III. Exemption From Section 19(b) of the Act With Regard to FINRA Rules Incorporated by Reference

BOX Exchange proposes to incorporate by reference certain FINRA rules.[256] Thus, for certain BOX Exchange rules, BOX Options Participants will comply with a BOX Exchange rule by complying with the referenced FINRA rule.

In connection with the proposal to incorporate the FINRA rules by reference, BOX Exchange requested, pursuant to Rule 240.0–12 under the Act,[257] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to the BOX Exchange rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.[258] BOX Exchange proposes to incorporate by reference categories of rules, rather than individual rules within a category, that are not trading rules. BOX Exchange agrees to provide written notice to BOX Options Participants whenever FINRA proposes a change to a cross-referenced rule [259] and whenever any such proposed changes are approved by the Commission or otherwise become effective.[260]

Using the authority under Section 36 of the Act, the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.[261] Each exempt SRO agreed to be governed by the incorporated rules, as amended from time to time, but is not required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify such rules. In addition, each exempt SRO incorporated by reference only regulatory rules, for example, margin, suitability, and arbitration rules, and not trading rules, and incorporated by reference whole categories of rules. Each exempt SRO had reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide such members with notice of a proposed rule change that affects the members' interests, so that the members will have an opportunity to comment.

The Commission is granting BOX Exchange's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that BOX Exchange proposes to incorporate by reference. The exemption is conditioned upon BOX Exchange providing written notice to BOX Options Participants whenever FINRA proposes to change an incorporated by reference rule. The Commission believes that the exemption is appropriate in the public interest and consistent, with the protection of investors because it will promote more efficient use of Commission and SROs resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.

IV. Conclusion

It is ordered that the application of BOX Exchange for registration as a national securities exchange be, and it hereby is, granted.

It is furthered ordered that operation of BOX Exchange is conditioned on the satisfaction of the requirements below:

A. *Participation in National Market System Plans Relating to Options Trading.* BOX Exchange must join: (1) The Plan for the Reporting of Consolidated Options Last Sale Reports and Quotation Information (Options Price Reporting Authority); (2) the OLPP; (3) the Linkage Plan; and (4) the Plan of the Options Regulatory Surveillance Authority.

B. *Participation in Multiparty Rule 17d–2 Plans.* BOX Exchange must become a party to the multiparty Rule 17d–2 agreements concerning options sales practice regulation and market surveillance.

C. *Participation in the Options Clearing Corporation.* BOX Exchange must become an Options Clearing Corporation participant exchange.

D. *Participation in the Intermarket Surveillance Group.* BOX Exchange must join the Intermarket Surveillance Group.

E. *Effective Regulation.* BOX Exchange must have, and represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations that it has, adequate procedures and programs in place to effectively regulate the BOX options trading facility.

F. *Trade Processing and Exchange Systems.* BOX Exchange must have, and represent in a letter to the staff in the Commission's Division of Trading and Markets that it has, adequate procedures and programs in place, as detailed in Commission Automation Policy Review guidelines, to effectively process trades and maintain the confidentiality, integrity, and availability of BOX Exchange's systems.[262]

It is further ordered, pursuant to Section 36 of the Act,[263] that BOX Exchange shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the FINRA rules that BOX Exchange proposes to incorporate by reference, subject to the conditions specified in this Order.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–10620 Filed 5–2–12; 8:45 am]

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[256] Specifically, BOX Exchange proposes to incorporate by reference the following FINRA rules: Series 12000 (Code of Arbitration for Customer Disputes) and 13000 (Code of Arbitration Procedure for Industry Disputes), referenced in Exchange Rule 14000.

[257] 17 CFR 240.0–12.

[258] *See* letter from Lisa J. Fall, President, BOX Exchange, to Elizabeth M. Murphy, Secretary, Commission, dated March 30, 2012 (''Section 19(b) Exemption Request'').

[259] *See id.*

[260] BOX Exchange will provide such notice through a posting on the same Web site location where BOX Exchange posts its own rule filings pursuant to Rule 19b–4 under the Act, within the required time frame. The Web site posting will include a link to the location on the FINRA Web site where FINRA's proposed rule change is posted. *See id.*

[261] *See e.g.,* DirectEdge Exchanges Order and BATS Order, *supra* note 21, C2 Order, *supra* note 29, Nasdaq Order, *supra* note 34 and NOM Approval Order, supra note 122.

[262] On November 16, 1989, the Commission published its first Automation Review Policy (''ARP I''), in which the Commission created a voluntary framework for SROs to establish comprehensive planning and assessment programs to determine systems capacity and vulnerability. On May 9, 1991, the Commission published its second Automation Review Policy (''ARP II'') to clarify the types of review and reports expected from SROs. *See* Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989) and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991).

