

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4File No.* SR - 2009 - * 060
Amendment No. (req. for Amendments *) 1Proposed 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 *).

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 * Stan Last Name * Macel
Title * Assistant General Counsel
E-mail * stan.macel@finra.org
Telephone * (202) 728-8056 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 12/21/2011

By Alan B. Lawhead
(Name *)

Vice President and Director Appellate Group

(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.

Alan Lawhead, alan.lawhead@finra.org

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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

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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 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.

On September 10, 2009, FINRA filed with the Securities and Exchange Commission (“SEC” or “Commission”) SR-FINRA-2009-060, a proposed rule change to amend FINRA Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books) to clarify the scope of the rule and to clarify certain issues with regard to service of requests made pursuant to the rule. The SEC published the proposed rule change for notice and comment on October 22, 2009¹ and received seven comment letters.² FINRA filed a letter responding to comments on December 22, 2009.³ FINRA is filing this Partial Amendment No. 1 to respond further to the comments received by the Commission and to propose amendments in response to these comments.

Rule 8210 confers on FINRA staff the authority to compel a member, person associated with a member, or other person over whom FINRA has jurisdiction to produce documents, provide testimony, or supply written responses or electronic data in connection with an investigation, complaint, examination or adjudicatory proceeding. Rule 8210(a) currently provides that FINRA staff shall have the right to inspect and copy the books, records and accounts of all applicable members and persons with respect to any matter involved in the investigation, complaint, examination or proceeding. The proposed rule change would: clarify that the information must be in the member’s or person’s “possession, custody or control;” explicitly address the methods by which notice will be deemed received by persons currently or formerly associated with a member in an unregistered capacity; and explicitly address issues of service on members or persons that are known to be represented by counsel.

Several commenters raised concerns that the rule, as amended, could appear to permit FINRA to compel members or associated persons to produce documents that may

¹ See Securities Exchange Act Release No. 60836 (October 16, 2009), 74 FR 54614 (October 22, 2009) (Notice of Filing of File No. SR-FINRA-2009-060).

² See letters from Dale E. Brown, President & CEO, Financial Services Institute, Inc., to Elizabeth Murphy, Secretary, SEC, dated November 4, 2009 (“FSI”); BTUD, to Elizabeth Murphy, Secretary, SEC, dated October 29, 2009 (“BTUD”); Frederick T. Greene, CIMA, Senior V.P., Portfolio Manager, Woodforest Financial Services, Inc., to Elizabeth Murphy, Secretary, SEC, dated October 29, 2009 (“Woodforest”); Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association, to Elizabeth Murphy, Secretary, SEC, dated December 16, 2009 (“SIFMA”); Bari Havlik, Chief Compliance Officer, Senior Vice President, Charles Schwab & Co., Inc., to Elizabeth Murphy, Secretary, SEC, dated November 12, 2009 (“Schwab”); Ronald C. Long, Director, Regulatory Affairs, Wells Fargo Advisors, to Elizabeth Murphy, Secretary, SEC, dated November 12, 2009 (“Wells Fargo”); and Neal E. Nakagiri, President, CEO, CCO, NPB Financial Group, LLC, to Elizabeth Murphy, Secretary, SEC, dated October 29, 2009 (“NPB”).

³ See letter from Stan Macel, Assistant General Counsel, FINRA, to Elizabeth Murphy, Secretary, SEC, dated December 22, 2009.

“belong” to a third party.⁴ As FINRA noted in its response to comments, this concern incorrectly assumes that FINRA’s investigations into the conduct of FINRA members and associated persons are strictly limited in scope to the FINRA members and associated persons under investigation. In fact, although FINRA has jurisdiction to file an action against its members and associated persons (and those otherwise subject to its jurisdiction), its investigations can involve non-FINRA members, including customers, issuers, or foreign businesses. As a result, FINRA believes that third party documents within the “possession, custody, and control” of the FINRA member or associated person that relate to the investigation should be produced pursuant to Rule 8210 and concerns solely based on their status as third party documents should not prevent the Commission from approving the proposed rule change.

