

OMB APPROVAL

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

Page 1 of 24

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

File No. SR - 2009 - 063

Amendment No.

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

Initial ☒	Amendment ☐	Withdrawal ☐	Section 19(b)(2) ☐	Section 19(b)(3)(A) ☒	Section 19(b)(3)(B) ☐
			Rule		
			☐ 19b-4(f)(1) ☐ 19b-4(f)(4)		
			☐ 19b-4(f)(2) ☐ 19b-4(f)(5)		
			☐ 19b-4(f)(3) ☒ 19b-4(f)(6)		

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 Extend to November 30, 2010, the Implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps)

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

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”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to extend to November 30, 2010, the implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps) on an interim pilot program basis, and to make minor technical changes. FINRA Rule 4240, as approved by the SEC on May 22, 2009, will expire on September 25, 2009. The rule implements an interim pilot program with respect to margin requirements for transactions in credit default swaps executed by a member (regardless of the type of account in which the transaction is booked), including those in which the offsetting matching hedging transactions are effected by the member in credit default swap contracts that are cleared through the central counterparty clearing services of the Chicago Mercantile Exchange.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on February 11, 2009, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become

¹ 15 U.S.C. 78s(b)(1).

operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately. The proposed rule change will expire on November 30, 2010.

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

(a) Purpose

On May 22, 2009, the Commission approved FINRA Rule 4240,² which implements an interim pilot program (the "Interim Pilot Program") with respect to margin requirements for transactions in credit default swaps ("CDS") executed by a member (regardless of the type of account in which the transaction is booked), including those in which the offsetting matching hedging transactions are effected by the member in credit default swap contracts that are cleared through the central counterparty clearing services of the Chicago Mercantile Exchange ("CME"). As originally approved by the Commission, the rule will expire on September 25, 2009.

As explained in the Approval Order, FINRA Rule 4240 is intended to be coterminous with certain Commission actions intended to address concerns arising from systemic risk posed by CDS, including, among others, risks to the financial system arising from the lack of a central clearing counterparty to clear and settle CDS.³

² See Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Notice of Approval of Proposed Rule Change; File No. SR-FINRA-2009-012) ("Approval Order").

³ See 74 FR 25588 through 25589. In early 2009 the Commission enacted interim final temporary rules (the "interim final temporary rules") providing enumerated exemptions under the federal securities laws for certain CDS to facilitate the operation of one or more central clearing counterparties in such CDS. See Securities Act Release No. 8999 (January 14, 2009), 74 FR 3967 (January 22, 2009) (Temporary Exemptions for Eligible Credit Default Swaps to Facilitate Operation of Central Counterparties to Clear and Settle Credit Default Swaps).

Recently, the Commission has determined to extend the period for which certain of these actions are in effect.⁴ FINRA believes it is appropriate to extend the implementation of the Interim Pilot Program accordingly, to November 30, 2010. In addition, FINRA is proposing a minor technical correction to FINRA Rule 4240.01(a).⁵

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately. The proposed rule change will expire on November 30, 2010.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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, consistent with the goals set forth by the Commission when it adopted the

See also Securities Exchange Act Release No. 59578 (March 13, 2009), 74 FR 11781 (March 19, 2009) (Order Granting Temporary Exemptions in Connection with Request of Chicago Mercantile Exchange Inc. and Citadel Investment Group, L.L.C. Related to Central Clearing of Credit Default Swaps); Securities Exchange Act Release No. 59165 (December 24, 2008), 74 FR 133 (January 2, 2009) (Order Granting Temporary Exemptions for Broker-Dealers and Exchanges Effecting Transactions in Credit Default Swaps).

⁴ See Securities Act Release No. 9063 (September 14, 2009) (Extension of Temporary Exemptions for Eligible Credit Default Swaps).

⁵ See Exhibit 5.

⁶ 15 U.S.C. 78o-3(b)(6).

interim final temporary rules with respect to the operation of central counterparties to clear and settle CDS, the margin requirements set forth by the proposed rule change will help to stabilize the financial markets.

