the Commission believes that this change will eliminate unnecessary duplicate disclosures, while continuing to provide investors with sufficient notice of such material information.

Finally, Nasdaq proposes to eliminate the requirements in Rule 5810(b) and 5840(k) that companies must notify multiple Nasdaq departments before issuing certain disclosures. The Commission is satisfied that Nasdaq's proposed changes will continue to provide for adequate notification to the MarketWatch Department, as well as other departments,[25] since Nasdaq has represented that the MarketWatch Department will notify other Nasdaq departments of the disclosures when necessary.[26] As such, the Commission believes that Nasdaq's notification procedures will be streamlined, eliminating unnecessary duplicative notification requirements for listed companies, while still ensuring that the necessary departments will be notified by the MarketWatch Department if necessary for regulatory or other reasons.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[27] and will, among other things, protect investors and the public interest by assuring that the investing public has broad and easy access to full disclosure of corporate matters. As discussed above, the Commission believes that the changes proposed by Nasdaq will continue to require issuers to disseminate necessary information to the public in a broad and inclusive manner, while at the same time minimizing duplicative disclosures.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NASDAQ–2010–006) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

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requirement for a foreign private issuer to enter into a listing agreement because there is no need to single out this requirement from all the others of the requirements of the Rule 5000 Series to which a foreign private issuer is subject.

[25] Companies are already required to use the electronic disclosure submission service to notify MarketWatch prior to the distribution of material news. *See* Rule 5250(b)(1) and IM–5250–1. *See also* Securities Exchange Act Release No. 55856 (June 4, 2007), 72 FR 32383 (June 12, 2007) (approving SR–NASDAQ–2007–029).

[26] Nasdaq is also proposing: (i) To add a title to Rule 5250(b)(1) to clarify the text; and (ii) to use capitalization for a defined term in Rule 5615. These are non-substantive changes.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61706; File No. SR–FINRA–2009–047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rule 3160 (Networking Arrangements Between Members and Financial Institutions) in the Consolidated FINRA Rulebook

March 15, 2010.

I. Introduction

On July 21, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rule 2350 (Broker/Dealer Conduct on the Premises of Financial Institutions) as FINRA Rule 3160 in the consolidated FINRA rulebook, subject to certain amendments.

The proposed rule change was published for comment in the **Federal Register** on August 11, 2009.[3] The Commission received five comments on the proposed rule change.[4] On February 5, 2010, FINRA responded to the comments.[5] Also on February 5, 2010, FINRA filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[7] FINRA proposed to adopt NASD Rule 2350 (Broker/Dealer Conduct on the Premises of Financial Institutions), subject to certain amendments, as FINRA Rule 3160 (Networking Arrangements Between Members and Financial Institutions). The details of the proposed rule change are described below.

NASD Rule 2350

NASD Rule 2350 governs the activities of broker-dealers on the premises of financial institutions.[8] Also known as the "bank broker-dealer rule," Rule 2350 generally requires broker-dealers that conduct business on the premises of a financial institution where retail deposits are taken to: (1) Enter into a written agreement with the financial institution specifying each party's responsibilities and the terms of compensation (networking agreement); (2) segregate the securities activities conducted on the premises of the financial institution from the retail deposit-taking area; (3) allow access for inspection and examination by the SEC and FINRA; (4) ensure that communications with customers clearly identify that the broker-dealer services are provided by the member; (5) disclose to customers that the securities

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60475 (August 11, 2009), 74 FR 41774 (August 18, 2009).

[4] *See* letter from Frederick T. Greene, Woodforest Financial Services, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 4, 2009 ("Woodforest Letter"); letter from William A. Jacobson and Eric D. Johnson, Cornell Securities Law Clinic, to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("Cornell Letter"); letter from Dale E. Brown, Financial Services Institute, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("FSI Letter"); letter from Jill I. Gross and Ed Pekarek, Pace University School of Law Investor Rights Clinic, operating through John Jay Legal Services, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("PIRC Letter"); letter from Ronald C. Long, Wells Fargo Advisors, to Elizabeth M. Murphy, Secretary, Commission, dated September 18, 2009 ("WFA Letter").

