properly reflect the Exchange's current name.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6[5] of the Securities Exchange Act of 1934 (the ''Act'')[6] in general and Section 6(b)(4) of the Act[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as the waiver of registered representative fees applies only to firms that became NYSE Amex member organizations automatically without any action on their part and in spite of the fact that they did not conduct any NYSE Amex business.

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

The Exchange does not believe that the proposed rule change will impose 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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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–NYSEAmex–2009–30 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–NYSEAmex–2009–30. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–30 and should be submitted on or before July 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15791 Filed 7–2–09; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78a *et seq.*

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60172; File No. SR–FINRA–2009–040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 2380 To Limit the Leverage Ratio Offered by Broker-Dealers for Certain Forex Transactions

June 25, 2009.

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 June 4, 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 substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to adopt FINRA Rule 2380 to prohibit any member firm from permitting a customer to: (1) Initiate any forex position with a leverage ratio of greater than 1.5 to 1; and (2) withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 1.5 to 1.

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

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

[2] 17 CFR 240.19b–4.

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

FINRA is proposing to limit the leverage ratio offered by broker-dealers for certain forex transactions to no more than 1.5 to 1. The proposed rule change addresses forex transactions in the off-exchange spot contract market. This market has grown in recent years following the passage of the Commodity Futures Modernization Act of 2000 (''CFMA''), which permits certain enumerated entities, including broker-dealers, to act as counterparties to a retail forex contract.[3] While most of the growth in this area has been concentrated in the futures commission merchant (''FCM'') channel, recent changes in legislation have brought greater interest to forex by broker-dealers.[4] The proposed rule change seeks to limit investor losses resulting from small changes in the exchange rate of a foreign currency and is intended to reduce the risks of excessive speculation.

Paragraph (a) of the proposed rule change states that no member shall permit a customer to initiate a forex position (as defined below) with a leverage ratio greater than 1.5 to 1. Thus, at the time a customer initiates a forex position, the customer must deposit at least ⅔ of the notional value of the contract. Using the example in supplementary material .01, a customer entering into a forex contract representing $750,000 of a foreign currency must have an initial deposit of at least $500,000. The proposed rule change differs from the leverage limits in the FCM channel, where depending on the foreign currency selected, a customer at 400 to 1 leverage would need only an initial deposit of $1,875.

In addition, paragraph (a) also states that ''no member shall permit a customer to withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 1.5 to 1.'' This provision is intended to prevent a customer from depositing funds at the initiation of the forex position and then immediately withdrawing them once the position is established. If a customer were permitted to withdraw the funds once a position is established, the leverage limitation could easily be circumvented as the same deposit could be used to establish multiple forex positions.

The limitation on a customer's ability to withdraw funds that would cause the leverage ratio to exceed 1.5 to 1 differs from a maintenance margin requirement in that an adverse movement in a customer's forex contract will not necessitate the deposit of additional funds. The intra-day and day-to-day pricing changes of a forex contract may cause a customer to have a leverage ratio greater than 1.5 to 1. So long as a customer does not withdraw funds from those initially used to establish the position, a leverage ratio may exceed 1.5 to 1. FINRA considered imposing a maintenance margin requirement but determined that the level of initial deposit was sufficiently high that a maintenance margin requirement was not necessary.

The proposed rule change does not impact existing rules addressing the necessary customer funds to enter into and maintain a forex position. For example, Regulation T does not have margin requirements for forex and allows a customer to obtain nonpurpose credit in a good faith account to effect and carry transactions in forex.[5] However, it should be noted that any funds deposited in a margin account to maintain a forex position or any account equity derived from a forex position may not be used to purchase securities in that account.

Paragraph (b) of the proposed rule change establishes the key definitions. The term ''forex'' is defined to mean a foreign currency spot, forward, future, option or any other agreement, contract, or transaction in foreign currency that: (1) Is offered or entered into on a leveraged basis, or financed by the offeror, the counter party, or a person acting in concert with such person, (2) offered to or entered into with persons that are not eligible contract participants;[6] and (3) not executed on or subject to the rules of a contract market,[7] derivatives transaction execution facility,[8] national securities exchange,[9] or foreign board of trade.[10] FINRA is proposing an amended version of the definition of forex from what appeared in *Regulatory Notice* 09–06 by adding the terms ''spot'' and ''forward'' in order to clarify that the leverage limitation will apply to foreign currency transactions no matter how they are legally classified. FINRA's definition of forex is similar to the National Futures Association's (''NFA'') definition of forex[11] and to amended Section 2(c)(2) of the Commodity Exchange Act which sets forth the scope of the Commodity Futures Trading Commission's (''CFTC'') rulemaking jurisdiction.[12] The FINRA definition, however, does not contain an exclusion for certain spot and forward contracts found in the NFA and CFTC definitions, which were included due to CFTC jurisdictional limitations.[13]