[263] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66872; File No. SR–FINRA–2012–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To Amend FINRA Rule 4560 (Short-Interest Reporting)

April 27, 2012.

I. Introduction

On January 10, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4

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

thereunder,[2] a proposed rule change to amend FINRA Rule 4560. On January 20, 2012, FINRA filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on January 30, 2012.[4] The Commission received one comment letter, from the Securities Industry and Financial Markets Association (''SIFMA''), on the proposal.[5] On April 23, 2012, FINRA responded to the comments in the SIFMA Letter[6] and filed Amendment No. 2 to the proposed rule change (''Amendment No. 2'' and collectively with Amendment No. 1, the ''Amendments'').[7] The Commission is publishing this notice and order to solicit comments on Amendment No. 2 and to approve the proposed rule change, as modified by the Amendments, on an accelerated basis.

II. Description of the Proposal

FINRA has proposed to amend FINRA Rule 4560. FINRA Rule 4560 (the ''Rule'') requires each FINRA member to maintain a record of total short positions in all customer and proprietary firm accounts in all equity securities (other than Restricted Equity Securities as defined in Rule 6420) and regularly report such information to FINRA in the manner prescribed by FINRA. The Rule generally provides that the short positions to be recorded and reported are those resulting from ''short sales'' as that term is defined in Rule 200(a) of Regulation SHO.[8] FINRA has proposed to amend the Rule to clarify members' recording and reporting obligations and to delete several exceptions to the Rule.

First, FINRA has proposed to codify interpretive guidance previously issued by the Intermarket Surveillance Group (ISG) that instructed members to report ''gross'' short positions existing in each proprietary and customer account (rather than net positions across accounts).[9] Thus, the proposed rule change provides that members must report all gross short positions existing in each firm or customer account, including the account of a broker-dealer, that resulted from a ''short sale'' as that term is defined in Rule 200(a) of Regulation SHO, as well as where the sale transaction that caused the short position was marked ''long,'' consistent with SEC Regulation SHO, due to the firm's or the customer's net long position at the time of the transaction (*e.g.,* aggregation units).

Second, FINRA has proposed to clarify that members' short interest reports must reflect only those short positions that have settled or reached settlement date by the close of the reporting settlement date designated by FINRA. Therefore, short positions resulting from short sales that were effected but have not reached settlement date by the given designated reporting settlement date, should not be included in a member's short interest report for that reporting cycle. Of course, short interest positions resulting from short sales that reached the expected settlement date, but failed to settle (*i.e.,* ''fails''), must be included.

Third, FINRA has proposed to clarify that members must reflect company-related actions in their short-interest reports adjusted as of the ex-date of the corporate action (and if no ex-date is declared by a self-regulatory organization (''SRO''), then the payment date).[10] Therefore, for the purposes of short interest reporting, members must reflect corporate actions (*e.g.,* a reverse or forward split) that impact the total number of shares in the short position in their short interest report for a reporting cycle if the ex-date of the corporate action occurs by the reporting settlement date designated by FINRA for such cycle (even if payment of the distribution is not received until after the designated reporting settlement date).

Finally, consistent with discussions with the ISG, FINRA has proposed amendments to delete certain existing exceptions to the Rule.[11] The Rule provides five exceptions, including an exception for stabilizing activity, domestic arbitrage and international arbitrage. FINRA, in cooperation with the ISG Short Interest Working Group (''ISG Working Group''), determined that the transactions addressed in these three exceptions result in the type of short positions that would be of interest to regulators and the public, and therefore, determined that these exceptions no longer are appropriate.[12]

FINRA has stated that it believes that the proposed amendments will remove confusion regarding the operation of the Rule and help facilitate the availability to the public and regulators of accurate and complete short interest information.

FINRA has represented that it will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 120 days following Commission approval. FINRA has also represented that the effective date will be no more than 365 days following Commission approval.

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[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 was a partial amendment that clarified the reference to a defined term in SEC Regulation SHO in the rule text and purpose section of the proposed rule change.

[4] *See* Securities Exchange Act Release No. 66220 (January 24, 2012), 77 FR 4599 (January 30, 2012).

[5] *See* letter from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated February 23, 2012 (''SIFMA Letter'').

[6] *See* letter from Racquel L. Russell, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated April 23, 2012 (''Response Letter'').

