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July 24, 2009

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-FINRA-2009-036 – Response to Comments

Dear Ms. Murphy:

This letter responds to comments submitted to the Securities and Exchange Commission (“SEC”) regarding the above-referenced rule filing, a proposed rule change that, among other things, would adopt NASD Rule 3510 (Business Continuity Plans) and NASD Rule 3520 (Emergency Contact Information) without substantive change into the consolidated FINRA Rulebook and combine the rules as FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information).¹

NASD Rules 3510 and 3520 comprise the NASD Rule 3500 Series (Emergency Preparedness), which requires members to establish emergency preparedness plans and procedures. Specifically, NASD Rule 3510 requires members to create and maintain a written business continuity plan identifying procedures relating to an emergency or significant business disruption and enumerates the minimum elements that a member’s business continuity plan must address, to the extent those elements are applicable and necessary to the member’s business. NASD

¹ See Securities Exchange Act Release No. 60066 (June 8, 2009); 74 FR 28308 (June 15, 2009) (SR-FINRA-2009-036). The proposed rule change also would adopt NASD Rules (Options Communications), 2441 (Net Transactions with Customers), and 2460 (Payments for Market Making) without substantive change into the consolidated FINRA rulebook as FINRA Rules 2124 (Net Transactions with Customers), 2220 (Options Communications), 4370 (Business Continuity Plans and Emergency Contact Information), and 5250 (Payments for Market Making). The comment letter addresses only proposed FINRA Rule 4370 and does not raise any issues regarding these other proposed FINRA rules.

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Rule 3520 requires members to designate two emergency contact persons who must both be registered principals and members of senior management that FINRA may contact in the event of a significant business disruption.

The SEC received one comment letter in response to the proposed rule filing requesting that FINRA amend proposed FINRA Rule 4370 to require that only one of a firm's two designated emergency contact persons must be a registered principal. The commenter explained that, in some situations, a firm may not be able to designate the individual who is the most knowledgeable of the firm's computer systems and business continuity issues (e.g., a technology manager) as an emergency contact person because that person is not a registered principal of the firm.²

In response, FINRA is amending proposed FINRA Rule 4370 to require that only one of a member's two designated emergency contact persons must be a member of senior management and a registered principal of the firm. The proposed rule change, however, would require that someone designated as a second emergency contact person who is not a registered principal must be a member of senior management who has knowledge of the member's business operations. The proposed rule change also clarifies that each emergency contact person must be an associated person of the member. This proposed rule change will provide a member with added flexibility to designate the persons the member considers to be the most appropriate emergency contacts for the firm. In addition, FINRA is amending proposed FINRA Rule 4370 to codify existing guidance that in the case of a member with only one associated person (e.g., a sole proprietorship without any other associated persons), the second emergency contact person may be an individual, either registered with another firm or nonregistered, who has knowledge of the member's business operations, such as the member's attorney, accountant, or clearing firm contact.³ FINRA believes that these proposed changes are consistent with the purpose of the provision, which is to provide FINRA with a means to contact a member in the event of a significant business disruption.

FINRA believes that the foregoing responds to the material issue raised in the comment letter to this rule filing. If you have any questions, please contact me at (202) 728-8026.

Sincerely,



Patricia Albrecht
Assistant General Counsel

² Letter from Pamela Ziermann, Dougherty and Company, LLC (June 30, 2009).

³ See NASD Notice to Members 04-37 (May 2004).