practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also believes that the proposals submitted by the Exchanges and FINRA are consistent with Section 11A(a)(1) of the Act [20] in that they seek to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule changes will expand the trading pause pilot to include all remaining NMS stocks, but will apply wider price move percentages to the newly added securities to reflect their general higher volatility, lower liquidity, and other trading characteristics. The Commission believes that the proposed trigger percentages of 30% and 50% are reasonable and appropriate for the purposes of the pilot. The Commission also believes that expanding the market-wide trading pauses to include all remaining NMS stocks will serve to reduce the risk of potentially destabilizing price volatility and thereby help promote the goals of investor protection and fair and orderly markets. Further, expanding the pilot will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

Finally, on April 5, 2011, thirteen of the Exchanges and FINRA filed a proposed NMS Plan to create a market-wide limit up-limit down mechanism to address extraordinary market volatility in NMS stocks. By its terms, the circuit breaker pilot will expire on the earlier of August 11, 2011, or the date on which this limit up-limit down mechanism, if approved by the Commission, applies.[21]

The Commission also believes that the proposed change to the market maker quoting obligations is consistent with the Act. This aspect of the proposal would adjust the market maker quoting obligations to assure they remain within a narrower range than the new trading pause percentage thresholds for Phase III securities, which is consistent with the original design of the market maker quoting obligations.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule changes (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) be, and hereby are, approved, as amended.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16229 Filed 6–28–11; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78k–1(a)(1).

[21] *See supra* notes 10 and 12.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64736; File No. SR–FINRA–2011–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook

June 23, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 10, 2011, 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. 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 the consolidated FINRA supervision rules. Specifically, the proposed rule change would: (1) Adopt FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) to replace NASD Rules 3010 (Supervision) and 3012 (Supervisory Control System), respectively; (2) incorporate into FINRA Rule 3110 and its supplementary material the requirements of NASD IM–1000–4 (Branch Offices and Offices of Supervisory Jurisdiction), NASD IM–3010–1 (Standards for Reasonable Review), Incorporated NYSE Rule 401A (Customer Complaints), and Incorporated NYSE Rule 342.21 (Trade Review and Investigation); (3) replace NASD Rule 3010(b)(2) (often referred to as the ''Taping Rule'') with new FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms); (4) replace NASD Rule 3010(e) (Qualifications Investigated) with new FINRA Rule 1260 (Responsibility of Member to Investigate Applicants for Registration); (5) replace NASD Rule 3110(i) (Holding of Customer Mail) with new FINRA Rule 3150 (Holding of Customer Mail); and (6) delete the following NASD and Incorporated NYSE Rules and NYSE Rule Interpretations: (i) NASD Rule 3010(f) (Applicant's Responsibility); (ii) NYSE Rule 342 (Offices—Approval, Supervision and Control) and related NYSE Rule Interpretations; (iii) NYSE Rule 343 (Offices—Sole Tenancy, and Hours) and related NYSE Rule Interpretations; (iv) NYSE Rule 351(e) (Reporting Requirements) and NYSE Rule Interpretation 351(e)/01 (Reports of Investigation); (v) NYSE Rule 354 (Reports to Control Persons); and (vi) NYSE Rule 401 (Business Conduct).

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 for Web site viewing and printing 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''),[3]

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

[2] 17 CFR 240.19b-4.

[3] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from the 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

Continued

FINRA is proposing to adopt new FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) and to delete NASD Rule 3010 (Supervision) and NASD Rule 3012 (Supervisory Control System), on which they are largely based. The proposed rule change also would delete Incorporated NYSE Rule 342 and much of its supplementary material and interpretations as they are, in main part, either duplicative of, or do not align with, the proposed supervision requirements. The proposed rule change, however, does incorporate—on a tiered basis—certain provisions from Incorporated NYSE Rule 342. The details of the proposed rule change are described below.

(1) Proposed FINRA Rule 3110 (Supervision)

Proposed FINRA Rule 3110 is based primarily on existing requirements in NASD Rule 3010 and Incorporated NYSE Rule 342 relating to, among other things, supervisory systems, written procedures, internal inspections, and review of correspondence. Proposed FINRA Rule 3110 also incorporates provisions in other NASD rules that pertain to supervision, including NASD Rule 3012.

(A) Proposed FINRA Rule 3110(a) (Supervisory System) and Proposed Supplementary Material .01 [4]

Proposed FINRA Rule 3110(a) requires a member to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with the applicable securities laws and regulations and FINRA and Municipal Securities Rulemaking Board (''MSRB'') rules. The proposed rule provision is substantially similar to NASD Rule 3010(a) except for two revisions. First, proposed FINRA Rule 3110(a) refers only to associated persons instead of the current reference in NASD Rule 3010(a) to each ''registered representative, registered principal, and other associated person.'' Second, proposed FINRA Rule 3110(a) requires a member's supervisory system to be reasonably designed to achieve compliance with MSRB rules, which NASD Rule 3010(a) does not explicitly reference.[5]

Proposed Supplementary Material .01 (Business Lines) provides that for a member's supervisory system required by proposed FINRA Rule 3110(a) to be reasonably designed to achieve compliance with FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), it must include supervision for all of the member's business lines irrespective of whether they require broker-dealer registration.

(i) Proposed FINRA Rule 3110(a)(1)

Proposed FINRA Rule 3110(a)(1), which is identical to NASD Rule 3010(a)(1), requires a member's supervisory system to include the establishment and maintenance of written procedures.

(ii) Proposed FINRA Rule 3110(a)(2): Designated Principal

Proposed FINRA Rule 3110(a)(2), which is identical to NASD Rule 3010(a)(2), requires a member's supervisory system to include the designation of an appropriately registered principal(s) with authority to carry out the supervisory responsibilities for each type of business in which the member engages for which registration as a broker-dealer is required.

(iii) Proposed FINRA Rule 3110(a)(3) and Proposed Supplementary Material .02–.03

Proposed FINRA Rule 3110(a)(3) requires the registration and designation as a branch office and/or an office of supervisory jurisdiction (''OSJ'') of each location, including the main office, as those terms are defined in the proposed rule. Proposed FINRA Rule 3110(a)(3) is based on similar provisions in NASD Rule 3010(a)(3). In addition, the proposed rule provision and proposed Supplementary Material .02 (Registration of Main Office) incorporate the requirement in NASD IM–1000–4 (Branch Offices and Offices of Supervisory Jurisdiction) that all branch offices and OSJs must be registered as either a branch office or OSJ, respectively. FINRA is deleting NASD IM–1000–4 as part of this proposed rule change.

Additionally, the proposed rule change moves, with no substantive changes, the provisions in NASD Rule 3010(a)(3) setting forth certain factors a member should consider in designating additional locations as OSJs into proposed Supplementary Material .03 (Designation of Additional OSJs).

(iv) Proposed FINRA Rule 3110(a)(4) and Proposed Supplementary Material .04–.05

Proposed FINRA Rule 3110(a)(4) requires a member to designate one or more appropriately registered principals in each OSJ and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the member. This proposed provision replaces the nearly identical provision in NASD Rule 3010(a)(4) with a minor editorial change to delete the phrase ''including the main office,'' from the rule text.

Supplementary Material .04 (One-Person OSJs) codifies existing guidance on the supervision of one-person OSJs. Specifically, the proposed supplementary material clarifies the core concept that the on-site principal in a one-person OSJ location cannot supervise his or her own activities if such principal is authorized to engage in business activities other than the supervision of associated persons or other offices as enumerated in proposed FINRA Rule 3110(e)(1)(D) through (G). Proposed Supplementary Material .04 also provides that, in such instances, the on-site principal must be under the close supervision and control of another appropriately registered principal (''senior principal''). The senior principal is responsible for supervising the activities of the on-site principal at such office and must conduct on-site supervision of such OSJ on a regular periodic schedule determined by the member. The proposed supplementary material requires a member to consider, among other factors, the nature and complexity of the securities activities for which the location is responsible, the nature and extent of contact with customers, and the disciplinary history of the on-site principal in determining this schedule.

Proposed Supplementary Material .05 (Supervision of Multiple OSJs by a Single Principal) clarifies the requirement in proposed Rule 3110(a)(4) to designate an on-site principal in each OSJ with authority to carry out the supervisory responsibilities assigned to that office. Such on-site principal must have a physical presence, on a regular and routine basis, at the OSJ for which the principal has supervisory responsibilities. The proposed

rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] FINRA published the proposed rules for comment in *Regulatory Notice* 08–24 (May 2008). In response to comments, FINRA, among other things, has added new proposed Supplementary Material .01 (Business Lines) to proposed FINRA Rule 3110; this amendment to the proposal has resulted in a change in numbering of all subsequent supplementary material to proposed FINRA Rule 3110. For ease of reference, the proposed rule change employs the new proposed numbers in all instances.

[5] In this regard, SEC staff has confirmed FINRA staff's view that a violation of the MSRB rules also would be a violation of the Federal securities laws, as it would constitute a violation of Exchange Act Section 15B(c)(1). *See Letter from James L. Eastman, Chief Counsel and Associate Director, Division of Trading and Markets, SEC, to Patrice M. Gliniecki, Senior Vice President and Deputy General Counsel, FINRA (March 17, 2009).*

supplementary material establishes a general presumption that a principal will not be assigned to supervise more than one OSJ and sets forth factors members should consider in making a determination regarding whether a single principal can supervise more than one OSJ. Where a member determines to assign one principal to supervise more than one OSJ, the member must document the factors it considered. There is a further general presumption that a determination by a member to assign one principal to supervise more than two OSJs is unreasonable. If a member determines to designate and assign one principal to supervise more than two OSJs, the proposed supplementary material provides that such determination will be subject to greater scrutiny, and the member will have a greater burden to evidence the reasonableness of such structure.

(v) Proposed FINRA Rule 3110(a)(5) through (7) and Proposed Supplementary Material .06

Proposed FINRA Rule 3110(a)(5) requires that each registered person be assigned to an appropriately registered representative(s) and/or principal(s) who is responsible for supervising that person's activities. Proposed FINRA Rule 3110(a)(6) requires a member to use reasonable efforts to determine that all supervisory personnel have the necessary experience or training to be qualified to carry out their assigned responsibilities. Proposed FINRA Rule 3110(a)(7) requires each registered representative and registered principal to participate, at least once each year, in an interview or meeting at which compliance matters relevant to the particular representative or principal are discussed. These proposed provisions replace the nearly identical provisions in NASD Rule 3010(a)(5) through (7) with only minor editorial changes.

Proposed Supplementary Material .06 (Annual Compliance Meeting) codifies existing guidance that a member is not required to conduct in-person meetings with each registered person or groups of registered persons to comply with the annual compliance meetings required by proposed FINRA Rule 3110(a)(7).[6] However, a member that chooses to conduct meetings using other methods (*e.g.,* on-demand Web cast, video conference, interactive classroom setting, telephone, or other electronic means) must ensure, at a minimum, that each registered person attends the entire meeting (*e.g.,* an on-demand annual compliance Web cast would require each registered person to use a unique user ID and password to gain access and use a technology platform to track the time spent on the Web cast, provide click-as-you-go confirmation, and have an attestation of completion at the end of a Web cast) and is able to ask questions regarding the presentation and receive answers in a timely fashion (*e.g.,* an on-demand annual compliance Web cast that allows registered persons to ask questions via an e-mail to a presenter or a centralized address or via a telephone hotline and receive timely responses directly or view such responses on the member's intranet site).

