

OMB APPROVAL

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

File No. SR - 2009 - 066

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 2251 (Forwarding of Proxy and Other Issuer-Related Materials) in the Consolidated FINRA Rulebook

Contact Information

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

First Name Last Name
Title
E-mail
Telephone Fax

Signature

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

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

Date By
(Name)

(Title)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

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

Exhibit 1 - Notice of Proposed Rule Change

Add

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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

Add

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

Exhibit Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

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Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

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 without material change NASD Rule 2260 (Forwarding of Proxy and Other Materials) and NASD IM-2260 (Approved Rates of Reimbursement) in the consolidated FINRA rulebook. The proposed rule change would combine NASD Rule 2260 and NASD IM-2260 into a single rule that would be renumbered as FINRA Rule 2251 in the consolidated FINRA rulebook.

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

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

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),² FINRA is proposing to adopt without material change NASD Rule 2260 (Forwarding of Proxy and Other Materials) and NASD Interpretive Material ("IM") 2260 (Approved Rates of Reimbursement) in the Consolidated FINRA Rulebook. The proposed rule change would combine NASD Rule 2260 and NASD IM-2260 into a single rule that would be renumbered as FINRA Rule 2251 in the Consolidated FINRA Rulebook.

A. Background

NASD Rule 2260 sets forth certain requirements with respect to the transmission of proxy materials and other communications to beneficial owners of securities and the limited circumstances in which members are permitted to vote proxies without instructions from those beneficial owners. NASD IM-2260 regulates the reimbursement that members are entitled to receive in connection with forwarding proxy materials and other communications.

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

1. NASD Rule 2260

NASD Rule 2260(a) sets forth the general obligation of members to transmit proxy and related materials. The rule provides that members must, in connection with an equity security, forward promptly³ or, in connection with a debt security, make reasonable efforts to forward promptly certain information to the beneficial owner,⁴ or the beneficial owner's designated investment adviser,⁵ if the member carries the account in which the security is held for the beneficial owner and the security is registered in a name other than the name of the beneficial owner (i.e., the member holds the security in "street name").

With respect to proxy materials, NASD Rule 2260(c)(1) generally requires that whenever an issuer or stockholder of the issuer soliciting proxies timely furnishes to a member sufficient copies of all soliciting material, as well as satisfactory assurance that it will reimburse the member for all out-of-pocket expenses, the member must transmit promptly to each beneficial owner of stock of the issuer that is in its possession or control all the material furnished. The rule addresses what must be included with the proxy

³ SEA Rule 14b-1(b)(2) requires that broker-dealers must forward proxy and other specified materials no later than five business days after receipt.

⁴ Under paragraph (e) of the rule, a member's duty under Rule 2260(a) applies provided the member: is furnished with sufficient copies of the material (e.g., annual reports, information statements or other material sent to security holders) by the issuer, stockholder or trustee; is requested by the issuer, stockholder or trustee to forward the material to security holders; and receives satisfactory assurance that it will be reimbursed by the issuer, stockholder or trustee for all out-of-pocket expenses, including reasonable clerical expenses. Rule 2260(e)(2) provides that paragraph (e) does not apply to beneficial owners residing outside the U.S. The rule states that members may voluntarily comply with the rule's provisions with respect to such persons if they wish.

⁵ The term "designated investment adviser" is defined in paragraph (f) of the rule.

materials and incorporates by reference certain recordkeeping requirements under SEA Rule 17a-4.

NASD Rule 2260(b) generally prohibits a member from giving a proxy to vote stock that is registered in its name unless the member is the beneficial owner of the stock (i.e., the rule generally bars members from giving proxies to vote without instructions from the beneficial owner). However, the rule sets forth certain exceptions. Rule 2260(c)(2) provides that a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the member is also responsible⁶ provided that the records of the member clearly indicate the procedure it is following.⁷ (Similar to Rule 2260(e)(2), Rule 2260(c)(3) provides that the rule's proxy transmission requirements do not apply to beneficial owners residing outside the U.S. The rule states that members may voluntarily comply with the rule's provisions with respect to such persons if they wish.) Rule 2260(d)(1) provides that a member may give a proxy to vote any stock registered in its name if the member holds the stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote. Rule 2260(d)(3) generally permits any member designated by a named Employee Retirement Income Security Act of 1974 (as amended) ("ERISA") Plan fiduciary as the

⁶ The phrase "national securities exchange to which the member is also responsible" refers to a national securities exchange to which the member belongs. See Securities Exchange Act Release No. 35681 (May 5, 1995), 60 FR 25749 (May 12, 1995) (Order Approving Proposed Rule Change; File No. SR-NASD-95-06); see also Notice to Members 95-45 (June 1995).