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

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

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

The Commission, in approving the Interim Pilot Program on an accelerated basis, solicited comment on the original proposed rule change that established the program.⁷ That comment period ended on June 18, 2009. The Commission received one comment.⁸ The commenter raised concerns regarding federal agency action with respect to regulation of CDS. FINRA declines to respond to those comments as beyond the scope of the proposed rule change.

In addition, FINRA received one letter in response to the Regulatory Notice⁹ announcing the Commission's approval of the original rule change establishing the Interim Pilot Program.¹⁰ SIFMA suggested that, while the adoption of a margin rule for

⁷ See Approval Order, supra note 2.

⁸ Letter from Gary De Waal, Senior Managing Director and Group General Counsel, Newedge USA, LLC, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated June 18, 2009, available at: <<http://www.sec.gov/rules/sro/finra.shtml>>.

⁹ See Regulatory Notice 09-30 (June 2009) (Credit Default Swaps).

¹⁰ Letter from Daniel McIsaac, Chair, Capital Steering Committee, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Office of the

CDS addresses an important regulatory issue, there are certain other obstacles to broker-dealers engaging in transactions in CDS, among other derivative instruments. While FINRA views this comment as generally beyond the scope of the proposed rule change, FINRA welcomes further substantive dialogue on this issue. SIFMA also sought clarification as to why FINRA Rule 4240 addresses in particular CDS transactions that are cleared using the central counterparty clearing facilities of the CME. In response, FINRA notes that, as explained in the Approval Order, the CME requested that FINRA adopt customer margin rules for CDS and suggested a specific customer margin methodology that could be employed.¹¹ FINRA performed an analysis of the margin methodology suggested by CME, as well as the alternative methodology set forth in Rule 4240(c)(2), prior to proposing Rule 4240. The Approval Order further noted that FINRA will consider proposals it receives from CDS central clearing counterparties in addition to the CME to amend the customer margin rules for CDS and, if appropriate, will propose changes to such rules.

SIFMA suggested certain changes to the margin requirements set forth in FINRA Rule 4240. FINRA believes these suggestions are premature and that additional time is needed to make a meaningful determination about whether Rule 4240 should be made permanent and whether certain provisions should be modified and, if so, to what extent. Consequently, at this time, FINRA is only seeking to extend the Interim Pilot Program and make minor technical changes. Lastly, SIFMA requested clarification as to certain net capital requirements and implementation issues, as well as documentation issues

Corporate Secretary, FINRA, dated August 3, 2009 (“SIFMA”), available at: <<http://www.sifma.org /comments/index.aspx>>.

¹¹ See 74 FR 25589.

discussed in Regulatory Notice 09-30. FINRA notes that it will provide further guidance working with the SEC regarding implementation of Rule 4240, as appropriate.

6. Extension of Time Period for Commission Action

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act¹² and paragraph (f)(6) of Rule 19b-4 thereunder,¹³ in that the proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not become operative for 30 days after filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. FINRA requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),¹⁴ to prevent FINRA Rule 4240 from lapsing. In accordance with Rule 19b-4(f)(6),¹⁵ FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.¹⁶

¹² 15 U.S.C. 78s(b)(3).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ Adam Arkel, Assistant General Counsel, FINRA, provided the notice via e-mail to Sheila Swartz, Special Counsel, Division of Trading and Markets, SEC, on September 14, 2009.

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

Not applicable.

9. **Exhibits**

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

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-063)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend to November 30, 2010, the Implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps)

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”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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 extend to November 30, 2010, the implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps) on an interim pilot program basis, and to make minor technical changes. FINRA Rule 4240, as approved by the SEC on May 22, 2009, will expire on September 25, 2009. The rule implements an

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

interim pilot program with respect to margin requirements for transactions in credit default swaps executed by a member (regardless of the type of account in which the transaction is booked), including those in which the offsetting matching hedging transactions are effected by the member in credit default swap contracts that are cleared through the central counterparty clearing services of the Chicago Mercantile Exchange.

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

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

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

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

1. Purpose

On May 22, 2009, the Commission approved FINRA Rule 4240,⁴ which implements an interim pilot program (the "Interim Pilot Program") with respect to margin requirements for transactions in credit default swaps ("CDS") executed by a member (regardless of the type of account in which the transaction is booked), including those in

⁴ See Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Notice of Approval of Proposed Rule Change; File No. SR-FINRA-2009-012) ("Approval Order").

which the offsetting matching hedging transactions are effected by the member in credit default swap contracts that are cleared through the central counterparty clearing services of the Chicago Mercantile Exchange (“CME”). As originally approved by the Commission, the rule will expire on September 25, 2009.

