and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, and any other exchange-traded products) from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, and any other exchange-traded products) from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The ETPs (including ETFs and ETNs), common and preferred stock, and warrants in which the Fund may invest all will be listed and traded on an exchange which is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Act,[39] as provided by NYSE Arca Equities Rule 5.3.

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Investment Adviser consistent with Commission guidance, and master demand notes.

(8) The Fund will only buy money market or other short-term debt instruments that are rated in the top three ratings by U.S. nationally recognized ratings services or that the Investment Adviser considers comparable in quality to instruments rated in the top three ratings. The Fund may only invest up to 5% of its total assets in non-investment-grade debt securities.

(9) If the Fund enters into a repurchase agreement, it will maintain possession of the purchased securities and any underlying collateral. A counterparty to a reverse repurchase agreement must be a primary dealer that reports to the Federal Reserve Bank of New York or one of the largest 100 commercial banks in the United States.

(10) The Fund will not invest in: (a) Any non-U.S. equity securities; (b) options contracts, futures contracts, or swap agreements; and (c) leveraged or inverse leveraged ETPs.

(11) The Fund will typically invest only in debt instruments that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally a debt instrument must have $100 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered sufficiently liquid at the time of investment. The Fund may invest up to 25% of its total assets in debt instruments having a lower par amount outstanding to the extent the Investment Advisor determines such an investment to be appropriate. In any such determination, the Investment Advisor will evaluate the relative creditworthiness of issuers and the relative credit quality of debt issues. Consideration may be given to an issuer's financial strength, capacity for timely payment, and ability to withstand adverse financial developments.

(12) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[40] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–NYSEArca–2013–132), as modified by Amendment Nos. 2 and 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2014–01661 Filed 1–28–14; 8:45 am]

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[39] *See* 17 CFR 240.10A–3.

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71372; File No. SR–FINRA–2014–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA's Corporate Financing Rules To Simplify and Refine the Scope of the Rules

January 23, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA's corporate financing rules to simplify and refine the scope of the rules.

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

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

[2] 17 CFR 240.19b–4.

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

FINRA proposes to amend Rules 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) and 5121 (Public Offerings of Securities with Conflicts of Interest). Rule 5110 generally regulates underwriting compensation and prohibits unfair arrangements in connection with the public offering of securities. Among other provisions, Rule 5110 requires members to file with FINRA information about the securities offerings in which they participate and to disclose affiliations and other relationships that may indicate the presence of conflicts of interest. Rule 5121 generally provides that members with a conflict of interest may not participate in a public offering unless the member complies with certain prescribed disclosures or other protections.

FINRA is proposing amendments to Rule 5110 to: (1) Narrow the scope of the definition of ''participation or participating in a public offering;'' (2) modify the lock-up restrictions to exclude certain securities acquired or converted to prevent dilution; and (3) clarify that the information requirements apply only to relationships with a ''participating'' member. FINRA also is proposing amendments to Rule 5121 to narrow the scope of the definition of ''control.''

Participation in a Public Offering

As noted above, Rule 5110 generally regulates underwriting compensation and prohibits unfair arrangements in connection with the public offering of securities. The protections of the rule apply to members that are ''participating'' in the public offering of an issuer's securities. Rule 5110(a)(5) defines ''participating in a public offering'' to include ''participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis'' and the ''furnishing of customer and/or broker lists for solicitation.'' Due to the importance of the role such members serve in the capital raising process and the degree to which issuers must rely on them, those members may be in a position to extract unreasonable underwriting terms, arrangements or compensation from issuers.

However, also included within the definition of ''participating in a public offering'' is participation in ''any advisory or consulting capacity related to the offering.'' Unlike in cases where a member is involved in distribution and solicitation activities, a member that solely provides advisory or consulting services typically would not have a significant degree of leverage over an issuer. Consequently, FINRA does not believe that the harms sought to be prevented by Rule 5110 are likely to occur in such cases.

Thus, FINRA is proposing to amend the definition of ''participating in a public offering'' to provide that an ''independent financial adviser'' that provides advisory or consulting services to an issuer would not be deemed to be ''participating'' in the public offering of an issuer's securities. The amendments would define ''independent financial adviser'' as a member that provides advisory or consulting services to the issuer and that is neither engaged in, nor affiliated with any entity that is engaged in, the solicitation or distribution of the offering. To the extent a member engages in solicitation or distribution activities in addition to providing advisory or consulting services, this exclusion would not be available and all of the compensation received by that member in connection with the offering would be included in the compensation limitations of Rule 5110. Rule 5110(a)(5)'s definition of ''participating member'' also includes affiliates of the member. Thus, if a member provides distribution or solicitation services and its affiliate provides advisory or consulting services, all of the compensation received by the member and its affiliate would be included in the compensation limitations of Rule 5110.

FINRA believes this proposed modification preserves the protections of the rule while also removing a possible obstacle to the ability of issuers to obtain advisory or consulting services from members not participating in the offering, since today the rule would include the compensation for such services in the limits on overall underwriting compensation. Thus, under the proposed approach, issuers would be free to seek the benefit of consulting services or advice from a member that is not engaged in the distribution or sale of its securities regarding such matters as the options for financing that may be available to the issuer, the benefits and disadvantages of a public offering and the terms proposed by the underwriters.

