

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59771; File No. SR-FINRA-2009-016)

April 15, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Adoption of FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), FINRA Rule 2310 (Direct Participation Programs), FINRA Rule 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) and FINRA Rule 2266 (SIPC Information) in the Consolidated FINRA Rulebook

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 March 25, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) 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. On April 14, 2009, FINRA filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to (1) adopt NASD Rules 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), 2810 (Direct Participation Programs) and 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superceded the original filing.

for Security Futures) as FINRA rules in the consolidated FINRA rulebook without material change; and (2) adopt NASD Rule 2342 (SIPC Information) in the consolidated FINRA rulebook without material change and to delete Incorporated NYSE Rule 409A (SIPC Disclosures). The proposed rule change would renumber NASD Rule 2130 as FINRA Rule 2080, NASD Rule 2810 as FINRA Rule 2310, NASD Rule 3115 as FINRA Rule 4551 and NASD Rule 2342 as FINRA Rule 2266 in the consolidated FINRA rulebook.

Amendment No. 1 to SR-FINRA-2009-016 makes minor changes to the original filing filed on March 25, 2009. The proposed rule change replaces and supercedes the proposed rule change filed on March 25, 2009 in its entirety.

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

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis 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. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),⁴ FINRA is proposing to (1) adopt FINRA Rules 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System), 2310 (Direct Participation Programs) and 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook; and (2) adopt FINRA Rule 2266 (SIPC Information) in the consolidated FINRA rulebook and delete the corresponding provisions in Incorporated NYSE Rule 409A.

a. Proposed FINRA Rule 2080

FINRA is proposing to adopt NASD Rule 2130 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2080. NASD Rule 2130 addresses the expungement of customer dispute information from the Central Registration Depository (“CRD®”) system. The CRD system is an online registration and licensing system that is used by the securities industry, state and federal regulators and self-regulatory

⁴ The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

organizations. It contains information regarding members and registered persons, specifically administrative information (e.g., personal, educational and employment history) and disclosure information (e.g., criminal matters, regulatory and disciplinary actions, civil judicial actions and information relating to customer disputes). Although public investors do not have access to the CRD system, much of the information in that system is available to investors through FINRA BrokerCheck and individual state disclosure programs.⁵ FINRA recognizes that accurate and complete reporting in the CRD system is an important component of investor protection.

FINRA operates the CRD system pursuant to policies developed jointly with the North American Securities Administrators Association (“NASAA”). FINRA works with the SEC, NASAA, other members of the regulatory community and member firms to establish policies and procedures reasonably designed to ensure that information submitted to and maintained in the CRD system is accurate and complete. These procedures, among other things, cover expungement of information from the CRD system.

In January 1999, after consultation with NASAA, FINRA imposed a moratorium on arbitrator-ordered expungement of customer dispute information from the CRD system.⁶ Under the moratorium, FINRA would expunge such information from the CRD system only when a court of competent jurisdiction confirmed an arbitrator’s directive to expunge customer dispute information. During this moratorium, however, FINRA continued to expunge information from the CRD system based on expungement

⁵ FINRA BrokerCheck is a free online tool to help investors check the background of current and former FINRA-registered securities firms and brokers.

⁶ See Notice to Members 99-09 (February 1999) and Notice to Members 99-54 (July 1999).

directives in arbitration awards rendered in disputes between firms and current or former registered persons, in which arbitrators awarded such relief based on the defamatory nature of the information.

After imposing the moratorium, FINRA began considering how to craft an approach to expungement that would allow FINRA effectively to challenge expungement directives that might diminish or impair the integrity of the CRD system and to ensure the maintenance of essential information for regulators and investors. In December 2003, the SEC approved NASD Rule 2130,⁷ which contains additional standards and procedures for expungement of customer dispute information⁸ from the CRD system. Rule 2130 continues the requirement started with the 1999 moratorium that a court of competent jurisdiction must order or confirm all expungement directives before FINRA will expunge customer dispute information from the CRD system.⁹ It also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award containing an order of expungement.

⁷ See Securities Exchange Act Release No. 48933 (December 16, 2003), 68 FR 74667 (December 24, 2003). FINRA Rule 2080, as with NASD Rule 2130, would apply to any request made to a court of competent jurisdiction to expunge customer dispute information from the CRD system that has its basis in an arbitration or civil lawsuit filed on or after April 12, 2004. See Notice to Members 04-16 (March 2004).

⁸ For purposes of Rule 2130, “customer dispute information” includes customer complaints, arbitration claims and court filings made by customers, and the arbitration awards or court judgments that may result from those claims or filings. See Notice to Members 04-16 (March 2004).

