

## OMB APPROVAL

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Page 1 of 19

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

File No. SR - 2010 - 028

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)

Pilot

☐Extension of Time Period  
for Commission Action☐

Date Expires

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 NASD Rule 3210 (Short Sale Delivery Requirements) as FINRA Rule 4320 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 Racquel

Last Name Russell

Title Assistant General Counsel

E-mail racquel.russell@finra.org

Telephone (202) 728-8363

Fax (202) 728-8264

**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 05/21/2010

By Stephanie Dumont

(Name)

Senior Vice President and Director of Capital Markets  
Policy

(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.

Stephanie Dumont,

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

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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**

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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”),<sup>1</sup> 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 NASD Rule 3210 (Short Sale Delivery Requirements) as FINRA Rule 4320 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 rule will be eliminated from the current FINRA rulebook.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

At its meeting on September 24, 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. The implementation date will be no more than 180 days following Commission approval.

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<sup>1</sup> 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”),<sup>2</sup> FINRA is proposing to adopt NASD Rule 3210 (Short Sale Delivery Requirements), with minor changes, as FINRA Rule 4320 in the Consolidated FINRA Rulebook.

On April 4, 2006, the SEC approved NASD Rule 3210, which applies short sale delivery requirements to those equity securities not otherwise covered by the close-out requirements of Regulation SHO. The Regulation SHO close-out requirements apply only to “reporting” securities (i.e., issuers that are registered pursuant to Section 12 of the Act<sup>3</sup> or that are required to file reports pursuant to Section 15(d) of the Act<sup>4</sup>).

NASD Rule 3210, among other things, requires participants of registered clearing agencies to take action on failures to deliver that exist for 13 consecutive settlement days in certain non-reporting securities. In addition, if the fail to deliver position is not closed out in the requisite time period, a participant of a registered clearing agency or any broker-dealer for which it clears transactions is prohibited from effecting further short

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<sup>2</sup> 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).

<sup>3</sup> 15 U.S.C. 78j.

<sup>4</sup> 15 U.S.C. 78q(d).

sales in the particular specified security without borrowing, or entering into a bona fide arrangement to borrow, the security until the fail to deliver position is closed out.

Pursuant to Rule 3210, FINRA publishes a daily “Threshold Securities List.”<sup>5</sup> The rule became effective on July 3, 2006. In adopting NASD Rule 3210, FINRA believed that the rule represented an important step in reducing long-term fails to deliver in this sector of the marketplace.

In July 2009, the SEC adopted Rule 204 under Regulation SHO as a permanent rule.<sup>6</sup> This rule is intended to further the goal of reducing fails to deliver and addressing potentially abusive “naked” short selling in all equity securities by requiring the delivery of securities by settlement date or, in connection with a short sale, the immediate purchase or borrow of such securities to close out the fail to deliver position by no later than the beginning of regular trading hours on the following settlement day.<sup>7</sup>

Notwithstanding the SEC’s adoption of this new rule, proposed FINRA Rule 4320 continues to be necessary to provide regulatory coverage for fails to deliver in non-

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<sup>5</sup> For purposes of Rule 3210, a non-reporting threshold security is any equity security that is not a reporting security and, for five consecutive settlement days, has: (1) aggregate fails to deliver at a registered clearing agency of 10,000 shares or more; and (2) a reported last sale during normal market hours (9:30 a.m. to 4:00 p.m., Eastern Time (ET)) for the security on that settlement day that would value the aggregate fail to deliver position at \$50,000 or more.

<sup>6</sup> See Securities Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38266 (July 31, 2009).

<sup>7</sup> Rule 204 of Regulation SHO further provides that fails to deliver resulting from long sales or certain bona fide market making activity must be closed out by no later than the beginning of regular trading hours on the third settlement day after settlement date (i.e., T+6).

reporting over-the-counter equity securities that pre-exist the SEC's implementation of temporary Rule 204 in September 2008.<sup>8</sup>

Therefore, FINRA is proposing to adopt NASD Rule 3210 as FINRA Rule 4320 with minor changes to delete language that provided allowances for "grandfathered" securities during the initial implementation period of NASD Rule 3210 and that, therefore, is no longer relevant. The proposed rule change also clarifies, consistent with Regulation SHO, that when a participant closes out a fail-to-deliver-position by purchasing securities of like kind and quantity, that purchase must clear and settle at a registered clearing agency before short sale orders in such securities may be accepted. In addition, the rule change makes certain technical amendments to the rule, including changing references to "NASD" to "FINRA."

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. The implementation date will be no more than 180 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,<sup>9</sup> 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

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<sup>8</sup> Likewise, the SEC is retaining Rule 203(b)(3) of Regulation SHO in order to cover pre-existing fails in threshold securities as defined in Rule 203(c)(6) of Regulation SHO.

