 2232 (Customer Confirmations) in the Consolidated FINRA Rulebook and to Delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule 409(f)

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 EFFF website.

Form 19b-4 Information

Add

Remove

View

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

Exhibit 1 - Notice of Proposed Rule Change

Add

Remove

View

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

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

Add

Remove

View

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

Exhibit Sent As Paper Document

☐

Exhibit 3 - Form, Report, or Questionnaire

Add

Remove

View

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

Exhibit Sent As Paper Document

☐

Exhibit 4 - Marked Copies

Add

Remove

View

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

Exhibit 5 - Proposed Rule Text

Add

Remove

View

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

Partial Amendment

Add

Remove

View

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “SEA”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt a customer confirmation rule for purposes of the consolidated FINRA rulebook. FINRA proposes to adopt FINRA Rule 2232 (Customer Confirmations) and to delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule 409(f).

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

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

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on April 15, 2009, the FINRA Board of Governors authorized the filing of the rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

¹ 15 U.S.C. 78s(b)(1).

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),² FINRA is proposing to adopt a new, consolidated customer confirmation rule. FINRA proposes to adopt FINRA Rule 2232 (Customer Confirmations) and to delete NASD Rule 2230, NASD IM-2110-6 and NYSE Rule 409(f).³

A. Background

NASD and NYSE Rules set forth certain basic requirements with respect to confirmations of transactions with customers.⁴

1. NASD Rule 2230

NASD Rule 2230 provides that a member at or before the completion of each

² The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

³ For convenience, the Incorporated NYSE Rules are referred to as the “NYSE Rules.”

⁴ The proposed rule change addresses basic customer confirmation requirements. FINRA Rules separately set forth confirmation requirements that are specific to certain types of financial products, for example the requirements set forth in FINRA Rule 2360 (adopted as part of FINRA’s set of consolidated rules addressing index warrants, options and security futures). See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (Order Granting Accelerated Approval to Proposed Rule Change; File No. SR-FINRA-2008-032).

transaction⁵ with a customer shall give or send to the customer written notification (i.e., confirmation) disclosing: (a) whether the member is acting as a broker for the customer, as a dealer for its own account, as a broker for some other person, or as a broker for both the customer and some other person; and (b) in any case in which the member is acting as a broker for the customer or for both the customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for the customer and the date and time when the transaction took place or the fact that such information will be furnished upon the request of the customer, and the source and amount of any commission or other remuneration received or to be received by the member in connection with the transaction.

When NASD Rule 2230 was adopted in 1939⁶ its requirements duplicated those set forth in SEA Rule 15c1-4 as originally adopted by the SEC, the primary difference being that the scope of Rule 15c1-4 was restricted to over-the-counter transactions whereas the NASD rule by its terms extends to all member transactions with customers.⁷ In 1977, the SEC rescinded Rule 15c1-4 and adopted SEA Rule 10b-10 with the intention that the new rule would apply “regardless of the manner in which a broker-dealer

⁵ SEA Rule 10b-10(d)(2) states that the term “completion of the transaction” has the meaning set forth in SEA Rule 15c1-1. Rule 15c1-1 defines “completion of the transaction” variously, depending on whether the customer is purchasing or selling the security, the time when payment is made and the status of the custody/delivery of the security.

⁶ Rule 2230, formerly designated as Section 12 of the Rules of Fair Practice, was adopted as part of FINRA’s original rulebook. See Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939).

⁷ See Securities Exchange Act Release No. 1330 (August 4, 1937).

conducts its business or the marketplace where transactions are effected.”⁸ Since then, the SEC has amended Rule 10b-10 several times.⁹

2. NASD IM-2110-6

NASD IM-2110-6 requires that any member providing a customer confirmation pursuant to SEA Rule 10b-10 in connection with any transaction in callable common stock¹⁰ must disclose on the confirmation that the security is callable common stock and that a customer may contact the member for more information concerning the security. When IM-2110-6 was adopted in 2000, FINRA noted that an investor purchasing callable common stock is subject to unique risks not typically associated with ownership of

⁸ See Securities Exchange Act Release No. 13508 (May 5, 1977) (Securities Confirmations: Final Rule).

