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 at 100 F Street NE., Washington, DC 20549–1090 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 office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–33, and should be submitted on or before May 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09917 Filed 4–30–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72033; File No. SR–FINRA–2014–003]

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

April 28, 2014.

On January 9, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change proposing to amend FINRA Rules 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) and 5121 (Public Offerings of Securities with Conflicts of Interest) in several respects in order to simplify and refine the scope of the rules. The proposed rule change was published for comment in the **Federal Register** on January 29, 2014.[3] The Commission received two comment letters on the proposal.[4] On April 16, 2014, FINRA responded to the comment letters.[5] On March 4, 2014, the Commission extended the time period for Commission action to April 28, 2014.[6] This order approves the proposed rule change.

I. Description of the Proposed Rule Change[7]

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 existence of conflicts of interest. 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 states that this change preserves the protections of the rule and will enable issuers to seek advice from a member that is not involved in the distribution or sale of the issuer's securities.

Participation in a Public Offering

Rule 5110(a)(5) defines ''participating in a public offering'' to include participation in ''any advisory or consulting capacity to the issuer related to the offering.'' FINRA proposes to amend Rule 5110(a)(5) to provide that an ''independent financial adviser'' that provides advisory or consulting services to the issuer would not meet the definition of ''participation in a public offering'' as defined in Rule 5110(a)(5) and would therefore not be subject to the compensation limitations of Rule 5110. The proposal defines an independent financial adviser as ''a member that provides advisory or consulting services to the issuer and is neither engaged in, nor affiliated with any entity that is engaged in, the solicitation or distribution of the offering.''

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 the 180 day period 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, including excluding 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 before the 180-day review period or otherwise were not deemed by FINRA to be underwriting compensation, as described in Rule 5110(d)(5)(D).

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 Rule 5110(g)(1). FINRA proposes to eliminate the lock-up restrictions for these securities in order to treat shares received in an acquisition or conversion to prevent dilution during the 180-day review period in a manner consistent with the treatment provided for the securities on which their acquisition or conversion was based.

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. The compensation limitations and other provisions of Rule 5110 and Rule 5121 apply only to members that participate in a public offering. Correspondingly, FINRA is proposing to amend Rule 5110(b)(6)(A)(iii) to narrow the scope of this provision to require disclosure about the affiliation or association of the

[18] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71372 (January 23, 2014), 79 FR 4793 (SR–FINRA–2014–003) (''Notice'').

[4] *See* Letter from Suzanne Rothwell (''Rothwell''), Managing Member, Rothwell Consulting LLC, to Elizabeth M. Murphy, Secretary, Commission, dated February 10, 2014 (''Rothwell Letter''); Letter from Sean Davy, Managing Director, Corporate Credits Market Division, Securities Industries and Financial Markets Association (''SIFMA''), to Elizabeth M. Murphy, Secretary, Commission, dated February 18, 2014 (''SIFMA Letter'').

[5] *See* Letter from Kathryn M. Moore, Associate General Counsel, FINRA, to Kevin O'Neill, Deputy Secretary, Commission, dated April 16, 2014 (''FINRA Letter'').

[6] *See* Securities Exchange Act Release No. 71642 (March 4, 2014), 79 FR 13364 (SR–FINRA–2014–003).

[7] A more detailed description of the proposal is contained in the Notice. *See supra* note 3.

specified parties with ''any participating member.''

Rule 5121—Definition of ''Control''

Under Rule 5121, the scope of the definition of ''control'' is considered in determining whether a member and an issuer are deemed to be affiliated [8] for purposes of the conflicts provisions of Rule 5121 [9] and for certain requirements to provide information to FINRA in Rule 5110. FINRA is proposing amendments to Rule 5121 to narrow the scope of the definition of ''control'' by eliminating Rule 5121(f)(6)(iii), thereby excluding from the definition of control the following: ''beneficial ownership of 10 percent or more of the outstanding subordinated debt of an entity, including any right to receive such subordinated debt within 60 days of the member's participation in the public offering.''

