| OMB APPROVAL |
|---|
| OMB Number: 3235-0045<br>Expires: September 30, 2011<br>Estimated average burden<br>hours per response...........38 |

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of * 5

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

File No.* SR - 2009 - * 040
Amendment No. (req. for Amendments *) 3

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, required when Initial is checked *).

**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 * Matthew Last Name * Vitek

Title * Counsel

E-mail * matthew.vitek@finra.org

Telephone * (202) 728-8156 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 09/13/2011

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 L. Goldsholle,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

| | |
|---|---|
| **Form 19b-4 Information (required)**<br>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 (required)**<br>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**<br>Add Remove View<br>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**<br>Add Remove View<br>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**<br>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**<br>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**<br>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. |

On June 4, 2009, FINRA filed with the Securities and Exchange Commission ("SEC" or "Commission") SR-FINRA-2009-040, a proposed rule change to adopt FINRA Rule 2380 (Leverage Limitation for Retail Forex) to prohibit any member firm from permitting a customer to: (1) initiate any forex position with a leverage ratio of greater than 1.5 to 1; and (2) withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 1.5 to 1.

On August 27, 2009, FINRA filed Partial Amendment No. 1 to SR-FINRA-2009-040 and submitted a response to the comments received by the SEC.

On November 12, 2009, FINRA filed Partial Amendment No. 2 to SR-FINRA-2009-040, which replaced and superseded Partial Amendment No. 1 in its entirety. Partial Amendment No. 2 increased the maximum leverage ratio in the proposed rule change from 1.5 to 1, to 4 to 1 and made conforming changes to Supplementary Material .01. In addition, FINRA proposed to exempt from the leverage limitation any security as defined in Section 3(a)(10) of the Securities Exchange Act of 1934.

Under section 742(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, certain foreign exchange transactions with persons who are not "eligible contract participants" with a registered broker or dealer would have been prohibited as of July 16, 2011, in the absence of the Commission adopting a rule to allow such transactions under terms and conditions prescribed by the Commission.[1] Recently, the Commission adopted interim final temporary Rule 15b12-1T to allow a registered broker-dealer to engage in retail forex business until July 16, 2012, provided that the broker-dealer complies with the Securities Exchange Act of 1934, the rules and regulation thereunder, and the rules of the self-regulatory organization(s) of which the broker-dealer is a member, insofar as they are applicable to retail forex transactions.[2] FINRA is filing this Partial Amendment No. 3 to SR-FINRA-2009-040 to implement the proposed rule change as a pilot program. The proposed rule change would expire on July 16, 2012, the same expiration date of the Commission's interim final temporary rule.

The amendment to the text of the proposed rule change is set forth below. FINRA is including with this Partial Amendment No. 3 an Exhibit 4 that shows the changes from the rule text set forth in the original filing and Partial Amendment No. 2.

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1 See Public Law 111–203, § 742(c), (to be codified at 7 U.S.C. 2(c)).

2 See Secuities Exchange Act Release No. 64874 (July 13, 2011), 76 FR 41676 (July 15, 2011) (Retail Foreign Exchange Transactions).

**EXHIBIT 4**

Exhibit 4 shows the changes proposed in this Partial Amendment No. 3, with the proposed changes in the original filing and Partial Amendment No. 2 shown as if adopted. New language proposed in this Partial Amendment No. 3 is underlined.

* * * * *

**2380. Leverage Limitation for Retail Forex <u>Pilot Program</u>**

(a) Leverage Ratio Limitation

No member shall permit a customer to initiate any forex position with a leverage ratio greater than 4 to 1. In addition, no member shall permit a customer to withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 4 to 1.

(b) Exemption

A security as defined in Section 3(a)(10) of the Securities Exchange Act of 1934 is exempt from paragraph (a) of this rule.

(c) Definitions

(1) The term “forex” means a foreign currency spot, forward, future option or any other agreement, contract, or transaction in foreign currency that is:

(A) offered or entered into on a leveraged basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis;

(B) offered to or entered into with persons that are not eligible contract participants as defined in Section 1a(12) of the Commodity Exchange Act; and

(C) not executed on or subject to the rules of a contract market registered pursuant to Section 5 of the Commodity Exchange Act, a derivatives transaction execution facility registered pursuant to Section 5a of the Commodity Exchange Act, a national securities exchange registered pursuant to Section 6(a) of the Securities Exchange Act of 1934, or a foreign board of trade.

(2) The term “leverage ratio” is the fraction represented by the numerator which is the notional value of a forex transaction, and the denominator, which is the amount of good faith deposit or account equity required by the customer for a forex position.

<u>(d) Effective Period of Pilot Program</u>

<u>This Rule will be in effect for a pilot period expiring on July 16, 2012.</u>

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

**.01 Leverage Ratio Example.** In order to meet the leverage ratio limitations of paragraph (a) of this rule, a customer must deposit at least 1/4 of the notional value of the forex contract. For example, a customer entering into a forex contract representing $500,000 of a foreign currency must deposit $125,000 to achieve a leverage ratio of 4 to 1.

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