⁷ FINRA notes that, with respect to compliance by Dual Members, the SEC recently approved amendments to non-Incorporated NYSE Rules (i.e., NYSE Rules that were not incorporated by FINRA into its rulebook) that eliminate discretionary voting by brokers under certain circumstances. See Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (Order Approving Proposed Rule Change; File No. SR-NYSE-2006-92).

investment manager of stock held as assets of the ERISA Plan to vote the proxies in accordance with the ERISA Plan fiduciary responsibilities, subject to certain conditions. Further, the rule permits designated investment advisers to vote the proxies.

2. NASD IM-2260

IM-2260 addresses the rates of reimbursement that are considered reasonable for purposes of Rule 2260 in connection with the rule's forwarding obligations. The IM has been amended a number of times, most recently in 2003 for the purpose of aligning the IM's requirements with the fee structures adopted by the NYSE and Amex.⁸ Broadly, the IM addresses three areas:

- IM-2260(a) provides that members, in addition to charges specified in IM-2260(a)(1) through (5),⁹ also are entitled to receive reimbursement for certain postage and stationery costs, as well as certain communication expenses incurred in receiving voting returns either telephonically or electronically;
- IM-2260(b) reminds members that NASD Rule 2430 requires that any charges must be reasonable.¹⁰ The IM provides that members may

⁸ See Securities Exchange Act Release No. 47392 (February 21, 2003), 68 FR 9730 (February 28, 2003) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-NASD-2003-019).

⁹ IM-2260(a)(1) through (5) specify the charges for: (1) initial proxy and/or annual report mailings; (2) proxy follow-up mailings; (3) providing beneficial ownership information; (4) interim report, post meeting report and other material mailings; and (5) incentive fees (fees with respect to each account where the member has eliminated the need to send materials in paper format through the mails).

¹⁰ NASD Rule 2430 provides, among other things, that charges for services performed must be "reasonable" and "not unfairly discriminatory between customers." (FINRA will address Rule 2430 at a later phase in the rulebook consolidation process.)

request reimbursement of expenses at less than the approved rates; however, no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed in the IM without the prior notification to and consent of the person soliciting proxies or the company;

- IM-2260(c) generally permits members to avoid transmitting multiple copies of materials to beneficial owners having more than one account or sharing the same address, provided members comply with applicable SEC rules.

B. Proposal

FINRA believes that NASD Rule 2260 and IM-2260 provide effective protection to investors. Accordingly, FINRA proposes to combine the two rules, without material change, into a single rule that would be renumbered as FINRA Rule 2251 in the Consolidated FINRA Rulebook.¹¹ The proposed rule change would make minor clarifying changes and other changes primarily to reflect the new formatting and terminology conventions of the Consolidated FINRA Rulebook.¹² In addition, because a number of requirements set forth by the rule also are addressed by the SEC's proxy rules, the proposed rule change would add language where appropriate to remind members that

¹¹ NASD IM-2260 would be redesignated as Supplementary Material within proposed FINRA Rule 2251.

¹² For example, the language in NASD Rule 2260(a) stating that a member "has an inherent duty" to forward materials would be revised to state that a member "shall" forward such materials. Further, the proposed rule change would move the footnoted provisions defining the terms "ERISA" and "state" to the rule text, and the footnoted provision regarding verification of investment advisers would be redesignated as Supplementary Material.

they are obligated to comply both with the FINRA rule and applicable SEC rules and/or guidance. With respect to the requirement set forth in NASD Rule 2260(a) that members forward those materials that are properly furnished to the member, the proposed rule change would clarify that firms are required to forward the materials subject to paragraphs (c) and (e) of the rule, as applicable. With respect to NASD Rule 2260(c)(2)'s provisions allowing a member to give a proxy to vote any stock pursuant to the rules of "any national securities exchange to which the member is also responsible," proposed FINRA Rule 2251 would read "any national securities exchange of which it is a member." FINRA believes the latter expression is clearer and reflects FINRA's longstanding interpretation of the rule language.¹³

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 would further the purposes of the Act because, as part of the Consolidated FINRA Rulebook, the proposed rule change will

¹³ See note 6 supra.

