

OMB APPROVAL

OMB Number: 3235-0045
Expires: August 31, 2011
Estimated average burden
hours per response.....38

Page 1 of 26

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

File No. SR - 2009 - 078

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 Update Certain Rule Cross-References and Make Other Non-Substantive Technical Changes to FINRA and NASD Rules

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”) (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 update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook and to make non-substantive technical changes to certain FINRA and NASD rules.

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

The proposed rule change has been approved by the General Counsel of FINRA pursuant to delegated authority. 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. The implementation date for the proposed rule changes to NASD Rule 2320 and FINRA Rules 0150, 2357, 5122, 6635 and 9551 will be December 14, 2009.² The implementation date for the proposed rule changes to FINRA Rule 9217 will be December 14, 2009, except the proposed change that would eliminate the reference to

¹ 15 U.S.C. 78s(b)(1).

² See Regulatory Notice 09-60 (October 2009).

NYSE Rule 445 from FINRA Rule 9217, which will be implemented on January 1, 2010.³

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

(a) Purpose

FINRA is in the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").⁴ That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references to reflect changes adopted in the Consolidated FINRA Rulebook. Specifically, the proposed rule change would update FINRA Rule 0150 to reflect the incorporation into the Consolidated FINRA Rulebook of NASD Rule 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising) as FINRA Rule 5230 (Payments Involving Publications that

³ See note 2.

⁴ 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).

Influence the Market Price of a Security),⁵ NASD Rule 2250 as FINRA Rule 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution)⁶ and certain paragraphs of NASD Rule 2330 (Customers' Securities or Funds) as FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts).⁷

Similarly, rule cross-references in FINRA Rule 6635 (FINRA Rules) would be updated to reflect the adoption of NASD Rule 2240 as FINRA Rule 2262 (Disclosure of Control Relationship with Issuer),⁸ NASD Rule 2250 as FINRA 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution),⁹ certain paragraphs of NASD Rule 2330 (Customers' Securities or Funds) as FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts)¹⁰ and NASD Rule 3340 as FINRA Rule 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts).¹¹

⁵ See Securities Exchange Act Release No. 60648 (September 10, 2009), 74 FR 47837 (September 17, 2009) (Order Approving File No. SR-FINRA-2008-048).

⁶ See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (Order Approving File No. SR-FINRA-2009-044).

⁷ See Securities Exchange Act Release No. 60701 (September 21, 2009); 74 FR 49425 (September 28, 2009) (Order Approving File No. SR-FINRA-2009-014).

⁸ See note 6.

⁹ See note 6.

¹⁰ See note 7.

¹¹ See note 6.

The proposed rule change also would amend FINRA Rules 2357 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants and Currency Warrants) and 9551 (Failure to Comply with Public Communication Standards) to reflect the adoption of NASD Rule 2220 as FINRA Rule 2220 (Options Communications) in the Consolidated FINRA Rulebook.¹² Moreover, the proposed rule change would update FINRA Rule 2357 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants and Currency Warrants) to delete references to NASD Rule 2220(c)(5) and (d)(2)(C)(v) as these subparagraphs will not be transferred into the Consolidated FINRA Rulebook as part of FINRA Rule 2220. These subparagraphs were deleted by SR-FINRA-2008-013, which became effective on March 4, 2009.¹³

Additionally, the proposed rule change would make non-substantive technical changes to paragraphs (e) and (f) of NASD Rule 2320 (Best Execution and Interpositioning) to reflect changes approved by the Commission in SR-FINRA-2007-024, which became effective on September 8, 2009,¹⁴ and to FINRA Rule 5122 (Private Placements of Securities Issued by Members). All of the proposed rule changes noted above will become effective on December 14, 2009.

¹² See Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (Order Approving File No. SR-FINRA-2009-036).

¹³ See Securities Exchange Act Release No. 58738 (October 6, 2008); 73 FR 60371 (October 10, 2008) (Order Approving File No. SR-FINRA-2008-013).

¹⁴ See Securities Exchange Act Release No. 60635 (September 8, 2009); 74 FR 47302 (September 15, 2009) (Order Approving File No. SR-FINRA-2007-024).