[5] *See* letter from Gary L. Goldsholle, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated February 5, 2010 ("FINRA Response").

[6] Amendment No. 1 made minor edits to the rule text and the description of the proposal.

[7] 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).

[8] Under the rule, the term "financial institution" includes federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions required by law.

products offered by the broker-dealer are not insured like other banking products; and (6) make reasonable efforts at account opening to obtain a customer's written acknowledgement of the receipt of such disclosure. Rule 2350 applies only when broker-dealer services are conducted either in person, over the telephone, or through any other electronic medium, on the premises of a financial institution where retail deposits are taken, by a broker-dealer that has a physical presence on those premises.[9]

NASD Rule 2350 was adopted to reduce potential customer confusion in dealing with broker-dealers that conduct business on the premises of financial institutions, and to clarify the relationship between a broker-dealer and a financial institution entering into a networking agreement.[10]

The Gramm-Leach Bliley Act and Regulation R

In 2007, the SEC and the Board of Governors of the Federal Reserve jointly adopted rules, known as Regulation R,[11] that implement the bank broker provisions of the Gramm-Leach Bliley Act of 1999 ("GLB").[12] These provisions replaced what had been a blanket exception for banks from the definition of "broker" under the Exchange Act with eleven exceptions from the definition of "broker" that are codified in Exchange Act Section 3(a)(4)(B).[13]

Exchange Act Section 3(a)(4)(B)(i) provides an exception from the definition of "broker" for banks that enter into third-party brokerage (or networking) arrangements with a broker-dealer (the networking exception). Under this exception, a bank is not considered to be a broker if it enters into a contractual or other written arrangement with a registered broker-dealer under which the broker-dealer offers brokerage services on or off bank premises, subject to certain conditions (this differs from NASD Rule 2350, which only applies to broker-dealers offering brokerage services on a financial institution's premises).[14] Although this exception generally provides that a bank may not pay its unregistered employees incentive compensation for referring a customer to a broker-dealer, it does permit a bank employee to receive a "nominal one-time cash fee of a fixed dollar amount" that is not contingent on whether the referral results in a transaction with the broker-dealer.[15] Further, Rule 701 of Regulation R provides an exemption for referrals of certain institutional and high net worth clients that may result in the payment of a higher referral fee (*i.e.,* incentive compensation of more than a nominal amount) to bank employees and may be contingent on the occurrence of a securities transaction, subject to certain additional requirements.[16]

Proposed FINRA Rule 3160

FINRA proposed to adopt NASD Rule 2350 into the Consolidated FINRA Rulebook as FINRA Rule 3160, subject to certain amendments to streamline the rule and to reflect applicable provisions of GLB and Regulation R.

First, the proposed rule change would amend the scope of the rule to conform to the networking exception in GLB. NASD Rule 2350 applies only to broker-dealer conduct on the premises of a financial institution where retail deposits are taken. However, the networking exception in GLB applies to networking arrangements in which a broker or dealer offers brokerage services on or off the premises of a bank.[17] Accordingly, with the exception of those requirements addressing the physical setting, proposed FINRA Rule 3160 would apply to a member that is a party to a networking arrangement with a financial institution under which the member offers broker-dealer services, regardless of whether the member is conducting broker-dealer services on or off the premises of a financial institution.[18]

Second, the proposed rule change would make certain minor changes to the provisions addressing setting, as set forth in NASD Rule 2350(c)(1) (Setting). The setting provision establishes the requirements regarding a member's presence on the premises of a financial institution. To better align the rule text with the language in the networking exception in GLB and its associated rules in Regulation R, proposed FINRA Rule 3160 would provide that a member conducting broker-dealer services on the premises of a financial institution: (1) Be clearly identified as the person performing broker-dealer services and distinguish its broker-dealer services from the services of the financial institution; (2) conduct its broker-dealer services in an area that displays clearly the member's name; and (3) to the extent practicable, maintain its broker-dealer services in a location physically separate from the routine retail deposit-taking activities of the financial institution.