Paragraph (b) also defines the term ''leverage ratio'' to mean the fraction represented by the numerator which is the notional value of a forex transaction, and the denominator, which is the amount of good faith deposit or account equity required from the customer for a forex position. For example, if the notional value of a forex contract is $250,000, and the customer deposits $200,000, the leverage ratio would be 1.25 to 1.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing 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,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative

[3] Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763, 2763A–378 (2001).

[4] *See* CFTC Reauthorization Act of 2008, Public Law 110–246, 122 Stat. 1651 (2008).

[5] 12 CFR 220.6.

[6] ''Eligible Contract Participants'' (''ECPs'') include regulated entities such as financial institutions, insurance companies, investment companies and broker-dealers. Certain corporations and individuals qualify as ECPs by meeting the requirements under the statute. *See* 7 U.S.C. 1a(12).

[7] ''Contract markets'' are markets that are designated by the CFTC that meet the criteria in Section 5 of the Commodity Exchange Act. *See* 7 U.S.C. 7.

[8] ''Derivatives transaction execution facilities'' (''DTEFs'') are CFTC-registered trading facilities that limit access primarily to institutional or otherwise eligible traders and/or limit the products traded. *See* 7 U.S.C. 7a.

[9] A ''national securities exchange'' is a securities exchange that has registered with the SEC under Section 6 of the Exchange Act. *See* 15 U.S.C. 78f.

[10] A ''foreign board of trade'' means any organized exchange or trading facility located outside of the United States.

[11] NFA By-Law 1507(b).

[12] *See* CFTC Reauthorization Act of 2008, 13101 (to be codified at 7 U.S.C. 2(c)(2)(C)(i)(I)).

[13] NFA By-Law 1507(b) and CFTC Reauthorization Act of 2008, 13101 (to be codified at 7 U.S.C. 2(c)(2)(C)(i)(II)).

[14] 15 U.S.C. 78*o*–3(b)(6).

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 is consistent with the provisions of the Act noted above in that it will limit leverage ratios, requiring greater initial deposits that will substantially reduce the likelihood that any small adverse percentage change in the exchange rate of a foreign currency will cause an investor's funds to be wiped out. Moreover, limiting the leverage ratios is intended to reduce the risks of excessive speculation.

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

The proposed rule change was published for comment in FINRA *Regulatory Notice* 09–06 (January 2009). FINRA received 109 comments in response to the *Regulatory Notice.* A copy of the *Regulatory Notice* is attached as Exhibit 2a, the index to the comment letters is attached as Exhibit 2b and copies of the comment letters received in response to the *Regulatory Notice* are attached as Exhibit 2c.[15]

Of the 109 comment letters received, none were in favor of the proposed rule change and 108 were opposed; one comment letter did not express an opinion.

Ninety-seven of the comment letters were from individual investors who opposed FINRA's attempts to limit the amount of leverage available.[16] FINRA believes the central theme in these comment letters was that it was unfair to lower the leverage ratios available and that neither the government nor any regulator should inhibit an individual's freedom to invest and make money.[17] In short, commenters believe that they should be entitled to invest their money at whatever leverage ratio they see fit. Several of these commenters [18] argued that the proposed rule change would kill the off-exchange retail forex business or force traders to trade in foreign, less regulated markets.[19] Many of the individual investors believed that the leverage limitations were unnecessary because they could manage their risk by trading in small amounts or by entering a stop-loss order.[20]

FINRA staff disagrees with these commenters and the *laissez faire* and *caveat emptor* approach. FINRA's mandate includes investor protection, and many of the comment letters, such as those from retirees and retail investors, are from individuals whose interests are traditionally helped by FINRA's regulatory program.[21] Taken to their logical conclusion, FINRA believes that these commenters would likely oppose many of FINRA's existing rules (including a 25% maintenance margin requirement, and the minimum equity of $25,000 for pattern day traders),[22] as well as the initial margin limitations in the Federal Reserve Board's Regulation T.[23] Further, while a stop-loss order may help minimize the losses on any particular forex position, it does not address the fact that at high levels of leverage, such as 400 or 100 to 1, a very small movement in the exchange rate of a foreign currency pair trade will quickly trigger the stop-loss provision and close out the position with a loss. Similarly, the fact that a firm will close out a customer position and not issue a margin call does not address the potential for losses resulting from such high leverage ratios.