II. Discussion of Comments and FINRA's Response

On January 29, 2014, the Commission published in the **Federal Register** FINRA's proposed rule change to amend its corporate financing rules.[10] The Commission received the two comment letters listed above.[11] SIFMA stated that it fully supports the substance of the proposed rule change and further stated that it believed that the modifications will benefit all offering participants by reducing unnecessary costs and burdens, while continuing to preserve important investor protection standards.[12]

Generally speaking, Rothwell expressed support for the proposed rule change's modifications to Rules 5110 and 5121, with the exception of the carve out in Rule 5110(a)(5) for independent financial advisers (''Adviser Proposal'').[13] Rothwell stated that modifying Rule 5110(a)(5) to exempt independent financial advisers from the definition of ''participation'' would result in independent financial advisers also being exempt from the definition of ''underwriter and related persons'' found in Rule 5110(a)(6).[14] Rothwell stated that FINRA should clarify that the Adviser Proposal would operate to exclude an independent financial adviser from compliance with the provisions of Rule 5110, Rule 5121 and Rule 2310.[15]

Rothwell agreed with FINRA that a member-consultant that meets the definition of independent financial adviser is generally less able in comparison to the underwriters to negotiate an unfair arrangement with an issuer.[16] Rothwell states, however, that this belief is also rooted in FINRA's experience that those issuers that hire FINRA members to provide independent advice on a potential IPO are major companies with significant negotiating power and consequently are able to avoid unfair and unreasonable terms under Rule 5110.[17] But Rothwell believes in the case of medium or small-sized companies, the issuer may not have sufficient economic power to be dominant when negotiating arrangements with a consultant.[18] Consequently, Rothwell recommends that the Adviser Proposal be revised and applied to independent financial advisers, which recommendations are summarized briefly here.[19]

- Because an independent financial adviser would be excluded from the definition of ''participation,'' the underwriter would not be required under Rule 5110(b)(6) to file with FINRA information on the consulting agreement, any acquisitions of securities by the ''independent financial adviser'' within the 180-day review period, and any conflict of interest between the consultant and the issuer.[20] Rothwell recommends that independent financial advisers comply with the information filing requirements of Rule 5110(b)(6) or that the Adviser Proposal be revised to require that the information described above be filed with FINRA.[21]
- Rothwell also recommends that FINRA clarify whether it would exercise its historical authority under Rule 5110 to conclude that a consulting arrangement with an ''independent financial adviser'' is unfair and unreasonable, despite the availability of the exemption, in the limited circumstance where FINRA staff determine that the consulting arrangement does not conform to ''high standards of commercial honor and just and equitable principles of trade'' under FINRA Rule 2010.[22]
- Rothwell believes that potential investors should be provided information regarding the independent financial adviser's consulting arrangement, acquisition of securities and any conflict of interest. Consequently, Rothwell recommends that the Adviser Proposal be amended to include a condition requiring that a separate paragraph in the ''Plan of Distribution'' section of the prospectus under Rule 5110(c)(2)(C) and Rule 5121(a)(1) disclose certain specific information.[23]
- Lastly, Rothwell recommends that the Adviser Proposal be amended to include a condition requiring that an ''independent financial consultant'' comply with the 180-day lock-up restriction in Rule 5110(g) with respect to any securities of the issuer acquired pursuant to the consulting agreement or otherwise during the 180-day review period.[24] Rothwell also recommends that FINRA require that any option, warrant or convertible security acquired by the ''independent financial adviser'' during the 180-day review period comply with the restriction of Rule 5110(f)(2)(H) (with the exception of Rule 5110(f)(2)(H)(ii)) on the terms of such securities.[25]

Rothwell also is concerned that the ordinary advisory services enumerated by FINRA and any other services provided by an ''independent financial consultant'' may be difficult to distinguish from, and may merge into, those activities that would bring such a consultant within the definitions of ''underwriter and related persons'' and ''participation.'' [26] Consequently, Rothwell requests that FINRA assist members in complying with the Adviser Proposal exemption by enumerating permissible consulting activities for an ''independent financial adviser'' and providing (where possible) guidance with respect to the types of activities that the consultant should not engage in (which is further discussed in the next section).[27]

Additionally, Rothwell expressed concern that an independent financial

[8] 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.

