Requirea	fields are shown with yellow backgrou	unds and asterisks.		OMB Number: 3235-0045 Estimated average burden hours per response	
Page 1 c	of * 40 SECUR	TIES AND EXCHANGE COMM WASHINGTON, D.C. 20549 Form 19b-4	Amendment No. (req. fo	D.* SR - 2013 - * 055	
	by Financial Industry Regulatory Aut ant to Rule 19b-4 under the Securities				
Initial *	Amendment * Withdra	wal Section 19(b)(2) *	Section 19(b)(3)(A) * Rule	Section 19(b)(3)(B) *	
Pilot	Extension of Time Period for Commission Action *	xpires *	19b-4(f)(1) 19b-4(f)(4) 19b-4(f)(2) 19b-4(f)(5) 19b-4(f)(3) ✓ 19b-4(f)(6) 19b-4(f)(6)	5)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 806(e)(1) * Section 806(e)(2) * Section 806(e)(1) * Section 3C(b)(2) *					
Exhibit 2	Exhibit 2 Sent As Paper Document Exhibit 3 Sent As Paper Document				
Descr	Description				
Provide	e a brief description of the action (limit 25	0 characters, required when Initia	l is checked *).		
Propo	Proposed Rule Change to Amend FINRA Rule 2360 (Options) Position Limits				
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 action.					
First N	lame * Kathryn	Last Name * Moore			
Title *					
E-mail	* kathryn.moore@finra.org				
Teleph	none * (202) 728-8200 Fax (20	2) 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.					
			(Title *)		
Date	12/23/2013	Senior Vice Presider Policy	nt and Director of Capital Mark	ets	
Ву	Stephanie Dumont				
this form	(Name *) Clicking the button at right will digitally sign and I. A digital signature is as legally binding as a p e, and once signed, this form cannot be change	hysical	hanie Dumont,		

OMB APPROVAL

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549				
For complete Form 19b-4 instructions please refer to the EFFS 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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * 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, security-based swap submission, or advance notice 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 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 Add Remove View 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 CopiesAddRemoveView	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.			
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. <u>Text of the Proposed Rule Change</u>

(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") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend FINRA Rule 2360 (Options) to: (1) specify that position limits for standardized equity options shall be the highest position limit established by an options exchange on which the option trades, which has the effect of eliminating position limits on standardized options on Standard and Poor's Depositary Receipts Trust ("SPY") and increasing the position limit for standardized options on iShares MSCI Emerging Markets Index Fund ("EEM") to 500,000 contracts; and (2) increase the position limit for conventional options on EEM to 500,000 contracts.

The text of the proposed rule change is attached as Exhibit 5.

- (b) Not applicable.
- (c) Not applicable.

2. <u>Procedures of the Self-Regulatory Organization</u>

The Chief Legal Officer of FINRA authorized the filing of the proposed rule change with the SEC 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 and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

15 U.S.C. 78s(b)(1).

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

(a) Purpose

FINRA Rule 2360(b)(3)(A) imposes a position limit on the number of equity options contracts in each class on the same side of the market that can be held or written by a member, a person associated with a member, or a customer or a group of customers acting in concert. Position limits are intended to prevent the establishment of options positions that can be used to manipulate or disrupt the underlying market or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In addition, position limits serve to reduce the potential for disruption of the options market itself, especially in illiquid options classes. FINRA understands that the Commission, when considering the appropriate level at which to set options position and exercise limits, seeks to prevent investors from disrupting the market in the security underlying the option.² This consideration has been balanced by the concern that the limits "not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market."³

Currently, Rule 2360(b)(3)(A) establishes position limits for equity options according to a five-tiered system in which options on more actively traded stocks with larger public floats are subject to higher position limits. Rule 2360 does not specifically

See Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4912-4913 (February 1, 1999) (Order Approving File No. SR-CBOE-98-23) (citing H.R. No. IFC-3, 96th Cong., 1st Sess. at 189-91 (Comm. Print 1978)).

³ <u>Id.</u> at 4913.

govern how a particular equity option falls within one of the tiers. Rather, the position limit established by the rules of an options exchange for a particular equity option is the applicable position limit for purposes of Rule 2360.⁴ Position limits for conventional equity options typically are the same as the limits for standardized equity options for which the underlying security qualifies or would be able to qualify.⁵

Standardized Options

As noted above, Rule 2360 provides that the five-tiered position limits established by the rules of an options exchange governs standardized equity options position limits. However, at times the options exchanges have increased position limits beyond the highest tier (currently 250,000 contracts) for certain exchange-traded funds ("ETF") options. For example, the options exchanges raised the position limit for standardized options on 'SPY options to 900,000 contracts.⁶ In response, FINRA filed a

⁴ <u>See CBOE Rule 4.11; ISE Rule 412; NASDAQ OMX PHLX Rule 1001; NYSE Amex Rule 904; NYSE Arca Rule 6.8; BOX Rule 3120 and IM-3120-2; Nasdaq Chapter III, Section 7; BX Chapter III, Section 7; and BATS Rule 18.7.</u>

⁵ <u>See</u> Rule 2360(b)(3)(A)(viii). Standardized equity option contracts on the same side of the market overlying the same security are not aggregated with conventional equity option contracts or FLEX Equity Option contracts.

See the options exchanges' filings to increase the position limits on SPY options to 900,000 contracts in Securities Exchange Act Release No. 64695 (June 17, 2011), 76 FR 36942 (June 23, 2011) (Order Approving File No. SR-Phlx-2011-58); Securities Exchange Act Release No. 64760 (June 28, 2011), 76 FR 39143 (July 5, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-ISE-2011-34); Securities Exchange Act Release No. 64928 (July 20, 2011), 76 FR 44633 (July 26, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-CBOE-2011-065); Securities Exchange Act Release No. 64966 (July 26, 2011), 76 FR 45899 (August 1, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEAmex-2011-50); and Securities Exchange Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEArca-2011-47).