Lock-Up Restrictions

Rule 5110(d)(1) generally includes as underwriting compensation all items of value, which may include unregistered securities, that are acquired (or arranged to be acquired) within 180 days prior to the filing of the registration statement (''180-day review period''). Rule 5110(d)(5) (Exceptions from Underwriting Compensation) provides five exceptions that permit participating members to acquire securities of the issuer during the 180-day review period without the securities being deemed to be underwriting compensation.

The provisions of paragraph (d)(5)(D) of Rule 5110 (Acquisitions and Conversions to Prevent Dilution) exclude from underwriting compensation the receipt of additional securities to prevent dilution of the investor's investment (*e.g.,* securities acquired as a result of a stock-split or a pro-rata rights or similar offering) where such additional securities are received during the 180-day review period or subsequent to the filing of the public offering, but where the original securities were acquired prior to the 180-day review period or otherwise were not deemed by FINRA to be underwriting compensation, as described in Rule 5110(d)(5)(D). Among other things, the exception requires that the right or opportunity to receive the additional securities was provided to all similarly situated security holders and the receipt of the additional securities does not increase the recipient's percentage ownership of the same class.

The exception is available when securities are acquired as a result of a stock split or pro-rata rights or similar offering, a stock conversion of securities that have not been deemed by FINRA to be underwriting compensation or certain rights of preemption. With respect to a right of preemption, the exception is only available if the right was granted in connection with securities purchased either: (i) In a private placement so long as the securities acquired in the private placement are not deemed to be underwriting compensation (*i.e.,* the private placement did not occur within the 180-day review period); or (ii) from a public offering or the public market.

While these acquisitions and conversions to prevent dilution are excepted from underwriting compensation, they currently continue to be subject to the lock-up restrictions of paragraph (g)(1).[3] For example, if common shares were acquired before the 180-day review period, they are not considered ''items of value'' and are not subject to the compensation limitations or lock-up restrictions. However, shares received as a result of the preexisting ownership of the common shares during the 180-day review period (*e.g.,* resulting from a stock-split) are not subject to the compensation limitations, but continue to be locked up pursuant to paragraph (g)(1). Subjecting securities acquired or converted to prevent dilution during the 180-day review period to the lock-up restrictions even where they are not considered ''items of value'' under Rule 5110(c)(3) may not provide any useful protection, and this requirement may impose unnecessary burdens on firms to track and monitor compliance with the lock-up provisions. Therefore, FINRA proposes to treat shares received in an acquisition or conversion to prevent dilution during the 180-day review period consistent with the treatment provided for the securities on which their acquisition or conversion was based, thereby eliminating the lock-up restrictions for these securities.

Information Requirements

Subject to certain exceptions, Rule 5110(b)(6)(A)(iii) requires filers to disclose to FINRA information about the affiliation or association with any member of the officers, directors, and certain owners of the issuer. FINRA is proposing to amend Rule 5110(b)(6)(A)(iii) to reduce the scope of this provision from requiring disclosure about the affiliation or association of the specified parties with ''any member'' to ''any participating member.'' The compensation limitations and other provisions of Rule 5110 and Rule 5121 apply only to members that participate in a public offering. Consequently, affiliations of non-participating members would not present the type of concerns that the rule is designed to address, and requiring that information about these other members be filed with FINRA is unnecessary.

Definition of ''Control''

FINRA proposes to revise the scope of the definition of ''control'' in Rule 5121(f)(6) to exclude beneficial ownership of 10 percent or more of the outstanding subordinated debt of an entity. The scope of the definition of ''control'' is related to the determination of whether a member and an issuer are deemed to be affiliated [4] for purposes of the conflicts provisions of Rule 5121 (Public Offerings of Securities With Conflicts of Interest) [5] and for certain informational requirements of Rule 5110.[6] However, ownership of 10 percent or more of the outstanding subordinated debt of an entity is not a meaningful measure of control or affiliation for purposes of Rules 5121 and 5110. The proposed amendment thus would reduce the scope of the information required to be reported by members.

FINRA staff discussed the proposal with industry groups and advisory committees in developing its approach, and these parties were supportive of the proposal. FINRA received one comment from an advisory committee member regarding the proposed reduction of the scope of the Rule 5110's provisions to only ''participating'' members. Specifically, the committee member suggested that FINRA retain the information requirement for issuer relationships with any financial adviser that owns 5 percent or more of any class of the issuer's securities—even where such financial adviser is not affiliated with a participating member. However, FINRA believes it is more appropriate to limit the information requirement to members that are ''participating'' in the offering and their affiliates, which would capture advisers who are affiliates of participating members (but would exclude an independent financial advisor). The effective date of the proposed rule change will be 30 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,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change meets these requirements in that it eliminates burdensome provisions that are not justified by the regulatory purposes of the rules, while continuing to preserve important protections addressing abusive arrangements and minimizing the opportunity for abusive practices by members in connection with their participation in public offerings of securities. For example, the proposed amendments to Rule 5110(a)(5) to revise the definition of ''participation'' to exclude from the definition's scope advisory or consulting services provided to the issuer by an independent financial adviser supports [sic] capital formation without compromising investor protection. Specifically, FINRA believes that provision of such services by an independent party, wholly uninvolved with the solicitation or distribution of the offering, is not likely to present the harms sought to be prevented by Rule 5110.