¹⁴ 15 U.S.C. 78o-3(b)(6).

protect investors and the public interest by addressing the forwarding of proxy and other issuer-related materials.

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 the proposed rule change.

¹⁵ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-066)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2251 (Forwarding of Proxy and Other Issuer-Related Materials) in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “SEA”)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 without material change NASD Rule 2260 (Forwarding of Proxy and Other Materials) and NASD IM-2260 (Approved Rates of Reimbursement) in the consolidated FINRA rulebook. The proposed rule change would combine NASD Rule 2260 and NASD IM-2260 into a single rule that would be renumbered as FINRA Rule 2251 in the consolidated FINRA rulebook.

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 without material change NASD Rule 2260 (Forwarding of Proxy and Other Materials) and NASD Interpretive Material ("IM") 2260 (Approved Rates of Reimbursement) in the Consolidated FINRA Rulebook. The proposed rule change would combine NASD Rule 2260 and NASD IM-2260 into a single rule that would be renumbered as FINRA Rule 2251 in the Consolidated FINRA Rulebook.

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

(A) Background

NASD Rule 2260 sets forth certain requirements with respect to the transmission of proxy materials and other communications to beneficial owners of securities and the limited circumstances in which members are permitted to vote proxies without instructions from those beneficial owners. NASD IM-2260 regulates the reimbursement that members are entitled to receive in connection with forwarding proxy materials and other communications.

(1) NASD Rule 2260

NASD Rule 2260(a) sets forth the general obligation of members to transmit proxy and related materials. The rule provides that members must, in connection with an equity security, forward promptly⁴ or, in connection with a debt security, make reasonable efforts to forward promptly certain information to the beneficial owner,⁵ or the beneficial owner's designated investment adviser,⁶ if the member carries the account in which the security is held for the beneficial owner and the security is

⁴ SEA Rule 14b-1(b)(2) requires that broker-dealers must forward proxy and other specified materials no later than five business days after receipt.

⁵ Under paragraph (e) of the rule, a member's duty under Rule 2260(a) applies provided the member: is furnished with sufficient copies of the material (e.g., annual reports, information statements or other material sent to security holders) by the issuer, stockholder or trustee; is requested by the issuer, stockholder or trustee to forward the material to security holders; and receives satisfactory assurance that it will be reimbursed by the issuer, stockholder or trustee for all out-of-pocket expenses, including reasonable clerical expenses. Rule 2260(e)(2) provides that paragraph (e) does not apply to beneficial owners residing outside the U.S. The rule states that members may voluntarily comply with the rule's provisions with respect to such persons if they wish.

⁶ The term "designated investment adviser" is defined in paragraph (f) of the rule.

registered in a name other than the name of the beneficial owner (i.e., the member holds the security in “street name”).

With respect to proxy materials, NASD Rule 2260(c)(1) generally requires that whenever an issuer or stockholder of the issuer soliciting proxies timely furnishes to a member sufficient copies of all soliciting material, as well as satisfactory assurance that it will reimburse the member for all out-of-pocket expenses, the member must transmit promptly to each beneficial owner of stock of the issuer that is in its possession or control all the material furnished. The rule addresses what must be included with the proxy materials and incorporates by reference certain recordkeeping requirements under SEA Rule 17a-4.

NASD Rule 2260(b) generally prohibits a member from giving a proxy to vote stock that is registered in its name unless the member is the beneficial owner of the stock (i.e., the rule generally bars members from giving proxies to vote without instructions from the beneficial owner). However, the rule sets forth certain exceptions. Rule 2260(c)(2) provides that a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the member is also responsible⁷ provided that the records of the member clearly indicate the procedure it is following.⁸

⁷ The phrase “national securities exchange to which the member is also responsible” refers to a national securities exchange to which the member belongs. See Securities Exchange Act Release No. 35681 (May 5, 1995), 60 FR 25749 (May 12, 1995) (Order Approving Proposed Rule Change; File No. SR-NASD-95-06); see also Notice to Members 95-45 (June 1995).

⁸ FINRA notes that, with respect to compliance by Dual Members, the SEC recently approved amendments to non-Incorporated NYSE Rules (i.e., NYSE Rules that were not incorporated by FINRA into its rulebook) that eliminate discretionary voting by brokers under certain circumstances. See Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (Order Approving Proposed Rule Change; File No. SR-NYSE-2006-92).