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corresponding rule change.⁷ Recently, the options exchanges amended position limits again to eliminate the position limit for standardized SPY options⁸ and raise the position limit for standardized EEM options.⁹ Instead of continuing to file separate proposed rule

<u>See</u> the options exchanges' filings to increase the position limits on EEM options to 500,000 contracts in Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (Order Approving File No. SR-CBOE-2012-066); Securities Exchange Act Release No. 68293 (November 27, 2012), 77 FR 71644 (December 3, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2012-132); Securities Exchange Act Release No. 68398 (December 11, 2012), 77 FR 74700 (December 17, 2012) (Notice of Filing and Immediate Effectiveness of File No. 68359 (December 5, 2012), 77 FR 73716 (December 11, 2012) (Notice of Filing and Immediate Effectiveness of File No. 68359 (December 5, 2012), 77 FR 73716 (December 11, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEArca-2012-132); Securities Exchange Act Release No. 68358 (December 11, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEArca-2012-132); Securities Exchange Act Release No. 68358 (December 11, 2012) (Notice of Filing and Immediate Effectiveness of File No. 58-NYSEArca-2012-132); Securities Exchange Act Release No. 68358 (December 5, 2012), 77 FR 73708 (December 11, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEMKT-2012-71); and Securities Exchange Act Release No. 68478

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⁷ See Securities Exchange Act Release No. 65086 (August 10, 2011), 76 FR 50796 (August 16, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Position Limit for Options on the Standard and Poor's Depositary Receipts Trust; File No. SR-FINRA-2011-036).

⁸ See the options exchanges' filings to eliminate position limits on SPY options on a pilot basis in Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (Order Approving File No. SR-NYSEAmex-2012-29); Securities Exchange Act Release No. 67937 (September 27, 2012), 77 FR 60489 (October 3, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-CBOE-2012-091); Securities Exchange Act Release No. 67999 (October 5, 2012), 77 FR 62295 (October 12, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2012-122); Securities Exchange Act Release No. 68000 (October 5, 2012), 77 FR 62300 (October 12, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-ISE-2012-81); Securities Exchange Act Release No. 68001 (October 5, 2012), 77 FR 62303 (October 12, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEArca-2012-112); and Securities Exchange Act Release No. 67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (Notice of Filing of File No. SR-BOX-2012-013). NYSE MKT, CBOE and PHLX recently have extended their pilot programs. See Securities Exchange Act Release No. 70734 (October 22, 2013), 78 FR 64255 (October 28, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEMKT-2013-83); Securities Exchange Act Release No. 70878 (November 14, 2013), 78 FR 69737 (November 20, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-CBOE-2013-106); and Securities Exchange Act Release No. 70879 (November 14, 2013), 78 FR 69731 (November 20, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2013-108).

changes to harmonize the FINRA provision regarding position limits for such standardized equity options with those of the options exchanges, FINRA proposes to amend Rule 2360(b)(3)(A) (and re-number it as Rule 2360(b)(3)(A)(i)) to eliminate reference to the specific five tiers and in their place specify that a member shall not hold or control or be obligated in respect of an aggregate standardized equity options position in excess of the highest position limit established by an exchange on which the option trades.¹⁰ As a result, under the proposed rule change, the position limits for standardized options on EEM would be 500,000 contracts and there would be no position limit for standardized options on SPY consistent with the options exchange provisions.

The proposed rule change would allow members to immediately take advantage of any increased standardized equity option position limit that may be set by an options exchange as approved by the SEC without waiting for FINRA to file a corresponding rule change.¹¹ The proposed rule change is consistent with FINRA's provision regarding

(December 19, 2012), 77 FR 76132 (December 26, 2012) (Notice of Filing and Immediate Effectiveness of SR-BOX-2012-023).

¹⁰ Rule 2360(b)(4) sets forth exercise limits through incorporating by reference options position limits under the rule. Accordingly, although the proposed rule change would not amend the text of Rule 2360(b)(4), the proposed rule change also would correspondingly raise exercise limits on the applicable standardized equity option.

¹¹ With respect to future potential increases for position limits by an options exchange, FINRA members would be able to take advantage of any increased position limit subject to the rules of any other options exchange of which such FINRA member may also be a member. For example, if CBOE increases the position limit on XYZ options to 300,000 contracts (from 250,000 contracts), then any CBOE and FINRA member (or a FINRA-only member) would be entitled to use the higher limit. However, if the FINRA member is also a member of the ISE and the ISE has not yet raised the position limit on XYZ options, such member would be bound by the lower ISE position limit. position limits on index options, which incorporates the position limits as set by the options exchange on which the index option trades.¹²

Conventional Options

As noted above, currently position limits for conventional options are the same as the limits for standardized options for which the underlying security qualifies or would be able to qualify.¹³ FINRA proposes to maintain this structure for purposes of securities that have position limits within the five-tiers (i.e., up to the 250,000 contract position limit). Accordingly, FINRA proposes to amend Rule 2360(b)(3)(A)(viii) (and re-number it as Rule 2360(b)(3)(A)(iii)) to provide that conventional equity options shall be subject to a basic position limit of 25,000 contracts or a higher tier for conventional option contracts on securities that underlie exchange-traded options qualifying for such higher tier as determined by the rules of the options exchanges. In addition, for options on securities that have higher position limits – currently, only the ETFs listed in Supplementary Material .03 – FINRA proposes to incorporate such position limits for conventional options on ETFs into the body of the text. At this time, FINRA also proposes to conform to the options exchanges' recent amendments that increased the position limit to 500,000 contracts for standardized options on EEM by increasing the position limit applicable to conventional options on EEM to 500,000 contracts.¹⁴

In support of the increased position limit on conventional EEM options, below are the trading statistics comparing EEM to IWM and SPY. As shown in the following table, the average daily volume in 2012 for EEM was 49.4 million shares compared to 45.7

¹² <u>See</u> Rule 2360(b)(3)(B).