⁹ Under Rule 2130, FINRA may continue to expunge information from the CRD system – without the need for judicial intervention – for expungement directives contained in intra-industry arbitration awards that involve registered persons and firms based on the defamatory nature of the information ordered expunged.

Upon request, however, FINRA may waive the requirement to be named as a party if it determines that the expungement relief is based on an affirmative judicial or arbitral finding that: (1) the claim, allegation or information is factually impossible or clearly erroneous; (2) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (3) the claim, allegation or information is false. If the expungement relief is based on judicial or arbitral findings other than those enumerated immediately above, FINRA also may waive the requirement to be named as a party if FINRA determines, in its sole discretion and under extraordinary circumstances, that the expungement relief and accompanying findings on which it is based are meritorious and the expungement relief would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

Upon receipt of a waiver request, FINRA staff will notify the States (directly or through NASAA) where the individual is registered or seeking registration of the expungement notice/waiver request. FINRA staff will then examine the basis on which the fact finder ordered expungement to determine whether the expungement was based on one or more of the standards in Rule 2130.¹⁰ If FINRA staff determines that the expungement was not based on one or more of the standards in Rule 2130, it will advise

¹⁰ In October 2008, the SEC approved a FINRA rule change (File No. SR-FINRA-2008-10), which became effective January 26, 2009, establishing new procedures that arbitrators must follow when considering requests for expungement relief, including requiring arbitrators to: (1) consider the terms of a settlement agreement in settled matters; (2) hold a recorded hearing regarding the appropriateness of expungement; and (3) provide a brief written explanation of the reason(s) for ordering expungement. See Securities Exchange Act Release No. 58886 (October 30, 2008), 73 FR 66086 (November 6, 2008). See also Regulatory Notice 08-79 (December 2008).

the parties that FINRA will not waive the requirement to be named as a party in the court confirmation process. The parties would then name FINRA as a party, and FINRA would have the opportunity to oppose the expungement in the court proceeding.

FINRA recommends that NASD Rule 2130 be transferred without material change into the Consolidated FINRA Rulebook. NASD Rule 2130 was the product of notice and comment rulemaking. FINRA solicited comment on proposed approaches regarding expungement of information in Notices to Members issued in July 1999 and October 2001.¹¹ FINRA staff drafted the proposed rule taking into account the comments received and following discussions with NASAA. Subsequently, the SEC published the proposal for comment in the Federal Register in March 2003, and the final rule reflects additional changes based on the comments received by the SEC. NASD Rule 2130 serves to enhance the integrity of information in the CRD system and to further ensure that investor protection is not compromised when arbitrators order expungement of information from a CRD record. Moreover, the new procedures that arbitrators must follow when considering requests for expungement will add transparency and procedural safeguards designed to ensure that the extraordinary relief of expungement is granted only under appropriate circumstances.

b. Proposed FINRA Rule 2310

FINRA is proposing to adopt NASD Rule 2810 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310. NASD Rule 2810 addresses underwriting terms and arrangements in public offerings of direct participation programs (“DPPs”) and unlisted real estate investment trusts (“REITs”) (collectively, “Investment

¹¹ See Notice to Members 99-54 (July 1999) and Notice to Members 01-65 (October 2001).

Programs”). A DPP is a business venture designed to let investors participate directly in the cash flow and tax benefits of an underlying investment. REITs are investment vehicles for income-generating real estate that benefit from the tax advantages of a trust if they satisfy certain criteria in the Internal Revenue Code. Rule 2810 requires that members participating in a public offering of an Investment Program meet certain requirements regarding underwriting compensation, fees and expenses, perform due diligence on the Investment Program, follow specific guidelines on suitability, and adhere to limits on non-cash compensation.

NASD Rule 2810 requires that, prior to participating in a public offering of an Investment Program, a member or a participating firm on its behalf must file information regarding the offering with the FINRA Corporate Financing Department and receive an opinion from the Department that it has no objections to the proposed underwriting terms and arrangements (a “no objections” opinion). Among the terms and arrangements that are reviewed by FINRA staff are the level of organization and offering expenses (“O&O expenses”). Rule 2810 limits the amount of O&O expenses for an Investment Program (which includes issuer expenses, underwriting compensation and due diligence expenses) to 15 percent of the gross proceeds of the offering. The rule also requires a member to perform due diligence about an Investment Program prior to participating in a public offering. The member must have reasonable grounds to believe, based on information in the prospectus, that all material facts, including those regarding compensation, physical properties, tax, financial stability and experience of the sponsor, and conflicts, are adequately and accurately disclosed and provide a basis for evaluating the Investment Program.