FINRA, however, acknowledges that the scope of the Rule 8210 has limits and proposes, in part to address commenters’ concerns described above, to add Supplementary Material that would provide additional interpretation in this regard. First, the proposed Supplementary Material would provide that, books, records and accounts “of” a broker dealer, associated person or person subject to FINRA’s jurisdiction (as referenced in paragraph 8210(a)) would include those books, records and accounts that the broker-dealer or its associated persons make or keep relating to its operation as a broker-dealer or relating to the person’s association with the member. This would include, but not be limited to, investigations of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other FINRA rules, MSRB rules and the federal securities laws. The proposed Supplementary Material would also clarify that such an investigation would not ordinarily include books and records that are in the possession, custody or control of a member or associated person, but whose bona fide ownership is held by an independent third party that is otherwise unrelated to the business of the member. Finally, the proposed Supplementary Material would provide that a FINRA member, associated person, or person subject to FINRA’s jurisdiction must make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as an attorney, accountant or other professional service provider, but the FINRA member, associated person or person subject to FINRA’s jurisdiction controls or has a right to demand them.

This Partial Amendment also makes a technical change to the text of Rule 8210 to reflect the addition of a paragraph to the Rule since this proposed rule change was originally filed in August 2009. Specifically, this Partial Amendment adds a reference to paragraph 8210(g);⁵ the proposed rule change has no effect on the text of paragraph 8210(g), which requires encryption of certain information provided via portable media device.

⁴ See letters from Schwab, SIFMA and Wells Fargo.

⁵ See Securities Exchange Act Release No. 63016 (September 29, 2010), 75 FR 61793 (October 6, 2010) (Order Approving Proposed Rule Change of File No. SR-FINRA-2010-021).

The amendments to the proposed rule change are set forth below. FINRA is including with this Partial Amendment No. 1 an Exhibit 4 that shows the changes from the original rule text set forth in the proposed rule change.

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed additions in this Partial Amendment No. 1 appear underlined.

* * * * *

8200. INVESTIGATIONS

8210. Provision of Information and Testimony and Inspection and Copying of Books

(a) Authority of Adjudicator and FINRA Staff

For the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, an Adjudicator or FINRA staff shall have the right to:

(1) require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding that is in such member's or person's possession, custody or control.

(b) through (c) No Change.

(d) Notice

A notice under this Rule shall be deemed received by the member or currently or formerly registered person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository. With respect to a person who is currently associated with a member in an unregistered capacity, a notice under this Rule shall be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the member as reflected in the Central Registration Depository. With respect to a person subject to FINRA's jurisdiction who was formerly associated with a member in an unregistered capacity, a notice under this Rule shall be deemed received by the person upon personal service, as set forth in Rule 9134(a)(1).

If the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the member or person has actual knowledge that the address in the Central Registration Depository is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

(1) the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository; and

(2) any other more current address of the member or the person known to the Adjudicator or FINRA staff who is responsible for mailing or otherwise transmitting the notice.

If the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the member or person knows that the member or person is represented by counsel regarding the investigation, complaint, examination, or proceeding that is the subject of the notice, then the notice shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the member or person, and any notice served upon counsel shall be deemed received by the member or person.

(e) through [(f)](g) No Change.

• • • Supplementary Material: -----

.01 Books and Records Relating to Investigations. This rule requires FINRA members, associated persons and persons subject to FINRA's jurisdiction to provide FINRA staff and adjudicators with requested books, records and accounts. In specifying the books, records and accounts "of such member or person," paragraph (a) of the rule refers to books, records and accounts that the broker-dealer or its associated persons make or keep relating to its operation as a broker-dealer or relating to the person's association with the member. This includes but is not limited to records relating to a FINRA investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other FINRA rules, MSRB rules, and the federal securities laws. It does not ordinarily include books and records that are in the possession, custody or control of a member or associated person, but whose bona fide ownership is held by an independent third party that is otherwise unrelated to the business of the member. The rule requires, however, that a FINRA member, associated person, or person subject to FINRA's jurisdiction must make

available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as a professional service provider, but the FINRA member, associated person or person subject to FINRA's jurisdiction controls or has a right to demand them.

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