¹³ <u>See note 5.</u>

¹⁴ <u>See</u> note 9.

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million shares for IWM and 143.3 million shares for SPY. The total shares outstanding for EEM were 911.7 million compared to 243.7 million shares for IWM and 837.5 million shares for SPY. Further, the fund market cap for EEM was \$34.1 billion compared to \$24.6 billion for IWM and \$137.2 billion for SPY.

ETF	2012 ADV (mil. shares)	2012 ADV (option contracts)	Shares Outstanding (Mil.)	Fund Market Cap (\$bil)
EEM	49.4	256,453	911.7	34.1
IWM	45.7	498,102	243.7	24.6
SPY	143.3	2,342,942	837.5	137.2

In further support of this proposal, as noted by CBOE, EEM tracks the performance of the MSCI Emerging Markets Index, which has approximately 800 component securities.¹⁵ As noted on MSCI's website: "[t]he MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance of emerging markets. The MSCI Emerging Markets Index consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey."¹⁶ CBOE, in its filing, indicated that EEM still qualifies for the initial listing

¹⁵ See <u>http://us.ishares.com/product_info/fund/overview/EEM.htm</u> and <u>http://www.msci.com/products/indices/licensing/msci_emerging_markets/</u>. Identification of the specific securities in the MSCI Emerging Markets Index and their individual concentrations in the MSCI Emerging Markets Index can be accessed at: <u>http://us.ishares.com/product_info/fund/holdings/EEM.htm</u>.

¹⁶ <u>See http://www.msci.com/products/indices/tools/index.html#EM.</u>

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criteria set forth in CBOE Rule 5.3.06(v) and that more than 50% of the weight of the securities held by EEM are subject to a comprehensive surveillance agreement ("CSA").¹⁷ In addition, CBOE further notes that the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any one country that is not subject to a CSA do not represent 20% or more of the weight of the MSCI Emerging Markets Index.¹⁸ Finally, the component securities of the MSCI Emerging Markets Index.¹⁸ Finally, the component securities of the MSCI Emerging Markets Index.¹⁹

FINRA believes that the liquidity in the underlying ETF and the liquidity in EEM options support its request to increase the position limits for conventional EEM options as similar to the standardized EEM options. Through November 29, 2013, the year-to-date average daily trading volume in the ETF for EEM across all exchanges was 62 million shares. The year-to-date average daily trading for EEM options across all exchanges was 327,347 contracts.

FINRA believes that increasing position limits for EEM conventional options will lead to a more liquid and competitive market environment for EEM options that will benefit customers interested in this product.

Surveillance and Reporting

Further, FINRA believes that the modified position limits provisions are appropriate in light of the existing surveillance procedures and reporting requirements at

¹⁷ <u>See</u> note 9.

¹⁸ <u>See</u> note 9.

¹⁹ <u>See</u> note 9.

FINRA,²⁰ the options exchanges, and at the several clearing firms, which are capable of properly identifying unusual or illegal trading activity. These procedures use daily monitoring of market movements by automated surveillance techniques to identify unusual activity in both options and underlying stocks.²¹

In addition, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.²² Options positions are part of any reportable positions and cannot legally be hidden. Moreover, the previously noted Rule 2360(b)(5) requirement that members must file reports with FINRA for any customer that held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of FINRA's surveillance efforts.

Finally, FINRA believes that the current financial requirements imposed by FINRA and by the Commission adequately address financial responsibility concerns that a member or its customer will maintain an inordinately large unhedged position in any option with a higher position limit. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin or capital that a member must maintain for a large position. Under Rule 4210(f)(8)(A), FINRA also may impose a higher margin requirement upon a member when FINRA determines a higher requirement is warranted. In addition, the

 $[\]frac{20}{20}$ See Rule 2360(b)(5) for the options reporting requirements.

²¹ These procedures have been effective for the surveillance of options trading and will continue to be employed.

²² 17 CFR 240.13d-1.

Commission's net capital rule²³ imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁴ 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 the proposed rule change promotes consistent regulation by harmonizing position limits on standardized equity options with those of the other self-regulatory organizations. FINRA further believes that increasing the position limit on conventional EEM options promotes consistent regulation by harmonizing the position limit with its standardized counterpart. In addition, FINRA believes the proposed rule change will be beneficial to large market makers and institutions (which generally have the greatest ability to provide liquidity and depth in products that may be subject to higher position limits as has been the case with recently approved increased position limits²⁵), as well as retail traders, investors and public customers, by providing them with a more effective trading and hedging vehicle.

²³ 17 CFR 240.15c3-1.

²⁴ 15 U.S.C. 78<u>o</u>-3(b)(6).

 $[\]frac{25}{\text{See}}$ notes 8 and 9.