⁹ See, e.g., Securities Exchange Act Release No. 19687 (April 18, 1983), 48 FR 17583 (April 25, 1983) (Securities Confirmations: Final Rule Amendments) (requiring, among others, disclosure to investors of certain yield and call feature information in connection with transactions in debt securities); Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612 (November 17, 1994) (Confirmation of Transactions: Final Rule Amendments) (generally requiring, among others, disclosure if a debt security is not rated by a nationally recognized statistical rating organization, disclosure if a broker-dealer is not a member of the Securities Investor Protection Corporation, and disclosure with respect to the availability of information with respect to transactions in collateralized debt securities); Securities Exchange Act Release No. 46471 (September 6, 2002), 67 FR 58302 (September 13, 2002) (Confirmation Requirements for Transactions of Security Futures Products Effected in Futures Accounts: Final Rule Amendments) (adopting, among others, requirements regarding transactions in securities futures products); Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS: Final Rules and Amendments) (making conforming amendments to Rule 10b-10 in connection with the adoption of Regulation NMS).

¹⁰ That is, stock that is subject to being called away from a shareholder, either by the issuer or a third party.

common stock, even where such stock is called away at a premium.¹¹ FINRA also believed that the ability of an issuer's common stock to be called away from a shareholder generally is a material fact to an investor. Accordingly, in adopting the IM, FINRA stated that high standards of commercial honor and just and equitable principles of trade would require providing the disclosures as set forth in the rule. FINRA further emphasized that the disclosure of the call feature on the confirmation in no way relieves a member of its obligation to consider the callable nature of the security when complying with any applicable suitability obligations.

3. NYSE Rule 409(f)

NYSE Rule 409(f) requires that confirmation of all transactions – whether over-the-counter or on an exchange – in securities admitted to dealings on the NYSE, sent by members or member organizations to their customers, must clearly set forth with a suitable legend the settlement date of each transaction. The rule provides that this requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from which the orders were received. The rule further contains a general cross-reference instructing members to refer to SEA Rule 10b-10.

B. Proposal

The proposed rule change deletes current NASD Rule 2230 from the FINRA rulebook and replaces it with proposed FINRA Rule 2232, which streamlines and

¹¹ See Securities Exchange Act Release No. 42761 (May 5, 2000), 65 FR 30459 (May 11, 2000) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-NASD-00-24). See also Notice to Members 00-33 (May 2000) (Callable Common Stock).

combines basic customer confirmation requirements in the NASD and NYSE Rules.

Specifically:

- Proposed FINRA Rule 2232 provides that confirmations must be given or sent to customers in conformity with the requirements of SEA Rule 10b-10. FINRA believes that incorporating by reference the requirements of Rule 10b-10, as opposed to replicating the SEC rule's detailed requirements in FINRA's rule, makes the proposed rule clear and serves the interests of regulatory efficiency.
- The proposed rule change deletes NASD IM-2110-6 from the FINRA rulebook and transfers its requirements to proposed FINRA Rule 2232. Proposed FINRA Rule 2232 expands the coverage of those requirements to make clear that the requirement to disclose that the security is callable (and that further information is available from the member) applies to *any* equity security,¹² not just callable common stock. FINRA believes that, from the standpoint of investor protection, this change is necessary to ensure that the rule covers, for instance, callable preferred stock.¹³
- NYSE Rule 409(f)'s requirement to disclose the settlement date of the transaction would be transferred to the new rule, with two changes. First,

¹² Exchange Act Section 3(a)(11) defines the term "equity security" to include, among others, "any stock or similar security."

¹³ FINRA notes that SEA Rule 10b-10(a)(4) requires that, in the case of any transaction in a debt security subject to redemption before maturity, the confirmation must include a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that such a redemption could affect the yield represented and that additional information is available upon request.

consistent with FINRA's investor protection mission, the requirement to disclose the settlement date of the transaction would include all transactions in securities, not just NYSE-listed securities. Second, because the proposed rule addresses customer confirmations, the elements of the NYSE rule addressing member-to-member communications would, consistent with the parameters of SEA Rule 10b-10, be deleted.

As noted in Item 2 of this filing, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act because, as part of the FINRA rulebook consolidation process, the proposed rule change will streamline and reorganize existing rules that govern basic customer confirmation requirements. Further, the proposed rule change will provide greater regulatory clarity with respect to a member's customer confirmation obligations.

¹⁴ 15 U.S.C. 78o-3(b)(6).

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.¹⁵

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

Not applicable.

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

Not applicable.

9. Exhibits

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

Exhibit 5. Text of proposed rule change.

¹⁵ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-058)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2232 (Customer Confirmations) in the Consolidated FINRA Rulebook and to Delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule 409(f)

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

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

FINRA is proposing to adopt a customer confirmation rule for purposes of the consolidated FINRA rulebook. FINRA proposes to adopt FINRA Rule 2232 (Customer Confirmations) and to delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule 409(f).