[7] Amendment No. 2 was a partial amendment that deleted the proposed requirement concerning the adjustment of corporate actions for short interest reporting purposes. The text of the proposed rule change and FINRA's Response Letter are available on FINRA's Web site at *http://www.finra.org,* at the principal offices of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

[8] Rule 200 of SEC Regulation SHO provides that ''short sale'' means ''any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.'' *See* Rule 200(a) of SEC Regulation SHO, 17 CFR 242.200. SEC Rule 200 further provides, among other things, that a person is deemed to own a security if: (a) The person or his agent has title to it; or (b) The person has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it; or (c) The person owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or (d) The person has an option to purchase or acquire it and has exercised such option; or (e) The person has rights or warrants to subscribe to it and has exercised such rights or warrants; or (f) The person holds a security futures contract to purchase it and has received notice that the position will be physically settled and is irrevocably bound to receive the underlying security. *See* Rule 200(b) of SEC Regulation SHO.

[9] *See* Intermarket Surveillance Group, Consolidated Reporting of Short Interest Positions, ISG Regulatory Memorandum 95–01 (March 6, 1995).

[10] The ex-date is the date on or after which a security is traded without a specific dividend or distribution. The ex-date also is the date that DTCC uses to determine who is entitled to the distribution. The payable date is the date that the dividend is sent to the record owner of the security. *See e.g., Regulatory Notice* 00–54 (August 2000).

[11] FINRA has worked closely with other SRO members of the ISG, a group that includes representatives of every U.S. SRO, to address problems that reach across marketplaces. Each ISG member adopted consistent short-interest reporting rules to enhance surveillance capabilities, augment market transparency, enable investors to make more informed decisions, and provide greater disclosure for regulatory purposes.

[12] FINRA and the ISG Working Group determined that the remaining two exceptions continue to be appropriate. Specifically, the exception for sales for an account in which the person has an interest, owns the security and intends to deliver it as soon as is possible (which FINRA is retaining) is intended to address circumstances where there may be a brief delay in delivery but the sale is a long sale, *i.e.,* exercise of a right, option, or warrant. In addition, the over-allotment exception (which FINRA also is retaining) addresses the narrow circumstance where the underwriter has not received shares and results in a short position for a very brief duration.

III. Summary of Comments and FINRA's Response

In the SIFMA Letter, the commenter generally supports the proposal but raised concerns with one aspect of the proposal. In the SIFMA Letter, the commenter also recommends other changes to the existing short interest reporting requirements. First, the commenter supports (1) the reporting of short positions based on gross short positions in all customer and proprietary accounts, (2) the deletion of certain existing exceptions to short interest reporting for stabilizing activity, domestic arbitrage and international arbitrage, and (3) the reporting of short positions that have settled or reached settlement date by the close of the reporting settlement date designated by FINRA. The commenter, however, opposes the proposed requirement that short interest reports reflect corporate actions adjusted as of the ex-date of the corporate action (and if no ex-date is declared by an SRO, then the payment date of a corporate action). The commenter argues that such requirement is inconsistent with other proposed requirements, is inconsistent with how firms maintain their stock records and how firms' systems capture short interest position information, and would require extensive programming at significant cost.

In the Response Letter, FINRA stated that it would amend the proposed rule change to delete the adjustment of corporate actions aspect of the proposal to provide FINRA additional time to gather further information on the issue and formulate a regulatory approach. FINRA also stated that it would separately amend Rule 4560 at a future date to propose a uniform requirement regarding the adjustment of corporate actions for short interest reporting purposes.

Additionally, in the SIFMA Letter, the commenter recommends changes to the existing short interest reporting requirements, including narrowing the exception from the reporting requirements for ''owned'' securities. FINRA declined to amend the proposal to make the requested changes suggested by SIFMA. In the Response Letter, FINRA stated that the additional comments raised by SIFMA relate to existing requirements of the Rule and not the current proposal. FINRA noted that SIFMA's recommendations are not germane to the consideration of the merits of the proposal or relevant to whether the proposal is consistent with the Exchange Act.

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, the comments received and FINRA's Response Letter and the Amendments, the Commission finds that the proposed rule change, as modified by the Amendments, is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.[13] In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. More specifically, the Commission believes that the proposed rule change to amend FINRA Rule 4560 will promote consistency and accuracy in the calculation and reporting of short interest positions by members. The Commission believes that FINRA has adequately responded to the concerns the SIFMA Letter. In response to SIFMA's comments concerning the adjustment of corporate actions for short interest reporting purposes, FINRA amended its proposal to delete this aspect of the proposal in order to allow additional time to gather further information. In addition, FINRA has suitably explained its reasons for declining to amend the proposed rule change by making the additional changes recommended by SIFMA.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act[14] for approving the proposed rule change, as modified by the Amendments, prior to the 30th day after publication of Amendment No. 2 in the **Federal Register**. In response to certain concerns raised by SIFMA, FINRA proposed in Amendment No. 2 to delete the proposed requirement that short interest reports reflect corporate actions adjusted as of the ex-date of the corporate action (and if no ex-date is declared by a self-regulatory organization, then the payment date of a corporate action). FINRA proposed Amendment No. 2 to allow FINRA additional time to gather further information on the issue of adjustment of corporate actions for short interest reporting purposes. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by the Amendments, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 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 email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2012–001 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–2012–001. This file number should be included on the subject line if email 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–2012–001 and