4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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. As noted above, the proposed rule change would amend Rule 2360 to harmonize FINRA's position limits on standardized options with those of the options exchange (which are subject to approval by the SEC), and to harmonize position limits for conventional EEM options with the position limit for standardized EEM options.²⁶ Under the current rule, broker-dealers that are members of FINRA remain subject to the lower FINRA specified contract position limit and may not avail themselves of the higher position limit as set by an options exchange until FINRA can file a corresponding change. FINRA believes that the proposed rule change promotes consistent regulation by harmonizing standardized equity option position limits with those of the options exchanges and by harmonizing conventional EEM options position limits with their standardized counterpart. FINRA believes that setting consistent position limits for standardized options does not result in any burden on competition and would allow market participants to compete equally regardless of membership with an options exchange. Likewise, FINRA believes that harmonizing position limits for conventional EEM options does not result in any burden on competition and would allow market participants in the conventional EEM options market to compete effectively with participants using the standardized counterpart.

²⁶ See notes 8 and 9.

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5. <u>Self-Regulatory Organization's Statement on Comments on the Proposed</u> <u>Rule Change Received from Members, Participants, or Others</u>

Written comments were neither solicited nor received.

6. <u>Extension of Time Period for Commission Action</u>

Not applicable.

7. <u>Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for</u> <u>Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)</u>

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act²⁷ and paragraph (f)(6) of Rule 19b-4 thereunder,²⁸ 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 or such shorter time as the Commission may designate. The proposed rule change is based on the rules of the options exchanges as noted in Item 8 below, and thus would ensure consistent regulation with respect to position limits (and exercise limits)²⁹ for SPY options and EEM options and standardized equity options as such may be established by an options exchange as approved by the SEC for the protection of investors and the public interest.

FINRA requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),³⁰ so FINRA may immediately harmonize position limits with those of other self-regulatory organizations to ensure consistent regulation for the protection of

²⁷ 15 U.S.C. 78s(b)(3).

²⁸ 17 CFR 240.19b-4(f)(6).

²⁹ <u>See</u> note 10.

³⁰ 17 CFR 240.19b-4(f)(6)(iii).

investors and the public interest.³¹ In accordance with Rule 19b-4(f)(6),³² 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, or such shorter time as the Commission may designate, as specified in Rule

19b-4(f)(6)(iii) under the Act.³³

8. <u>Proposed Rule Change Based on Rules of Another Self-Regulatory</u> <u>Organization or of the Commission</u>

See CBOE Rule 4.11; ISE Rule 412; NASDAQ OMX PHLX Rule 1001; NYSE

Amex Rule 904; NYSE Arca Rule 6.8; BOX Rule 3120 and IM-3120-2; Nasdaq Chapter

III, Section 7; BX Chapter III, Section 7; and BATS Rule 18.7.

9. <u>Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act</u> Not applicable.

10. <u>Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing</u> <u>and Settlement Supervision Act</u>

Not applicable.

11. <u>Exhibits</u>

Exhibit 1. Completed notice of proposed rule change for publication in the

Federal Register.

Exhibit 5. Text of proposed rule change.

³³ 17 CFR 240.19b-4(f)(6)(iii).

 $[\]frac{31}{2}$ See notes 8 and 9.

³² 17 CFR 240.19b-4(f)(6).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION (Release No. 34- ; File No. SR-FINRA-2013-055)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 2360 (Options) Position Limits

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. 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. <u>Self-Regulatory Organization's Statement of the Terms of Substance of the</u> <u>Proposed Rule Change</u>

FINRA is proposing to amend FINRA Rule 2360 (Options) to: (1) specify that position limits for standardized equity options shall be the highest position limit established by an options exchange on which the option trades, which has the effect of eliminating position limits on standardized options on Standard and Poor's Depositary Receipts Trust ("SPY") and increasing the position limit for standardized options on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

iShares MSCI Emerging Markets Index Fund ("EEM") to 500,000 contracts; and (2) increase the position limit for conventional options on EEM to 500,000 contracts.

The text of the proposed rule change is available on FINRA's website at <u>http://www.finra.org</u>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis</u> 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. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory</u> <u>Basis for, the Proposed Rule Change</u>
- 1. Purpose

FINRA Rule 2360(b)(3)(A) imposes a position limit on the number of equity options contracts in each class on the same side of the market that can be held or written by a member, a person associated with a member, or a customer or a group of customers acting in concert. Position limits are intended to prevent the establishment of options positions that can be used to manipulate or disrupt the underlying market or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In addition, position limits serve to reduce the potential for disruption of the options market itself, especially in illiquid options classes. FINRA understands that the Commission, when considering the appropriate level at which to set options position and exercise limits, seeks to prevent investors from disrupting the market in the security underlying the option.⁴ This consideration has been balanced by the concern that the limits "not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market."⁵

Currently, Rule 2360(b)(3)(A) establishes position limits for equity options according to a five-tiered system in which options on more actively traded stocks with larger public floats are subject to higher position limits. Rule 2360 does not specifically govern how a particular equity option falls within one of the tiers. Rather, the position limit established by the rules of an options exchange for a particular equity option is the applicable position limit for purposes of Rule 2360.⁶ Position limits for conventional equity options typically are the same as the limits for standardized equity options for which the underlying security qualifies or would be able to qualify.⁷

Standardized Options

As noted above, Rule 2360 provides that the five-tiered position limits established by the rules of an options exchange governs standardized equity options position limits. However, at times the options exchanges have increased position limits beyond the

⁴ <u>See</u> Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4912-4913 (February 1, 1999) (Order Approving File No. SR-CBOE-98-23) (citing H.R. No. IFC-3, 96th Cong., 1st Sess. at 189-91 (Comm. Print 1978)).

⁵ <u>Id.</u> at 4913.

⁶ <u>See</u> CBOE Rule 4.11; ISE Rule 412; NASDAQ OMX PHLX Rule 1001; NYSE Amex Rule 904; NYSE Arca Rule 6.8; BOX Rule 3120 and IM-3120-2; Nasdaq Chapter III, Section 7; BX Chapter III, Section 7; and BATS Rule 18.7.