As explained in the Approval Order, FINRA Rule 4240 is intended to be coterminous with certain Commission actions intended to address concerns arising from systemic risk posed by CDS, including, among others, risks to the financial system arising from the lack of a central clearing counterparty to clear and settle CDS.⁵ Recently, the Commission has determined to extend the period for which certain of these actions are in effect.⁶ FINRA believes it is appropriate to extend the implementation of the Interim Pilot Program accordingly, to November 30, 2010. In addition, FINRA is proposing a minor technical correction to FINRA Rule 4240.01(a).⁷

⁵ See 74 FR 25588 through 25589. In early 2009 the Commission enacted interim final temporary rules (the “interim final temporary rules”) providing enumerated exemptions under the federal securities laws for certain CDS to facilitate the operation of one or more central clearing counterparties in such CDS. See Securities Act Release No. 8999 (January 14, 2009), 74 FR 3967 (January 22, 2009) (Temporary Exemptions for Eligible Credit Default Swaps to Facilitate Operation of Central Counterparties to Clear and Settle Credit Default Swaps). See also Securities Exchange Act Release No. 59578 (March 13, 2009), 74 FR 11781 (March 19, 2009) (Order Granting Temporary Exemptions in Connection with Request of Chicago Mercantile Exchange Inc. and Citadel Investment Group, L.L.C. Related to Central Clearing of Credit Default Swaps); Securities Exchange Act Release No. 59165 (December 24, 2008), 74 FR 133 (January 2, 2009) (Order Granting Temporary Exemptions for Broker-Dealers and Exchanges Effecting Transactions in Credit Default Swaps).

⁶ See Securities Act Release No. 9063 (September 14, 2009) (Extension of Temporary Exemptions for Eligible Credit Default Swaps).

⁷ See Exhibit 5.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately. The proposed rule change will expire on November 30, 2010.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act because, consistent with the goals set forth by the Commission when it adopted the interim final temporary rules with respect to the operation of central counterparties to clear and settle CDS, the margin requirements set forth by the proposed rule change will help to stabilize the financial markets.

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

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

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

⁸ 15 U.S.C. 78o-3(b)(6).

The Commission, in approving the Interim Pilot Program on an accelerated basis, solicited comment on the original proposed rule change that established the program.⁹ That comment period ended on June 18, 2009. The Commission received one comment.¹⁰ The commenter raised concerns regarding federal agency action with respect to regulation of CDS. FINRA declines to respond to those comments as beyond the scope of the proposed rule change.

In addition, FINRA received one letter in response to the Regulatory Notice¹¹ announcing the Commission's approval of the original rule change establishing the Interim Pilot Program.¹² SIFMA suggested that, while the adoption of a margin rule for CDS addresses an important regulatory issue, there are certain other obstacles to broker-dealers engaging in transactions in CDS, among other derivative instruments. While FINRA views this comment as generally beyond the scope of the proposed rule change, FINRA welcomes further substantive dialogue on this issue. SIFMA also sought clarification as to why FINRA Rule 4240 addresses in particular CDS transactions that are cleared using the central counterparty clearing facilities of the CME. In response, FINRA notes that, as explained in the Approval Order, the CME requested that FINRA

⁹ See Approval Order, supra note 4.

¹⁰ Letter from Gary De Waal, Senior Managing Director and Group General Counsel, Newedge USA, LLC, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated June 18, 2009, available at: <<http://www.sec.gov/rules/sro/finra.shtml>>.

¹¹ See Regulatory Notice 09-30 (June 2009) (Credit Default Swaps).

¹² Letter from Daniel McIsaac, Chair, Capital Steering Committee, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, dated August 3, 2009 ("SIFMA"), available at: <<http://www.sifma.org/comments/index.aspx>>.

adopt customer margin rules for CDS and suggested a specific customer margin methodology that could be employed.¹³ FINRA performed an analysis of the margin methodology suggested by CME, as well as the alternative methodology set forth in Rule 4240(c)(2), prior to proposing Rule 4240. The Approval Order further noted that FINRA will consider proposals it receives from CDS central clearing counterparties in addition to the CME to amend the customer margin rules for CDS and, if appropriate, will propose changes to such rules.