[9] 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.''

[10] *See supra* note 3.

[11] *See supra* note 4.

[12] *See* SIFMA Letter *supra* note 4, at 2.

[13] *See* Rothwell Letter *supra* note 4, at 2.

[14] *See* Rothwell Letter *supra* note 4, at 3.

[15] *See id.* Rothwell provides examples of eight specific provisions of FINRA's rules from which an independent financial adviser might be exempt. *See id.*

[16] *See* Rothwell Letter *supra* note 4, at 4.

[17] *See id.*

[18] *See id.*

[19] *See* Rothwell Letter *supra* note 4, at 5–6.

[20] *See* Rothwell Letter *supra* note 4, at 5.

[21] *See id.*

[22] *See id.*

[23] *See* Rothwell Letter *supra* note 4, at 5–6. Specifically, the information that Rothwell states should be included in the prospectus are: (1) The identity of the consultant; (2) an explanation of the consulting arrangement, including the form (cash and securities or other arrangement) and amount of any compensation, and any terms providing for liquidated damages or a right of first refusal; (3) the acquisition of any securities of the issuer by the consultant during the 180-day review period in addition to those disclosed under (2) above; and (4) any ''conflict of interest'' with the issuer as defined in Rule 5121(f)(5).

[24] *See* Rothwell Letter *supra* note 4, at 6.

[25] *See id.*

[26] *See* Rothwell Letter *supra* note 4, at 7.

[27] *See id.*

consultant, in the course of providing advice on the options for financing and the terms proposed by underwriters, among other possible advice requested by an issuer, would be considered to be engaged in the ''solicitation or distribution of the offering,'' as prohibited by the Adviser Proposal, or to be a ''finder'' under the definition of ''underwriter and related persons'' by assisting an issuer in identifying potential FINRA members or registered investment advisers that could serve as distribution channels and even contacting and arranging introductions to such persons.[28] Consequently, Rothwell also requests that FINRA clarify the scope of the prohibition on ''solicitation or distribution of the offering'' and of acting as a finder to assist FINRA members to comply with the exemption provided by the Adviser Proposal.[29]

With respect to the proposed rule change to Rule 5110(g)(1) (related to the lock-up restriction) and Rule 5121(f)(6) (narrowing the scope of the conflict of interest rule), Rothwell supports FINRA's proposed modifications.[30] And to the extent that FINRA does not adopt some form of Rothwell's recommendation to continue to require the filing of information relevant to a FINRA member that claims to be an independent financial adviser,[31] Rothwell is opposed to the proposed modification to Rule 5110(b)(6)(A)(iii).[32] However, Rothwell stated that if FINRA does modify its proposal in line with Rothwell's recommendation, Rothwell supports narrowing the information filing requirement.[33]

FINRA responded to the comments in a letter dated April 16, 2014.[34] FINRA stated that in filing this proposed rule change, it concluded that the potential for abuse by independent financial advisers of issuers is minimized when a financial adviser is not engaged in, or affiliated with any entity that is engaged in, the solicitation or distribution of the offering.[35] FINRA further stated that the purpose of the corporate financing rules—to prohibit the imposition of unfair and unreasonable underwriting terms and arrangements on issuers by members participating in a public offering—is served and the risk of unfairness and unreasonableness is minimized when a member provides only advisory or consulting services.[36] Indeed, FINRA stated that its review of public offerings filed under Rule 5110 in the last decade did not identify abusive underwriting terms and arrangements associated with firms that would fall under the proposed definition of independent financial adviser.[37]