(B) Proposed FINRA Rule 3110(b) (Written Procedures)

FINRA proposes to consolidate various provisions and rules that currently require written procedures into proposed FINRA Rule 3110(b), including provisions from NASD Rule 3010(d)(1) relating to the supervision of registered representatives and Incorporated NYSE Rule 401A (Customer Complaints) relating to the review of customer complaints. In addition, proposed supplementary material, which is discussed in detail below, codifies and expands guidance in these areas.

(i) Proposed FINRA Rule 3110(b)(1) (General Requirements)

Proposed FINRA Rule 3110(b)(1) requires a member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, FINRA rules, and MSRB rules. The proposed rule provision is substantially similar to NASD Rule 3010(b)(1) except for two revisions that mirror changes in proposed FINRA Rule 3110(a). First, proposed FINRA Rule 3110(b)(1) refers only to associated persons instead of the current reference in NASD Rule 3010(b)(1) to ''registered representatives, registered principals, and other associated persons.'' Second, FINRA Rule 3110(b)(1) requires a member's written supervisory procedures to be reasonably designed to achieve compliance with MSRB rules, which NASD Rule 3010(b)(1) does not explicitly reference.[7]

(ii) Proposed FINRA Rule 3110(b)(2) (Review of Member's Investment Banking and Securities Business) and Proposed Supplementary Material .07

FINRA is retaining the provision in NASD Rule 3010(d)(1) requiring principal review, evidenced in writing, of all transactions, but is relocating the provision to proposed FINRA Rule 3110(b)(2). FINRA is also proposing to amend the provision to clarify that such review includes all transactions relating to the member's investment banking or securities business. Proposed Supplementary Material .07 (Risk-based Review of Member's Investment Banking and Securities Business) permits a member to use a risk-based system to review these transactions.

(iii) Proposed FINRA Rule 3110(b)(3)

FINRA is reserving this provision for future rulemaking.[8]

(iv) Proposed FINRA Rule 3110(b)(4) (Review of Correspondence and Internal Communications) and Proposed Supplementary Material .08–.11

Proposed FINRA Rule 3110(b)(4) generally incorporates the substance of NASD Rule 3010(d) (Review of Transactions and Correspondence) requiring members to have supervisory procedures for the review of correspondence. In addition, the proposed provision and proposed related supplementary material incorporate certain existing guidance regarding the supervision of electronic communications in *Regulatory Notice* 07–59 (December 2007).

Specifically, proposed FINRA Rule 3110(b)(4) requires that a member have supervisory procedures for the review of the member's incoming and outgoing written (including electronic) correspondence with the public and internal communications that relate to its investment banking or securities business. Proposed Supplementary Material .08 (Risk-based Review of Correspondence and Internal Communications), however, permits a member to use risk-based review principles to review much of its incoming and outgoing correspondence with the public and internal communications.

The proposed rule also requires a member to identify and handle in

[6] *See Notice to Members* 99–45 (June 1999).

[7] *See supra* note 5.

[8] As noted in *Regulatory Notice* 08–24, FINRA proposed to delete NASD Rule 3040 (Private Securities Transactions of an Associated Person) and replace it with FINRA Rule 3110(b)(3) (Supervision of Outside Securities Activities) and proposed Supplementary Material .07 (Reliance on Bank or Affiliated Entity to Supervise Dual Employees). FINRA, however, has determined to address NASD Rule 3040 as a separate proposal.

accordance with the firm's procedures: Customer complaints, instructions, and funds and securities, and communications that are of a subject matter that require review under FINRA and MSRB rules and the Federal securities laws. Those communications include (without limitation):

- Communications between non-research and research departments concerning a research report's contents (NASD Rule 2711(b)(3) and Incorporated NYSE Rule 472(b)(3));
- Certain communications with the public that require a principal's pre-approval (NASD Rules 2210 and 2211);
- The identification and reporting to FINRA of customer complaints (NASD Rule 3070(c) and Incorporated NYSE Rule 351(d)); [9] and
- The identification and prior written approval of every order error and other account designation change (NASD Rule 3110(j) and Incorporated NYSE Rule 410).[10]

Proposed FINRA Rule 3110(b)(4) also requires that a registered principal review correspondence with the public and internal communications and evidence those reviews in writing (either electronically or on paper). However, proposed Supplementary Material .10 (Delegation of Correspondence and Internal Communication Review Functions) allows a supervisor/principal to delegate review functions to an unregistered person; however, the supervisor/principal remains ultimately responsible for the performance of all necessary supervisory reviews.

Proposed Supplementary Material .09 (Evidence of Review of Correspondence and Internal Communications) codifies existing FINRA guidance that merely opening a communication is not sufficient review.[11] Instead, a member must identify what communication was reviewed, the identity of the reviewer, the date of review, and the actions taken by the member as a result of any significant regulatory issues identified during the review.

Finally, proposed Supplementary Material .11 (Retention of Correspondence and Internal Communications) requires a member to retain its internal communications and correspondence of associated persons relating to the member's investment banking or securities business in accordance with Exchange Act Rule 17a–4(b) [12] and make those records available to FINRA upon request.

(v) Proposed FINRA Rule 3110(b)(5) (Review of Customer Complaints)

Incorporated NYSE Rule 401A requires firms to acknowledge and respond to all customer complaints subject to the reporting requirements of Incorporated NYSE Rule 351(d) (Reporting Requirements). Previously, this meant that firms had to acknowledge and respond to both written and oral customer complaints. However, as part of the effort to harmonize the NASD and NYSE rules in the interim period before completion of the Consolidated FINRA Rulebook, Incorporated NYSE Rule 351(d) was amended to limit the definition of ''customer complaint'' to include only written complaints, thereby making the definition substantially similar to that in NASD Rule 3070(c) (Reporting Requirements).[13]

Proposed FINRA Rule 3110(b)(5), which requires a member's supervisory procedures to include procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints, essentially incorporates the customer complaint requirement in Incorporated NYSE Rule 401A, including the limitation on including only written (including electronic) customer complaints. FINRA believes that oral complaints are difficult to capture and assess, and they raise competing views as to the substance of the complaint being alleged. Consequently, oral complaints do not lend themselves as effectively to a review program as written complaints, which are more readily documented and retained. However, FINRA reminds members that the failure to address any customer complaint, written or oral, may be a violation of FINRA Rule 2010.

(vi) Proposed FINRA Rule 3110(b)(6) (Documentation and Supervision of Supervisory Personnel) and Proposed Supplementary Material .12

Proposed FINRA Rule 3110(b)(6) is based largely on existing provisions in NASD Rule 3010(b)(3) requiring a member's supervisory procedures to set forth the member's supervisory system and to include a record of the member's supervisory personnel with such details as titles, registration status, locations, and responsibilities. The proposed rule also includes a new provision, proposed FINRA Rule 3110(b)(6)(C), that would address potential abuses in connection with the supervision of supervisors. This provision would replace NASD Rule 3012(a)(2) concerning the supervision of a producing manager's customer account activity and the requirement to impose heightened supervision when any producing manager's revenues rise above a specific threshold.

Specifically, the proposed provision requires members to have procedures prohibiting associated persons who perform a supervisory function from:

- Supervising their own activities; and
- Reporting to, or having their compensation or continued employment determined by, someone they are supervising.

The proposal, however, creates an exception for a member that determines, with respect to any of its supervisory personnel, that compliance with either of these conditions is not possible because of the member's size or a supervisory personnel's position within the firm. A member relying on this exception must document the factors the member used to reach such determination and how the supervisory arrangement with respect to such supervisory personnel otherwise comports with proposed FINRA Rule 3110(a). Proposed Supplementary Material .12 (Supervision of Supervisory Personnel) explains that a member generally will need to rely on this exception only because it is a sole proprietor in a single-person firm or where a supervisor holds a very senior executive position within the firm. Members relying on this exception would not be required to notify FINRA of their reliance.[14]

[9] FINRA adopted FINRA Rule 4530 to replace NASD Rule 3070 and comparable provisions in Incorporated NYSE Rule 351 (Reporting Requirements). *See* Exchange Act Release No. 63260 (November 5, 2010), 75 FR 69508 (November 12, 2010) (Order Approving File No. SR–FINRA–2010–034). FINRA Rule 4530 becomes effective on July 1, 2011. *See Regulatory Notice* 11–06 (February 2011). With respect to customer complaints, as detailed further below, proposed FINRA Rule 3110(b)(5) also would affirmatively require members to capture, acknowledge, and respond to all written (including electronic) customer complaints.

[10] On January 27, 2011, the SEC approved, among other things, FINRA Rule 4515 (Approval and Documentation of Changes in Account Name or Designation) to replace NASD Rule 3110(j), and the deletion of Incorporated NYSE Rule 410. *See* Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Order Approving File No. SR–FINRA–2010–052). This rule change becomes effective on December 5, 2011. *See Regulatory Notice* 11–19 (April 2011).

[11] *See Regulatory Notice* 07–59 (December 2007).

[12] 17 CFR 240.17a–4(b).

[13] *See* Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving File No. SR–FINRA–2008–036). As noted previously, FINRA Rule 4530 will replace NASD Rule 3070 and comparable provisions in Incorporated NYSE Rule 351, effective July 1, 2011. *See supra* note 9.

[14] *See* NAIBD letter, *infra* note 21, requesting clarification regarding potential notification requirements for members relying on the proposed exception.

Proposed FINRA Rule 3110(b)(6)(D) requires a member to have procedures to prevent the standards of supervision required pursuant to proposed FINRA Rule 3110(a) from being reduced in any manner due to any conflicts of interest that may be present with respect to the associated person being supervised, such as the person's position, the amount of the revenue generated by such person, or any other factor that would present a conflict. There is no exception from this provision.

(vii) Proposed FINRA Rule 3110(b)(7) (Maintenance of Written Supervisory Procedures) and Proposed Supplementary Material .13

Proposed FINRA Rule 3110(b)(7), which replaces the nearly identical provision in NASD Rule 3010(b)(4), requires a member to retain, and keep current, a copy of the member's written supervisory procedures at each OSJ and at each location where supervisory activities are conducted on behalf of the member. The member must also communicate any amendments to its written supervisory procedures throughout its organization. Proposed Supplementary Material .13 (Use of Electronic Media to Communicate Written Supervisory Procedures) permits a member to distribute and amend its written supervisory procedures using electronic media, subject to certain conditions. Those conditions include: (1) Quick and easy access to the written supervisory procedures; (2) prompt posting of any written supervisory procedure amendments; (3) notifying associated persons of such amendments; (4) verifying, at least once each calendar year, that associated persons have reviewed the written supervisory procedures; (5) having reasonable security procedures to ensure that the written supervisory procedures cannot be altered by unauthorized persons; and (6) retaining current and prior versions of the written supervisory procedures in compliance with the applicable record retention requirements of Exchange Act Rule 17a–4(e)(7).[15]

(C) Proposed FINRA Rule 3110(c) (Internal Inspections) and Proposed Supplementary Material .14–.16

Proposed FINRA Rule 3110(c)(1), based largely on NASD Rule 3010(c)(1), retains the existing requirements for each member to review, at least annually, the businesses in which it engages and inspect each office on a specified schedule. That inspection schedule requires that OSJs and supervisory branch offices be inspected at least annually, non-supervisory branch offices be inspected at least every three years, and non-branch locations be inspected on a regular periodic schedule. The proposed rule provision also clarifies that the term ''annually,'' as used in proposed FINRA Rule 3110(c), means on a calendar-year basis.