Finally, the proposed rule change would update rule cross-references in FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)) to reflect the incorporation of NASD Rule 2220 into the Consolidated FINRA Rulebook as FINRA Rule 2220 (Options Communications)¹⁵ and the deletion of NYSE Rule 445 (Anti-Money Laundering Compliance Program)¹⁶ and certain paragraphs of NYSE Rule 352 (Guarantees, Sharing in Accounts, and Loan Arrangements)¹⁷ from the FINRA rulebook.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule changes to NASD Rule 2320 and FINRA Rules 0150, 2357, 5122, 6635 and 9551 will be December 14, 2009.¹⁸ The implementation date for the proposed rule changes to FINRA Rule 9217 will be December 14, 2009, except the proposed change that would eliminate the reference to NYSE Rule 445 from FINRA Rule 9217, which will be implemented on January 1, 2010.¹⁹

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁰ which requires, among other things, that FINRA rules

¹⁵ See note 12.

¹⁶ See Securities Exchange Act Release No. 60645 (September 10, 2009), 74 FR 47630 (September 16, 2009) (Order Approving File No. SR-FINRA-2009-039).

¹⁷ See note 7.

¹⁸ See note 2.

¹⁹ See note 2.

²⁰ 15 U.S.C. 78o-3(b)(6).

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 the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

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

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 Act²¹ and paragraph (f)(6) of Rule 19b-4 thereunder,²² 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.

²¹ 15 U.S.C. 78s(b)(3).

²² 17 CFR 240.19b-4(f)(6).

In accordance with Rule 19b-4,²³ 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.

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.

²³

17 CFR 240.19b-4.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-078)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Update Certain Cross-References within Certain FINRA Rules

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 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 update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook and to make non-substantive technical changes to certain FINRA and NASD rules.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

FINRA is in the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").⁴ That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

⁴ 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).

The proposed rule change would update rule cross-references to reflect changes adopted in the Consolidated FINRA Rulebook. Specifically, the proposed rule change would update FINRA Rule 0150 to reflect the incorporation into the Consolidated FINRA Rulebook of NASD Rule 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising) as FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security),⁵ NASD Rule 2250 as FINRA Rule 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution)⁶ and certain paragraphs of NASD Rule 2330 (Customers' Securities or Funds) as FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts).⁷

Similarly, rule cross-references in FINRA Rule 6635 (FINRA Rules) would be updated to reflect the adoption of NASD Rule 2240 as FINRA Rule 2262 (Disclosure of Control Relationship with Issuer),⁸ NASD Rule 2250 as FINRA 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution),⁹ certain paragraphs of NASD Rule 2330 (Customers' Securities or Funds) as FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in

⁵ See Securities Exchange Act Release No. 60648 (September 10, 2009), 74 FR 47837 (September 17, 2009) (Order Approving File No. SR-FINRA-2008-048).

⁶ See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (Order Approving File No. SR-FINRA-2009-044).

⁷ See Securities Exchange Act Release No. 60701 (September 21, 2009); 74 FR 49425 (September 28, 2009) (Order Approving File No. SR-FINRA-2009-014).

⁸ See note 6.

⁹ See note 6.

Accounts)¹⁰ and NASD Rule 3340 as FINRA Rule 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts).¹¹

The proposed rule change also would amend FINRA Rules 2357 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants and Currency Warrants) and 9551 (Failure to Comply with Public Communication Standards) to reflect the adoption of NASD Rule 2220 as FINRA Rule 2220 (Options Communications) in the Consolidated FINRA Rulebook.¹² Moreover, the proposed rule change would update FINRA Rule 2357 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants and Currency Warrants) to delete references to NASD Rule 2220(c)(5) and (d)(2)(C)(v) as these subparagraphs will not be transferred into the Consolidated FINRA Rulebook as part of FINRA Rule 2220. These subparagraphs were deleted by SR-FINRA-2008-013, which became effective on March 4, 2009.¹³

Additionally, the proposed rule change would make non-substantive technical changes to paragraphs (e) and (f) of NASD Rule 2320 (Best Execution and Interpositioning) to reflect changes approved by the Commission in SR-FINRA-2007-

¹⁰ See note 7.