⁷ <u>See Rule 2360(b)(3)(A)(viii)</u>. Standardized equity option contracts on the same side of the market overlying the same security are not aggregated with conventional equity option contracts or FLEX Equity Option contracts.

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highest tier (currently 250,000 contracts) for certain exchange-traded funds ("ETF") options. For example, the options exchanges raised the position limit for standardized options on 'SPY options to 900,000 contracts.⁸ In response, FINRA filed a corresponding rule change.⁹ Recently, the options exchanges amended position limits again to eliminate the position limit for standardized SPY options¹⁰ and raise the position

⁹ See Securities Exchange Act Release No. 65086 (August 10, 2011), 76 FR 50796 (August 16, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Position Limit for Options on the Standard and Poor's Depositary Receipts Trust; File No. SR-FINRA-2011-036).

10 See the options exchanges' filings to eliminate position limits on SPY options on a pilot basis in Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (Order Approving File No. SR-NYSEAmex-2012-29); Securities Exchange Act Release No. 67937 (September 27, 2012), 77 FR 60489 (October 3, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-CBOE-2012-091); Securities Exchange Act Release No. 67999 (October 5, 2012), 77 FR 62295 (October 12, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2012-122); Securities Exchange Act Release No. 68000 (October 5, 2012), 77 FR 62300 (October 12, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-ISE-2012-81); Securities Exchange Act Release No. 68001 (October 5, 2012), 77 FR 62303 (October 12, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEArca-2012-112); and Securities Exchange Act Release No. 67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (Notice of Filing of File No. SR-BOX-2012-013). NYSE MKT, CBOE and PHLX recently have extended their pilot programs. See Securities Exchange Act Release No. 70734 (October 22, 2013), 78 FR 64255 (October 28, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEMKT-2013-83); Securities Exchange Act Release No. 70878 (November 14, 2013), 78 FR 69737 (November 20, 2013) (Notice of Filing and Immediate

 <u>See</u> the options exchanges' filings to increase the position limits on SPY options to 900,000 contracts in Securities Exchange Act Release No. 64695 (June 17, 2011), 76 FR 36942 (June 23, 2011) (Order Approving File No. SR-Phlx-2011-58); Securities Exchange Act Release No. 64760 (June 28, 2011), 76 FR 39143 (July 5, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-ISE-2011-34); Securities Exchange Act Release No. 64928 (July 20, 2011), 76 FR 44633 (July 26, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-CBOE-2011-065); Securities Exchange Act Release No. 64966 (July 26, 2011), 76 FR 45899 (August 1, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEAmex-2011-50); and Securities Exchange Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing and Immediate Effectiveness of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of Filing Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEArca-2011-47).

limit for standardized EEM options.¹¹ Instead of continuing to file separate proposed rule changes to harmonize the FINRA provision regarding position limits for such standardized equity options with those of the options exchanges, FINRA proposes to amend Rule 2360(b)(3)(A) (and re-number it as Rule 2360(b)(3)(A)(i)) to eliminate reference to the specific five tiers and in their place specify that a member shall not hold or control or be obligated in respect of an aggregate standardized equity options position in excess of the highest position limit established by an exchange on which the option trades.¹² As a result, under the proposed rule change, the position limits for standardized options on SPY consistent with the options exchange provisions.

Effectiveness of File No. SR-CBOE-2013-106); and Securities Exchange Act Release No. 70879 (November 14, 2013), 78 FR 69731 (November 20, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2013-108).

11 See the options exchanges' filings to increase the position limits on EEM options to 500,000 contracts in Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (Order Approving File No. SR-CBOE-2012-066); Securities Exchange Act Release No. 68293 (November 27, 2012), 77 FR 71644 (December 3, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2012-132); Securities Exchange Act Release No. 68398 (December 11, 2012), 77 FR 74700 (December 17, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-ISE-2012-93); Securities Exchange Act Release No. 68359 (December 5, 2012), 77 FR 73716 (December 11, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEArca-2012-132); Securities Exchange Act Release No. 68358 (December 5, 2012), 77 FR 73708 (December 11, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEMKT-2012-71); and Securities Exchange Act Release No. 68478 (December 19, 2012), 77 FR 76132 (December 26, 2012) (Notice of Filing and Immediate Effectiveness of SR-BOX-2012-023).

¹² Rule 2360(b)(4) sets forth exercise limits through incorporating by reference options position limits under the rule. Accordingly, although the proposed rule change would not amend the text of Rule 2360(b)(4), the proposed rule change also would correspondingly raise exercise limits on the applicable standardized equity option. The proposed rule change would allow members to immediately take advantage of any increased standardized equity option position limit that may be set by an options exchange as approved by the SEC without waiting for FINRA to file a corresponding rule change.¹³ The proposed rule change is consistent with FINRA's provision regarding position limits on index options, which incorporates the position limits as set by the options exchange on which the index option trades.¹⁴

Conventional Options

As noted above, currently position limits for conventional options are the same as the limits for standardized options for which the underlying security qualifies or would be able to qualify.¹⁵ FINRA proposes to maintain this structure for purposes of securities that have position limits within the five-tiers (i.e., up to the 250,000 contract position limit). Accordingly, FINRA proposes to amend Rule 2360(b)(3)(A)(viii) (and re-number it as Rule 2360(b)(3)(A)(iii)) to provide that conventional equity options shall be subject to a basic position limit of 25,000 contracts or a higher tier for conventional option contracts on securities that underlie exchange-traded options qualifying for such higher tier as determined by the rules of the options exchanges. In addition, for options on securities that have higher position limits – currently, only the ETFs listed in

¹⁵ <u>See</u> note 7.