In addition, these commenters believed that the proposal was targeted at the retail investor, while allowing larger institutional investors to have access to higher levels of leverage.[24] One commenter compared the proposed rule change to the ''accredited investor'' standard which he viewed as preventing the little guy from having access to the best deals.[25] Interestingly, some of those commenters who opposed the proposed rule change also acknowledged that existing levels of leverage were excessive and would not trade at these levels.[26]

Several broker-dealers submitted comment letters on the proposed rule change. Interactive Brokers, Knight, TD Ameritrade and thinkorswim believed that the investor protection benefits of the proposed rule change would not be attained as the proposal would merely divert customers' forex activities to non-FINRA members.[27] Knight urged FINRA to allow customers to trade forex at broker-dealers ''on similar terms as accounts held at entities that are not regulated by FINRA.'' FINRA does not believe that the opportunity for customers to trade in a less-regulated environment or on more lenient terms is a compelling rationale to limit the application of the proposed rule change. Prior to soliciting comment on the proposed rule change in *Regulatory Notice* 09–06, FINRA reviewed the regulatory requirements of other regulators and concluded that the availability of such high levels of leverage was the crux of the problem faced by investors. FINRA acknowledges that different regulators may choose to pursue their regulatory mandate in separate ways; however,

[15] All references to commenters under this Item are to the commenters as listed in Exhibit 2b to the proposed rule change [SR–FINRA–2009–040].

[16] Abhay, Aird, Akhras, Ali, Andrews, Arthur, Avery, Chris, Cohn, Colman, Crowley, Dallmann, Daniels, David, Day, Decker, Delfino, Doozan, Evergreen, Figlewski, Findley, Fortner, Gallagher, Gallagher 2, Getline, Goff, GoodBoy, Gray, gslatham, Gurkan, Hoepker, Howell, Hurley, Issacs, Jackal, Jackson, Jacobs, James, Jim, Johnston, Jones, Kerr, Lambert, Langin, Lannon, Lebold, Leousis, Levy, Marsh, Marshall, Muir, National Information, Nadjakov, Negus, Newhouse, Nichols, Nick, nv46, O'Moore, Otlo, Overfield, Parker, Pellot, Pena, Prime, Prindle, Quesenberry, Rajenthiran, Ramlakhan, Ramsey, Rawlins, Revolg, Rice, Richardson, L. Richardson, Rigney, Rocha, Romero, Sabo, Salatino, Shore, Sinclair, Sinclair 2, Thomlinson, Tischer, Uwins, Vern, Walker, Waratah, Weaver, Weisbloom, Wilkes, Williams, Young, Young 2, Zarlengo and Zepco.

[17] Aird, Akhras, Avery, Day, Doozan, Findley, Gallagher, Gallagher 2, Getline, GoodBoy, gslatham, Jackson, Jacobs, James, Jones, Lannon, Marsh, National Information, Newhouse, nv46, O'Moore, Quesenberry, Ramsey, Revolg, Richardson, L. Richardson, Rigney, Sabo, Sinclair, Vern, Walker, Wilkes, Williams, Young and Zarlengo.

[18] Abhay, Akhras, Andrews, Crowley, David, Figlewski, Fortner, Getline, GoodBoy, Gray, Gurkan, Hoepker, Lambert, Lebold, Leousis, Nick, nv46, Prindle, Ramlakhan, Rawlins, Rice, Romero, Sinclair 2, Thomlinson, Tischer, Waratah, Wilkes, Williams and Zepco.

[19] Because many of these commenters are unfamiliar with FINRA and its jurisdiction, FINRA believes that these commenters mistakenly believe that the proposed rule change would eliminate their ability to trade forex at higher leverage levels. FINRA's proposal would have no direct effect on the leverage ratios offered by non-broker-dealers, which currently represent the overwhelming majority of participants in this industry. As of November 2008, the NFA had 26 Forex Dealer Members. *See* Lee Oliver, *Retail FX in the U.S.: A Market in Transformation,* Futures Industry Magazine, November/December 2008, at 35.

[20] Abhay, Colman, Gurkan, Leousis, Sinclair 2, Weisbloom and Williams.

[21] One investor noted that after finally saving up $114, he was able to start trading forex.

[22] *See* NASD Rule 2520.

[23] 12 CFR 220.