Proposed Supplementary Material .15 (General Presumption of Three-Year Limit for Periodic Inspection Schedules) provides a general presumption that a non-branch location will be inspected at least every three years, even in the absence of any indicators of irregularities or misconduct (*i.e.,* ''red flags''). If a member establishes a periodic inspection schedule longer than three years, the member must document in its written supervisory and inspection procedures the factors used in determining that a longer periodic inspection cycle is appropriate. As with NASD Rule 3010(c), proposed FINRA Rule 3110(c) requires a member to retain a written record of each review and inspection, reduce a location's inspection to a written report, and keep each inspection report on file either for a minimum of three years or, if the location's inspection schedule is longer than three years, until the next inspection report has been written.

The proposal revises NASD Rule 3010(c)(3)'s provisions prohibiting certain persons from conducting office inspections to make the provisions less prescriptive. To that end, the proposed rule eliminates the heightened office inspection requirements members must implement if the branch office manager and the person conducting the office inspection report to the same person. The proposal replaces these requirements with provisions requiring a member to:

- Prevent the inspection standards required pursuant to proposed FINRA Rule 3110(c)(1) from being reduced in any manner due to any conflicts of interest that may be present, including but not limited to, economic, commercial, or financial interests in the associated persons and businesses being inspected; and
- Ensure that the person conducting an inspection pursuant to proposed FINRA Rule 3110(c)(1) is not an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to the location.

A member that determines it cannot comply with this last condition due to its size or business model must document in the inspection report both the factors the member used to make its determination and how the inspection otherwise comports with proposed FINRA Rule 3110(c)(1). Proposed Supplementary Material .16 (Exception to Persons Prohibited from Conducting Inspections) explains that such a determination generally will arise only in instances where the member has only one office or the member has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices' branch office manager. The proposal also retains as Supplementary Material .14 (Standards for Reasonable Review) the content of NASD IM–3010–1 (Standards for Reasonable Review) relating to standards for the reasonable review of offices, which has already been harmonized with the review requirements in analogous Incorporated NYSE Rule 342.10.

In addition, the proposal relocates into proposed FINRA Rule 3110(c)(2) certain provisions in NASD Rule 3012 regarding the review and monitoring of certain specific activities, such as transmittals of funds and securities and customer changes of address and investment objectives. Specifically, proposed FINRA Rule 3110(c)(2)(A) requires a member to test and verify a location's procedures for the safeguarding of customer funds and securities, maintenance of books and records, supervision of supervisory personnel, transmittals of funds or securities, and changes of customer account information, including address and investment objective changes and validation of such changes.

Proposed FINRA Rule 3110(c)(2)(B) requires a means or method of customer confirmation regarding transmittals of funds and securities but makes clear that members may use risk-based methods to determine the authenticity of the transmittal instructions. Proposed FINRA Rule 3110(c)(2)(C) also requires a means or method of customer confirmation for changes of customer account information. Finally, proposed FINRA Rule 3110(c)(2)(D) makes clear that if a location being inspected does not engage in all of the activities listed above, the member must identify those activities in the location's written inspection report and document in the report that supervisory policies and procedures must be in place at that location before the location can engage in them.

[15] 17 CFR 240.17a–4(e)(7).

(D) Proposed FINRA Rule 3110(d) (Transaction Review and Investigation)

Section 15(g) of the Act,[16] adopted as part of the Insider Trading and Securities Fraud Enforcement Act of 1988 (''ITSFEA''),[17] requires every registered broker or dealer to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the broker or dealer or any associated person of the broker or dealer. Incorporated NYSE Rule 342.21 sets forth specific supervisory procedures for compliance with ITSFEA by requiring firms to review trades in NYSE-listed securities and related financial instruments that are effected for the member's account or for the accounts of the member's employees and family members. Incorporated NYSE Rule 342.21 also requires members to promptly conduct an internal investigation into any trade the firm identifies that may have violated insider trading laws or rules.

FINRA is proposing FINRA Rule 3110(d) to incorporate into the Consolidated FINRA Rulebook the provisions of Incorporated NYSE Rule 342.21, with some modifications, and extend the requirement beyond NYSE-listed securities and related financial instruments to cover all securities. Specifically, proposed FINRA Rule 3110(d)(1) requires a member to have supervisory procedures for the review of securities transactions that are effected for the account(s) of the member and/or associated persons of the member as well as any other ''covered account'' [18] to identify trades that may violate the provisions of the Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices. The proposed rule change also requires members to promptly conduct an internal investigation into any identified trades to determine whether a violation of those laws or rules has occurred.

Proposed FINRA Rule 3110(d)(2) requires any member that engages in ''investment banking services,'' [19] to provide reports to FINRA regarding such investigations. These members would be required to make reports to FINRA within ten business days of the initiation of an investigation, each quarter to update the status of all ongoing investigations, and within five business days of the conclusion of an investigation.

(E) Proposed FINRA Rule 3110(e) (Definitions)

Proposed FINRA Rule 3110(e) retains the definitions of ''branch office,'' ''office of supervisory jurisdiction,'' and ''business day'' in NASD Rule 3010(g). The branch office definition already has been harmonized with the definition of ''branch office'' in Incorporated NYSE Rule 342.10.

(2) Proposed FINRA Rule 3120 (Supervisory Control System)

FINRA is proposing to replace NASD Rule 3012 (Supervisory Control System) with FINRA Rule 3120. Proposed FINRA Rule 3120(a) retains NASD Rule 3012(a)(1)'s testing and verification requirements for the member's supervisory procedures, including the requirement to prepare and submit to the member's senior management a report at least annually summarizing the test results and any necessary amendments to those procedures.

Proposed FINRA Rule 3120(b) requires a member that reported $150 million or more in gross revenue (total revenue less, if applicable, commodities revenue) on its FOCUS reports in the prior calendar year to include in the report it submits to senior management:

- A tabulation of the reports pertaining to customer complaints and internal investigations made to FINRA during the preceding year; and
- A discussion of the preceding year's compliance efforts, including procedures and educational programs, in each of the following areas:
  - Trading and market activities;
  - Investment banking activities;
  - Antifraud and sales practices;
  - Finance and operations;
  - Supervision;
  - Anti-money laundering; and
  - Risk management.

With the exception of risk management, the categories listed above are incorporated from the annual report content requirements of Incorporated NYSE Rule 342.30 (Annual Report and Certification). The requirement to adequately manage the risks of a member's business is an inherent part of the member's obligations under FINRA's supervision and supervisory control rules. Accordingly, FINRA believes that a discussion of the member's compliance efforts in the area of risk management should be included in proposed FINRA Rule 3120's additional annual report content requirements.

(3) Proposed FINRA Rule 3150 (Holding of Customer Mail)

The proposed rule change replaces NASD Rule 3110(i) (Holding of Customer Mail) with proposed FINRA Rule 3150, a more general rule that eliminates the strict time limits in NASD Rule 3110(i) and generally allows a member to hold a customer's mail for a specific time period in accordance with the customer's written instructions if the member meets certain conditions. Specifically, proposed FINRA Rule 3150(a) provides that a member may hold mail for a customer who will not be receiving mail at his or her usual address, provided that the member:

- Receives written instructions from the customer that include the time period during which the member is requested to hold the customer's mail. If the time period included in the customer's instructions is longer than three consecutive months (including any aggregation of time periods from prior requests), the customer's instructions must include an acceptable reason for the request (*e.g.,* safety or security concerns). Convenience is not an acceptable reason for holding mail longer than three months;
- Informs the customer in writing of any alternate methods, such as e-mail or access through the member's Web site, that the customer may use to receive or monitor account activity and information and obtains the customer's confirmation of the receipt of such information; and
- Verifies at reasonable intervals that the instructions still apply.

In addition, proposed FINRA Rule 3150(b) requires that the member be able to communicate, as necessary, with the customer in a timely manner during the time the member is holding the customer's mail to provide important account information (*e.g.,* privacy notices, the SIPC information disclosures required by FINRA Rule 2266).

Finally, proposed FINRA Rule 3150(c) requires a member holding a customer's mail to take actions reasonably designed

[16] 15 U.S.C. 78*o*(g).

[17] *See* Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100–704, 102 Stat. 4677.

[18] Proposed FINRA Rule 3110(d)(3)(A) defines the term ''covered account'' to include (i) any account held by the spouse, child, son-in-law, or daughter-in-law of a person associated with the member where such account is introduced or carried by the member; (ii) any account in which a person associated with the member has a beneficial interest; and (iii) any account over which a person associated with the member has the authority to make investment decisions.

[19] Proposed FINRA Rule 3110(d)(3)(B) defines the term ''investment banking services'' to include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer, or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer. This proposed definition is the same definition as in proposed FINRA Rule 2240(a)(4) (Research Analysts and Research Reports). *See Regulatory Notice* 08–55 (October 2008).

to ensure that the customer's mail is not tampered with, held without the customer's consent, or used by an associated person of the member in any manner that would violate FINRA rules, MSRB rules, or the Federal securities laws.

(4) Proposed FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms)

FINRA proposes to reconstitute NASD Rule 3010(b)(2) (Tape Recording of Conversations) without any substantive changes as new FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms). The only proposed changes to the rule text are minor editorial changes to assist with readability, changes to the definition of disciplinary history to reflect the adoption of certain enumerated NASD rules as FINRA rules, and a definition clarifying that the term ''tape recording'' includes without limitation, any electronic or digital recording that meets the requirements of proposed FINRA Rule 3170.

(5) Proposed FINRA Rule 1260 (Responsibility of Member To Investigate Applicants for Registration)

FINRA is proposing to relocate the requirements in NASD Rule 3010(e) (Qualifications Investigated) concerning a member's responsibilities during the pendency of a person's application for registration as a representative or principal to a standalone new registration rule, FINRA Rule 1260 (Responsibility of Member to Investigate Applicants for Registration). In addition, the proposed rule change deletes NASD Rule 3010(f) (Applicant's Responsibility) requiring an applicant for registration to provide, upon a member's request, a copy of his or her Form U5. The provision is no longer necessary because members now have electronic access to an applicant's Form U5 through the Central Registration Depository.

(6) Proposal To Eliminate Certain NYSE Rules

As mentioned previously, the proposed rule change deletes corresponding provisions in the Incorporated NYSE Rules and Interpretations that are, in main part, either duplicative of, or do not align with, the proposed supervision requirements discussed above. Specifically, the proposed deleted rule provisions are:

- Incorporated NYSE Rule 342;
- NYSE Rule Interpretations 342(a)(b)/01 through 342(a)(b)/03, 342(b)/01 through 342(b)/02, 342(c)/02, 342(e)/01, 342.10/01, 342.13/01, 342.15/01 through 342.15/05, 342.16/01 through 342.16/03;
- Incorporated NYSE Rules 343, 343.10 and NYSE Rule Interpretation 343(a)/01;
- Incorporated NYSE Rule 351(e) and NYSE Rule Interpretation 351(e)/01;
- Incorporated NYSE Rule 354; and
- Incorporated NYSE Rule 401.

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. The implementation date will be no later than 365 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,[20] 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 also believes that the proposed rule change will clarify and streamline the supervision and supervisory rules for adoption as FINRA Rules in the Consolidated FINRA Rulebook.

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

FINRA published the proposed rules in *Regulatory Notice* 08–24 (May 2008) requesting comment from interested parties. A copy of the *Regulatory Notice* is attached as Exhibit 2a. FINRA received 47 comment letters. A list of the commenters and copies of the comment letters received are attached as Exhibits 2b and 2c, respectively.[21] The comments and FINRA's responses are discussed below.