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

interest. FINRA believes that adopting the proposed rules as part of the Consolidated FINRA Rulebook continues to be necessary to provide regulatory coverage for fails to deliver in non-reporting over-the-counter equity securities and will continue to help reduce long-term fails to deliver in this sector of the marketplace.

**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.<sup>10</sup>

**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.

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2010-028)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 NASD Rule 3210 (Short Sale Delivery Requirements), with minor changes, as FINRA Rule 4320 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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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"),<sup>3</sup> FINRA is proposing to adopt NASD Rule 3210 (Short Sale Delivery Requirements), with minor changes, as FINRA Rule 4320 in the Consolidated FINRA Rulebook.

On April 4, 2006, the SEC approved NASD Rule 3210, which applies short sale delivery requirements to those equity securities not otherwise covered by the close-out requirements of Regulation SHO. The Regulation SHO close-out requirements apply

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<sup>3</sup> 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).

only to “reporting” securities (i.e., issuers that are registered pursuant to Section 12 of the Act<sup>4</sup> or that are required to file reports pursuant to Section 15(d) of the Act<sup>5</sup>).

NASD Rule 3210, among other things, requires participants of registered clearing agencies to take action on failures to deliver that exist for 13 consecutive settlement days in certain non-reporting securities. In addition, if the fail to deliver position is not closed out in the requisite time period, a participant of a registered clearing agency or any broker-dealer for which it clears transactions is prohibited from effecting further short sales in the particular specified security without borrowing, or entering into a bona fide arrangement to borrow, the security until the fail to deliver position is closed out. Pursuant to Rule 3210, FINRA publishes a daily “Threshold Securities List.”<sup>6</sup> The rule became effective on July 3, 2006. In adopting NASD Rule 3210, FINRA believed that the rule represented an important step in reducing long-term fails to deliver in this sector of the marketplace.

In July 2009, the SEC adopted Rule 204 under Regulation SHO as a permanent rule.<sup>7</sup> This rule is intended to further the goal of reducing fails to deliver and addressing potentially abusive “naked” short selling in all equity securities by requiring the delivery

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<sup>4</sup> 15 U.S.C. 78l.

<sup>5</sup> 15 U.S.C. 78o(d).

<sup>6</sup> For purposes of Rule 3210, a non-reporting threshold security is any equity security that is not a reporting security and, for five consecutive settlement days, has: (1) aggregate fails to deliver at a registered clearing agency of 10,000 shares or more; and (2) a reported last sale during normal market hours (9:30 a.m. to 4:00 p.m., Eastern Time (ET)) for the security on that settlement day that would value the aggregate fail to deliver position at \$50,000 or more.

<sup>7</sup> See Securities Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38266 (July 31, 2009).

of securities by settlement date or, in connection with a short sale, the immediate purchase or borrow of such securities to close out the fail to deliver position by no later than the beginning of regular trading hours on the following settlement day.<sup>8</sup>

Notwithstanding the SEC's adoption of this new rule, proposed FINRA Rule 4320 continues to be necessary to provide regulatory coverage for fails to deliver in non-reporting over-the-counter equity securities that pre-exist the SEC's implementation of temporary Rule 204 in September 2008.<sup>9</sup>

Therefore, FINRA is proposing to adopt NASD Rule 3210 as FINRA Rule 4320 with minor changes to delete language that provided allowances for "grandfathered" securities during the initial implementation period of NASD Rule 3210 and that, therefore, is no longer relevant. The proposed rule change also clarifies, consistent with Regulation SHO, that when a participant closes out a fail-to-deliver-position by purchasing securities of like kind and quantity, that purchase must clear and settle at a registered clearing agency before short sale orders in such securities may be accepted. In addition, the rule change makes certain technical amendments to the rule, including changing references to "NASD" to "FINRA."

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. The implementation date will be no more than 180 days following Commission approval.

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<sup>8</sup> Rule 204 of Regulation SHO further provides that fails to deliver resulting from long sales or certain bona fide market making activity must be closed out by no later than the beginning of regular trading hours on the third settlement day after settlement date (i.e., T+6).

<sup>9</sup> Likewise, the SEC is retaining Rule 203(b)(3) of Regulation SHO in order to cover pre-existing fails in threshold securities as defined in Rule 203(c)(6) of Regulation SHO.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> 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 adopting the proposed rules as part of the Consolidated FINRA Rulebook continues to be necessary to provide regulatory coverage for fails to deliver in non-reporting over-the-counter equity securities and will continue to help reduce long-term fails to deliver in this sector of the marketplace.