¹³ With respect to future potential increases for position limits by an options exchange, FINRA members would be able to take advantage of any increased position limit subject to the rules of any other options exchange of which such FINRA member may also be a member. For example, if CBOE increases the position limit on XYZ options to 300,000 contracts (from 250,000 contracts), then any CBOE and FINRA member (or a FINRA-only member) would be entitled to use the higher limit. However, if the FINRA member is also a member of the ISE and the ISE has not yet raised the position limit on XYZ options, such member would be bound by the lower ISE position limit.

¹⁴ <u>See</u> Rule 2360(b)(3)(B).

Supplementary Material .03 – FINRA proposes to incorporate such position limits for conventional options on ETFs into the body of the text. At this time, FINRA also proposes to conform to the options exchanges' recent amendments that increased the position limit to 500,000 contracts for standardized options on EEM by increasing the position limit applicable to conventional options on EEM to 500,000 contracts.¹⁶

In support of the increased position limit on conventional EEM options, below are the trading statistics comparing EEM to IWM and SPY. As shown in the following table, the average daily volume in 2012 for EEM was 49.4 million shares compared to 45.7 million shares for IWM and 143.3 million shares for SPY. The total shares outstanding for EEM were 911.7 million compared to 243.7 million shares for IWM and 837.5 million shares for SPY. Further, the fund market cap for EEM was \$34.1 billion compared to \$24.6 billion for IWM and \$137.2 billion for SPY.

ETF	2012 ADV (mil. shares)	2012 ADV (option contracts)	Shares Outstanding (Mil.)	Fund Market Cap (\$bil)
EEM	49.4	256,453	911.7	34.1
IWM	45.7	498,102	243.7	24.6
SPY	143.3	2,342,942	837.5	137.2

In further support of this proposal, as noted by CBOE, EEM tracks the performance of the MSCI Emerging Markets Index, which has approximately 800 component securities.¹⁷ As noted on MSCI's website: "[t]he MSCI Emerging Markets

¹⁶ <u>See note 11.</u>

¹⁷ <u>See http://us.ishares.com/product_info/fund/overview/EEM.htm</u> and http://www.msci.com/products/indices/licensing/msci_emerging_markets/.

Index is a free float-adjusted market capitalization index that is designed to measure equity market performance of emerging markets. The MSCI Emerging Markets Index consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey."¹⁸ CBOE, in its filing, indicated that EEM still qualifies for the initial listing criteria set forth in CBOE Rule 5.3.06(v) and that more than 50% of the weight of the securities held by EEM are subject to a comprehensive surveillance agreement ("CSA").¹⁹ In addition, CBOE further notes that the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any one country that is not subject to a CSA do not represent 20% or more of the weight of the MSCI Emerging Markets Index.²⁰ Finally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any two countries that are not subject to CSAs do not represent 33% or more of the weight of the MSCI Emerging Markets Index.²¹

FINRA believes that the liquidity in the underlying ETF and the liquidity in EEM options support its request to increase the position limits for conventional EEM options as similar to the standardized EEM options. Through November 29, 2013, the year-to-

²¹ <u>See</u> note 11.

Identification of the specific securities in the MSCI Emerging Markets Index and their individual concentrations in the MSCI Emerging Markets Index can be accessed at: <u>http://us.ishares.com/product_info/fund/holdings/EEM.htm</u>.

¹⁸ <u>See http://www.msci.com/products/indices/tools/index.html#EM.</u>

¹⁹ <u>See note 11.</u>

²⁰ <u>See</u> note 11.

date average daily trading volume in the ETF for EEM across all exchanges was 62 million shares. The year-to-date average daily trading for EEM options across all exchanges was 327,347 contracts.

FINRA believes that increasing position limits for EEM conventional options will lead to a more liquid and competitive market environment for EEM options that will benefit customers interested in this product.

Surveillance and Reporting

Further, FINRA believes that the modified position limits provisions are appropriate in light of the existing surveillance procedures and reporting requirements at FINRA,²² the options exchanges, and at the several clearing firms, which are capable of properly identifying unusual or illegal trading activity. These procedures use daily monitoring of market movements by automated surveillance techniques to identify unusual activity in both options and underlying stocks.²³

In addition, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.²⁴ Options positions are part of any reportable positions and cannot legally be hidden. Moreover, the previously noted Rule 2360(b)(5) requirement that members must file reports with FINRA for any customer that held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of FINRA's surveillance efforts.

²² <u>See Rule 2360(b)(5) for the options reporting requirements.</u>

²³ These procedures have been effective for the surveillance of options trading and will continue to be employed.

²⁴ 17 CFR 240.13d-1.

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Finally, FINRA believes that the current financial requirements imposed by FINRA and by the Commission adequately address financial responsibility concerns that a member or its customer will maintain an inordinately large unhedged position in any option with a higher position limit. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin or capital that a member must maintain for a large position. Under Rule 4210(f)(8)(A), FINRA also may impose a higher margin requirement upon a member when FINRA determines a higher requirement is warranted. In addition, the Commission's net capital rule²⁵ imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁶ 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 the proposed rule change promotes consistent regulation by harmonizing position limits on standardized equity options with those of the other self-regulatory organizations. FINRA further believes that increasing the position limit

²⁵ 17 CFR 240.15c3-1.