(a) General Comments

Many of the commenters expressed general support for the proposed rules. Commenters especially commended FINRA for proposing rules that give members the flexibility to design supervisory procedures that reflect their individual business models, as well as eliminating obsolete and/or duplicative requirements.[22]

One commenter, PIABA, opposed the flexibility within the proposed rules, including the proposed risk-based review standards for the approval of securities transactions and the review of certain correspondence, arguing that such flexibility appears to reduce the supervision requirements, thereby diminishing the protection of the investing public. FINRA disagrees. The proposed rules include prescriptive provisions where necessary, while also providing firms with additional flexibility to establish their supervisory programs in a manner that reflects their business models, where consistent with the principles of investor protection and market integrity. In this regard, the proposal retains certain specific requirements of NASD Rules 3010 and 3012, such as mandatory inspection cycles, prohibitions on who can conduct location inspections, and procedures for the monitoring of certain enumerated activities, while providing additional prescriptive requirements where necessary, including special supervision for supervisory personnel rather than just the existing special supervision for producing branch managers, specific procedures to detect and investigate potential insider trading violations, and additional content requirements for certain firms' annual reports. Additionally, with respect to the risk-based review of correspondence, as explained further below, the proposed rules would codify certain existing guidance.

One commenter requested that all supplementary material be moved into the ''body'' of the proposed rules.[23] FINRA notes that supplementary material is considered part of the rule and carries the same force of regulation. Supplementary material provisions provide additional detail regarding a requirement that either appears elsewhere in the rule or is of special significance.

(b) Comments on Proposed FINRA Rule 3110(a) (Supervisory System)

(1) Use of ''Associated Person''

Several commenters objected to the use of the term ''associated person'' in the preamble of proposed FINRA Rule 3110(a), arguing that FINRA could

[20] 15 U.S.C. 78*o*–3(b)(6).

[21] All references to commenters in this rule filing are to the commenters as listed in Exhibit 2b.

[22] ProEquities, ICBA Financial, WealthTrust, LPL, Nationwide Financial, NAIBD, Northwestern Mutual, ING, Prudential, Comerica, WilmerHale, Charles Schwab, CCS.

[23] National Planning.

effectively expand its jurisdiction over non-broker-dealer entities by broadly interpreting this term to include a member's affiliates and the affiliates' employees.[24] To avoid this result, the commenters suggested retaining the reference in NASD Rule 3010(a) to ''registered representative, registered principal, and other associated person.''

These concerns are unfounded as the FINRA By-Laws specifically define who is an ''associated person of a member.'' [25] Included in that definition are all persons who are registered (or have applied for registration) with FINRA. Accordingly, in drafting proposed FINRA Rule 3110(a), FINRA omitted the references to registered representatives and principals as duplicative and unnecessary. The elimination of the terms ''registered representative'' and ''registered principal'' does not alter the reach of the provision or expand FINRA's jurisdiction in any way. FINRA's jurisdiction continues to extend to all persons, regardless of affiliation, that meet the associated person definition.

(2) Permissive Licenses

Commenters also suggested that proposed FINRA Rule 3110(a) should acknowledge that associated persons holding permissive licenses who do not engage in securities activities can have a different level of supervision than registered persons actively engaged in securities activities.[26] To that end, certain commenters even suggested that FINRA rewrite proposed FINRA Rule 3110(a) to refer only to associated persons who are ''actively engaged in the securities business of the firm.'' [27] In response, FINRA notes that it has separately issued for comment the proposed consolidated FINRA rules governing registration and qualification requirements.[28] Among other things, those proposed rules address permissive registration categories and members' differentiated supervisory obligations with respect to persons registered pursuant to such categories.

(3) MSRB Rules

One commenter questioned the proposed requirement to have a supervisory system that is reasonably designed to achieve compliance with MSRB rules, arguing that members affiliated with banks that have opted to conduct their municipal securities business within a bank should not be required to supervise in-bank municipal securities activities.[29] Any member that falls within the Act's definitions of ''municipal securities broker'' or ''municipal securities dealer'' must comply with all applicable obligations, including the obligation to supervise the municipal securities activities of its associated persons and the conduct of its municipal securities business, set forth in the Federal securities law and MSRB rules. Proposed FINRA Rule 3110(a) does not alter this basic premise. Rather, it supports the premise by expressly requiring members to have supervisory procedures that are reasonably designed to achieve compliance with the applicable Federal securities laws and regulations, FINRA rules, and MSRB rules.

Additionally, although FINRA enforces and examines its members for compliance with MSRB rules, current NASD Rule 3010(a) does not expressly require members to design supervisory systems to achieve compliance with the MSRB rules. The proposed rule change clarifies that supervisory systems must extend to compliance with MSRB rules and also aligns FINRA's supervisory system requirement with the existing requirement under MSRB rules to have a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations and MSRB rules.[30]

FINRA is not making any changes to the preamble in proposed FINRA Rule 3110(a) in response to the comments above.

(c) Comments on Proposed FINRA Rule 3110(a)(2): Designated Principal

(1) A Designated Principal for All Business Lines

As proposed in *Regulatory Notice* 08–24, FINRA Rule 3110(a)(2) required a member to designate an appropriately registered principal(s) with authority to carry out the member's supervisory responsibilities for all of a member's business lines, regardless of whether a business line required broker-dealer registration. Commenters had several reactions to this proposed change. Some commenters asked whether the proposed change would expand FINRA's jurisdiction and rules into non-securities activities, such as insurance and investment advisory services that are already regulated by other regulators.[31] Other commenters asked about the appropriate principal registration license for persons responsible for non-broker-dealer business lines.[32] One commenter asked how a firm would comply with the provision without violating the prohibition in NASD Rule 1021(a) (All Principals Must Be Registered) prohibiting principal registration of associated persons who are not currently engaging in a member's investment banking or securities business.[33]

The proposed rule change was intended to explicitly address the fact that a member is responsible for having a supervisory system that encompasses all of its business lines. Thus, if a member chooses to engage in a business that does not require registration as a broker-dealer, the member is nonetheless responsible for supervising that business. To avoid further confusion, FINRA has proposed to retain the language in NASD Rule 3010(a) and adopt supplementary material explaining this requirement. Consequently, proposed Supplementary Material .01 (Business Lines) provides that for a member's supervisory system required by proposed FINRA Rule 3110(a) to be reasonably designed to achieve compliance with FINRA Rule 2010, it must include supervision for all of the member's business lines irrespective of whether they require broker-dealer registration.

As FINRA noted in *Regulatory Notice* 08–24, the requirement that a member supervise all of its business lines is consistent with NASD Rule 3010(b)(1) (and proposed FINRA Rule 3110(b)(1)), which currently requires a member to have supervisory procedures for all business activities in which it engages. Additionally, a member's responsibility for appropriate supervision for all of its business activities is consistent with a member's obligation under FINRA Rule 2010 to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.[34] These general

[24] National Planning, Cornerstone Financial, Nationwide Financial, Great American Advisors, FSI.

[25] *See* FINRA By-Laws Art. 1(rr); *see also Notice to Members* 98–38 n.5 (May 1998) (citing the same By-Laws definition to clarify the term ''associated person'').

[26] FSI, Cornerstone Financial.

[27] Great American Advisors, National Planning, M Holdings.

[28] *See Regulatory Notice* 09–70 (December 2009).

[29] ABA.

[30] *See* MSRB Rule G–27(b).

[31] Cornerstone Financial, National Planning, Comerica, LPL, Nationwide Financial, Great American Advisors, Janney, FSI, NAIBD, WilmerHale, CAI, Charles Schwab, CCS, NSCP, SIFMA, Wachovia Securities, FPA, ING, NFA.

[32] Janney, Charles Schwab, SIFMA, Wachovia Securities, FPA, NFA.

[33] SIFMA. NASD Rule 1021(a) permits a member to maintain a principal license for an associated person who performs legal, compliance, internal audit, back office operations, or similar responsibilities for the member or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

[34] FINRA is required under the Act to have rules that, among other things, are designed to prevent

ethical standards protect investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, regardless of whether those practices occur in business lines that do not require broker-dealer registration or are not illegal or violate a specific rule, law, or regulation.[35] The proposal merely codifies, under proposed FINRA Rule 3110, a member's duty required by FINRA Rule 2010 to supervise all business activities, irrespective of whether they are part of a member's investment banking or securities business.[36]

(d) Comments on Proposed Supplementary Material .03 (Designation of Additional OSJs)

Several commenters raised questions regarding the factors set forth in proposed Supplementary Material .03 that a member should consider in designating additional OSJs.[37] One commenter requested that FINRA delete the factor regarding whether registered persons at the location engage in retail sales or other activities involving regular customer contact with the public as it was not a previously articulated factor.[38] Two other commenters asked that FINRA clarify the terms ''diverse'' and ''complex'' as used in the factors.[39] FINRA notes that proposed Supplementary Material .03 transfers NASD Rule 3010(a)(3) unchanged into the Consolidated FINRA Rulebook without adding any new requirements or language. No single factor is dispositive, but members must use these factors, as necessary, to supervise their associated persons and activities in accordance with proposed FINRA Rule 3110.

(e) Comments on Proposed FINRA Rule 3110(a)(4) and Supplementary Material .04 and .05

Commenters requested clarification regarding several aspects of the requirement in proposed Rule 3110(a)(4) for a member to designate an appropriately registered principal in each OSJ to carry out supervisory responsibilities assigned to that location and the proposed Supplementary Material .04 (One-Person OSJs) and .05 (Supervision of Multiple OSJs by a Single Principal).[40] In main part, the commenters' concerns are centered on their belief that the proposed provisions do not take into account the business and supervisory structure of independent dealer firms and appear to be more tailored to ''wirehouses.'' Specifically, one commenter objected to the requirement in proposed Supplementary Material .04 to designate a senior principal to supervise the activities of a producing on-site principal at a one-person OSJ.[41] The commenter believed that a producing manager at one-person OSJs should be able to supervise his or her own activities. The commenter noted that its firm employs a ''field OSJ'' supervisory structure that permits field OSJ staff to conduct supervisory functions and also be producing managers. The commenter stated that requiring an on-site principal to supervise one-person OSJs would result in the firm needing over 3,300 new staff in the field.

Proposed Supplementary Material .04 codifies existing FINRA guidance on the designation and supervision of one-person OSJs. The provision makes clear that a member may establish a one-person OSJ and also clarifies how a member can establish reasonable on-site supervision on a regular periodic schedule determined by the member at a one-person OSJ in light of the core concept that a principal cannot supervise his or her own activities. A one-person office that is designated an OSJ because it engages in final approval of new accounts or sales literature presents an inherently different supervisory challenge than a one-person OSJ location where the single on-site principal engages in structuring public offerings and/or is a producer. In the latter instance, the proposed supplementary material makes clear that the principal cannot supervise his or her own sales activities due to the conflict of interest such situation presents. Accordingly, FINRA believes that the requirement to have a senior principal regularly supervise the activities of an on-site producing principal is necessary to ensure that the on-site principal's activities are appropriately supervised.

With respect to concerns regarding the need for additional personnel to meet the proposed requirements, FINRA believes that the proposed supplementary material provides members with flexibility in designing a supervisory scheme for these locations by not mandating a specific schedule, but rather, permitting the member to establish the schedule after considering certain factors (*e.g.,* the nature and complexity of the securities activities for which the location is responsible, the nature and extent of contact with customers, and the disciplinary history of the on-site principal). Consequently, FINRA has not revised the proposed supplementary material as requested by the commenters.