Third, the proposed rule change would amend the provisions addressing networking agreements, in NASD Rule 2350(c)(2) (Networking and Brokerage Affiliate Agreements), to reference certain requirements in GLB and Regulation R regarding written agreements between banks and broker-dealers. As noted above, Rule 701 of Regulation R allows a bank employee to receive a contingent referral fee not subject to the "nominal amount" restriction, so long as the client referred to the broker-dealer by the bank employee is an "institutional" or "high net worth" customer, as defined in Rule 701, and the other conditions of the rule are satisfied.

Rule 701 requires that the written agreement between a bank relying on the exception from the definition of "broker" under Exchange Act Section (3)(a)(4)(B)(i) and the exemption under Rule 701 for institutional and high net worth customers and its networking broker-dealer include terms that obligate the broker-dealer to take certain actions.[19] In particular, the written agreement between the bank and broker-dealer must require that the broker-dealer:

(1) Determine that a bank employee is not subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act, have a reasonable basis to believe that the customer is a "high net worth customer" or an "institutional customer" and conduct a suitability or sophistication analysis for customers and securities transactions by customers;[20]

(2) promptly inform the bank if the broker-dealer determines that the customer referred to the broker-dealer is not a "high net worth customer" or an "institutional customer," as applicable, or the bank employee receiving

[9] *See Notice to Members* 97–89 (December 1997).

[10] *See* Securities Exchange Act Release No. 39294 (November 4, 1997), 62 FR 60542, 60547 (November 10, 1997) (Approval Order).

[11] *See* 17 CFR 247.700–781.

[12] Pub. L. 106–102, 113 Stat. 1338 (1999).

[13] *See* 15 U.S.C. 78c(a)(4).

[14] The exceptions in Section 3(a)(4)(B) of the Exchange Act apply to "banks" as defined in Exchange Act Section 3(a)(6). NASD Rule 2350 addresses "financial institutions." *See supra* note 8.

[15] *See* 17 CFR 247.700 for definitions of the terms "nominal one-time cash fee of a fixed dollar amount," "referral," "contingent on whether the referral results in a transaction" and "incentive compensation."

[16] *See* 17 CFR 247.701.

[17] *See* 15 U.S.C. 78c(a)(4)(B)(i).

[18] The title of the rule would be changed from "Broker/Dealer Conduct on the Premises of Financial Institutions" to "Networking Arrangements Between Members and Financial Institutions."

[19] *See* 17 CFR 247.701(a)(3). *See also* Securities Exchange Act Release No. 56501, 72 FR 56514, 56523 (October 3, 2007) (Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for Banks) ("Banks and broker-dealers are expected to comply with the terms of their written networking arrangements. If a bank or broker-dealer does not comply with the terms of the agreement, however, the bank would not become a 'broker' under Section 3(a)(4) of the Exchange Act or lose its ability to operate under the proposed exemption.").

[20] *See* 17 CFR 247.701(a)(3)(ii)–(iii).

the referral fee is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act;[21] and

(3) inform the customer if the customer or the securities transaction(s) to be conducted by the customer does not meet the applicable standard set forth in the suitability or sophistication determination in Rule 701;[22]

In addition, the broker-dealer may be contractually obligated to provide certain disclosures to a referred customer.[23]

Proposed FINRA Rule 3160 would clarify that networking agreements must include all broker-dealer obligations, as applicable, in Rule 701, and that independent of their contractual obligations, members must comply with all such broker-dealer obligations. In this regard, the release adopting Regulation R specifically contemplated that FINRA might adopt a rule to require that broker-dealers comply with the requirements of Rule 701.[24]

Next, the proposed rule change would modify the provisions addressing customer disclosure and acknowledgements, in NASD Rule 2350(c)(3) (Customer Disclosure and Written Acknowledgement), which require members to make certain disclosures to customers regarding securities products, at or prior to account opening, and to make reasonable efforts to obtain a customer's written acknowledgement of the receipt of such disclosures at account opening. Such disclosures include that the securities products are: (1) Not insured by the Federal Deposit Insurance Corporation ("FDIC"); (2) not deposits or other obligations of the financial institution and not guaranteed by the financial institution; and (3) subject to investment risk, including possible loss of the principal invested.