²⁶ 15 U.S.C. 78<u>o</u>-3(b)(6).

on conventional EEM options promotes consistent regulation by harmonizing the position limit with its standardized counterpart. In addition, FINRA believes the proposed rule change will be beneficial to large market makers and institutions (which generally have the greatest ability to provide liquidity and depth in products that may be subject to higher position limits as has been the case with recently approved increased position limits²⁷), as well as retail traders, investors and public customers, by providing them with a more effective trading and hedging vehicle.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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. As noted above, the proposed rule change would amend Rule 2360 to harmonize FINRA's position limits on standardized options with those of the options exchange (which are subject to approval by the SEC), and to harmonize position limits for conventional EEM options with the position limit for standardized EEM options.²⁸ Under the current rule, broker-dealers that are members of FINRA remain subject to the lower FINRA specified contract position limit and may not avail themselves of the higher position limit as set by an options exchange until FINRA can file a corresponding change. FINRA believes that the proposed rule change promotes consistent regulation by harmonizing standardized equity option position limits with those of the options exchanges and by harmonizing conventional EEM options position limits for standardized counterpart. FINRA believes that setting consistent position limits for

²⁷ <u>See notes 10 and 11.</u>

²⁸ See notes 10 and 11.

market participants to compete equally regardless of membership with an options exchange. Likewise, FINRA believes that harmonizing position limits for conventional EEM options does not result in any burden on competition and would allow market participants in the conventional EEM options market to compete effectively with participants using the standardized counterpart.

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

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, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁹ and Rule 19b-4(f)(6) thereunder.³⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4(f)(6).

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 <u>rule-comments@sec.gov</u>. Please include File Number SR-FINRA-2013-055 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-2013-055. 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 website (<u>http://www.sec.gov/rules/sro.shtml</u>). 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 website 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-2013-055 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.³¹

Elizabeth M. Murphy

Secretary

³¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

* * * * *

2000. DUTIES AND CONFLICTS

* * * * *

2300. SPECIAL PRODUCTS

* * * * *

2360. Options

(a) Definitions

The following terms shall, unless the context otherwise requires, have the stated meanings:

(1) through (10) No Change.

(11) Delta Neutral — The term "delta neutral" describes an equity options position that has been fully hedged, in accordance with a Permitted Pricing Model as defined in paragraph [(b)(3)(A)(vii)b.] (b)(3)(A)(ii)b. with a portfolio of instruments including or relating to the same underlying security to offset the risk that the value of the equity options position will change with incremental changes in the price of the security underlying the options position.

(12) through (39) No Change.

(b) Requirements

(1) through (2) No Change.

(3) **Position Limits**

(A) Stock Options —

(i) Standardized Equity Options

Except in highly unusual circumstances, and with the prior written approval of FINRA pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-member dealer, an opening transaction [through the over-the-counter market or] on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or nonmember dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate <u>standardized</u> equity options position in excess of[:] the highest position limit established by an exchange on which the option trades, or

[(i) 25,000 option contracts of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or] [(ii) 50,000 option contracts of the put class and the call class on the same side of the market covering the same underlying security, provided that the 50,000 contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of 50,000 option contracts; or]

[(iii) 75,000 option contracts of the put class and the call class on the same side of the market covering the same underlying security provided that the 75,000 contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of 75,000 option contracts; or]

[(iv) 200,000 option contracts of the put and the call class on the same side of the market covering the same underlying security, provided that the 200,000 contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of 200,000 option contracts; or]

[(v) 250,000 option contracts of the put and the call class on the same side of the market covering the same underlying security, provided that the 250,000 contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of 250,000 option contracts; or]

[(vi)] such other number of stock option contracts as may be fixed from time to time by FINRA as the position limit for one or more classes or series of options provided that reasonable notice shall be given of each new position limit fixed by FINRA.

[(vii)] (ii) Equity Option Hedge Exemptions

a. The following qualified hedge strategies and positions described in subparagraphs 1. through 6. below shall be exempt from the established position limits under this [r]Rule for standardized options. Hedge strategies and positions described in subparagraphs 7. and 8. below in which one of the option components consists of a conventional option, shall be subject to a position limit of five times the established position limits contained in [sub]paragraphs [(i)] (b)(3)(A)(iii)a.1. through 6. below [(vi) above]. Hedge strategies and positions in conventional options as described in subparagraphs 1. through 6. below shall be subject to a position limit of five times the established position limits contained in [sub]paragraphs [(i)] (b)(3)(A)(iii)a.1. through 6. below [(vi) above]. Options positions limits established under this subparagraph shall be separate from limits established in other provisions of this $[r]\underline{R}$ ule.

1. through 8. No Change.

b. Delta Hedging Exemption For Members and Non-Member Affiliates

An equity options position of a member or nonmember affiliate in standardized and/or conventional equity options that is delta neutral under a Permitted Pricing Model shall be exempt from position limits under this Rule. Any equity options position of such member or nonmember affiliate that is not delta neutral shall be subject to position limits, subject to the availability of other options position limit exemptions. The number of options contracts attributable to a position that is not delta neutral shall be the options contract equivalent of the net delta.

1. through 3. No Change.

4. Reporting

A. Each member must report in accordance with paragraph (b)(5), all equity option positions (including those that are delta neutral) of 200 or more contracts (whether long or short) on the same side of

the market covering the same underlying security that are effected by the member.

B. In addition, each member on its own behalf or on behalf of a designated aggregation unit pursuant to paragraph [(b)(3)(A)(vii)b.2.] (b)(3)(A)(ii)b.2. shall report in a manner specified by FINRA the options contract equivalent of the net delta of each position that represents 200 or more contracts (whether long or short) on the same side of the market covering the same underlying security that are effected by the member.

[(viii)] (iii) Conventional Equity Options

a. For purposes of this paragraph (b), standardized equity option contracts of the put class and call class on the same side of the market overlying the same security shall not be aggregated with conventional equity option contracts or FLEX Equity Option contracts overlying the same security on the same side of the market. Conventional equity option contracts of the put class and call class on the same side of the market overlying the same security shall be subject to a position limit [equal to the greater] of: [1. the basic limit of 25,000 contracts, or]
[2. any standardized equity options position
limit as set forth in paragraphs (b)(3)(A)(ii) through
(v) for which the underlying security qualifies or
would be able to qualify.]