[24] Abhay, Arthur, Chris, Goff, Gurkan, James, Jim, Kerr, Leousis, Nadjakov, Newhouse, Nichols, Prime, Prindle, Ramsey, Sinclair, Sinclair 2, Vern, Weisbloom, Williams and Young 2.

[25] Avery.

[26] Crowley (offered 40 to 1, yet trades at no more than 2 to 1); Dallmann (says you should not risk more than 2% of your account balance); Delfino (allow for a maximum leverage of 100 to 1); Lambert (understanding lowering the limit to 100 to 1); Parker (proposing maximum leverage of 5 to 1 or 4 to 1); Ramlakhan (the firm he trades with offers 40 to 1, but he uses no more than 16 to 1); Revolg (leverage no less than 20 to 1); Uwins (stating ''400:1 is getting a little ridiculous'' and favoring 100:1 or less); and Waratah (uses a true leverage of 5 to 1).

[27] This view also was reflected in comment letters by FIA and FXC.

FINRA is not compelled to follow the standards adopted by other regulators.

FIA, FXC and thinkorswim urged FINRA to use the standards articulated in *Regulatory Notice* 08–66 (Retail Foreign Currency Exchange) and FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), and best practices adopted by the forex community in lieu of the proposed rule change. While FINRA believes that the protections afforded investors under *Regulatory Notice* 08–66 and FINRA Rule 2010 are meaningful, they do not, in FINRA's view, go far enough. FXC also questioned whether FINRA has the authority to control the terms of a non-securities transaction. FINRA does not read any provisions in the Act that prohibit it from proposing rules on broker-dealer conduct relating to non-securities. The standards for the rules of a national securities association in Section 15A of the Act include the ''protect[ion] of investors'' irrespective of whether such activity relates to securities. Ironically, FXC's premise that FINRA Rule 2010 and *Regulatory Notice* 08–66 are sufficient to protect investors contradicts its assertion that FINRA does not have authority to adopt rules relating to non-securities transactions.

FIA and Interactive Brokers stated that the proposed rule change is inconsistent with congressional intent in allowing a broker-dealer to engage in an off-exchange retail forex business. While Congress authorized a class of *regulated* entities to engage in an off-exchange retail forex business,[28] FINRA believes that there is nothing in the legislation to suggest that Congress intended that each regulated entity would adopt a conforming regulatory regime. Indeed, when the CFMA was adopted, Congress was well-aware of the differing regulatory regimes in the eligible entities. Moreover, FINRA believes Congress actually contributed to the regulatory disparities in only increasing the minimum net capital required for FCMs.[29]

Interactive Brokers, Roberts & Ryan and TradeStation suggested that FINRA adopt an exclusion from the proposed rule change for FINRA members that are dually registered broker-dealer/FCMs like themselves. Both Interactive Brokers and TradeStation stated that dual registrants will be subject to oversight by the CFTC and/or NFA. FINRA believes Interactive Brokers and TradeStation are misreading the CEA and the scope of the NFA's rules. The CEA specifically states that the CFTC's jurisdiction over off-exchange retail forex applies only to FCMs that *are not also a registered broker-dealer*.[30] Similarly, NFA exempts from its Forex Dealer Members entities *that are a member of a national securities association*.[31] Thus, Interactive Brokers' and TradeStation's off-exchange retail forex business operate outside the ambit of the CFTC and NFA rules tailored to forex. It is not sufficient for regulatory purposes that the CTFC and NFA can enforce their books and records and general anti-fraud provisions. Moreover, even if Interactive Brokers and TradeStation were to voluntarily submit to the NFA's jurisdiction for purpose of applying its off-exchange retail forex rules, FINRA would still have concerns about the level of leverage provided in what is a joint broker-dealer/FCM.

Interactive Brokers, thinkorswim and TradeStation also argued that the proposed rule change will disadvantage combined broker-dealer/FCMs. FINRA agrees that conducting an off-exchange retail forex business in a combined broker-dealer will subject the firm to a different regulatory regime than if the business were conducted in a separate FCM. Such differences exist today in the application of FINRA Rule 2010 and NASD Rule 2210 to joint broker-dealer/FCMs. FINRA also notes that joint broker-dealer/FCMs are in many other ways operating in a less regulated environment inasmuch as they operate outside of the CFTC and NFA rules on forex. However, the observation that either another regulatory scheme or practices occurring outside of any regulatory scheme allow business in retail forex at greater leverage levels is neither a compelling reason for FINRA to mandate a standard less than that deemed necessary by FINRA for investor protection nor does it demonstrate a deficiency for meeting the elements of approval of this proposed rule change under the Act.