The proposal would not incorporate the written acknowledgement requirement into proposed FINRA Rule 3160, in light of the application of the rule to networking arrangements regardless of whether the member is conducting broker-dealer services on or off the premises of a financial institution and the obligation that members provide the requisite disclosures orally and in writing. In this context, FINRA believes that oral and written disclosure to customers regarding securities products is sufficient and that requiring a written acknowledgement of receipt from customers is unnecessary.

Lastly, the proposed rule change would amend the provisions addressing communications with the public in NASD Rule 2350(c)(4) (Communications with the Public), consistent with the extension of proposed FINRA Rule 3160 to networking arrangements where the member conducts broker-dealer services on or off the premises of a financial institution. NASD Rule 2350(c)(4) requires a member to make the same disclosures regarding securities products discussed above on advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the member or that are distributed by the member on the premises of a financial institution. To further reduce potential customer confusion, proposed FINRA Rule 3160 would extend this requirement to include all of the member's advertisements and sales literature that promote the name or services of the financial institution or that are distributed by the member at any other location where the financial institution is present or represented.

III. Summary of Comments and Amendment No. 1

The Commission received five comments in response to the rule proposal. Four of the commenters generally supported the proposed rule change,[25] and one opposed it, stating that the proposal did not go far enough to distinguish between banking and investment activities.[26] The comments also raised specific issues, discussed below.

Networking Arrangements on and off the Premises of Financial Institutions

One commenter[27] stated that the application of proposed FINRA Rule 3160 to broker-dealer services off the premises of a financial institution would unreasonably expand the requirements of NASD Rule 2350 to provide certain disclosures orally and in writing to customers beyond bank brokerage clients to include all other customers of the broker-dealer, including institutional clients, on-line brokerage clients and off-shore clients. In its response, FINRA stated that it believes that extending proposed FINRA Rule 3160 to apply to member conduct pursuant to a networking arrangement, regardless of where such activities take place, will enhance investor protection. However, in light of comments received regarding the application of the proposed rule to customer accounts that are not opened as a result of a member's networking arrangement with a financial institution, FINRA amended the proposal to require that oral disclosures only be provided at or prior to the time that a customer account is opened on the premises of a financial institution by a member that is a party to a networking arrangement with the financial institution. Written disclosures that the broker-dealer services are being provided by the member and not by the financial institution, and that the securities products purchased or sold in a transaction with the member are not insured by the FDIC, not obligations of or guaranteed by the financial institution, and are subject to investment risks, including possible loss of principal, would still be required as set forth in the original proposal. FINRA notes that a written acknowledgement is not required under GLB or Regulation R. FINRA believes that this change will retain the benefits of applying the rule to member conduct on or off the premises of a financial institution without imposing potentially unnecessary oral disclosures to customers whose account openings may be wholly unrelated to the networking arrangement.[28]

One commenter[29] suggested that if a member's networking agreement with a financial institution does not explicitly address off premises brokerage services to be provided by the member, then the member should not have to comply with the proposed rule in its application to off premises activities. In its response, FINRA disagreed with this interpretation of the proposed rule. Proposed FINRA Rule 3160 would apply to a member conducting broker-dealer services under a networking arrangement off the premises of a financial institution, regardless of the specific contractual agreements between the parties. FINRA stated that the proposed rule is intended to impose certain requirements on members in networking arrangements that apply

[21] *See* 17 CFR 247.701(a)(3)(v).

[22] *See* 17 CFR 247.701(a)(3)(iv). *See* Securities Exchange Act Release No. 56501 (October 3, 2007) (re: Suitability or Sophistication Analysis by Broker-Dealer). The "sophistication" analysis is based on the elements of NASD IM–2310–3 (Suitability Obligations to Institutional Customers). FINRA is seeking comment on a proposal regarding a consolidated FINRA rule addressing suitability obligations. *See Regulatory Notice* 09–25 (May 2009).

[23] *See* 17 CFR 247.701(b).

[24] *See* Securities Exchange Act Release No. 56501, 72 FR 56514, 56528 n.135 (October 3, 2007) ("As stated in the proposal, the Commission anticipates that it may be necessary for either FINRA or the Commission to propose a rule that would require broker-dealers to comply with the written agreements entered into pursuant to Rule 701.").

[25] *See* Cornell Letter, FSI Letter, WFA Letter and Woodforest Letter.