In response to Rothwell's request to clarify the intended scope of the modifications in light of the Adviser Proposal,[38] FINRA confirmed that the proposed rule change would exclude an independent financial adviser, acting solely in that capacity, from the requirements of Rule 5110, Rule 5121 and Rule 2310.[39]

In addition, FINRA stated that Rothwell's concerns stemming from the filing requirements of Rule 5110(b)(6)[40] and the disclosure requirements of Rule 5110(c)(2)(C)[41] are irrelevant to the rules that regulate the underwriting terms and arrangements in public offerings—the purpose of the corporate financing rules.[42]

In response to Rothwell's recommendation that the filing and disclosure requirements of Rule 5110(b)(6)(A)(iii) continue to apply to independent financial advisers,[43] FINRA stated that the facts and its experience support the elimination of these requirements for independent financial advisers and do not justify burdening independent financial advisers with these requirements.[44] In particular, FINRA stated that although the information sought by the filing and disclosure requirements of Rule 5110(b)(6)(A)(iii) from an underwriter is useful to assist investors in understanding potential conflicts raised by the underwriter's financial interests in the issuer, this conflict is unlikely to arise because an independent financial adviser is not engaged in underwriting the offering or otherwise participating in its solicitation and distribution.[45]

FINRA also did not agree with Rothwell's recommendation[46] that independent financial advisers that acquire securities during the 180-day review period should be subject to the compensation requirements of Rule 5110(g) and Rule 5110(f)(2)(H).[47] FINRA pointed out that although Rule 5110 is intended to impose requirements on underwriters and their affiliates to address potential conflicts, FINRA believes that independent financial advisers who lack leverage and influence over pricing and other terms of an offering are not subject to those types of conflicts.[48]

Finally, FINRA provided clarification[49] on the types of activities that would be permitted and prohibited for an independent financial adviser, particularly with respect to the meaning of ''solicitation or distribution of the offering,'' as requested by Rothwell.[50] FINRA stated the existing definition of ''participation or participating in a public offering'' in Rule 5110(a)(5) presently includes ''participation in the distribution'' and furnishing of customer or broker lists ''for solicitation.''[51] FINRA also emphasized that it is prepared to address factual questions specific to a particular filing and offer its interpretation of the permissible services of independent financial advisers.[52]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's response to the comments, and believes that FINRA has responded adequately to the comments. The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[53] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[54] which, among other things, requires that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

[28] *See id.*

[29] *See* Rothwell Letter *supra* note 4, at 7–8.

[30] *See* Rothwell Letter *supra* note 4, at 8–9.

[31] *See supra* notes 20–21 and accompanying text.

[32] *See* Rothwell Letter *supra* note 4, at 8.

[33] *See id.*

[34] *See supra* note 5.

[35] *See* FINRA Letter *supra* note 5, at 3.

[36] *See id.*

[37] *See* FINRA Letter *supra* note 5, at 3. The proposal defined an independent financial adviser as ''a member that provides advisory or consulting services to the issuer and is neither engaged in, nor affiliated with any entity that is engaged in, the solicitation or distribution of the offering.'' *See* Notice *supra* note 3.

[38] *See supra* note 15 and accompanying text.

[39] *See* FINRA Letter *supra* note 5, at 3.

[40] *See supra* notes 20–21 and accompanying text.

[41] *See supra* note 23 and accompanying text.

[42] *See* FINRA Letter *supra* note 5, at 3–4.

[43] *See supra* notes 20–21 and 32 and accompanying text.

[44] *See* FINRA Letter *supra* note 5, at 4.

[45] *See id.* FINRA also stated that it believes that targeted filing and disclosure requirements that focus squarely on underwriting compensation and arrangements would enhance the effectiveness of these provisions in Rule 5110(b)(6)(A)(iii). *See id.*

[46] *See supra* notes 24–25 and accompanying text.