SIFMA suggested certain changes to the margin requirements set forth in FINRA Rule 4240. FINRA believes these suggestions are premature and that additional time is needed to make a meaningful determination about whether Rule 4240 should be made permanent and whether certain provisions should be modified and, if so, to what extent. Consequently, at this time, FINRA is only seeking to extend the Interim Pilot Program and make minor technical changes. Lastly, SIFMA requested clarification as to certain net capital requirements and implementation issues, as well as documentation issues discussed in Regulatory Notice 09-30. FINRA notes that it will provide further guidance working with the SEC regarding implementation of Rule 4240, as appropriate.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed,

¹³ See 74 FR 25589.

or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2009-063 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-2009-063. This file number should be included on the subject line if e-mail is used. To help the Commission process

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

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-2009-063 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

Below is the text of the proposed rule change. New language is underlined; proposed deletions are in brackets.

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

* * * * *

4200. MARGIN

* * * * *

4240. Margin Requirements for Credit Default Swaps

(a) Effective Period of Interim Pilot Program

This Rule establishes an interim pilot program (“Interim Pilot Program”) with respect to margin requirements for any transactions in credit default swaps executed by a member (regardless of the type of account in which the transaction is booked), including those in which the offsetting matching hedging transactions (“matching transactions”) are effected by the member in contracts that are cleared through the central counterparty clearing services of the Chicago Mercantile Exchange (“CME”). The Interim Pilot Program shall automatically expire on [September 25, 2009] November 30, 2010. For purposes of this Rule, the term “credit default swap” (“CDS”) shall mean any “eligible credit default swap” as defined in Securities Act Rule 239T(d), as well as any other CDS that would otherwise meet such definition but for being subject to individual negotiation, and the term “transaction” shall include any ongoing CDS position.

(b) Central Counterparty Clearing Arrangements

Any member, prior to establishing any clearing arrangement with respect to CDS transactions that makes use of any central counterparty clearing services provided by any clearing agency, pursuant to Securities Act Rule 239T(a)(1), must notify FINRA in advance in writing, in such manner as may be specified by FINRA in a Regulatory Notice.

(c) Margin Requirements

(1) CDS Cleared on the Chicago Mercantile Exchange

Members shall require as a minimum for computing customer or broker-dealer margin, with respect to any customer or broker-dealer transaction in CDS with a member in which the member executes a matching transaction that makes use of the central counterparty clearing facilities of the CME (“CME matching customer-side transaction”), the applicable margin pursuant to CME rules (sometimes referred to in such rules as a “performance bond”) regardless of the type of account in which the transaction in CDS is booked. Members shall, based on the risk monitoring procedures and guidelines set forth in paragraph (d) of this Rule, determine whether the applicable CME requirements are adequate with respect to their customer and broker-dealer accounts and the positions in those accounts and, where appropriate, increase such margin in excess of such minimum margin. For this purpose, members are permitted to use the margin requirements set forth in Supplementary Material .01 of this Rule.

The aggregate amount of margin the member collects from customers and broker-dealers for transactions in CDS must equal or exceed the aggregate

amount of margin the member is required to post at CME with respect to those customer and broker-dealer transactions.

CME matching customer-side transactions are not subject to the provisions of paragraph (c)(2) of this Rule.

(2) CDS That Are Cleared on Central Counterparty Clearing Facilities Other Than the CME or That Settle Over-the-Counter (“OTC”)

Members shall require, with respect to any transaction in CDS that makes use of central counterparty clearing facilities other than the CME or that settle OTC, the applicable minimum margin as set forth in Supplementary Material .01 of this Rule regardless of the type of account in which the transaction in CDS is booked. However, members shall, based on the risk monitoring procedures and guidelines set forth in paragraph (d) of this Rule, determine whether such margin is adequate with respect to their customer and broker-dealer accounts and, where appropriate, increase such requirements.