(Similar to Rule 2260(e)(2), Rule 2260(c)(3) provides that the rule's proxy transmission requirements do not apply to beneficial owners residing outside the U.S. The rule states that members may voluntarily comply with the rule's provisions with respect to such persons if they wish.) Rule 2260(d)(1) provides that a member may give a proxy to vote any stock registered in its name if the member holds the stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote. Rule 2260(d)(3) generally permits any member designated by a named Employee Retirement Income Security Act of 1974 (as amended) ("ERISA") Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan to vote the proxies in accordance with the ERISA Plan fiduciary responsibilities, subject to certain conditions. Further, the rule permits designated investment advisers to vote the proxies.

(2) NASD IM-2260

IM-2260 addresses the rates of reimbursement that are considered reasonable for purposes of Rule 2260 in connection with the rule's forwarding obligations. The IM has been amended a number of times, most recently in 2003 for the purpose of aligning the IM's requirements with the fee structures adopted by the NYSE and Amex.⁹

Broadly, the IM addresses three areas:

- IM-2260(a) provides that members, in addition to charges specified in IM-2260(a)(1) through (5),¹⁰ also are entitled to receive

⁹ See Securities Exchange Act Release No. 47392 (February 21, 2003), 68 FR 9730 (February 28, 2003) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-NASD-2003-019).

¹⁰ IM-2260(a)(1) through (5) specify the charges for: (1) initial proxy and/or annual report mailings; (2) proxy follow-up mailings; (3) providing beneficial

reimbursement for certain postage and stationery costs, as well as certain communication expenses incurred in receiving voting returns either telephonically or electronically;

- IM-2260(b) reminds members that NASD Rule 2430 requires that any charges must be reasonable.¹¹ The IM provides that members may request reimbursement of expenses at less than the approved rates; however, no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed in the IM without the prior notification to and consent of the person soliciting proxies or the company;
- IM-2260(c) generally permits members to avoid transmitting multiple copies of materials to beneficial owners having more than one account or sharing the same address, provided members comply with applicable SEC rules.

(B) Proposal

FINRA believes that NASD Rule 2260 and IM-2260 provide effective protection to investors. Accordingly, FINRA proposes to combine the two rules, without material change, into a single rule that would be renumbered as FINRA Rule

ownership information; (4) interim report, post meeting report and other material mailings; and (5) incentive fees (fees with respect to each account where the member has eliminated the need to send materials in paper format through the mails).

¹¹ NASD Rule 2430 provides, among other things, that charges for services performed must be “reasonable” and “not unfairly discriminatory between customers.” (FINRA will address Rule 2430 at a later phase in the rulebook consolidation process.)

2251 in the Consolidated FINRA Rulebook.¹² The proposed rule change would make minor clarifying changes and other changes primarily to reflect the new formatting and terminology conventions of the Consolidated FINRA Rulebook.¹³ In addition, because a number of requirements set forth by the rule also are addressed by the SEC's proxy rules, the proposed rule change would add language where appropriate to remind members that they are obligated to comply both with the FINRA rule and applicable SEC rules and/or guidance. With respect to the requirement set forth in NASD Rule 2260(a) that members forward those materials that are properly furnished to the member, the proposed rule change would clarify that firms are required to forward the materials subject to paragraphs (c) and (e) of the rule, as applicable. With respect to NASD Rule 2260(c)(2)'s provisions allowing a member to give a proxy to vote any stock pursuant to the rules of "any national securities exchange to which the member is also responsible," proposed FINRA Rule 2251 would read "any national securities exchange of which it is a member." FINRA believes the latter expression is clearer and reflects FINRA's longstanding interpretation of the rule language.¹⁴

¹² NASD IM-2260 would be redesignated as Supplementary Material within proposed FINRA Rule 2251.

¹³ For example, the language in NASD Rule 2260(a) stating that a member "has an inherent duty" to forward materials would be revised to state that a member "shall" forward such materials. Further, the proposed rule change would move the footnoted provisions defining the terms "ERISA" and "state" to the rule text, and the footnoted provision regarding verification of investment advisers would be redesignated as Supplementary Material.

¹⁴ See note 7 supra.

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 interest. FINRA believes that the proposed rule change would further the purposes of the Act because, as part of the Consolidated FINRA Rulebook, the proposed rule change will protect investors and the public interest by addressing the forwarding of proxy and other issuer-related materials.

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

¹⁵ 15 U.S.C. 78o-3(b)(6).