[47] *See* FINRA Letter *supra* note 5, at 4–5.

[48] *See* FINRA Letter *supra* note 5, at 4.

[49] *See* FINRA Letter *supra* note 5, at 5.

[50] *See supra* notes 28–29 and accompanying text.

[51] *See* FINRA Letter *supra* note 5, at 5.

[52] *See id.*

[53] In approving this 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).

[54] 15 U.S.C. 78*o*–3(b)(6).

in facilitating transactions in securities, 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.

As discussed above, FINRA proposed to amend 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. The Commission believes that this revision will reduce the burden on independent financial advisers while not compromising investor protection, as the harms sought to be prevented by Rule 5110 are not implicated where advisory or consulting services are being carried out by an independent party such as an independent financial adviser.

With regard to FINRA's proposal to eliminate the lock-up restrictions for certain securities, the Commission believes that it is appropriate to treat shares received in an acquisition or conversion to prevent dilution during the 180-day review period consistently with the securities on which their acquisition or conversion was based. The amendment should further the goal of preventing fraudulent and manipulative acts and practices and protecting investors and the public interest, especially in light of the continued application of the protections described in Rule 5110(d)(5)(D)(ii)–(iv).

With regard to FINRA's proposal to limit the scope of the disclosure requirement contained in Rule 5110(b)(6)(A)(iii) by specifying that the rule applies to ''any participating member,'' rather than simply ''any member,'' the Commission believes that this proposal should reduce the burden on members not participating in an offering who were required to report information regarding the acquisition of the issuer's unregistered equity securities to FINRA.

In addition, the Commission believes that FINRA's proposal to amend the scope of the definition of ''control'' in Rule 5121(f)(6) is appropriate because it tailors the requirement to report information to eliminate an unnecessary burden on members while also maintaining the rule's efficacy.

The Commission further believes that FINRA, through its response, has adequately addressed the concerns expressed in Rothwell's letter by providing additional guidance and clarification on its proposed changes to Rules 5110 and 5121 and further explaining the interaction of this proposal with other FINRA Rules.

For the reasons stated above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[55] that the proposed rule change (SR–FINRA–2014–003) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09972 Filed 4–30–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72018; File No. SR–NYSEArca–2014–40]

Self-Regulatory Organizations; NYSE Arca Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rules Governing Letters of Guarantee and Letters of Authorization

April 25, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 21, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange rules governing Letters of Guarantee and Letters of Authorization. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

As further described below, each OTP Holder acting as either a Market Maker or Floor Broker on NYSE Arca currently is required to submit to the Exchange a Letter of Guarantee or Letter of Authorization for its trading activities from a Clearing Member.[4] Typically, by a Letter of Guarantee, the Clearing Member accepts financial responsibility for all Exchange transactions of a Market Maker[5] and, by a Letter of Authorization, a Clearing Member is responsible for the clearance of the Exchange transactions of a Floor Broker.[6]

The purpose of the proposal is to amend various Exchange rules governing Letters of Guarantee and Authorization to:

- Provide that any written notice of revocation of a Letter of Guarantee or Letter of Authorization will become effective upon processing by the Exchange.
- give the Exchange the ability to prevent access and connectivity if a Market Maker or Floor Broker is subject to written notice of revocation.

Changes to Rule 6.36—Letters of Guarantee

Rule 6.36(c) states that a Letter of Guarantee filed with the Exchange shall remain in effect until a final written notice of revocation has been filed with the Exchange. The current rule sets forth a time period for the effectiveness of a revocation to take place. However the Exchange does not believe that a

[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Clearing Member is an Exchange OTP Firm or OTP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation. *See* Rule 6.1(b)(3).

[5] *See* Rule 6.36(a).

[6] *See* Rule 6.45(a).