In addition, NASD Rule 2810 contains an exception from the disclosure requirements for offerings of certain Investment Programs that are listed, or approved for listing, on a national securities exchange. This exception, currently in paragraph (b)(1), would be re-located to paragraph (b)(3)(D) of the new rule, the section of the rule addressing disclosures. In this regard, the proposed rule change would return the exception to its original location in the rule. Prior to 2008, the exception was located in paragraph (b)(3)(D) of the rule; however, as part of a larger effort to streamline the rule in SR-NASD-2005-114, it was moved to paragraph (b)(1).¹² The proposed rule change would enhance the clarity of the rule by re-locating the exception to the section addressing disclosures at paragraph (b)(3)(D).

The rule also imposes specific suitability standards on recommended transactions to take account of the risks and lack of liquidity of Investment Programs. Further, it requires members and associated persons to ensure, prior to participating in a public offering of an Investment Program, that all material facts are adequately and accurately disclosed, including pertinent facts relating to the liquidity and marketability of the Investment Program. In addition, under Rule 2810, members cannot accept or make non-cash gifts in connection with the sale or distribution of an Investment Program in excess of \$100 per year, nor can any non-cash entertainment (such as an occasional meal) raise any question of propriety or be conditioned on the achievement of a sales target. Finally, the non-cash provisions of the rule prohibit payments for an associated person to attend training or educational meetings unless the associated person obtains the member's prior approval and such training and entertainment is not based upon the associated person

¹² See Securities Exchange Act Release No. 57803 (May 8, 2008), 73 FR 27869 (May 14, 2008).

achieving a sales target. Collectively, these non-cash provisions are aimed at preventing Investment Program sponsors from using non-cash compensation as a means to circumvent the limits on underwriting compensation.

NASD Rule 2810 was adopted in 1980 to address issues arising from members' participation in oil and gas programs and real estate syndications in the 1970s.¹³ It has been amended periodically to include additional programs and procedures,¹⁴ including greater limitations on sales incentive compensation and members' participation in limited partnership rollup transactions.¹⁵ These amendments were adopted to address new developments regarding members' participation in Investment Programs, and were the product of extensive notice and comment rulemaking over a period of several years.¹⁶ The most recent amendments to the rule, which became effective on August 6, 2008,

¹³ See Securities Exchange Act Release No. 16967 (July 8, 1980), 45 FR 47294 (July 14, 1980).

¹⁴ For example, some significant amendments to Rule 2810 include the following: in 1982, amendments to include suitability, due diligence and disclosure requirements; see Securities Exchange Act Release No. 19054 (September 16, 1982), 47 FR 42226 (September 24, 1982); in 1984, to require that sales incentives be in cash; see Securities Exchange Act Release No. 20844 (April 11, 1984), 49 FR 15041 (April 16, 1984); in 1986, to exempt certain secondary offerings; see Securities Exchange Act Release No. 23619 (September 15, 1986), 51 FR 33968 (September 24, 1986); in 1994, to apply to limited partnership rollup transactions; see Securities Exchange Act Release No. 34533 (August 15, 1994), 59 FR 43147 (August 22, 1994); and in 2003, to modify the non-cash compensation provisions; see Securities Exchange Act Release No. 47697 (April 18, 2003), 68 FR 20191 (April 24, 2003).

¹⁵ A limited partnership rollup transaction either reorganizes an existing limited partnership or combines multiple limited partnerships into a new entity to take advantage of larger asset pools and economies of scale.

¹⁶ See supra note 14.

address O&O expenses and enhanced investor disclosures regarding the liquidity of Investment Programs.¹⁷

FINRA believes that the rule as currently drafted is well-understood by the sponsors of Investment Programs and the broker-dealers that sell them, and is providing significant investor protections. As a result, FINRA recommends that NASD Rule 2810 be transferred without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310.

c. Proposed FINRA Rule 4551

FINRA is proposing to adopt NASD Rule 3115 without material change into the Consolidated FINRA Rulebook as FINRA Rule 4551. NASD Rule 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) requires alternative trading systems (“ATs”) ¹⁸ that accept orders for security futures ¹⁹ to record and report to FINRA certain information regarding those orders, including the date and time the order was received, the security future product name and symbol, the details of the order, and the date and time that the order was executed. The rule thus provides FINRA with an audit trail of orders for security futures placed on an ATS.

¹⁷ See Securities Exchange Act Release No. 57803 (May 8, 2008), 73 FR 27869 (May 14, 2008).

¹⁸ ATs generally are registered broker-dealers that provide or maintain a marketplace for bringing together purchasers and sellers of securities or otherwise perform the functions commonly performed by a securities exchange but do not perform self-regulatory functions.

¹⁹ A security future is a contract of sale for future delivery of a single security or of a narrow-based security index. Security futures are defined as “securities” under the Act; consequently, the federal securities laws are generally applicable to security futures. See 15 U.S.C. 78c(a)(10).