Several commenters requested that FINRA revise the presumption in proposed Supplementary Material .05 that a principal cannot supervise more than one OSJ to allow a registered principal to supervise additional OSJs.[42] In addition, at least one commenter stated that firms and their registered principals should be allowed to determine the appropriate number of offices assigned to each OSJ manager and the rules ''should clearly reflect that firms have this freedom in designing their supervisory system.''[43] Commenters further stated that the requirement of a ''physical presence'' on a regular and routine basis is overly burdensome and biased against independent broker-dealer firms.[44]

FINRA does not agree that the proposed supplementary material is biased against independent dealer firms. Members are currently required under NASD Rule 3010(a)(4) to designate an appropriately registered principal in each OSJ and an appropriately registered representative or principal in each non-OSJ branch office with authority to carry out supervisory responsibilities. Proposed FINRA Rule 3110(a)(4) transfers that provision unchanged into the Consolidated FINRA Rulebook. The one-principal-per-OSJ presumption in proposed Supplementary Material .05 explains the meaning of the term ''in each OSJ'' in proposed FINRA Rule 3110(a)(4). This presumption does not limit a

fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. 15 U.S.C. 78*o*–3(b)(6).

[35] *See Ialeggio* v. *SEC,* No. 98–70854, 1999 U.S. App. LEXIS 10362, at *4–5 (9th Cir. May 20, 1999) (''NASD's disciplinary authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.'') (citations omitted).

[36] A number of other FINRA rules apply to conduct irrespective of whether securities transactions are directly involved. For instance, NASD Rule 2210 (Communications with the Public) requires that all member communications with the public be based on principles of fair dealing and good faith and prohibits the distribution to the public of exaggerated, unwarranted, or misleading advertisements and sales literature. *See Robert L. Wallace,* 53 S.E.C. 989, 995 (1998) (Rule 2210 is ''not limited to advertisements for securities, but provide[s] standards applicable to all NASD member communications with the public''). *See also Daniel C. Adams,* 47 S.E.C. 919, 920–21 (1983) (finding that it was within NASD's authority pursuant to NASD Rule 8210 (now FINRA Rule 8210) to investigate and seek information about a product that the broker was selling even assuming that the product was not a security).

[37] Thornburg, NAIBD, Cornerstone Financial, FSI.

[38] NAIBD.

[39] Cornerstone Financial, FSI.

[40] LPL, Cornerstone Financial, FSI.

[41] LPL.

[42] LPL, Cornerstone Financial, FSI.

[43] Cornerstone Financial.

[44] Thornburg, Cornerstone Financial, FSI, NAIBD, SIFMA.

member's ability to have more than one principal in the supervisory chain for an OSJ. Rather, FINRA believes that the presumption is consistent with the long-standing requirement in NASD Rule 3010(a)(4) for members to have an on-site principal in each OSJ location, which is a cornerstone of a member's supervisory structure. Moreover, FINRA believes that physical presence, on a regular and routine basis, by a supervisor at a location that engages in significant activities is necessary for effective oversight. The presumption ensures that such on-site principal has sufficient time and resources to engage in meaningful supervision. However, in response to the comments, FINRA has modified proposed Supplementary Material .05 to make it clear that the presumption applies only to the designation of the on-site principal supervisor required for FINRA Rule 3110(a)(4) purposes in each OSJ location.

(f) Comments on Proposed Supplementary Material .06 (Annual Compliance Meeting)

Several commenters supported proposed Supplementary Material .06, which allows a member to conduct annual compliance meetings through electronic means rather than holding in-person meetings.[45] Two commenters, however, asked that the text be simplified or clarified.[46] One of the commenters also asked that the term ''presenter'' be deleted, as ''many webcasts have audio recordings and screens, rather than presenters, and employees with questions may be directed to an email address or group of individuals, rather than to a single presenter.''[47] FINRA believes that the proposed rule text provides significant flexibility as to the methods members may choose to conduct their annual compliance meetings; however, in response to commenters' concerns, FINRA has revised the proposed rule to eliminate the term ''presenter,'' thereby further recognizing that members may employ methods that may not necessarily involve a specific presenter. The proposed rule would continue to require that registered persons attending the meeting be able to ask questions regarding the presentation and receive answers in a timely fashion (*e.g.,* an on-demand annual compliance Web cast that allows registered persons to ask questions via an e-mail to a presenter or a centralized address or via a telephone hotline and receive timely responses directly or view such responses on the member's intranet site). FINRA also reminds members that the proposed supplementary material requires a member to ensure, at a minimum, that each registered person attends the entire meeting.

(g) Comments on Proposed FINRA Rule 3110(b)(1) (General Requirements) (1) Use of ''Associated Person''

Several commenters objected to the use of the term ''associated person'' by itself in proposed FINRA Rule 3110(b)(1), arguing that its use could effectively expand FINRA's jurisdiction to include a member's affiliates.[48] This argument is similar to those raised by commenters objecting to the same proposed change in FINRA Rule 3110(a). As noted in FINRA's response to that argument, the use of ''associated person'' by itself does not effectively expand FINRA's jurisdiction as the FINRA By-Laws specifically define who is considered an ''associated person of a member.''[49] Included in the definition are persons who are registered (or have applied for registration) with FINRA, which includes registered representatives and registered principals. Accordingly, FINRA drafted proposed FINRA Rule 3110(b)(1) without the references to registered representatives and principals because such persons are already included in the term ''associated person.''

(2) Scope of Supervisory Procedures

Some commenters suggested narrowing the scope of FINRA Rule 3110(b)(1) by having a member's written supervisory procedures address only those types of business for which broker-dealer registration is required.[50] FINRA declines to adopt this suggestion for several reasons. First, NASD Rule 3010(b)(1) currently requires a member to have supervisory procedures to supervise all types of business in which it engages. Proposed FINRA Rule 3010(b)(1) merely retains this existing requirement. Second, as explained above, a member's supervisory system must include appropriate supervision for all of its business activities in order to comply with its obligations under FINRA Rule 2010 to protect investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market.

(h) Comments on Proposed FINRA Rule 3110(b)(2) (Review of a Member's Investment Banking and Securities Business)

(1) ''One Size Fits All''

Two commenters objected to the proposed provision requiring a member to review its investment banking and securities business on the basis that a firm's investment banking business and its securities business are inherently different and that any supervisory review for these businesses should not be subject to a ''one-size-fits-all approach.''[51] The commenters build on their objection with the arguments that since members adopt specific supervisory structures and supervisory procedures specific to their investment banking businesses, implementing this proposed requirement would be ''unnecessary'' and ''duplicative.''[52] These objections do not take into account the fact that a member's supervisory procedures should be tailored to a member's business. As long as a member has supervisory procedures that meet the requirements of the proposed rule, a member may design procedures specific to its individual business lines.

(2) Use of Risk-Based Principles

Several commenters requested that the risk-based provision in proposed Supplementary Material .07 be inserted into the body of the rule.[53] As noted previously, supplementary material is part of the rule. FINRA believes that locating the risk-based discussion as supplementary material improves the readability of the rule without affecting the weight or significance of the provision. Finally, one commenter requested that FINRA clarify the meaning of the term ''risk-based.''[54] The term ''risk-based,'' which the proposed rule uses in several places, describes the type of methodology a member may use to identify and prioritize for review those areas that pose the greatest risk of potential securities laws and self-regulatory organization (''SRO'') rule violations. FINRA acknowledges that members may need to prioritize their review processes due to the volume of information that must be reviewed by using a review methodology based on a reasonable sampling of information in

[45] NAIBD, ING, SIFMA.

[46] ING, SIFMA.

[47] SIFMA.

[48] National Planning, Cornerstone Financial, Nationwide Financial, Great American Advisors.

[49] *See* FINRA By-Laws, Art. 1(rr); *see also Notice to Members* 98–38 n.5 (May 1998) (citing the same By-Laws definition to clarify the term ''associated person'').

[50] National Planning, Cornerstone Financial, FSI.

[51] Janney, SIFMA.

[52] *Id.*

[53] Cornerstone Financial, FSI, LPL, Nationwide Financial, Great American Advisors, Janney, NSCP, SIFMA, ING.

[54] PIABA.

which the sample is designed to discern the degree of overall compliance, the areas that pose the greatest numbers and risks of violation, and any possibly needed changes to firm policies and procedures. In addition, FINRA believes that allowing risk-based review in limited circumstances improves investor protection by ensuring that those areas that pose the greatest potential for investor harm are reviewed more quickly to uncover potential violations.

(i) Comments on Proposed FINRA Rule 3110(b)(3) (Supervision of Outside Securities Activities)

As noted above, proposed FINRA Rule 3110(b)(3) is reserved for future rule making. Accordingly, FINRA is not addressing any comments received on proposed FINRA Rule 3110(b)(3) and related Supplementary Material .07 as such comments are outside of the scope of this proposed rule change.

(j) Comments on Proposed FINRA Rule 3110(b)(4) (Review of Correspondence and Internal Communications) and Supplementary Material .08–.11

One commenter suggested that proposed FINRA Rule 3110(b)(4) and proposed Supplementary Material .08 (Risk-based Review of Correspondence and Internal Communications) could be read to create a new affirmative obligation to supervise all written and electronic internal communications relating to investment banking and securities activities.[55] This conclusion appears to be a misreading of the proposed rule change. As explained in the Purpose section, although there are certain communications that members must review, members may use risk-based review principles to determine the extent to which additional communications should be reviewed.[56]

Proposed FINRA Rule 3110(b)(4) requires each member to have supervisory procedures to review its incoming and outgoing (including electronic) correspondence with the public and internal communications relating to the member's investment banking or securities business to ensure that the member properly identifies and handles in accordance with firm procedures, among other things, customer complaints, instructions, and funds and securities. Two commenters noted that this requirement conflicted with the guidance in *Regulatory Notice* 07–59, which the commenters contend does not instruct members to review internal communications for these topics (outside of those relating to the identifying and reporting of customer complaints).[57] FINRA believes that proposed FINRA Rule 3110(b)(4) and the guidance in *Regulatory Notice* 07–59 do not conflict. *Regulatory Notice* 07–59 specifically notes that a member must have procedures for the review of its associated persons' incoming, outgoing, and internal electronic communications that are of a subject matter that require review under FINRA rules and the Federal securities laws. It is FINRA's view that the categories at issue are of a subject matter that would require review under the Federal securities laws and FINRA rules, including current NASD Rule 3010(d)(2).

Several commenters also requested that FINRA replace the phrase ''to ensure'' in proposed FINRA Rule 3110(b)(4) with ''reasonably designed to ensure.''[58] FINRA declines to make this requested change. Proposed FINRA Rule 3010(b)(1) already requires a member to have reasonably designed written procedures. The term ''to ensure'' is the standard around which those supervisory procedures must be designed. Altering the standard to read ''reasonably designed to ensure'' is a redundancy and would only serve to weaken the standard.

SIFMA and Janney requested that FINRA delete the provision in proposed Supplementary Material .09 (Evidence of Review of Correspondence and Internal Communications) stating that merely opening a communication is not sufficient review. NAIBD also supported deleting this provision, noting that electronic review systems could become more sophisticated and thus, render the sentence obsolete. FINRA declines to delete this provision as it codifies existing guidance that FINRA believes remains appropriate.[59] Whether technological advances would render this provision obsolete in the future is an issue that FINRA will address when, and if, such technology exists.

NAIBD requested that FINRA acknowledge that a reviewer can be an electronic system. A reviewer may decide to use an electronic review system to assist with his or her review functions but the assigned supervisor/principal remains responsible for the adequacy of the review.

SIFMA and Janney requested that FINRA clarify what reasonable and appropriate standards would be sufficient to demonstrate overall supervisory control of delegated functions pursuant to proposed Supplementary Material .10 (Delegation of Correspondence and Internal Communication Review Functions). What may be reasonable and appropriate for each firm will depend on the firm's size, business, structure, etc. Members should look to these factors to determine how they should structure their procedures to demonstrate adequate supervision of delegated functions.