[26] *See* PIRC Letter.

[27] *See* WFA Letter.

[28] *See* FINRA Response.

[29] *See* WFA Letter.

notwithstanding any contractual obligations of the parties.

One commenter [30] opposed proposed FINRA Rule 3160 stating that it appears designed to maintain the status quo. The commenter stated that the proposed rule is insufficient and does not adequately protect investors, and specifically noted that senior citizens are often confused regarding the role of financial institutions with respect to securities activities through networking arrangements. In its response, FINRA stated that it does not believe that the proposed rule maintains the status quo, and noted that the proposed rule change expands existing requirements to encompass activities of a broker-dealer operating under a networking agreement with a financial institution occurring off the premises of a financial institution. Moreover, FINRA stated that its examination and enforcement mechanisms will continue to bolster the application of FINRA's requirements governing members' networking arrangements with financial institutions.[31]

Written Acknowledgement of Receipt of Disclosures

Certain commenters [32] suggested that FINRA maintain in proposed FINRA Rule 3160 a requirement that a member make a reasonable effort to obtain from each customer during the account opening process a written acknowledgement of receipt of the disclosures required under the rule. One commenter [33] noted that, if this requirement was eliminated, members would have less incentive to ensure that associated persons are making the required disclosures. Another commenter [34] viewed FINRA's reasons for removing the acknowledgement requirement as unpersuasive. This commenter suggested that members have the technology to obtain adequate written acknowledgement from customers, and any administrative burden imposed upon members by a written acknowledgment requirement would be greatly outweighed by the benefit of reducing customer confusion. One commenter [35] asserted that notwithstanding the current requirement to obtain written acknowledgment from customers, many investors do not know that they are acquiring a securities product as opposed to a bank product.

Additionally, one commenter [36] noted that FINRA's proposal may conflict with the *Interagency Statement on Retail Sales of Nondeposit Investment Products,*[37] which requires firms to obtain written acknowledgement for the receipt of nondepository product disclosures. While the commenter did not oppose FINRA's proposal in this respect, it views the proposal as an opportunity for regulatory harmonization in this area. In its response, FINRA stated that it continues to believe that retaining a written acknowledgement in its rule is unnecessary. Moreover, FINRA opined that its proposal would not conflict with a firm's obligations under the *Interagency Statement,* and a written acknowledgement is not required under GLB or Regulation R.

Setting Provision

One commenter [38] expressed the view that it is common industry practice for a registered representative to use conference rooms at a bank location to meet with customers because many representatives' "offices" are cubicles within the operations area of the financial institution. The commenter [39] suggested that FINRA eliminate proposed FINRA Rule 3160(a)(1)(B), which would require members to conduct broker-dealer activities in an area that clearly displays the member's name so that the use of shared conference rooms may continue. Another commenter [40] added that the "to the extent practicable" language in the setting provision is problematic because it invites a subjective and self-serving interpretation of this provision by the financial institution and the member. One commenter [41] read proposed FINRA Rule 3160 as excluding electronic broker-dealer activities and noted that the setting provision ignores that bank deposits are often done electronically.

In its response, FINRA stated that it does not believe that the proposed rule prevents a registered person from using a conference room at a financial institution inasmuch as each of the elements of paragraph (a)(1) of the proposed rule, including the signage requirement in subparagraph (B), can be satisfied. FINRA also noted that the language "to the extent practicable" exists in current NASD Rule 2350 and was not amended under the proposal. Additionally, GLB includes identical language in a corresponding provision.[42] Finally, although the provisions of proposed FINRA Rule 3160(a)(1) provide specific guidance for physical separation on the premises of a financial institution, other provisions in the proposed rule (*i.e.,* paragraphs (a)(3) and (a)(4)) address potential customer confusion for electronic or otherwise off-premises broker-dealer conduct. With respect to electronic deposits made on the premises of a financial institution, FINRA noted that the "retail deposit-taking area" would include areas that have ATMs where electronic deposits are made.