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt a new, consolidated customer confirmation rule. FINRA proposes to adopt FINRA Rule 2232 (Customer Confirmations) and to delete NASD Rule 2230, NASD IM-2110-6 and NYSE Rule 409(f).⁴

(A) Background

³ The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁴ For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

NASD and NYSE Rules set forth certain basic requirements with respect to confirmations of transactions with customers.⁵

(1) NASD Rule 2230

NASD Rule 2230 provides that a member at or before the completion of each transaction⁶ with a customer shall give or send to the customer written notification (i.e., confirmation) disclosing: (a) whether the member is acting as a broker for the customer, as a dealer for its own account, as a broker for some other person, or as a broker for both the customer and some other person; and (b) in any case in which the member is acting as a broker for the customer or for both the customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for the customer and the date and time when the transaction took place or the fact that such information will be furnished upon the request of the customer, and the source and amount of any commission or other remuneration received or to be received by the member in connection with the transaction.

⁵ The proposed rule change addresses basic customer confirmation requirements. FINRA Rules separately set forth confirmation requirements that are specific to certain types of financial products, for example the requirements set forth in FINRA Rule 2360 (adopted as part of FINRA's set of consolidated rules addressing index warrants, options and security futures). See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (Order Granting Accelerated Approval to Proposed Rule Change; File No. SR-FINRA-2008-032).

⁶ SEA Rule 10b-10(d)(2) states that the term "completion of the transaction" has the meaning set forth in SEA Rule 15c1-1. Rule 15c1-1 defines "completion of the transaction" variously, depending on whether the customer is purchasing or selling the security, the time when payment is made and the status of the custody/delivery of the security.

When NASD Rule 2230 was adopted in 1939⁷ its requirements duplicated those set forth in SEA Rule 15c1-4 as originally adopted by the SEC, the primary difference being that the scope of Rule 15c1-4 was restricted to over-the-counter transactions whereas the NASD rule by its terms extends to all member transactions with customers.⁸ In 1977, the SEC rescinded Rule 15c1-4 and adopted SEA Rule 10b-10 with the intention that the new rule would apply “regardless of the manner in which a broker-dealer conducts its business or the marketplace where transactions are effected.”⁹ Since then, the SEC has amended Rule 10b-10 several times.¹⁰

⁷ Rule 2230, formerly designated as Section 12 of the Rules of Fair Practice, was adopted as part of FINRA’s original rulebook. See Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939).

⁸ See Securities Exchange Act Release No. 1330 (August 4, 1937).

⁹ See Securities Exchange Act Release No. 13508 (May 5, 1977) (Securities Confirmations: Final Rule).

¹⁰ See, e.g., Securities Exchange Act Release No. 19687 (April 18, 1983), 48 FR 17583 (April 25, 1983) (Securities Confirmations: Final Rule Amendments) (requiring, among others, disclosure to investors of certain yield and call feature information in connection with transactions in debt securities); Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612 (November 17, 1994) (Confirmation of Transactions: Final Rule Amendments) (generally requiring, among others, disclosure if a debt security is not rated by a nationally recognized statistical rating organization, disclosure if a broker-dealer is not a member of the Securities Investor Protection Corporation, and disclosure with respect to the availability of information with respect to transactions in collateralized debt securities); Securities Exchange Act Release No. 46471 (September 6, 2002), 67 FR 58302 (September 13, 2002) (Confirmation Requirements for Transactions of Security Futures Products Effected in Futures Accounts: Final Rule Amendments) (adopting, among others, requirements regarding transactions in securities futures products); Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS: Final Rules and Amendments) (making conforming amendments to Rule 10b-10 in connection with the adoption of Regulation NMS).

(2) NASD IM-2110-6

NASD IM-2110-6 requires that any member providing a customer confirmation pursuant to SEA Rule 10b-10 in connection with any transaction in callable common stock¹¹ must disclose on the confirmation that the security is callable common stock and that a customer may contact the member for more information concerning the security. When IM-2110-6 was adopted in 2000, FINRA noted that an investor purchasing callable common stock is subject to unique risks not typically associated with ownership of common stock, even where such stock is called away at a premium.¹² FINRA also believed that the ability of an issuer's common stock to be called away from a shareholder generally is a material fact to an investor. Accordingly, in adopting the IM, FINRA stated that high standards of commercial honor and just and equitable principles of trade would require providing the disclosures as set forth in the rule. FINRA further emphasized that the disclosure of the call feature on the confirmation in no way relieves a member of its obligation to consider the callable nature of the security when complying with any applicable suitability obligations.

