

October 10, 2013

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

**Re: Application for Exemption from the Rule Filing Requirements of Section 19(b) of the Securities Exchange Act of 1934**

Dear Ms. Murphy;

FINRA Rule 2360 (Options) and FINRA Rule 2359 (Position and Exercise Limits; Liquidations) incorporate by reference comparable position and exercise limit rules of the options exchanges.<sup>1</sup> In addition, FINRA intends to propose further amendments to FINRA Rule 2360 options position limits<sup>2</sup> if the exemption discussed below is granted by filing a proposed rule change with the Securities and Exchange Commission (“SEC” or “Commission”) pursuant to the provisions of Section 19(b)(1)

---

<sup>1</sup> Specifically, (1) FINRA Rule 2360(b)(3)(B) incorporates position limits for index options established by the exchange on which the option trades; (2) FINRA Rule 2360(b)(2) incorporates position and exercise limits for FLEX Equity Options (as defined in FINRA Rule 2360(a)(16)) established by the exchange on which such FLEX Equity Options are traded; and (3) FINRA Rule 2359 incorporates position and exercise limits for index warrants established by the exchange on which the index warrant is listed.

<sup>2</sup> Specifically, FINRA proposes to incorporate in FINRA Rule 2360(b)(3): (1) the highest position limit for standardized equity options established by an exchange on which the option trades; and (2) position limit tiers for conventional equity options that reflect the same tier structure used in exchange rules for standardized equity options and that, for each tier, incorporate for conventional equity options the same position limit that exchange rules establish for standardized equity options in the equivalent tier.

FINRA also notes that FINRA Rule 2360(b)(4) sets forth exercise limits through incorporating by reference options positions limits under the rule. Accordingly, although the amendment to FINRA Rule 2360 pursuant to the proposed rule change would not amend the text of FINRA Rule 2360(b)(4), the proposed rule change also would correspondingly raise exercise limits.

under the Securities Exchange Act of 1934 (the “Exchange Act”),<sup>3</sup> and Rule 19b-4 thereunder<sup>4</sup> (the “Proposal”).

FINRA requests that the SEC exercise its authority under Section 36 of the Exchange Act<sup>5</sup> and Rule 240.0-12 thereunder,<sup>6</sup> and grant FINRA an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to FINRA Rule 2360, as amended by the Proposal, and FINRA Rule 2359 that are effected solely by virtue of a change to the corresponding rules of the exchanges.<sup>7</sup>

Specifically, we request that FINRA be permitted to incorporate by reference changes made to each exchange rule without the need for FINRA to file separately the same proposed rule changes for FINRA Rules 2360 and 2359 pursuant to Section 19(b) of the Exchange Act. By virtue of these incorporations by reference, the requirements applicable to FINRA members will change when the applicable incorporated exchanges rules change, without the need for FINRA to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act. FINRA represents that the rules it seeks to incorporate by reference into FINRA Rules 2360 and 2359 are categories of exchange rules (rather than individual rules within a category) that are not trading rules.

This exemption is necessary and appropriate to maintain the consistency between FINRA rules and the relevant provisions of the exchanges’ rules at all times, thus helping to ensure identical regulation of members of FINRA that are also members of one or more exchanges with respect to the incorporated provisions as well as helping to ensure

---

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

<sup>5</sup> 15 U.S.C. 78mm.

<sup>6</sup> 17 CFR 240.0-12. As required by Rule 0-12, the applicant for this exemption is Financial Industry Regulatory Authority, Inc. (“FINRA”), 1735 K St, NW, Washington, DC 20006, (301) 590-6500. Questions regarding this application should be directed to Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA, at (202) 728-8176 or Kathryn Moore, Associate General Counsel, FINRA, at (202) 974-2974.

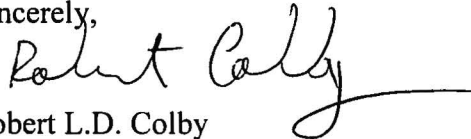
<sup>7</sup> The SEC has granted several exchanges similar applications for exemptions. See Securities Exchange Act Release No. 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (granting BATS Exchange, Inc.’s request for exemption from Section 19(b)); Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (granting The NASDAQ Stock Market LLC’s request for exemption from Section 19(b)); and Securities Exchange Act Release No. 58454 (September 3, 2008), 73 FR 52433 (September 9, 2008) (granting NASDAQ OMX PHLX, Inc.’s request for exemption from Section 19(b)).

that FINRA-only members are subject to consistent regulation as members that are members of exchanges. Without such an exemption, such members could be subject to two different standards.

The incorporation by reference of the exchanges rules, which are regulatory rules, is intended to be a comprehensive integration of the specified exchanges' rules into the FINRA rules. Accordingly, FINRA hereby requests that the SEC exempt FINRA from the Section 19(b) requirement that FINRA separately file a proposed rule change each time an exchange makes a change to a rule (or series of rules) referenced within FINRA Rules 2360 and 2359. As a condition of this exemption, FINRA agrees to provide written notice to its members whenever an exchange proposes a change to its relevant rule (or series of rules).<sup>8</sup> Such notice will alert FINRA members to the proposed rule change and give them an opportunity to comment on the proposal. FINRA similarly will inform its members when the SEC approves any such proposed changes.

We appreciate the SEC's consideration of this request. If you have any questions regarding this exemption request, please contact me at 202-728-8484, Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, at (202) 728-8176 or Kathryn Moore, Associate General Counsel, at (202) 728-8200.

Sincerely,



Robert L.D. Colby  
Chief Legal Officer

cc (by email): John Roeser  
Ira Brandriss  
Michael Bradley

---

<sup>8</sup> FINRA will provide such notice by posting on its website at the same location as FINRA posts its own rule filings as required by Rule 19b-4(l). The website posting will include a link to the location on the exchange's website where the proposed rule change is posted.