NASD Rule 3115 was adopted in 2003 following the amendments to the Act included in the Commodity Futures Modernization Act of 2000.²⁰ Section 6(h)(5) of the Act, which was added as part of those amendments, prohibits a person other than a national securities association or national securities exchange from maintaining or providing a marketplace or facilities for bringing together purchasers and sellers of security futures products unless it is a member of a national securities association or national securities exchange that has: (1) procedures for coordinated surveillance; (2) rules to require an audit trail necessary or appropriate to facilitate coordinated surveillance; and (3) rules to require such person to coordinate trading halts with markets trading the securities underlying the security futures products and other markets trading related securities.²¹ FINRA adopted NASD Rule 3115 as part of a package of rules to meet these requirements and thus allow ATs that are FINRA members to provide a marketplace for security futures. Specifically, NASD Rule 3115 satisfies the requirement that a national securities association have “rules to require an audit trail necessary or appropriate to facilitate coordinated surveillance.”²²

Because NASD Rule 3115 is necessary to allow ATs to provide trading facilities for security futures, the proposed rule change would transfer NASD Rule 3115 into the

²⁰ See Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003).

²¹ 15 U.S.C. 78f(h)(5).

²² In the same rule filing adopting NASD Rule 3115, FINRA also amended NASD Rule 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) to satisfy the requirement that a national securities association have “rules to require such person to coordinate trading halts with markets trading the securities underlying the security futures products and other markets trading related securities.” See Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003). The proposed rule change does not address NASD Rule 3340.

Consolidated FINRA Rulebook as FINRA Rule 4551 without material change. This would allow ATSS to continue to provide trading facilities for security futures and would ensure FINRA receives information to maintain an audit trail regarding the trading of security futures.

d. Proposed FINRA Rule 2266

FINRA is proposing to adopt NASD Rule 2342 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2266 and to delete comparable Incorporated NYSE Rule 409A. NASD Rule 2342 and Incorporated NYSE Rule 409A were adopted in response to a May 2001 report issued by the Government Accountability Office (“GAO”), entitled “Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors.”²³ In that report, the GAO made recommendations to the SEC and the Securities Investor Protection Corporation (“SIPC”) about ways to improve the information available to the public about SIPC and the Securities Investor Protection Act of 1970 (“SIPA”). Among other things, the GAO recommended that self-regulatory organizations explore ways to encourage broader dissemination of the SIPC brochure to customers so that they can become more aware of the scope of coverage of SIPA.

In May 2007, the SEC approved NASD Rule 2342 setting forth requirements for providing SIPC information to customers. Rule 2342 requires all FINRA members, except those members (1) that are excluded from membership in SIPC and are not SIPC members; or (2) whose business consists exclusively of the sale of investments that are

²³ See U.S. Government Accountability Office, “Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors,” Publication GAO-01-653 (May 25, 2001).

ineligible for SIPC protection, to advise all new customers that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Such members also must provide SIPC's Web site address and telephone number. Members must provide this disclosure to new customers, in writing, at the opening of an account and also must provide customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

Incorporated NYSE Rule 409A is substantially similar to NASD Rule 2342; however, the Incorporated NYSE rule does not contain the exclusions set forth in NASD Rule 2342 because NYSE member organizations generally would not qualify for those exclusions.

FINRA believes that the approach in NASD Rule 2342, which excludes non-SIPC members and members that sell exclusively non-SIPC eligible securities from the rule's requirements, is the more appropriate rule for the FINRA membership. Accordingly, the proposed rule change would transfer NASD Rule 2342 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2266 and delete Incorporated NYSE Rule 409A.

As noted above, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

2. 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 transferring NASD Rule 2130 into the Consolidated FINRA Rulebook will ensure that its standards and procedures regarding expungement of customer dispute information from the CRD system continue to be reasonably designed to ensure that information submitted to and maintained in the CRD system is accurate and complete. FINRA believes that transferring NASD Rule 2810 into the Consolidated FINRA Rulebook will ensure that policies and procedures regarding members' participation in public offerings of Investment Programs continue to meet statutory mandates. FINRA believes that transferring NASD Rule 3115 into the Consolidated FINRA Rulebook will continue to allow ATs to provide trading facilities for security futures while also ensuring that FINRA will receive sufficient information to maintain an audit trail regarding the trading of security futures on ATs. Finally, FINRA believes that transferring NASD Rule 2342 into the Consolidated FINRA Rulebook will continue to ensure that SIPC information is provided to customers effectively. The proposed rule change makes non-material changes to rules that have proven effective in meeting the statutory mandates.

²⁴ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

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.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 rule-comments@sec.gov. Please include File Number SR-FINRA-2009-016 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-2009-016. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-2009-016 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.²⁵

Florence E. Harmon
Deputy Secretary

²⁵ 17 CFR 200.30-3(a)(12).