¹¹ See note 6.

¹² See Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (Order Approving File No. SR-FINRA-2009-036).

¹³ See Securities Exchange Act Release No. 58738 (October 6, 2008); 73 FR 60371 (October 10, 2008) (Order Approving File No. SR-FINRA-2008-013).

024, which became effective on September 8, 2009,¹⁴ and to FINRA Rule 5122 (Private Placements of Securities Issued by Members). All of the proposed rule changes noted above will become effective on December 14, 2009.

Finally, the proposed rule change would update rule cross-references in FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)) to reflect the incorporation of NASD Rule 2220 into the Consolidated FINRA Rulebook as FINRA Rule 2220 (Options Communications)¹⁵ and the deletion of NYSE Rule 445 (Anti-Money Laundering Compliance Program)¹⁶ and certain paragraphs of NYSE Rule 352 (Guarantees, Sharing in Accounts, and Loan Arrangements)¹⁷ from the FINRA rulebook.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule changes to NASD Rule 2320 and FINRA Rules 0150, 2357, 5122, 6635 and 9551 will be December 14, 2009.¹⁸ The implementation date for the proposed rule changes to FINRA Rule 9217 will be December 14, 2009, except the proposed change that would eliminate the reference to

¹⁴ See Securities Exchange Act Release No. 60635 (September 8, 2009); 74 FR 47302 (September 15, 2009) (Order Approving File No. SR-FINRA-2007-024).

¹⁵ See note 12.

¹⁶ See Securities Exchange Act Release No. 60645 (September 10, 2009), 74 FR 47630 (September 16, 2009) (Order Approving File No. SR-FINRA-2009-039).

¹⁷ See note 7.

¹⁸ See Regulatory Notice 09-60 (October 2009).

NYSE Rule 445 from FINRA Rule 9217, which will be implemented on January 1, 2010.¹⁹

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁰ 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 the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

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

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,

¹⁹ See note 18.

²⁰ 15 U.S.C. 78o-3(b)(6).

or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²²

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-2009-078 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-2009-078. This file number should be included on the subject line if e-mail is used. To help the Commission process

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 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-2009-078 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.²³

Florence E. Harmon
Deputy Secretary

²³ 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.

* * * * *

FINRA Rules

0100. GENERAL STANDARDS

* * * * *

0150. Application of Rules to Exempted Securities Except Municipal Securities

(a) through (b) No Change.

(c) Unless otherwise indicated within a particular Rule, the following FINRA and NASD rules are applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons:

FINRA Rules 2010, 2020, 2150, 2269, 2320(g), 3220, 5230, 8110, 8120, 8210, 8310, 8311, 8312, 8320, 8330 and 9552; NASD Rules 2210, IM-2210-1, IM-2210-2, IM-2210-3, [2250,] 2270, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2450, 2510, 2520, 2521, 2522, IM-2522, 2770, 2780, 2910, 3010, 3020, 3030, 3040, 3050, 3070, 3110, IM-3110, 3120, 3130, IM-3130, 3131, 3140, 3230, 3310, IM-3310, 3320, IM-3320[, 3330].

* * * * *

2300. SPECIAL PRODUCTS

* * * * *

2350. Trading in Index Warrants, Currency Index Warrants and Currency Warrants

* * * * *

2357. Communications with the Public and Customers Concerning Index

Warrants, Currency Index Warrants and Currency Warrants

The provisions of [NASD] Rule 2220 shall be applicable to communications to customers regarding index warrants, currency index warrants, or currency warrants. The term "option" as used therein shall be deemed to include such warrants for purposes of this Rule and the term "The Options Clearing Corporation" shall be deemed to mean the issuer of such warrants. [NASD Rule 2220(c)(5) and (d)(2)(C)(v) shall also not be applicable to communications with the public regarding index warrants, currency index warrants, or currency warrants.]

