

Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2011 - * 017

Amendment No. (req. for Amendments *)

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934Initial * ☒ 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, required when Initial is checked *).

Proposed Rule Change to Amend FINRA Rule 5131 (New Issue Allocations and Distributions)

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 04/18/2011

By Gary L. Goldsholle
(Name *)

Vice President and Associate General Counsel

(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.

Gary Goldsholle,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

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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 (required)

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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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Exhibit Sent As Paper Document

☐

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 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

☐

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 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 (“Exchange Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to FINRA Rule 5131 (New Issue Allocations and Distributions) to simplify the spinning provision and to delay the implementation date of paragraphs (b) and (d)(4).

Below is the text of the proposed rule change. Proposed new language is underlined, proposed deletions in brackets.

* * * * *

5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

* * * * *

5131. New Issue Allocations and Distributions

(a) No Change.

(b) Spinning

[(1) Members must establish, maintain and enforce policies and procedures reasonably designed to ensure that investment banking personnel have no involvement or influence, directly or indirectly, in the new issue allocation decisions of the member.]

(2) and (3) redesignated as (1) and (2).

¹ 15 U.S.C. 78s(b)(1).

(c) through (e) No Change.

• • • **Supplementary Material:** -----

.01 through .03 No Change.

* * * * *

(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 (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

The effective date of the proposed rule change will be the date of Commission approval. FINRA also is proposing to delay the implementation date of paragraphs (b) and (d)(4) until September 26, 2011.

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

(a) Purpose

On November 29, 2010, FINRA issued Regulatory Notice 10-60 announcing Commission approval of SR-NASD-2003-140² and designating the effective date of new Rule 5131 (the "Rule") as May 27, 2011.³

² See Securities Exchange Act Release No. 63010 (September 29, 2010), 75 FR 61541 (October 5, 2010) (Order Approving File No. SR-NASD-2003-140).

³ See Regulatory Notice 10-60 (November 2010) (Approval of New Issue Rule).

A. Spinning

Paragraph (b) of the Rule (Spinning), implements a recommendation from the IPO Advisory Committee Report⁴ to prohibit spinning – i.e., an underwriter’s allocation of IPO shares to directors or executives of investment banking clients in exchange for receipt of investment banking business. The primary means by which the Rule prohibits spinning is through a series of prophylactic prohibitions on the allocation of new issues. Specifically, the rule prohibits allocations of a new issue to any account in which an executive officer or director of a public company or a covered non-public company, or a person materially supported by such executive officer or director, has a beneficial interest: (A) if the company is currently an investment banking services client of the member or the member has received compensation from the company for investment banking services in the past 12 months; (B) if the person responsible for making the allocation decision knows or has reason to know that the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months; or (C) on the express or implied condition that such executive officer or director, on behalf of the company, will retain the member for the performance of future investment banking services.

Paragraph (b)(1) requires that members establish, maintain and enforce policies and procedures reasonably designed to ensure that investment banking personnel have no involvement or influence, directly or indirectly, in the new issue allocation decisions of the member. However, because the term “investment banking personnel” is not defined

⁴ NYSE/NASD IPO Advisory Committee Report and Recommendations (May 2003).
<http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p010373.pdf>.

in the Rule, members have raised concern that, if the term is read co-extensively with the definition of “investment banking services,” certain necessary functions traditionally performed by syndicate personnel would be prohibited. In light of this unintended consequence, FINRA is proposing to delete paragraph (b)(1). FINRA believes that benefits of the anti-spinning provisions can be attained without this particular provision inasmuch as firms currently are required to have written policies and procedures with respect to the spinning prohibitions in paragraph (b)(2) pursuant to NASD Rule 3010.

In addition, upon further discussions with member firms regarding the steps necessary to prepare for compliance with the spinning provisions,⁵ FINRA proposes to delay the implementation date of paragraph (b), as amended, until September 26, 2011.

B. Market Orders

Paragraph (d)(4) of the Rule (Market Orders) prohibits members from accepting any market order for the purchase of shares of a new issue in the secondary market prior to the commencement of trading of such shares in the secondary market. Members have requested additional time to develop a process for reliably identifying new issues and to modify their order handling systems to prevent the acceptance of market orders in new issue shares in contravention of the Rule. FINRA believes the Rule must carefully balance the investor protection concerns with needs of issuers in capital formation and market participants in price discovery. Accordingly, FINRA proposes to delay the implementation date of paragraph (d)(4) until September 26, 2011.

⁵ For example, members have requested additional time to: (1) create additional forms, account documents and other measures of obtaining information from clients necessary to assess eligibility for new issue allocations under the new Rule; (2) build systems and surveillance infrastructure to ensure appropriate blocks of allocations; and (3) developing appropriate compliance policies and procedures and training materials on the new policies and procedures.