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

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

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

Written comments were neither solicited nor received.

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

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

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<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

(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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2010-028 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2010-028. 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 Web site viewing and printing 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-2010-028 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.<sup>11</sup>

Florence E. Harmon

Deputy Secretary

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<sup>11</sup> 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.

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### **Text of Proposed New FINRA Rule (Marked to Show Changes from NASD Rule 3210; NASD Rule 3210 to be Deleted in its Entirety from the Transitional Rulebook)**

\* \* \* \* \*

#### **4000. FINANCIAL AND OPERATIONAL RULES**

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#### **4300. OPERATIONS**

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#### **[3210]4320. Short Sale Delivery Requirements**

(a) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a non-reporting threshold security for 13 consecutive settlement days, the participant shall immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity.

[(1) *Provided, however,* a participant of a registered clearing agency that has a fail to deliver position at a registered clearing agency in a non-reporting threshold security on October 15, 2007, and which, prior to October 15, 2007, had been previously grandfathered from the close-out requirement in paragraph (a) (i.e., because the participant of a registered clearing agency had the fail to deliver position at a registered clearing agency on the settlement day preceding the day that the security became a non-reporting threshold security), shall close out that fail to deliver position within thirty-five settlement days of October 15, 2007 by

purchasing securities of like kind and quantity. The requirements in paragraph (b) shall apply to all such fails to deliver that are not closed out in conformance with this paragraph (a)(1).]

[(2)] (1) *Provided, however,* if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency for thirty-five consecutive settlement days in a non-reporting threshold security that was sold pursuant to SEC Rule 144, the participant shall immediately thereafter close out the fail to deliver position in the security by purchasing securities of like kind and quantity. The requirements in paragraph (b) shall apply to all such fails to deliver that are not closed out in conformance with this paragraph (a)(1)[(2)].

(b) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a non-reporting threshold security for 13 consecutive settlement days (or 35 consecutive settlement days if entitled to rely on paragraph[s] (a)(1)) [or (a)(2) of this rule], the participant and any broker or dealer for which it clears transactions, including any market maker that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(iii) of [SEC] Rule 203 of SEC Regulation SHO, may not accept a short sale order in the non-reporting threshold security from another person, or effect a short sale in the non-reporting threshold security for its own account, without borrowing the security or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency.



(c) If a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker or dealer for which it clears trades or for which it is responsible for settlement, based on such broker or dealer's short position, then the provisions of this [r]Rule relating to such fail to deliver position shall apply to the portion of the fail to deliver position allocated to such registered broker or dealer [that was allocated the fail to deliver position], and not to the participant.

(d) A participant of a registered clearing agency shall not be deemed to have fulfilled the requirements of this [r]Rule where the participant enters into an arrangement with another person to purchase securities as required by this [r]Rule, and the participant knows or has reason to know that the other person will not deliver securities in settlement of the purchase.

(e) For the purposes of this [r]Rule, the following terms shall have the meanings below:

(1) the term "market maker" has the same meaning as in [s]Section 3(a)(38) of the Exchange Act.

(2) the term "non-reporting threshold security" means any equity security of an issuer that is not registered pursuant to [s]Section 12 of the Exchange Act and for which the issuer is not required to file reports pursuant to [s]Section 15(d) of the Exchange Act:

(A) for which there is an aggregate fail to deliver position for five consecutive settlement days at a registered clearing agency of 10,000 shares or more and for which on each settlement day during the five consecutive settlement day period, the reported last sale during normal

market hours for the security on that settlement day that would value the aggregate fail to deliver position at \$50,000 or more, provided that if there is no reported last sale on a particular settlement day, then the price used to value the position on such settlement day would be the previously reported last sale; and

(B) is included on a list published by [NASD] FINRA.

A security shall cease to be a non-reporting threshold security if the aggregate fail to deliver position at a registered clearing agency does not meet or exceed either of the threshold tests specified in paragraph (e)(2)(A) of this [r]Rule for five consecutive settlement days.

(3) the term “participant” means a participant as defined in [s]Section 3(a)(24) of the Exchange Act, that is a[n NASD] FINRA member.

(4) the term “registered clearing agency” means a clearing agency, as defined in [s]Section 3(a)(23)(A) of the Exchange Act, that is registered with the [Commission] SEC pursuant to [s]Section 17A of the Exchange Act.

(5) the term “settlement day” means any business day on which deliveries of securities and payments of money may be made through the facilities of a registered clearing agency.

(f) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may grant an exemption from the provisions of this [r]Rule, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities, or to any person or class of

persons, if such exemption is consistent with the protection of investors and the public interest.

\* \* \* \* \*