* * * * *

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

* * * * *

5120. Offerings of Members' Securities

5122. Private Placements of Securities Issued by Members

(a) through (e) No Change.

• • • Supplementary Material: -----

.01[.] Private Placement Memorandum. Nothing in this rule shall require a member to prepare a private placement memorandum. A member may satisfy the disclosure and filing requirements in the Rule with an offering document that does not meet the additional requirements of Securities Act Rule 502.

* * * * *

6600. OTC REPORTING FACILITY

* * * * *

6630. Reporting Transactions in PORTAL® Securities

* * * * *

6635. FINRA Rules

(a) The following are specifically applicable to transactions and business activities relating to PORTAL securities:

(1) NASD Rules 2230, [2240, 2250,] 2260, 2270, 2310, 2440, 3370, and FINRA Rules 0130, 0140, 2010, 2020, 2262, 2269, 8210;

(2) through (3) No Change.

(b) The following are specifically applicable to transactions and business activities relating to PORTAL securities, with the exceptions specified below:

(1) No Change.

(2) FINRA Rule 2150, and NASD Rule 2330, except for paragraph (d);

and

(3) No Change.

(c) The following are applicable to members and persons associated with members regardless of whether the member participates in transactions in PORTAL securities:

(1) No Change.

(2) NASD Rules 2210, 3020, 3030, 3040, 3050, 3130, 3140[, 3340] and FINRA Rules 3220, and 5260.

(d) No Change.

* * * * *

9200. DISCIPLINARY PROCEEDINGS

* * * * *

9217. Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)

Any member of FINRA that is also a member of the New York Stock Exchange LLC ("NYSE") ("Dual Member") (including any persons affiliated with such member) may be subject to a fine under Rule 9216(b) with respect to any rule or By-Law provision listed in this Rule that applies to such member or person. However, any Dual Member that was not also a member of NASD as of July 30, 2007 and that does not engage in any activities that otherwise would require it to be a FINRA member (and its affiliated persons that are not otherwise subject to NASD rules) shall only be subject to a fine under Rule 9216(b) with respect to the following rules or By-Law provisions listed in this Rule: any FINRA By-Law or Schedule to the By-Laws, FINRA rule, SEA rule, or NYSE rule.

Any member of FINRA that is not also a member of the NYSE (and its associated persons that are not otherwise subject to NYSE rules) may be subject to a fine under Rule 9216(b) with respect to any rule or By-Laws provision listed in this Rule, with the exception of the NYSE rules.

- Article IV of the FINRA By-Laws — Failure to timely submit amendments to Form BD.

- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U4.

- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U5.

- Rule 2220 Options Communications.

- Rule 2360(b)(3) and (b)(4) — Failure to comply with options position and exercise limits.

- Rule 2360(b)(23) — Failure to comply with contrary exercise advice procedures.

- Rule 4560 — Failure to timely file reports of short positions on Form NS-1.

- Rules 6282, 6380A, 6550, 6622, 6730, 7130, 7160, 7230A, and 7260A — Transaction reporting in equity and debt securities.

- Rules 7440 and 7450 — Failure to submit data in accordance with the Order Audit Trail System ("OATS").

- Rules 8211 and 8213 — Failure to submit trading data as requested.

- NASD Rule 1120 — Failure to comply with the Firm Element of the continuing education requirements.

- NASD Rules 2210, 2211, [and 2220,] and IM-2210-1, -2210-2, -2210-3, -2210-4, -2210-5, -2210-7, and -2210-8 — Communications with the public.

- NASD Rule 3010(b) — Failure to timely file reports pursuant to the Taping Rule.

- NASD Rule 3070 — Failure to timely file reports.

- NASD Rule 3110 — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD rules.

- NASD Rule 11870 — Failure to abide by Customer Account Transfer

Contracts.

- Failure to provide or update contact information as required by FINRA or

NASD rules.

- SEA Rule 17a-5 — Failure to timely file FOCUS reports and annual audit

reports.

- SEA Rule 17a-10 — Failure to timely file Schedule I.

- Rule 602(b)(5) of SEC Regulation NMS — Failure to properly update

published quotations in certain Electronic Communication Networks ("ECNs").