(3) NYSE Rule 409(f)

NYSE Rule 409(f) requires that confirmation of all transactions – whether over-the-counter or on an exchange – in securities admitted to dealings on the NYSE, sent by members or member organizations to their customers, must clearly set forth with a

¹¹ That is, stock that is subject to being called away from a shareholder, either by the issuer or a third party.

¹² See Securities Exchange Act Release No. 42761 (May 5, 2000), 65 FR 30459 (May 11, 2000) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-NASD-00-24). See also Notice to Members 00-33 (May 2000) (Callable Common Stock).

suitable legend the settlement date of each transaction. The rule provides that this requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from which the orders were received. The rule further contains a general cross-reference instructing members to refer to SEA Rule 10b-10.

(B) Proposal

The proposed rule change deletes current NASD Rule 2230 from the FINRA rulebook and replaces it with proposed FINRA Rule 2232, which streamlines and combines basic customer confirmation requirements in the NASD and NYSE Rules. Specifically:

- Proposed FINRA Rule 2232 provides that confirmations must be given or sent to customers in conformity with the requirements of SEA Rule 10b-10. FINRA believes that incorporating by reference the requirements of Rule 10b-10, as opposed to replicating the SEC rule's detailed requirements in FINRA's rule, makes the proposed rule clear and serves the interests of regulatory efficiency.
- The proposed rule change deletes NASD IM-2110-6 from the FINRA rulebook and transfers its requirements to proposed FINRA Rule 2232. Proposed FINRA Rule 2232 expands the coverage of those requirements to make clear that the requirement to disclose that the security is callable (and that further information is available from the member) applies to *any* equity

security,¹³ not just callable common stock. FINRA believes that, from the standpoint of investor protection, this change is necessary to ensure that the rule covers, for instance, callable preferred stock.¹⁴

- NYSE Rule 409(f)'s requirement to disclose the settlement date of the transaction would be transferred to the new rule, with two changes. First, consistent with FINRA's investor protection mission, the requirement to disclose the settlement date of the transaction would include all transactions in securities, not just NYSE-listed securities. Second, because the proposed rule addresses customer confirmations, the elements of the NYSE rule addressing member-to-member communications would, consistent with the parameters of SEA Rule 10b-10, be deleted.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public

¹³ Exchange Act Section 3(a)(11) defines the term "equity security" to include, among others, "any stock or similar security."

¹⁴ FINRA notes that SEA Rule 10b-10(a)(4) requires that, in the case of any transaction in a debt security subject to redemption before maturity, the confirmation must include a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that such a redemption could affect the yield represented and that additional information is available upon request.

¹⁵ 15 U.S.C. 78o-3(b)(6).

interest. FINRA believes that the proposed rule change will further the purposes of the Act because, as part of the FINRA rulebook consolidation process, the proposed rule change will streamline and reorganize existing rules that govern basic customer confirmation requirements. Further, the proposed rule change will provide greater regulatory clarity with respect to a member's customer confirmation obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-058 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2009-058. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE.,

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-058 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

* * * * *

Text of Proposed New FINRA Rule

* * * * *

2000. DUTIES AND CONFLICTS

* * * * *

2200. COMMUNICATIONS AND DISCLOSURES

* * * * *

2230. Customer Account Statements and Confirmations

* * * * *

2232. Customer Confirmations

A member shall, at or before the completion of any transaction in any security effected for or with an account of a customer, give or send to such customer written notification (“confirmation”) in conformity with the requirements of SEA Rule 10b-10.

In addition, such confirmation shall:

- (a) set forth the settlement date of the transaction; and
- (b) with respect to any transaction in a callable equity security disclose that:
 - (1) the security is a callable equity security; and

¹ This Exhibit 5 reflects deletions to Incorporated NYSE Rule 409 proposed pursuant to SR-FINRA-2009-028. See Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (Notice of Filing of Proposed Rule Change; File No. SR-FINRA-2009-028). The proposed rule change would, in combination with SR-FINRA-2009-028, delete Rule 409 in its entirety.

(2) a customer may contact the member for more information concerning the security.

* * * * *

**Text of NASD and Incorporated NYSE Rules
to be Deleted in their
Entirety from the Transitional Rulebook**

NASD Rules

* * * * *

[2230. Confirmations]

[A member at or before the completion of each transaction with a customer shall give or send to such customer written notification disclosing (a) whether such member is acting as a broker for such customer, as a dealer for his own account, as a broker for some other person, or as a broker for both such customer and some other person; and (b) in any case in which such member is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by such member in connection with the transaction.]