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-2009-066 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-2009-066. 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-2009-066 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. Proposed new language is underlined; proposed deletions are in brackets.

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**Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 2260 and IM-2260; NASD Rule 2260
and IM-2260 to be Deleted in Their Entirety from the Transitional Rulebook)**

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2000. DUTIES AND CONFLICTS

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2200. COMMUNICATIONS AND DISCLOSURES

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2250. Proxy Materials

[2260]2251. Forwarding of Proxy and Other Issuer-Related Materials

(a) A member [has an inherent duty to] shall forward promptly all [certain] information as required by this Rule and applicable SEC rules regarding a security to the beneficial owner (or the beneficial owner's designated investment adviser) if the member carries the account in which the security is held for the beneficial owner and the security is registered in a name other than the name of the beneficial owner.

(1) Equity Securities

For an equity security, the member, subject to paragraph (e) of this Rule and applicable SEC rules, [must] shall forward:

(A) all proxy material, as provided in paragraph (c) of this Rule, that is [properly] furnished to the member by the issuer of the securities or a stockholder of such issuer; and

(B) all annual reports, information statements and other material sent to stockholders that are [properly] furnished to the member by the issuer of the securities.

(2) Debt Securities

For a debt security other than a municipal security, the member, subject to paragraph (e) of this Rule and applicable SEC rules, [must] shall make reasonable efforts to forward any communication, document, or collection of documents pertaining to the issue that:

(A) was prepared by or on behalf of, the issuer, or was prepared by or on behalf of, the trustee of the specific issue of the security; and

(B) contains material information about such issue including, but not limited to, notices concerning monetary or technical defaults, financial reports, information statements, and material event notices.

(b) No member shall give a proxy to vote stock that is registered in its name, except as required or permitted under the provisions of paragraphs (c) or (d) [hereof] of this Rule, unless such member is the beneficial owner of such stock.

(c) (1) Whenever an issuer or stockholder of such issuer soliciting proxies shall, subject to paragraph (e) of this Rule and applicable SEC rules, timely furnish to a member:

(A) sufficient copies of all soliciting material that such person is sending to registered holders, and

(B) satisfactory assurance that he or she will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses incurred by such member in connection with such solicitation, such member shall transmit promptly to each beneficial owner of stock of such issuer (or the beneficial owner's designated investment adviser) that is in its possession or control and registered in a name other than the name of the beneficial owner, all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of SEA[C] Rule 17a-4.

(2) Notwithstanding the provisions of [sub]paragraph (c)(1) of this Rule, a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange [to] of which it is a [the] member [is also responsible] provided that the records of the member clearly indicate [which] the procedure it is following.

(3) This paragraph (c) shall not apply to beneficial owners residing outside of the United States [of America], although members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

(d) (1) A member may give a proxy to vote any stock registered in its name if such member holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

(2) A member that has in its possession or within its control stock registered in the name of another member and that desires to transmit signed proxies pursuant to the provisions of paragraph (c) of this Rule, shall obtain the requisite number of signed proxies from such holder of record.

(3) Notwithstanding the foregoing,

(A) any member designated by a named Employee Retirement Income Security Act of 1974 (as amended) (“ERISA”)^{*} Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary; and

(B) any designated investment adviser may vote such proxies.

(e) (1) As required in paragraph (a) of this Rule, a member must forward promptly the material set forth in paragraph (a)(1), in connection with an equity security, or must make reasonable efforts to forward promptly the material set forth in paragraph (a)(2), in connection with a debt security, provided that the member:

(A) is furnished with sufficient copies of the material (e.g., annual reports, information statements or other material sent to security holders) by the issuer, stockholder, or trustee;

(B) is requested by the issuer, stockholder, or trustee to forward the material to security holders; and,

(C) receives satisfactory assurance that it will be reimbursed, consistent with Rule 2251.01 and applicable SEC rules, by such issuer, stockholder, or trustee for all out-of-pocket expenses, including reasonable clerical expenses.

(2) This paragraph (e) shall not apply to beneficial owners residing outside of the United States [of America] although members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

(f) For purposes of this Rule, the term “designated investment adviser” is a person registered under the Investment Advisers Act of 1940, or registered as an investment adviser under the laws of a state,^[1] who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to security holders.

(1) For purposes of this Rule, the term “state” shall have the meaning given to such term in Section 202(a)(19) of the Investment Advisers Act of 1940 (as the same may be amended from time to time).