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

[14] 15 U.S.C. 78s(b)(2).

should be submitted on or before May 24, 2012.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (File No. SR–FINRA–2012–001), as modified by the Amendments, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10642 Filed 5–2–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66873; File No. SR–EDGX–2012–15]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to New EDGX Rule Regarding Telemarketing

April 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2012, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to add Rule 3.26, Telemarketing,[3] to its rulebook to codify provisions that are substantially similar to Federal Trade Commission (''FTC'') rules that prohibit deceptive and other abusive telemarketing acts or practices. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, on the Commission's Web site at *www.sec.gov,* and at the Public Reference Room of the Commission.

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

In its filing with the Commission, the Exchange 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. The Exchange 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

The Exchange proposes to add Rule 3.26, *Telemarketing,* to its rulebook to codify provisions that are substantially similar to FTC rules that prohibit deceptive and other abusive telemarketing acts or practices. Rule 3.26 will require Members to, among other things, maintain do-not-call lists, limit the hours of telephone solicitations, and not use deceptive and abusive acts and practices in connection with telemarketing. The Commission directed EDGX to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[4] The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules [5] to prohibit deceptive and other abusive telemarketing acts or practices, unless the Commission determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or Commission rules already provide for such protection.[6]

In 1997, the Commission determined that telemarketing rules promulgated and expected to be promulgated by self-regulatory organizations, together with the other rules of the self-regulatory organizations, the federal securities laws and the Commission's rules thereunder, satisfied the requirements of the Prevention Act because, at the time, the applicable provisions of those laws and rules were substantially similar to the FTC's telemarketing rules.[7] Since 1997, the FTC has amended its telemarketing rules in light of changing telemarketing practices and technology.[8]

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[9] In May 2011, Commission staff directed EDGX to conduct a review of its telemarketing rule and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules.[10] Commission staff had concerns ''that the [Exchange] rules overall have not kept pace with the FTC's rules, and thus may no longer meet the standards of the [Prevention] Act.'' [11]

The proposed rule change, as directed by the Commission staff, adopts provisions in Rule 3.26 that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[12]

Telemarketing Restrictions

The proposed rule change codifies the telemarketing restrictions in Rule 3.26(a) to provide that no Member or

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

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The proposed rule change is substantially similar in all material respects to Financial Industry Regulatory Authority, Inc. (''FINRA'') Rule 3230 (Telemarketing), which the Commission recently approved. *See* Securities Exchange Act Release No. 66279 (Jan. 30, 2012), 77 FR 5611 (Feb. 3, 2012) (SR–FINRA–2011–059) (approval order of proposed rule change to adopt telemarketing rule).

[4] 15 U.S.C. 6101–6108.

[5] 16 CFR 310.1–.9. The FTC adopted these rules under the Prevention Act in 1995. *See* Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995).

[6] 15 U.S.C. 6102.

[7] *See Telemarketing and Consumer Fraud and Abuse Prevention Act; Determination that No Additional Rulemaking Required,* Securities Exchange Act Release No. 38480 (Apr. 7, 1997), 62 FR 18666 (Apr. 16, 1997). The Commission also determined that some provisions of the FTC's telemarketing rules related to areas already extensively regulated by existing securities laws or activities not applicable to securities transactions *See id.*

[8] *See, e.g.,* Federal Trade Commission, *Telemarketing Sales Rule,* 73 FR 51164 (Aug. 29, 2008) (amendments to the *Telemarketing Sales Rule* relating to prerecorded messages and call abandonments); and Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) (amendments to the *Telemarketing Sales Rule* establishing requirements for sellers and telemarketers to participate in the national do-not-call registry).

[9] *See supra* note 6.

[10] *See* Letter from Robert W. Cook, Director, Division of Trading and Markets, Securities and Exchange Commission, to William O'Brien, Chief Executive Officer, Direct Edge Holdings LLC, dated May 12, 2011.

[11] *Id.*

[12] The proposed rule change is also substantially similar to FINRA Rule 3230. *See supra* note 3.