* * * * *

[IM-2110-6. Confirmation of Callable Common Stock]

[Any member providing a customer confirmation pursuant to SEC Rule 10b-10 in connection with any transaction in callable common stock shall disclose on such confirmation that:]

[• The security is callable common stock; and]

[• A customer may contact the member for more information concerning the security.]

* * * * *

Incorporated NYSE Rules

* * * * *

[Rule 409. Statements of Accounts to Customers]

[(a) Except with the permission of the Exchange, or as otherwise provided by this paragraph, member organizations shall send to their customers statements of account showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. Quarterly statements need not be sent to a customer pursuant to Rule 409(a) if:]

[1] the customer's account is carried solely for the purpose of execution on a Delivery versus Payment/Receive versus Payment basis (DVP/RVP);]

[2] all transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 387;]

[3] the account does not show security or money positions at the end of the quarter;]

[4] the customer consents to the suspension of such statements in writing. Such

consents must be maintained by the member organization in a manner consistent with Exchange Rule 440 and Rule 17a-4 under the Securities Exchange Act of 1934;]

[5) the member organization undertakes to provide any particular statement or statements to the customer promptly upon request; and]

[6) the member organization undertakes to promptly reinstate the delivery of such statements to the customer upon request.]

[Nothing in this rule shall be seen to qualify or condition the obligations of a member organization under SEC Rule 15c3-2 concerning quarterly notices of free credit balances on statements.]

[For purposes of this rule, a DVP/RVP account is an arrangement whereby payment for securities purchased is to be made to the selling customer's agent and/or delivery of securities sold is to be made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.]

[(b) No member organization shall address confirmations, statements or other communications to a nonmember customer]

[(1) in care of a person holding power of attorney over the customer's account unless either (A) the customer has instructed the member organization in writing to send such confirmations, statements or other communications in care of such person, or (B) duplicate copies are sent to the customer at some other address designated in writing by him; or]

[(2) at the address of any member, member organization, or in care of a partner, stockholder who is actively engaged in the member corporation's business or

employee of any member organization. The Exchange may upon written request therefore waive these requirements.]

[(c) Rescinded October 6, 1978. (See SEC Rule 10b-10).]

[(d) Rescinded July 1, 1970. (See SEC Rule 10b-16).]

[(e) Each statement of account sent to a customer pursuant to this rule shall bear a legend as follows:]

[(1) A legend that reads: “A financial statement of this organization is available for your personal inspection at its offices, or a copy of it will be mailed upon your written request.”]

[(2) A legend that advises customers to report promptly any inaccuracy or discrepancy in that person’s account to his or her brokerage firm. If a customer’s account is subject to a clearing agreement pursuant to Rule 382, the legend must advise that such notification be sent to both the introducing firm and the clearing firm. The legend must also advise the customer that any oral communications with either the introducing firm or the clearing firm should be re-confirmed in writing in order to further protect the customer’s rights, including its rights under the Securities Investor Protection Act (SIPA).]

[(f) Confirmation of all transactions (including those made “over-the-counter” and on other exchanges) in securities admitted to dealings on the Exchange, sent by members or member organizations to their customers, shall clearly set forth with a suitable legend the settlement date of each transaction. This requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from whom the orders were received.]

[(See SEC Rule 10b-10)]

[(g) Member organizations carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless such guarantors have specifically declared in writing that they do not wish such statements sent to them.]

[• • • Supplementary Material: -----]

[.10 Exceptions to Rule 409(b) [¶2409]]

[The provisions of Rule 409(b), above, are not considered applicable to the following:]

[(1) General or special partners or holders of voting or non-voting stock other than any freely transferable security of member organizations.]

[(2) Employees of member organizations.]

[(3) Persons who maintain desk space at the office of a member or member organization and who thereby establish such office as their place of business.]

[(4) Corporations of which partners, stockholders or employees are officers or directors, and corporation accounts over which such persons have powers of attorney, provided, in each such case, the partner, stockholder or employee is duly authorized by the corporation to receive communications covering the account.]

[(5) Trust accounts, when a partner, stockholder or employee of a member organization is a trustee and has been duly authorized by all other trustees to receive communications covering the account.]

[(6) Estate accounts, when a partner, stockholder or employee of a member organization is an executor or administrator of the estate and has been duly authorized by all other executors or administrators to receive communications covering the account.]

[(7) Upon the written instructions of a customer and with the written approval of a member or supervisor of a member organization, a member organization may hold mail for a customer who will not be at his usual address for the period of his absence, but (a) not to exceed two months if the organization is advised that such customer will be on vacation or travelling or (b) not be exceed three months if the customer is going abroad.]

* * * * *