((1)2) The written designation must be signed by the beneficial owner; be addressed to the member; and include the name of the designated investment adviser.

((2)3) Members that receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the SEC [Commission] pursuant to the Investment Advisers Act of 1940, or with a state as an investment adviser under the laws of such state,^[2] and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information.

((3)4) Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the member.

(g) The Board of Governors for the guidance of members is authorized to establish a suggested rate of reimbursement of members for expenses incurred in connection with transmitting the proxy solicitation to the beneficial owners of the securities pursuant to paragraph (c) [hereof] of this Rule or in transmitting information statements or other material to the beneficial owners of securities pursuant to paragraph (e) [hereof] of this Rule.

[* For purposes of this Rule, the term "ERISA" is an acronym for the Employee Retirement Income Security Act of 1974.]

[¹ The term “state” as used herein shall have the meaning given to such term in Section 202(a)(19) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.]

[² Members may verify registration of an investment adviser through the use of the Investment Adviser Registration Depository (“IARD”) system.]

• • • Supplementary Material: -----

[IM-2260].01 Approved Rates of Reimbursement.

(a) The following approved rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements and other material shall be considered reasonable rates of reimbursement. In addition to the charges specified in this [schedule] Supplementary Material, members also are entitled to receive reimbursement for: (1) actual postage costs (including return postage at the lowest available rate); (2) the actual cost of envelopes (provided they are not furnished by the issuer, the trustee, or a person soliciting proxies); and (3) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

(1) Charges for Initial Proxy and/or Annual Report Mailings

(A) 40 cents for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, unless an opposition proxy statement has been furnished to securities holders, with a minimum of \$5.00 for all sets mailed;

(B) 15 cents for each copy, plus postage, for annual reports that are mailed separately from the proxy material pursuant to the instruction

of the person soliciting proxies with a minimum of \$3.00 for all sets mailed;

(C) \$1.00 for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of \$5.00 for all sets mailed;

(D) FINRA [NASD] has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees: \$20.00 per nominee plus (i) 10 cents for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5 cents for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

(2) Charges for Proxy Follow-Up Mailings

40 cents for each set of follow-up material, plus postage.

(3) Charge for Providing Beneficial Ownership Information

Six and one-half cents per name of non-objecting beneficial owner provided to the issuer pursuant to the issuer's request. Where the non-objecting beneficial ownership information is not furnished directly to the issuer by the member, but is furnished through an agent designated by the member, the issuer will be expected to pay the reasonable expenses of the agent in providing such information, as provided pursuant to SEA Rules 14a-13(b) and 14c-7(b) and applicable SEC guidance, in addition to the rate described above. [(See SEC

Rules 14a-13(b) and 14c-7(b) under the Securities Exchange Act of 1934 and notes thereto.))]

Any member that designates an agent for the purpose of furnishing requesting issuers with beneficial ownership information pursuant to SEA[C] Rule 14b-1(c) and thereafter cancels that designation or appoints a new agent for such purpose should promptly inform interested issuers.

(4) Charges for Interim Report, Post Meeting Report and Other Material Mailings

15 cents for each copy, plus postage, for interim reports, post meeting reports, or other material with a minimum of \$2.00 for all sets mailed.

(5) Incentive Fees

A[n] fee (for purposes of this Supplementary Material, an “incentive fee”) [(as defined below)] for proxy material mailings, including the annual report, and 10 cents for interim report mailings, with respect to each account where the member has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically) shall be: (i) 25 cents with respect to issuers whose shares are held in at least 200,000 nominee accounts; and (ii) 50 cents with respect to issuers whose shares are held in fewer than 200,000 nominee accounts.

(b) [Members are reminded that Rule 2430 requires that any such] Any charges for any forwarding pursuant to this Supplementary Material must be reasonable.

Members may request reimbursement of expenses at less than the approved rates; however, no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically [listed above] enumerated in paragraph (a) of this Supplementary Material without the prior notification to and consent of the person soliciting proxies or the company.

(c) [Rule 2260 requires members to forward promptly issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners.] For purposes of this Rule, [M]members are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, members [organizations] may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with SEA Rule 14b-1 and other applicable SEC rules. [with respect thereto (see SEC Rule 14b-1 under the Act).]

.02 Investment Adviser Registration. For purposes of this Rule, members may verify registration of an investment adviser through the use of the Investment Adviser Registration Depository (“IARD”).

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