Several commenters[32] suggested that disclosure about the risks of leverage, or the actual leverage, in a particular transaction would be an effective alternative to the proposed rule change. FINRA disagrees that disclosure alone is an effective regulatory solution. FINRA also notes that *Regulatory Notice* 08–66 already requires disclosures of the risks of forex trading and the risks and terms of leveraged trading.[33] SIFMA suggested that FINRA adopt a definition of retail customer. FINRA disagrees and believes that the reference to the ''eligible contract participant'' standard is most appropriate for the proposed rule change as that is the terminology used in the federal legislation that permits a broker-dealer to engage in an off-exchange retail forex business. SIFMA and TD Ameritrade also requested that FINRA adopt a hedging exemption to allow customers to hedge foreign currency exposure from securities. FINRA does not support a hedging exemption as there are many other available alternatives (*e.g.,* exchange traded futures and options, and other OTC products) that may be used to hedge foreign currency exposure. Furthermore, FINRA does not believe that the off-exchange retail forex markets are used for hedging and is concerned that burdens and complexities in establishing a hedging exemption will not be justified.

SIFMA also suggested that FINRA clarify whether Exchange Act Rule 15c3–3 is applicable to the deposit required to carry positions involving retail transactions in foreign exchange. FINRA will work with the SEC to publish an interpretation of Exchange Act Rule 15c3–3 that will address this question.

Finally, TD Ameritrade stated that the proposed rule change would cause broker-dealers to establish an FCM affiliate or to establish an introducing relationship with an NFA firm that offers off-exchange retail forex, and that the broker-dealer would therefore be unregulated with respect to its forex activity. FINRA disagrees and notes that *Regulatory Notice* 08–66 was very clear in reminding firms that broker-dealer forex activities, including referral and introducing activities, would be subject to FINRA Rule 2010.

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

[28] *See supra* note 6.

[29] CFTC Reauthorization Act of 2008, 13101 (to be codified at 7 U.S.C. 2(c)(2)(B)).

[30] CFTC Reauthorization Act of 2008, 1301 (to be codified at 7 U.S.C. 2(c)(2)(B)(i)(II)(cc)(AA)).

[31] NFA By-Law 306.

[32] Dallmann, Hurley, Rocha and Young.

[33] *See Regulatory Notice* 08–66, page 4.

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–2009–040 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–2009–040. 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 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–2009–040 and should be submitted on or before July 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15741 Filed 7–2–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60175; File No. SR–ISE–2009–36]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Linkage Fees

June 25, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 23, 2009, International Securities Exchange, LLC (''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The ISE is proposing to extend through July 31, 2010 the current pilot program regarding transaction fees charged for trades executed through the intermarket options linkage (''Linkage''). The text of the proposed rule change is available at the Exchange.

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

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of this proposed rule change is to extend for one year the pilot program establishing ISE fees for Principal Orders (''P Orders'') and Principal Acting as Agent Orders (''P/A Orders'') sent through Linkage and executed on the ISE. The fees currently are effective for a pilot period scheduled to expire on July 31, 2009.[3] This filing would extend the pilot program for another year, through July 31, 2010.

The ISE fees affected by this filing are: The Linkage P Order fee of $0.27 per contract; the Linkage P/A Order fee of $0.18 per contract and a surcharge fee of between $0.02 and $0.16 per contract for trading certain licensed products (collectively ''linkage fees'').[4] These are the same fees that all ISE Members pay for non-customer transactions executed on the Exchange.[5] The ISE does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

The Exchange believes it is appropriate to charge fees for P Orders and P/A Orders executed through Linkage. Notably, while market makers on competing exchanges always can match a better price on the ISE, they never are obligated to send orders to the ISE through Linkage. However, if such market makers do seek the ISE's liquidity, whether through conventional orders or through the use of P Orders or P/A Orders, we believe it is appropriate to charge our Members the same fees levied on other non-customer orders. We appreciate that there has been limited experience with Linkage and that the Commission is continuing to study Linkage in general and the effect of fees on Linkage trading. Thus, this filing would extend the status quo with Linkage fees for an additional year. The Exchange is making no substantive changes to the way the pilot is currently operating, other than to extend the date of operation through July 31, 2010.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4) that

[34] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Linkage Fees).

[4] Pursuant to other pilot programs, certain linkage fees may not apply during the Linkage pilot program.

[5] The ISE charges these fees only to its Members, generally firms who clear P Orders and P/A Orders for market makers on the other linked exchanges.