Disclosures on Advertisements and Sales Literature

One commenter [43] suggested clarifying proposed FINRA Rule 3160(a)(4)(B), stating that the rule appears to require financial institutions to include disclosures on advertisements that do not refer to the broker-dealer or its services. In its response, FINRA noted that proposed FINRA Rule 3160 would apply to the conduct and communications of a FINRA member in a networking arrangement, and not to the activities or communications of a financial institution that are unrelated to the networking arrangement. As such, FINRA declined to amend the proposal in response to this comment.

Proposed FINRA Rule 3160(a)(4)(C) would provide a list of certain advertisements and sales literature that do not have to include the disclosures required under the proposed rule. One commenter [44] recommended adding business cards of a registered representative that are printed on a standard size 2″ x 3″ card to this list, stating that it would be difficult to fit the disclosures on such communications. In its response, FINRA stated that it does not intend to amend proposed FINRA Rule 3160(a)(4)(C) to exclude business cards from the required disclosures. FINRA explained that, to the extent business cards are sales literature, disclosures should be provided to assist customers in recognizing the distinctions between the brokerage services offered by the member and the banking services

[30] *See* PIRC Letter.

[31] *See* FINRA Response.

[32] *See* Woodforest Letter, Cornell Letter and PIRC Letter.

[33] *See* PIRC Letter.

[34] *See* Cornell Letter.

[35] *See* PIRC Letter.

[36] *See* WFA Letter.

[37] Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, "Interagency Statement on Retail Sale of Nondeposit Investment Products," Feb. 15, 1994, as supplemented by Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products, Sept. 12, 1995 (the "Interagency Statement").

[38] *See* Woodforest Letter.

[39] *See id.*

[40] *See* PIRC Letter.

[41] *See id.*

[42] *See* Exchange Act Section 3(a)(4)(B)(i)(II).

[43] *See* FSI Letter.

[44] *See* Woodforest Letter.

offered by the financial institution.[45] FINRA also noted that, where necessary, members may use the short form legend as provided in proposed FINRA Rule 3160(a)(4)(B) on business cards.

IV. Discussion and Finding

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[46] The Commission believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act, 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.[47] In particular, the proposed rule change, as amended, will clarify and streamline the FINRA requirements for broker-dealer networking arrangements and better align FINRA requirements with GLB and Regulation R. This, in turn, should promote member firm's compliance efforts.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[48] for approving the proposed rule change, as amended by Amendment No. 1 thereto, prior to the 30th day after the date of publication in the **Federal Register.** The changes proposed in Amendment No. 1 are minor, and do not raise novel regulatory concerns. Moreover, accelerating approval of this proposal should benefit FINRA member firms and investors by more closing aligning, without undue delay, FINRA requirements with both GLB and Regulation R.

VI. 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–2009–047 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–2009–047. 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–2009–047 and should be submitted on or before April 12, 2010.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[49] that the proposed rule change (SR–FINRA–2009–047), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6214 Filed 3–19–10; 8:45 am]

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[45] *See* FINRA Interpretive Letter to Tamara K. Salmon, Investment Company Institute (September 6, 2007).

[46] In approving the proposed rule change, the Commission has considered the rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[47] *See* 15 U.S.C. 78*o*–3(b)(6).

[48] 15 U.S.C. 78o-3(b)(5).

[49] 15 U.S.C. 78s(b)(2).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61710; File No. SR–ISE–2010–02]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change To Amend Exchange Rules Related to Cut-Off Time for Contrary Exercise Advice Submissions

March 15, 2010.

I. Introduction

On January 11, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the cut-off time for submitting contrary exercise advices to the Exchange. The proposed rule change was published for comment in the **Federal Register** on February 8, 2010.[3] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend Rule 1100 to extend the cut-off time to submit contrary exercise advices ("CEAs") [4] to the Exchange to 7:30 p.m. The Exchange also has proposed to make certain non-substantive changes to reorganize the text of Rule 1100 to more clearly present the existing requirements and to eliminate duplicative language.

Pursuant to Rule 805 of the Options Clearing Corporation ("OCC"), certain options that are in-the-money by a specified amount will be automatically exercised. This procedure is known as "Exercise-by-Exception" or "Ex-by-Ex." Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61458 (February 1, 2010), 75 FR 6237.

[4] Contrary exercise advices are also referred to as Expiring Exercise Declarations in the OCC rules.