- Rule 604 of SEC Regulation NMS — Failure to properly display limit orders.

- MSRB Rule A-14 — Failure to timely pay annual fee.

- MSRB Rule G-12 — Failure to abide by uniform practice rules.

- MSRB Rule G-14 — Failure to submit reports.

- MSRB Rule G-36 — Failure to timely submit reports.

- MSRB Rule G-37 — Failure to timely submit reports for political contributions.

- MSRB Rule G-38 — Failure to timely submit reports detailing consultant

activities.

- NYSE Rules 312(a), (b) & (c), 313, 345.12, 345.17, 346(c), 351, 421, and 440F

& G — Reporting rule violations.

- NYSE Rules 312(h) & (i), 342(c), 342.10, 346(e) and (f), and 382(a) — Failure

to obtain approval rule violations.

- NYSE Rules 342(b), (d) & 342.13, 311(b)(5), and 344 — Failure of a member

organization to have individuals responsible and qualified for the positions of Financial

Principal, Operations Principal, Compliance Official, Branch Office Manager and Supervisory Analyst.

- NYSE Rule 343 — Requirements relating to member organization office sharing arrangements.
- NYSE Rule 345(a) — Failure of a member organization to have individuals responsible and qualified for the positions of Securities Lending Supervisor and Securities Trader Supervisor.
- NYSE Rules 345.11, 410, 432(a), 440, and 472(c) — Record retention rule violations.
- NYSE Rule 346(b) — Failure to obtain employer's prior written consent for engaging in an outside activity.
- [• NYSE Rule 352(b) and (c) — Guaranteeing a customer's account against loss or sharing in profits or losses.]
- NYSE Rule 387 — Requirements for customer COD/POD transactions.
- NYSE Rule 401A — Failure to acknowledge customer complaint within 15 business days.
- NYSE Rule 407 — Requirements for transactions of employees of the Exchange, members or member organizations.
- NYSE Rule 407A — Reporting and notification requirements for members.
- NYSE Rule 408(a) — Requirement that written authorization be obtained for discretionary power in a customer's account.

- NYSE Rule 411(b) — Requirements to bundle multiple odd-lot orders in the same stock, which aggregate to 100 shares or more, to aggregate the orders into round-lot orders.

- NYSE Rule 416A — Failure to promptly provide or promptly update required membership profile information through the Electronic Filing Platform ("EFP"), or failure to electronically certify that required membership profile information is complete and accurate.

- [• NYSE Rule 445(4) — Failure to designate and identify an Anti-Money Laundering contact person or persons.]

* * * * *

9500. OTHER PROCEEDINGS

* * * * *

9550. Expedited Proceedings

9551. Failure to Comply with Public Communication Standards

(a) Notice of Pre-Use Filing Requirement

Pursuant to NASD Rule[s] 2210(c)(5) and FINRA Rule 2220(c)(2), FINRA staff may issue a written notice requiring a member to file advertising, educational material or sales literature with the FINRA Advertising Regulation Department at least ten days prior to use if FINRA staff determines that the member has departed from the standards of NASD Rule 2210 or [NASD] FINRA Rule 2220.

(b) through (c) No Change.

(d) Effective Date of Notice of Pre-Use Filing Requirement

Pursuant to NASD Rule[s] 2210(c)(5) and FINRA Rule 2220(c)(2), the pre-use filing requirement referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) through (g) No Change.

* * * * *

NASD Rule

* * * * *

2300. TRANSACTIONS WITH CUSTOMERS

* * * * *

2320. Best Execution and Interpositioning

(a) through (d) No Change.

(e) The obligations described in paragraphs (a) through (d)~~[(e)]~~ above exist not only where the member acts as agent for the account of his customer but also where retail transactions are executed as principal and contemporaneously offset. Such obligations do not relate to the reasonableness of commission rates, markups or markdowns which are governed by Rule 2440 and IM-2440.

(f) (1) through (3) No Change.

(4) Definitions

For purposes of this paragraph (f) ~~[(g)]~~:

(A) through (B) No Change.

(5) No Change.

* * * * *