Similarly, the proposed amendments to the provision subjecting securities acquired as a result of an acquisition or conversion to prevent dilution—notwithstanding that the acquisition of the such securities is not deemed underwriting compensation pursuant to Rule 5110(d)(5)—maintains [sic] the goals of preventing fraudulent and manipulative acts and practices as well as protecting investors and the public interest. Since the effective date of the Rule 5110(d)(5)(D) on March 22, 2004,[8] FINRA has not observed abuse in connection with securities acquired prior to the 180-day review period where those securities ultimately split within the 180-day period (or otherwise qualify for the (d)(5)(D) exception). Thus, in addition to the current exception for securities acquisitions or conversion to prevent dilution from the underwriting compensation provisions, FINRA believes it also is appropriate to except these acquisitions or conversions to prevent dilution from the lock-up restrictions of paragraph (g) given the continued application of the protections described in paragraph (d)(5)(D)(ii), (iii) and (iv).

The proposed amendment to limit the scope of the disclosure provision of 5110(b)(6)(A)(iii) to issuer relationships with ''any participating member'' (rather

[3] Paragraph (g)(1) of Rule 5110 generally provides that such securities received as a result of an acquisition or conversion to prevent dilution must not be sold during the offering, or sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities by any person for a period of 180 days immediately following the date of effectiveness or commencement of sales of the public offering (''lock-up restrictions'').

[4] Rule 5121(f)(1) provides that the term ''affiliate'' means an entity that controls, is controlled by or is under common control with a member.

[5] Rule 5121 defines ''conflict of interest'' to include situations where the issuer ''controls, is controlled by or is under common control with the member or the member's associated persons.''

[6] *See* Rule 5110(b)(6)(A)(iii).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] *See* Securities Exchange Act Release No. 48989 (December 23, 2003), 68 FR 75684 (December 31, 2003) (Order Approving File No. SR–NASD–00–04).

than ''any member'') reduces the burden on members to report to FINRA items of information that FINRA does not believe are necessary. The current requirement to obtain information regarding the acquisition of the issuer's unregistered equity securities by any member regardless of whether the member is participating in the offering may facilitate filing when members are moving in and out of a syndicate or selling group prior to an offering. Information regarding members that are not participating in the offering, however, is not useful for purposes of the rule's compensation limits and other requirements. Accordingly, the burden of acquiring this unnecessary information is not justified by a regulatory benefit.

Finally, in proposing amendments to the scope of the definition of ''control'' in Rule 5121(f)(6), as discussed above, FINRA believes that ownership of 10 percent or more of the outstanding subordinated debt of an entity should be excluded from the scope of the definition of ''control'' because it is not a meaningful measure of control or affiliation between a member and an issuer for purposes of Rules 5121 and 5110 and, thus, eliminating this aspect of the definition would reduce the information required to be reported to FINRA by members without reducing the rule's efficacy, consistent with the purposes of the Act.

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. As discussed above, the proposal makes simplifying and streamlining amendments to Rules 5110 and 5121 and would reduce the burden of compliance. The proposed amendments also would provide these benefits to any affected members engaging in activity subject to Rules 5110 and 5121.

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

Written comments were neither solicited nor received.

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

Within 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 the 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 email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–003 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–2014–003. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–2014–003, and should be submitted on or before February 19, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2014–01656 Filed 1–28–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71376; File No. SR–OCC–2013–807]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection To Advance Notice Filing Concerning the Governance Committee Charter

January 23, 2014.

On November 26, 2013, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2013–807 (''Advance Notice'') pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'' or ''Title VIII'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Exchange Act'').[2] The Advance Notice was published for comment in the **Federal Register** on December 20, 2013.[3] The Commission did not receive any comments on the Advance Notice publication. This publication serves as a notice of no objection to the Advance Notice.

I. Description of the Advance Notice

This advance notice concerns the Board of Director's (''Board'') formation of a Governance Committee (''GC'') and its approval of the GC Charter. As set forth in the GC Charter, the purpose of the GC is to review the overall corporate governance of OCC and recommend improvements to OCC's Board. The GC Charter describes the role the GC plays

[9] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i). OCC is a designated financial market utility and is required to file advance notices with the Commission. *See* 12 U.S.C. 5465(e). OCC also filed the proposal in this Advance Notice as a proposed rule change under Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder, which was published for comment in the **Federal Register** on December 16, 2013. 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4. *See* Release No. 34–71030 (Dec. 11, 2013), 78 FR 76182 (Dec. 16, 2013) (SR–OCC–2013–18).

[3] Release No. 34–71803 (Dec. 16, 2013), 78 FR 77181 (Dec. 20, 2013) (SR–OCC–2013–807) (''Notice'').