Finally, PIABA requested that FINRA expand the record retention period in proposed Supplementary Material .11 (Retention of Correspondence and Internal Communications) to six years to match the eligibility provisions for customer arbitration disputes in FINRA Rule 12206 (Time Limits). The proposed rule purposefully aligns the record retention period for communications with the SEC's record retention period for the same types of communications to achieve consistent regulation in this area. Accordingly, FINRA declines to extend the record retention period beyond the three-year period stipulated in Rule 17a–4(b) of the Act.[60]

(k) Comments on Proposed FINRA Rule 3110(b)(5)

One commenter questioned the necessity of proposed FINRA Rule 3110(b)(5) as proposed FINRA Rule 3110(b)(4) would require members to review communications to ensure that customer complaints are identified and handled in accordance with a member's supervisory procedures.[61] Proposed FINRA Rule 3110(b)(5) makes clear that members have an affirmative obligation to capture, acknowledge, and respond to every written customer complaint. The review requirement in proposed FINRA Rule 3110(b)(4) supplements this affirmative responsibility.

Another commenter, SIFMA, supported proposed FINRA Rule 3110(b)(5), including the decision to include only written customer complaints. PIABA, on the other hand, argued that members should be required to reduce an oral complaint to writing or to provide the customer with a form. As stated previously, the proposed rule change does not include oral complaints because they are difficult to capture and assess, whereas members can more

[55] Charles Schwab.

[56] In a related comment, several commenters requested that FINRA move the proposed supplementary material regarding the use of risk-based review and delegation of review into the body of proposed FINRA Rule 3110(b)(4). SIFMA, Janney, Baum, Cornerstone Financial, Nationwide Financial, Great American Advisors, FSI. As previously explained, the proposed supplementary material is part of the proposed rule.

[57] SIFMA, Janney.

[58] Cornerstone Financial, Nationwide Financial, Great American Advisors, FSI, NAIBD, ING.

[59] *See Regulatory Notice* 07–59 (December 2007).

[60] 17 CFR 240.17a–4(b).

[61] ING.

readily capture and assess written complaints. FINRA encourages members to provide customers with a form or other format that will allow customers to detail their complaints in writing. However, as noted above, FINRA reminds members that the failure to address any customer complaint, written or oral, may be a violation of FINRA Rule 2010.

A couple of commenters were concerned with the requirement that members ''acknowledge'' customer complaints. One commenter argued that this would be a new requirement for firms currently required to comply only with NASD rules.[62] Another commenter questioned the relevancy of requiring firms to acknowledge complaints when the proposed rule does not include the Incorporated NYSE Rule 401A requirement to do so within 15 days.[63] While FINRA acknowledges that this would be a new requirement for many FINRA members, the investor protection that this provision would provide outweighs any potential compliance burdens. Finally, the absence in the proposed rule of a specific time period in which members must acknowledge their receipt of customer complaints provides members a certain amount of flexibility in designing their supervisory procedures. Members, however, would be expected to explain the reasonableness of a period in excess of 30 days.

(l) Comments on Proposed FINRA Rule 3110(b)(6)

Commenters generally supported FINRA's proposal to eliminate NASD Rule 3012's producing manager supervision requirements.[64] Nevertheless, some commenters requested clarification and guidance regarding certain aspects of the proposed supervisory requirements that would replace the current producing manager supervision provisions.

One commenter, concerned about the meaning of the term ''supervisory function,'' asked FINRA whether an associated person performing a supervisory function needed to be a principal.[65] The proposed rule language does not impose a registration requirement. Whether an associated person performing a supervisory function should be licensed as a principal depends on whether the person is acting in a capacity that requires principal registration.[66] Furthermore, the term ''supervisory function'' does not have a static definition. Whether an associated person is performing a supervisory function depends on the member's supervisory structure and the associated person's assigned duties. Members may delegate supervisory functions to associated persons who are not registered principals. However, FINRA expects members to supervise those persons in accordance with proposed FINRA Rule 3110(b)(6).

One commenter asked why a member's written supervisory procedures should prohibit a supervisor from engaging in conduct (supervising one's own activities and reporting to, or having compensation determined by, a person being supervised) when such conduct is not expressly prohibited by any other FINRA rule.[67] The same commenter also questioned how a member should apply the prohibitions to certain supervisory personnel, such as finance, continuing education, and registration supervisors, who supervise people who could ''affect'' the supervisors' compensation. Other commenters requested, without explanation, that ''home office personnel'' be exempted from the prohibitions.[68]

The proposed supervisory requirements are designed to prevent supervisory situations from occurring that regulators previously have found do not lead to effective supervision.[69] Additionally, the requirement to have supervisory procedures prohibiting a supervisor from supervising one's own activities and reporting to, or having compensation determined by, a person being supervised also serves as the general substantive prohibition against that conduct.[70] However, FINRA understands, and has provided a limited exception for, certain situations and member business models (*i.e.,* senior executive management and/or sole proprietors) where, for example, it is not possible to avoid having someone supervise his or her own activities or supervise someone who determines (not merely ''affects'') his or her compensation. FINRA believes that this exception provides sufficient flexibility for a member to design an appropriate supervisory system for all of its supervisory personnel, irrespective of their place in the member's organizational structure.

Two commenters also requested that FINRA add rule language explaining that a supervisor receiving commission overrides does not equate to having ''compensation determined by'' a person who is supervised.[71] FINRA does not believe that additional rule language is necessary. Although a supervised person may affect his or her supervisor's compensation (through overrides or in other ways), proposed FINRA Rule 3110(b)(6)(C) concerns only those situations where a supervised person directly controls a supervisor's compensation or continued employment. In this context, however, the member would still need to address this conflict in its procedures pursuant to proposed FINRA Rule 3110(b)(6)(D).

Several commenters questioned the necessity of proposed FINRA Rule 3110(b)(6) given the requirement that a member's supervisory system and written procedures be reasonably designed to achieve compliance with applicable securities laws and regulations and SRO rules.[72] As noted above, proposed FINRA Rule 3110(b)(6), among other things, requires members to address conflicts of interest that may reduce the standards of supervision applicable to an associated person. Serious conflicts of interest have, in the past, caused diminished supervision standards that, in turn, have resulted in inadequate supervision. Accordingly, FINRA believes that supervisory procedures to address potential conflicts of interest are necessary.

Several commenters suggested that the standards within FINRA Rule 3110(b)(6) (*e.g.,* procedures ''to prohibit'' supervisory personnel from supervising their own activities and to prevent supervision from being ''lessened in any manner'' due to conflicts of interest) should be changed to ''a reasonably designed'' standard. As noted previously, proposed FINRA Rule 3110(b) already requires that members have procedures that are reasonably designed to achieve compliance with the applicable laws, regulations, and SRO rules. To alter the standards within the rule that describe the outcome the procedures should try to achieve suggest an impermissible relaxation of the standard around which the rule is

[62] Charles Schwab.

[63] ING.

[64] ProEquities, NAIBD, Charles Schwab, SIFMA.

[65] CCS.

[66] *See* NASD Rule 1021.

[67] ING.

[68] Cornerstone Financial, Nationwide Financial, FSI.

[69] *See SEC* v. *Frank D. Gruttadauria,* Civil Action No. 1:02CV324 (N.D. Ohio Apr. 23, 2004), SEC Litigation Release No. 17369 (Feb. 21, 2002).

[70] FINRA also notes that the SEC has consistently recognized that FINRA rules do not generally permit someone to supervise his or her own activities. *See, e.g., Bradford John Titus,* 52 S.E.C. 1154, 1158 (1996) (compliance director held liable, under FINRA (then NASD) rules, for supervisory failure based on finding that salesperson, who was operating as independent contractor out of two-person ''non-branch'' office, could not supervise himself).

[71] Cornerstone Financial, FSI.

[72] Janney, Charles Schwab, SIFMA.

designed. FINRA, however, has revised proposed FINRA Rule 3110(b)(6) to clarify that a member must have procedures to prevent the standards of supervision required pursuant to proposed FINRA Rule 3110(a) from being reduced in any manner due to any conflicts of interest that may be present.

(m) Comments on Proposed FINRA Rule 3110(b)(7) and Proposed Supplementary Material .13

Commenters requested clarification regarding several aspects of proposed FINRA Rule 3110(b)(7), which requires each member to keep and maintain a copy of its written supervisory procedures at each OSJ and at each location where supervisory activities are conducted. Specifically, several commenters requested that FINRA clarify whether members can electronically maintain their written supervisory procedures and also electronically communicate to their associated persons any amendments or updates to the written supervisory procedures.[73] One commenter also suggested that it would be inappropriate to communicate a written supervisory procedures amendment throughout the firm if the amendment was relevant only to a limited business line or set of associated persons.[74]

Written supervisory procedures are records subject to the recordkeeping requirements of Exchange Act Rule 17a–4,[75] which permits a member to store records electronically so long as they are accessible. However, in response to commenters' concerns regarding the use of electronic means to communicate written supervisory procedures amendments to their associated person, FINRA has added proposed Supplementary Material .13 (Use of Electronic Media to Communicate Written Supervisory Procedures), which clarifies that a member may electronically amend and distribute its written supervisory procedures as long as the member meets certain conditions (*e.g.,* providing easy access to the written supervisory procedures, promptly posting written supervisory procedures amendments, and notifying associated persons of the amendments).

(n) Comments on Proposed FINRA Rule 3110(c)

(1) Flexibility To Conduct Location Inspections

Several commenters raised concerns regarding the flexibility members have in conducting location inspections.[76] In particular, four commenters expressed concern regarding the three-year presumption in proposed Supplementary Material .15 (General Presumption of Three-Year Limit for Periodic Inspection Schedules) for inspecting non-branch locations (also referred to as ''unregistered locations'').[77] While one commenter expressed concern that the presumption would be interpreted as a ''three-year pass,'' [78] two other commenters viewed the presumption as becoming a de facto three-year requirement.[79] These same two commenters suggested that the proposed rule include a risk-based inspection scheme similar to that in Incorporated NYSE Rules 342.24 and 342.25, arguing that, otherwise, Dual Members will be forced to change inspection programs previously approved by the NYSE permitting firms to conduct branch office examinations less frequently than once each calendar year.

FINRA believes the timing requirements for location inspections in proposed FINRA Rule 3110(c)(1), which are carried over from the existing NASD requirements, are appropriate and provide all members with sufficient flexibility to meet their inspection requirements. In addition, irrespective of any annual branch office inspection exemptions that may have been granted by the NYSE pursuant to NYSE Rule 342.24, Dual Members have always been required to comply with the annual inspection requirements for supervisory branch offices pursuant to NASD Rule 3010(c)(1)(A).

Regarding the periodic inspection of non-branch locations, proposed Supplementary Material .15 does not set forth either a three-year requirement or a three-year gap between inspections. The proposed supplementary material merely establishes a three-year presumption and provides members with the flexibility to use a periodic inspection schedule that is either shorter or longer than three years. Members may choose to examine non-branch locations more frequently than every three years if the member determines such examinations are necessary to detect and prevent violations of, and achieve compliance with, applicable securities laws and regulations and with applicable FINRA and MSRB rules. Conversely, if a member chooses to use a periodic inspection schedule that is longer than three years, then the proposed supplementary material requires the member to properly document the factors used in determining the appropriateness of the longer schedule.[80]

(2) Reliance on Existing Guidance Regarding Unannounced Inspections

One commenter asked that FINRA clarify the continued viability of those sections of *Notices to Members* 99–45 (June 1999) and 98–38 (May 1998) alerting members to specific SEC cases where the SEC found one pre-announced annual inspection of unregistered locations to be an inadequate discharge of a firm's supervisory obligations for those locations.[81] As indicated by the commenter, these portions of the referenced *Notices* alerted members to SEC decisions regarding the failure to adequately supervise unregistered locations. Although this is not FINRA guidance, these SEC decisions continue to provide valuable information that firms may wish to consider when establishing inspection cycles for unregistered locations. The actual guidance in the referenced *Notices* is applicable unless overridden by the content of proposed rules.