(d) Risk Monitoring Procedures and Guidelines

Members shall monitor the risk of any customer or broker-dealer accounts with exposure to CDS and shall maintain a comprehensive written risk analysis methodology for assessing the potential risk to the member’s capital over a specified range of possible market movements over a specified time period. For purposes of this Rule, members must employ the risk monitoring procedures and guidelines set forth in paragraphs (d)(1) through (8) of this Rule. The member must review, in accordance with the member’s written procedures, at reasonable periodic intervals, the member’s credit extension activities for consistency with the risk monitoring procedures and guidelines set forth in

this Rule, and must determine whether the data necessary to apply the risk monitoring procedures and guidelines is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data, including:

(1) obtaining and reviewing the required account documentation and financial information necessary for assessing the amount of credit to be extended to customers and broker-dealers;

(2) assessing the determination, review and approval of credit limits to each customer and broker-dealer, and across all customers and broker-dealers, engaging in CDS transactions;

(3) monitoring credit risk exposure to the member from CDS, including the type, scope and frequency of reporting to senior management;

(4) the use of stress testing of accounts containing CDS contracts in order to monitor market risk exposure from individual accounts and in the aggregate;

(5) managing the impact of credit extended related to CDS contracts on the member's overall risk exposure;

(6) determining the need to collect additional margin from a particular customer or broker-dealer, including whether that determination was based upon the creditworthiness of the customer or broker-dealer and/or the risk of the specific contracts;

(7) monitoring the credit exposure resulting from concentrated positions within both individual accounts and across all accounts containing CDS contracts; and

(8) maintaining sufficient margin in each customer and broker-dealer account to protect against the default of the largest individual exposure in the account as measured by computing the largest maximum possible loss.

(e) Concentrations

Where the maximum current and potential exposure with respect to the largest single name CDS across all accounts exceeds the member's tentative net capital, the member must take a capital charge equal to the aggregate margin requirement for such accounts on the positions in such single name CDS in accordance with the tables set forth in Supplementary Material .01 of this Rule. This capital charge may be reduced by the amount of excess margin held in all customer and broker-dealer accounts.

• • • Supplementary Material: -----

.01 Margin Requirements for CDS. The following customer and broker-dealer margin requirements shall apply, as appropriate, pursuant to paragraph (c) of this Rule.

(a) Customer and Broker-Dealer Accounts That Are Short a CDS

The following table shall be used to determine the margin that a member must collect from a customer or broker-dealer that is short a single name debt security CDS contract (sold protection). The margin [is] to be collected based upon the basis point spread over LIBOR of the CDS contract as well as the maturity of that contract as a percentage of the notional amount[,] shall be as follows:

Basis Point Spread	Length of Time to Maturity of CDS Contract			
	1 year	3 years	5 years	7 years & longer
0-100	1%	2%	4%	7%
100-300	2%	5%	7%	10%
300-500	5%	10%	15%	20%

500-700	10%	15%	20%	25%
700 and above	15%	20%	25%	30%

For those CDS contracts where the underlying obligation is a debt index, rather than a single name bond, the margin requirement as a percentage of the notional amount shall be as follows:

Index	Length of Time to Maturity of CDS Contract				
	1 year	3 years	5 years	7 years	10 years
CDX.IG	1%	1%	2%	4%	5%
CDX.HY	3%	5%	10%	12%	15%
CDX.HVOL	2%	3%	4%	5%	7%

(b) Accounts That Are Long a CDS

For customer or broker-dealer accounts that are long the CDS contracts (purchased protection), the margin to be collected shall be 50% of the above amounts.

(c) Accounts That Maintain Both Long and Short CDS

In instances where the customer or broker-dealer maintains both long and short CDS, the member may elect to collect 50% of the above margin requirements on the greater of the long or short position within the same Bloomberg CDS sector, provided those long and short positions are in the same spread and maturity bucket.

If a customer or broker-dealer is long the bond and long a CDS contract on the same underlying obligor, margin needs to be collected only on the long bond position, provided that bond can be delivered against the long CDS contract, as prescribed pursuant to applicable FINRA margin rules.

In instances where the customer or broker-dealer is short the bond and short the CDS on the same underlying obligor, margin need only be collected on the short bond, as prescribed pursuant to applicable FINRA margin rules.

* * * * *