As noted in Item 2 of this filing, the effective date of the proposed rule change will be the date of Commission approval. However, FINRA also is proposing to delay the implementation date of paragraphs (b) and (d)(4) until September 26, 2011.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change simplifies member obligations with respect to Rule 5131, thereby aiding member compliance efforts and helping to maintain investor confidence in the capital markets.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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 Exchange Act.⁷

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78s(b)(2).

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 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2011-017)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 5131 (New Issue Allocations and Distributions)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on ,
Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, 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 amend FINRA Rule 5131 (New Issue Allocations and Distributions) to simplify the spinning provision and to delay the implementation date of paragraphs (b) and (d)(4).

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

On November 29, 2010, FINRA issued Regulatory Notice 10-60 announcing Commission approval of SR-NASD-2003-140³ and designating the effective date of new Rule 5131 (the "Rule") as May 27, 2011.⁴

A. Spinning

Paragraph (b) of the Rule (Spinning), implements a recommendation from the IPO Advisory Committee Report⁵ to prohibit spinning – *i.e.*, an underwriter's allocation of IPO shares to directors or executives of investment banking clients in exchange for receipt of investment banking business. The primary means by which the Rule prohibits spinning is through a series of prophylactic prohibitions on the allocation of new issues.

³ See Securities Exchange Act Release No. 63010 (September 29, 2010), 75 FR 61541 (October 5, 2010) (Order Approving File No. SR-NASD-2003-140).

⁴ See Regulatory Notice 10-60 (November 2010) (Approval of New Issue Rule).

⁵ NYSE/NASD IPO Advisory Committee Report and Recommendations (May 2003).
<http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p010373.pdf>.

Specifically, the rule prohibits allocations of a new issue to any account in which an executive officer or director of a public company or a covered non-public company, or a person materially supported by such executive officer or director, has a beneficial interest: (A) if the company is currently an investment banking services client of the member or the member has received compensation from the company for investment banking services in the past 12 months; (B) if the person responsible for making the allocation decision knows or has reason to know that the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months; or (C) on the express or implied condition that such executive officer or director, on behalf of the company, will retain the member for the performance of future investment banking services.

Paragraph (b)(1) requires that members establish, maintain and enforce policies and procedures reasonably designed to ensure that investment banking personnel have no involvement or influence, directly or indirectly, in the new issue allocation decisions of the member. However, because the term “investment banking personnel” is not defined in the Rule, members have raised concern that, if the term is read co-extensively with the definition of “investment banking services,” certain necessary functions traditionally performed by syndicate personnel would be prohibited. In light of this unintended consequence, FINRA is proposing to delete paragraph (b)(1). FINRA believes that benefits of the anti-spinning provisions can be attained without this particular provision inasmuch as firms currently are required to have written policies and procedures with respect to the spinning prohibitions in paragraph (b)(2) pursuant to NASD Rule 3010.

In addition, upon further discussions with member firms regarding the steps necessary to prepare for compliance with the spinning provisions,⁶ FINRA proposes to delay the implementation date of paragraph (b), as amended, until September 26, 2011.

B. Market Orders

Paragraph (d)(4) of the Rule (Market Orders) prohibits members from accepting any market order for the purchase of shares of a new issue in the secondary market prior to the commencement of trading of such shares in the secondary market. Members have requested additional time to develop a process for reliably identifying new issues and to modify their order handling systems to prevent the acceptance of market orders in new issue shares in contravention of the Rule. FINRA believes the Rule must carefully balance the investor protection concerns with needs of issuers in capital formation and market participants in price discovery. Accordingly, FINRA proposes to delay the implementation date of paragraph (d)(4) until September 26, 2011.

The effective date of the proposed rule change will be the date of Commission approval. However, FINRA also is proposing to delay the implementation date of paragraphs (b) and (d)(4) until September 26, 2011.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,⁷ which requires, among other things, that FINRA

⁶ For example, members have requested additional time to: (1) create additional forms, account documents and other measures of obtaining information from clients necessary to assess eligibility for new issue allocations under the new Rule; (2) build systems and surveillance infrastructure to ensure appropriate blocks of allocations; and (3) developing appropriate compliance policies and procedures and training materials on the new policies and procedures.

⁷ 15 U.S.C. 78o-3(b)(6).

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 simplifies member obligations with respect to Rule 5131, thereby aiding member compliance efforts and helping to maintain investor confidence in the capital markets.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2011-017 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-2011-017. 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-2011-017 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.⁸

Elizabeth M. Murphy

Secretary

⁸ 17 CFR 200.30-3(a)(12).