FINRA is not making any changes to proposed FINRA Rule 3110(c)(1) in response to the comments received.

(3) Minimum Content Requirements of Inspection Reports

Several commenters argued that a location's written inspection report should not have to include the testing and verification of a member's policies and procedures for all of the activities enumerated in proposed FINRA Rule 3110(c)(2)(A)(i) through (v) (*e.g.,* transmittals of funds and securities, changes of customer account information, safeguarding of customer funds and securities, supervision of supervisory personnel, maintaining books and records) if that location did

[73] Cornerstone Financial, Great American Advisors, FSI, SIFMA, Baum, ING.

[74] Charles Schwab.

[75] 17 CFR 240.17a–4.

[76] Janney, SIFMA.

[77] Janney, SIFMA, CAI, Nekvasil.

[78] Nekvasil.

[79] Janney, SIFMA.

[80] National Planning requested that this documentation appear in a member's written supervisory procedures. However, FINRA believes that such documentation is more appropriate in an inspection report for a particular location because it explains why a member established a longer periodic inspection schedule for a particular location.

[81] NAIBD.

not conduct all of those activities.[82] In response to these concerns, FINRA has amended the proposed rule language to make clear that a location's inspection report has to include the testing and verification of only those enumerated activities conducted by the location.

One commenter suggested that the proposed customer confirmation requirements for transmittals of funds and securities and changes of customer account information be moved to another section of the proposed rule as they did not pertain to the internal inspection requirements.[83] FINRA disagrees. It is clear from the proposed rule text that the customer confirmation requirements must be included in the policies and procedures for the transmittals of funds and securities and changes of customer account information that a member must test and verify during its inspection of any location at which those activities are performed.

This commenter also objected as ''unnecessarily broad'' the proposed requirement to test and verify the policies and procedures regarding a location's supervision of its supervisory personnel and argued that this language could potentially include off-site supervisory personnel who supervise a branch office manager's activities. FINRA, however, does not view this requirement as overly broad. Rather, the provision is intended to further ensure that the activities of supervisory personnel are subject to supervision, and FINRA would expect, for example, an inspection report to address, as applicable, off-site supervision of the branch office manager's activities.

One commenter asked whether anything other than an account statement would be appropriate to comply with the requirement in proposed FINRA Rule 3110(c)(2)(B) to provide a means or method of customer confirmation for transmittals of customer funds and securities.[84] Additionally, the commenter requested guidance on how to comply with the proposed requirement that members test and verify procedures for the transmittal of funds, especially the hand-delivery of checks. The proposed requirements are already existing requirements of NASD Rule 3012 that FINRA is moving into proposed FINRA Rule 3110. As such, members should already be aware of how to comply with these requirements. Additionally, FINRA has previously provided guidance in *Notice to Members* 05–08 (January 2005) regarding the appropriate means or method of customer confirmation, notification, or follow-up that members should use to comply with this requirement. That guidance remains applicable to the relocated provisions. FINRA does not believe additional guidance is necessary.

Commenters also objected to the rule requirement, as originally proposed in the *Notice,* requiring a member to identify in its written supervisory procedures the activities in which it does not engage.[85] In response to these concerns and the proposed changes made above, FINRA has amended the proposed rule change to retain the requirement that a member identify in a location's written inspection report any enumerated activities the member does not engage in at that location and document in that location's report that the member must have in place at that location supervisory policies and procedures for those activities before the location can engage in them.

(4) Associated Persons Who May Conduct Inspections

Several commenters questioned whether the proposed requirement that a location be inspected by someone who is not an associated person assigned to that location or is not supervised by an associated person assigned to that location would require members to hire outside consultants to conduct inspections.[86] FINRA believes that the proposed rule change, similar to existing NASD Rule 3010(c), provides members with sufficient flexibility to conduct their inspections using only firm personnel.[87] Pursuant to the proposed rule, a member that determines it cannot comply with the restriction, either because of its size or business model, must document in the inspection report the factors the member used to make its determination and how the inspection otherwise comports with proposed FINRA Rule 3110(c)(1).

One commenter requested that FINRA permit members to rely on the exception described above for home office personnel conducting home office inspections.[88] As noted in proposed Supplementary Material .16 (Exception to Persons Prohibited from Conducting Inspections), a member's determination that it cannot meet the requirement on who can conduct a location's inspection will generally arise only in instances where a member has only one office or has an independent contractor business model. However, this general presumption does not prohibit a member from relying on the exception in other instances provided it complies with the conditions in proposed FINRA Rule 3110(c)(3)(C).

(5) Preventing Conflicts of Interest from Lessening an Inspection

Some commenters have argued that the proposed rule's requirement that members prevent conflicts of interest from lessening an inspection in any manner is vague and overly broad and should be altered to a ''reasonably designed'' standard.[89] One commenter also suggested that firms be permitted to design their own procedures to safeguard against conflicts of interest. The proposed requirement does not pertain to a member's supervisory procedures, which a member must ''reasonably design'' to achieve compliance with applicable Federal laws and regulations and SRO rules. Instead, it defines a standard around which inspections must be conducted. The proposed requirement does not prohibit conflicts of interest. Additionally, FINRA has revised the proposed rule text to make clear that a member, for each inspection, must prevent the inspection standards required pursuant to proposed FINRA Rule 3110(c)(1) from being reduced in any manner due to any conflicts of interest that may be present.

(o) Comments on Proposed Supplementary Material .14 (Standards for Reasonable Review)

Several commenters suggested that proposed Supplementary Material .14 be amended to adopt a ''reasonably designed to ensure'' standard.[90] Another commenter suggested that the experience of a representative and/or length of service of a representative with the firm be added as a factor to be considered in determining the reasonableness of review for one-person

[82] Cornerstone Financial, Great American Advisors, FSI, ING (referring to activities in proposed FINRA Rule 3110(c)(2)(A)(i) through (v)).

[83] Charles Schwab.

[84] ING.

[85] Thornburg, Charles Schwab.

[86] Nationwide Financial, Cornerstone Financial, Great American Advisors, FSI.

[87] Charles Schwab also argued that the proposed restriction would prevent personnel based in the same location from inspecting other business units at the same location. To the extent that this comment refers to business departments within a location, the proposed restriction pertains only to office (both registered and unregistered) location inspections. If the comment is referring to multiple locations within one geographical place, a member may use personnel from one location in a particular setting to inspect another location in that same setting.

[88] ING.

[89] LPL, Cornerstone Financial, Great American Advisors, Janney, FSI, Charles Schwab, NSCP, SIFMA.

[90] Cornerstone Financial, Great American Advisors, FSI.

or small remote locations.[91] Proposed Supplementary Material .14 transfers NASD IM–3010–1 with minor changes into the Consolidated FINRA Rulebook. NASD IM–3010–1 was adopted in connection with the uniform branch office definition in 2005 after several years of discussions with the NYSE, NASAA, and NASD. As such, FINRA does not believe that this provision should be further modified at this time. Additionally, FINRA notes the factors listed are not exhaustive, and no single factor is dispositive. Members can and should consider additional factors that are relevant to their business model.

(p) Comments on Proposed FINRA Rule 3110(d)

FINRA received numerous comments on the proposal to require members to include in their supervisory procedures a process for the review of securities transactions that are effected for the accounts of the member and certain accounts of associated persons of the member and their family members to identify trades that may violate the Federal securities laws, rules thereunder, or FINRA rules. The provision was originally proposed in *Regulatory Notice* 08–24 as supplementary material to proposed FINRA Rule 3110; however, as reflected above, FINRA has amended the proposed rule change so that the provision is now contained in the rule as proposed FINRA Rule 3110(d) (Transaction Review and Investigation) rather than as supplementary material. As described below, FINRA made several other changes to the rule in response to comments.

(1) Scope of Provision

Several commenters expressed concern that the proposed provision was too broad in that it failed to recognize different types of business models or to account for transactions in securities such as mutual funds or variable contracts that do not raise the types of concerns addressed by the rule.[92] Other commenters believed the provision was overly broad, vague, or inconsistent with existing FINRA Rules, such as NASD Rule 3050.[93]

As noted above, proposed FINRA Rule 3110(d) is intended to help members comply with their existing obligations under Section 15(g) of the Act,[94] which requires all registered brokers or dealers to ''establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of [the Act] * * * or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.'' FINRA recognizes that not all members will have the same procedures and that not all transactions present the same risks. Consistent with the requirements of Section 15(g) of the Act and proposed FINRA Rule 3110(b), the procedures adopted by the member would need to be reasonably designed to prevent violations of the Act, the rules thereunder, and FINRA rules prohibiting insider trading and manipulative and deceptive devices. Accordingly, each member's procedures should take into consideration the nature of the member's business, which includes an assessment of the risks presented by different transactions and different departments within a firm. Thus, while some members may need to develop restricted lists and/or watch lists, other members may only need to periodically review employee and proprietary trading. Like the incorporated NYSE rule on which the proposal is based, there is no requirement that a member examine every trade of every employee or every proprietary trade.

(2) Family Member and Other Accounts

One commenter stated that, as proposed in *Regulatory Notice* 08–24, the proposal would require family members of persons associated with a member to hold their accounts at the associated person's firm.[95] Other commenters suggested changes to the rule to include those accounts in which the associated person of the member had a beneficial interest or accounts over which an associated person of the member had control.[96] In response to these comments, FINRA has revised the text in the proposed rule change regarding a member's responsibility to monitor trading in certain accounts of an associated person of a member and his or her family members. As revised, the proposed rule change would require a member to review the account activity of any account held by the spouse, child, son-in-law, or daughter-in-law of a person associated with the member where such account is introduced or carried by the member, not every family member of a person associated with the member. In addition, the revised proposed rule change would require members to review any account in which a person associated with the member has a beneficial interest and any account over which a person associated with the member has the authority to make investment decisions. This revised language is based, in large part, on the obligations established by the NYSE in *Information Memo* 88–21 (July 28, 1988) regarding the accounts of certain family members of persons associated with a member and accounts in which the associated person has an interest or has the power, directly or indirectly, to make investment decisions. Finally, proposed FINRA Rule 3110(d) does not require family members of persons associated with a member to hold their accounts at the associated person's firm.

(3) Required Reports

Several commenters expressed concern with the provision in the proposed rule change requiring that members that engage in investment banking activities report to FINRA the status of internal investigations.[97] Although some commenters supported the quarterly report requirement, but not the additional reporting requirements,[98] another commenter believed the reports were unnecessary in light of information reported to FINRA pursuant to NASD Rule 3070[99] (to be replaced by FINRA Rule 4530 (Reporting Requirements, effective July 1, 2011)).[100]

FINRA believes that the proposed rule change strikes the appropriate balance by only requiring certain members to report information (*i.e.,* those members that conduct investment banking activities). Additionally, unlike FINRA Rule 4530,[101] the proposed rule change would require more targeted and detailed reporting, following a review of whether a securities transaction effected for the account(s) of the member, the member's associated person, or other covered account may have violated the Exchange Act or FINRA rules prohibiting insider trading and manipulative and deceptive devices.

[91] Nekvasil.

[92] CAI, Liberty Life, NSCP, PFS, Thornburgh.

[93] FSI, ING.

[94] 15 U.S.C. 78*o*(g).

[95] ING. Another commenter requested that FINRA clarify the term ''family member'' if the provision was not removed. Charles Schwab.

[96] FSI, Northwestern Mutual.