<u>1. 25,000 option contracts, combining for</u> purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

2. 50,000 option contracts for option
 contracts on securities that underlie exchange traded options qualifying under applicable rules for
 a position limit of 50,000 option contracts; or
 3. 75,000 option contracts for option
 contracts on securities that underlie exchange traded options qualifying under applicable rules for
 a position limit of 75,000 option contracts; or
 4. 200,000 option contracts for option
 contracts on securities that underlie exchange traded options qualifying under applicable rules for
 a position limit of 75,000 option contracts; or
 a position limit of 200,000 option contracts; or

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5. 250,000 option contracts for option

contracts on securities that underlie exchange-

traded options qualifying under applicable rules for

a position limit of 250,000 option contracts; or

6. for selected conventional options on

exchange-traded funds ("ETF"), the position limits

are listed in the chart below:

Security Underlying Option	Position Limit
The DIAMONDS Trust (DIA)	300,000 contracts
The Standard and Poor's Depositary Receipts Trust (SPY)	900,000 contracts
The iShares Russell 2000 Index Fund (IWM)	500,000 contracts
The PowerShares QQQ Trust (QQQQ)	<u>900,000 contracts</u>
<u>The iShares MSCI Emerging Markets</u> <u>Index Fund (EEM)</u>	500,000 contracts

b. No Change.

(B) through (D) No Change.

(4) through (24) No Change.

(c) No Change.

••• Supplementary Material: ------

.01 Position Limit Examples

The following examples illustrate the operation of position limits established by Rule 2360(b)(3) (all examples assume a position limit of 25,000 contracts and that the options are standardized options):

(a) through (c) No Change.

(d) Customer D, who is short 2,000,000 shares of XYZ, may be long up to 45,000 XYZ calls, since the "hedge" exemption contained in paragraph [(b)(3)(A)(vii)] (b)(3)(A)(ii)a.1. permits Customer D to establish an options position up to 25,000 contracts in size. In this instance, 25,000 of the 45,000 contracts are permissible under the basic 25,000 position limit [contained in paragraph (b)(3)(A)(i)] and the remaining 20,000 contracts are permissible because they are hedged by the 2,000,000 short stock position.

.02 In connection with the delta hedging exemptions for members and non-member affiliates in Rule [2360(b)(3)(A)(vii)b.] <u>2360(b)(3)(A)(ii)b.</u>, FINRA will require broker-dealer(s) to satisfy the following conditions in order for FINRA to deem no control relationship, in accordance with Rule 2360(a)(6), to exist between affiliates and between separate and distinct trading units within the same entity:

• operate the trading unit(s) requesting non-aggregation treatment independently of other trading units controlled by the broker-dealer, and disclose to FINRA the trading objective of the trading unit(s) requesting non-aggregation treatment;

• create internal firewalls and information barriers to segregate the trading unit(s) receiving non-aggregation treatment from other trading units controlled by the broker-dealer to prevent the flow of information (e.g., trades, positions, trading strategies);

- conduct all trading activity of the trading unit(s) requesting non-aggregation in a segregated account, which shall be reported to FINRA as such;
- maintain regulatory compliance oversight and internal controls and procedures addressing the non-aggregation arrangement;

• retain written records of information concerning the non-aggregated account, including, but not limited to, trading personnel, names of personnel making trading decisions, unusual trading activities, disciplinary action resulting from breach of the broker-dealer's systems firewalls and information-sharing policies, and the transfer of securities between the broker-dealer's non-aggregated accounts, which information shall be promptly made available to FINRA upon its request;

- promptly provide to FINRA a written report at such time there is any material change with respect to the non-aggregated account, which FINRA will use as a basis to reexamine its determination of non-aggregation; and
- provide a written acknowledgement that FINRA reserves the right to (1) impose additional restrictions and conditions with respect to the granting and removal of non-aggregation, and (2) freeze any position above the applicable position limit if FINRA determines that aggregation has become necessary due to changed circumstances.

Generally, the presumption of control in these types of arrangements will become easier to rebut as the physical separation between the trading units increases. For example, FINRA will require that trading units located on the same floor of a building be physically isolated from each other to ensure that no inappropriate communication will

take place between individuals staffed in the applicable trading units.

.03 Position Limits for Exchange-Traded Funds

[(a) In accordance with Rule 2360(b)(3)(A)(vi), FINRA may fix the position

limit for one or more classes or series of options. The position limits applicable to option contracts on the securities listed in the chart below are as follows:]

[Security Underlying Option]	[Position Limit]
[The DIAMONDS Trust (DIA)]	[300,000 contracts]
[The Standard and Poor's Depositary Receipts Trust (SPY)]	[900,000 contracts]
[The iShares Russell 2000 Index Fund (IWM)]	[500,000 contracts]
[The PowerShares QQQ Trust (QQQQ)]	[900,000 contracts]

[(b) The position limit for a conventional option contract on an exchange-traded fund ("ETF") that also underlies a standardized option shall be the same as the position limit for the applicable standardized option.]

[(c)] The position limit for a conventional option contract on an ETF that <u>is not</u> <u>listed in Rule 2360(b)(3)(A)(iii)a.6. and</u> does not also underlie a standardized option shall be the basic limit of 25,000 contracts. To qualify for a position limit of more than 25,000 contracts, a member must apply for an increased position limit in accordance with Rule [2360(b)(3)(A)(viii)b.] 2360(b)(3)(A)(iii)b.

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