[97] Janney, NSCP, Charles Schwab, SIFMA,

[98] Janney, SIFMA.

[99] Charles Schwab.

[100] *See supra* note 9.

[101] FINRA Rule 4530 is based in large part on NASD Rule 3070 and takes into account requirements under NYSE Rule 351, including the requirement that the firm report whenever the firm has concluded on its own that an associated person of the firm or the firm itself has violated any securities, insurance, commodities, financial or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or SRO. *See* FINRA Rules 4530(b) and 4530.01.

Such information would include reporting the initiation of an investigation (including such information as the identity of the member, the date the internal investigation commenced, and the identity of the security, trades, accounts, associated persons, or associated person's family members holding a covered account, under review), a quarterly report providing progress of any open investigation, and a written report detailing the completion of an investigation, including the investigation's results. Providing such detailed information, even if a member's investigation does not uncover violations in association with the suspected securities transactions, could prove vital to FINRA in connecting the underlying conduct to other conduct about which the member may not know. Thus, FINRA believes that the reporting obligations pursuant to the proposed rule change are necessary to help protect investors and market integrity.

(q) Comments on Proposed FINRA Rule 3110(e)

Two commenters requested that FINRA make several amendments to the definition of the term ''branch office'' in proposed FINRA Rule 3110(e).[102] Both commenters stated that additional exemptions from branch office registration need to be established for certain categories of activities. Specifically, one of the commenters asked that FINRA add an exemption from branch office registration for wholesalers of mutual funds who use their primary residences for business purposes but do not meet with customers at such locations.[103] The other commenter asked that FINRA add an exemption from branch office registration for certain non-U.S. locations because registration can create potentially adverse consequences for the member in the local jurisdiction.[104] FINRA notes that the definition of branch office is being transferred unchanged from current NASD Rule 3010(g)(2). The uniform branch office definition was developed in 2005 after several years of discussions with the NYSE, NASAA, and NASD. As such, FINRA believes the current definition provides appropriate exemptions from registration, and such exemptions should not be expanded at this time.

(r) Comments on Proposed FINRA Rule 3120

All of the comments FINRA received regarding proposed FINRA Rule 3120 addressed the new provisions concerning the report requirements in paragraph (b). As noted above, these requirements are based on provisions that had previously been adopted by the NYSE; however, FINRA determined to apply the requirements only to members that reported $150 million or more in gross revenue on their FOCUS reports for the previous year.

Several commenters noted that the requirements would impose new burdens on certain FINRA members that had previously been members of only NASD and would continue to impose a burden for certain firms that had previously created the report under the Incorporated NYSE Rule.[105] Commenters also questioned the need for the report,[106] and several commenters suggested that the report was duplicative of existing requirements.[107] Finally, several commenters suggested that the $150 million revenue threshold was inappropriate.[108] One commenter suggested that all members be required to include the supplemental information in the report, not merely those members reporting more than $150 million in revenue.[109]

As FINRA stated in *Regulatory Notice* 08–24, FINRA believes that the additional information required of members with more than $150 million in gross revenue will prove to be valuable information for FINRA's regulatory program, in addition to being valuable compliance information for the senior management of the firm. FINRA recognizes the burden the additional content requirements may place on some members and, as a result, proposed only requiring certain members to include the specific information listed in paragraph (b) of the proposed rule in their reports. Although FINRA considered several alternative metrics (*e.g.,* number of registered persons), FINRA attempted to balance the value of the information with the burden and determined that using a gross revenue threshold of $150 million struck the appropriate balance. The metric also is easily determined by reference to the member's most recent annual FOCUS report.

With respect to the specific supplemental information required in the report, for members reporting more than $150 million in gross revenue, the proposed rule requires that those reports include the preceding year's compliance effort in seven areas: Trading and market activity, investment banking activities, antifraud and sales practices, finance and operations, supervision, anti-money laundering, and risk management. In addition, the report is required to include a tabulation of the reports made to FINRA in the previous year regarding customer complaints and internal investigations. As noted above, several commenters stated that some of the information (such as the tabulation of customer complaints) was duplicative of existing requirements while other information was too broad or could be outside the scope of a member's compliance structure (such as risk management or finance). The proposed requirements to include a tabulation of information provided to FINRA regarding complaints and internal investigations are not duplicative of existing requirements. Whereas FINRA Rule 4530 requires reporting certain information to FINRA, the requirement in proposed FINRA Rule 3120(b) covers information required to be provided to a firm's senior management. Thus, each rule serves a distinct purpose.

Several commenters also suggested that the provisions in proposed FINRA Rule 3120 are duplicative of requirements in NASD Rule 3013 and IM–3013.[110] FINRA disagrees. Paragraph (b) of proposed FINRA Rule 3120 does not create a new report requirement; it merely specifies several specific topics that the report (already required under NASD Rule 3012) must address for firms reporting $150 million or more in gross revenue. Since the adoption of NASD Rules 3012 and 3013, FINRA has addressed the issue regarding the interplay between the requirements of NASD Rules 3012 and 3013, noting that the requirements are complementary, not duplicative. For example, in *Notice to Members* 04–71 (October 2004), FINRA stated that the supervisory system required under NASD Rule 3010 results from the processes that are the subject of certification under FINRA Rule 3130.

[102] Nationwide Financial, SIFMA.

[103] Nationwide Financial.

[104] SIFMA.

[105] Cornerstone Financial, FSI, Great American Advisors, Janney, SIFMA.

[106] Charles Schwab, ING, SIFMA.

[107] FSI, Northwestern Mutual, Charles Schwab, ING, Wachovia Securities.

[108] Cornerstone Financial, GAA, FSI, CAI, ING, Charles Schwab.

[109] PIABA.

[110] The SEC approved the adoption of NASD Rule 3013 and IM–3013 into the Consolidated FINRA Rulebook as FINRA Rule 3130. *See* Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (Order Approving File No. SR–FINRA–2008–030). The rule became effective on December 15, 2008. *See Regulatory Notice* 08–57 (October 2008).

NASD Rule 3012 (proposed FINRA Rule 3120) requires members to have supervisory control procedures to test and verify that the member's supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules, as well as to, where necessary, amend or create new supervisory procedures. This same relationship between the rules (proposed FINRA Rules 3110 and FINRA Rule 3120) remains present.

With respect to the specific topics covered by the rule, although most were taken from the existing provisions of Incorporated NYSE Rule 342.30, FINRA determined to add risk management as a required area of discussion in the report. For those firms that did not have compliance efforts in that area (or in any of the enumerated areas) during the year covered by the report, the report should so state.

Finally, one commenter stated that ''it should be clear that such 'testing and verification' also may be risk-based in light of the member's particular business and circumstances.'' [111] The commenter also suggested that the language in the proposed rule be changed from ''test and verify'' to ''regularly test or otherwise monitor.'' FINRA has previously provided guidance in *Notice to Members* 05–29 (April 2005) regarding a member's ability to use risk-based methodologies and sampling to test a subset of policies and procedures annually when conducing the testing and verification required by NASD Rule 3012. That guidance remains applicable to proposed FINRA Rule 3120. FINRA does not believe additional guidance or rule text is necessary.

(s) Comments on Proposed FINRA Rule 3150

FINRA received several comments on proposed FINRA Rule 3150 regarding the holding of customer mail. One commenter requested clarification that members are not required to hold a customer's mail if, for example, the member lacks the systems, processes, and personnel to provide this service.[112] Proposed FINRA Rule 3150, like NASD Rule 3110(i), does not impose an obligation on members to hold a customer's mail upon request. Rather, the rule establishes minimum requirements if a member does provide this service to its customers.

Three commenters expressed concern regarding the requirement that a member holding a customer's mail be able to communicate with the customer in a timely manner during the time the member is holding the customer's mail.[113] All three commenters noted that mail is often held by a member because the customer is unreachable (*e.g.,* when the customer is overseas or in active military service). These commenters also requested that the rule include a specific time limit rather than requiring that a member periodically verify the customer's instructions if the customer instructs the member to hold his or her mail for ''an extended time.''

Under NASD Rule 3110(i), a member is prohibited from holding a customer's mail for more than two months if the customer is on vacation or traveling, or for more than three months if the customer is going abroad. FINRA determined to eliminate the specific maximum time periods from the rule and allow members to create appropriate procedures regarding the holding of customer mail; however, to ensure that a member does not hold a customer's mail indefinitely, FINRA has clarified in the proposed rule that members must receive written instructions from the customer that include the time period during which the member is requested to hold the customer's mail. Additionally, if the requested time period included in the instructions is longer than three consecutive months (including any aggregation of time periods from prior requests), the customer's instructions must include an acceptable reason for the request (*e.g.,* safety or security concerns). Convenience is not an acceptable reason for holding mail longer than three months. Proposed FINRA Rule 3150 also requires members to periodically verify the customer's instructions if they agree to hold mail for that customer for an extended time. As noted above, there is no requirement that members hold customer mail at all, and there is similarly no restriction on a member's ability to limit the time period it offers to hold mail for a customer. Consequently, FINRA believes that providing each member with the flexibility to devise a system that best meets the member's capabilities and the customers' needs is appropriate. Thus, for example, if a member knows a customer will be unreachable, the member may reasonably agree not to hold that customer's mail for more than a specified time or may agree to hold mail only if the customer will be reachable.

Three commenters recommended that FINRA revise the standard for holding customer mail so that rather than a requirement that members ''take actions reasonably designed to ensure that the customer's mail is not tampered with, held without the customer's consent, or used by an associated person of the member in any manner that would violate'' applicable laws, members only be required to ''take actions reasonably designed to avoid tampering with the customer's mail.'' [114] FINRA believes that the current standard in the proposal is the correct standard. If a member chooses to hold a customer's mail, FINRA believes that the member must accept responsibility for the protection of any information in that mail and take reasonable steps to prevent the misuse of that information.

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

Within 45 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 or disapprove 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–2011–028 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–2011–028. This file number should be included on the

[111] Baum.

[112] NSCP.

[113] Cornerstone Financial, Great American Advisors, FSI.

[114] Cornerstone Financial, Great American Advisors, FSI.

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 Web site viewing and printing 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–2011–028 and should be submitted on or before July 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[115]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16232 Filed 6–28–11; 8:45 am]

BILLING CODE 8011–01–P

[115] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12530 and #12531]

North Carolina Disaster Number NC–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1969–DR), dated 04/19/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/16/2011.

Effective Date: 06/20/2011.

Physical Loan Application Deadline Date: 07/05/2011.

EIDL Loan Application Deadline Date: 01/20/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of North Carolina, dated 04/19/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 07/05/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–16236 Filed 6–28–11; 8:45 am]

BILLING CODE 8025–01–P

Small Business Administration

[Disaster Declaration #12576 and #12577]

Missouri Disaster Number MO–00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1980–DR), dated 05/09/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/19/2011 through 06/06/2011.

Effective Date: 06/21/2011.

Physical Loan Application Deadline Date: 07/08/2011.

EIDL Loan Application Deadline Date: 02/09/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Missouri, dated 05/09/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Carter, Lawrence, Wayne

Contiguous Counties: (Economic Injury Loans Only): Missouri, Greene.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator or Disaster Assistance.

[FR Doc. 2011–16237 Filed 6–28–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12599 and #12600]

Kentucky Disaster Number KY–00040

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1976–DR), dated 05/19/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/12/2011 through 05/20/2011.

Effective Date: 06/20/2011.

Physical Loan Application Deadline Date: 07/18/2011.

EIDL Loan Application Deadline Date: 02/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of KENTUCKY, dated 05/19/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:(Physical Damage and Economic Injury Loans): Floyd.

All contiguous counties have previously been declared.

All other information in the original declaration remains unchanged.