

In order to motivate data recipients to comply with the display statement requirements, including the requisite declarations and screen submissions, the Amendment establishes a non-compliance fee for each month of non-compliance. For each of Network A and Network B, the monthly fee is \$3,000.

A datafeed recipient must submit the required screen prints upon the Amendment's implementation date⁸ or within thirty days of the effective date of its Vendor Agreement. It must submit those screen prints (including previously provided, new, or changed screen prints) annually by the 31st day of January.

The non-compliance charges will be assessed against a data redistributor for each month in which it fails to provide the declaration or a copy of a Consolidated Volume screen print with the required display statement in a timely manner. The charge will also be assessed against a data redistributor each month for non-compliance by persons in the redistribution chain starting with the data redistributor where such persons have not entered into an applicable agreement with CTA.

The Approving Participants expect the non-compliance charges to provide incentives for data redistributors to comply with the consolidated volume requirements; they do not view the non-compliance fee as establishing a new revenue source. Rather, they hope it encourages all data redistributors to submit their declarations and screen prints (where applicable) in a timely fashion. They hope that the fee will motivate non-compliant redistributors to adopt the same practices that the majority of redistributors follow.

The Approving Participants included delayed displays of consolidated volume in the Amendment to make it clear that if a data redistributor accompanies displays of real-time unconsolidated prices and quotes with delayed consolidated volume, it is subject to the new requirement.

III. Discussion

After careful review, the Commission finds that the proposed Amendment to the Plan is consistent with the requirements of the Act and the rules and regulations thereunder,⁹ and, in particular, Section 11A(a)(1) of the

Act¹⁰ and Rule 608 thereunder¹¹ in that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹² which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. These goals are furthered by the proposed changes to establish a fee that will be charged to a vendor or other data redistributor that fails to comply with the CTA Plan participants' Consolidated Volume display statement, and related requirements. Consolidated data continues to provide a great deal of value for investors in assessing the current market for trades and the quality of the execution they receive for their trades. The Commission believes it is important for market participants to know when Consolidated Volume is displayed alongside unconsolidated prices and quotes by data redistributors. The Consolidated Volume display policy should provide greater transparency on the source of the data for users of displays that contain both consolidated and proprietary data from redistributors. Additionally, the non-compliance charge should provide incentives for data redistributors to comply with the Consolidated Volume requirement.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,¹³ and the rules thereunder, that the proposed Amendment to the CTA Plan (File No. SR-CTA-2015-02) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75655; File No. SR-FINRA-2015-029]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook

August 10, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "SEA")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 31, 2015, 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 substantially 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 FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook, and to delete NASD Rule 3050, Incorporated NYSE Rules 407 and 407A and Incorporated NYSE Rule Interpretations 407/01 and 407/02.

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.

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.

⁸ The Approving Participants indicated that they will give notice of the compliance fee to all data redistributors no less than 120 days prior to its implementation. See August 6 Letter.

⁹ The Commission has considered the proposed amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78k-1(a)(1).

¹¹ 17 CFR 240.608.

¹² 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹³ 15 U.S.C. 78k-1.

¹⁴ 17 CFR 200.30-3(a)(27).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 FINRA is proposing to adopt a new, consolidated rule addressing accounts opened or established by associated persons of members at firms other than the firm with which they are associated. FINRA proposes to adopt FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook and to delete NASD Rule 3050, Incorporated NYSE Rules 407 and 407A and Incorporated NYSE Rule Interpretations 407/01 and 407/02.⁴

Sound supervisory practices require that a member firm monitor personal accounts opened or established outside of the firm by its associated persons. Proposed FINRA Rule 3210 combines and streamlines longstanding provisions of the NASD and NYSE rules that address this area and would, in combination with FINRA's new FINRA Rule 3110(d) governing securities transactions review and investigation,⁵ help facilitate effective oversight of the specified trading activities of associated

³ The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

⁴ For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

⁵ New FINRA Rule 3110(d) (Transaction Review and Investigation) sets forth requirements for supervisory procedures for members to comply with the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA") (Pub. L. 100-704, 102 Stat. 4677). The Commission has approved FINRA Rule 3110(d) as part of FINRA's new consolidated supervision rules, which became effective on December 1, 2014. See Securities Exchange Act Release No. 71179 (December 23, 2013), 78 FR 79542 (December 30, 2013) (Order Granting Approval of Proposed Rule Change; File No. SR-FINRA-2013-025) ("Supervisory Rules Filing"); see also *Regulatory Notice* 14-10 (March 2014) (Consolidated Supervision Rules). Paragraph (d)(1) of the rule requires that a member's supervisory procedures must include a process for the review of securities transactions that is reasonably designed to identify trades that may violate the provisions of the Act, its regulations, or FINRA rules prohibiting insider trading and manipulative and deceptive devices that are effected for the accounts specified under paragraphs (d)(1)(A) through (d)(1)(D) of the rule.

persons of member firms. FINRA sought comment on the proposal in a *Regulatory Notice* (the "Notice").⁶ FINRA has revised the proposed rule as published in the *Notice* in response to comments.⁷

(A) Background: NASD Rule 3050 and NYSE Rules 407 and 407A

NASD Rule 3050 and NYSE Rules 407 and 407A are longstanding rules that address specified accounts opened or established by associated persons of members at firms other than the firm with which they are associated.

NASD Rule 3050 (designated in its original form as Section 28 of the Rules of Fair Practice) was adopted to address this issue by providing a means by which members would be informed of the extent and nature of transactions effected by their employees or other associated persons,⁸ so that members, in their own interest and in the interest of their customers, might weigh the effect, if any, of such transactions handled outside their firms.⁹ The rule imposes specified obligations on member firms and associated persons.¹⁰ In short:

- *Obligations of Member Firms:* NASD Rule 3050(a) requires that a member (called an "executing member") who knowingly executes a transaction for the purchase or sale of a security for the account of a person associated with another member (called an "employer member"), or for any account over which the associated person has discretionary authority, must use reasonable diligence to determine that the execution of the transaction will not adversely affect the interests of the employer member. NASD Rule 3050(b) requires that, where an executing member knows that a person associated with an employer member has or will

⁶ See *Regulatory Notice* 09-22 (April 2009) (Personal Securities Transactions).

⁷ Comments are discussed in Item I.I.C of this filing. As discussed further in Item I.I.C, commenters expressed concern that Rule 3210, as proposed in the *Notice*, would be burdensome or difficult to implement and that the rule should, informed by the approach of current NASD Rule 3050, be revised to permit firms flexibility to craft appropriate supervisory policies and procedures taking into account their business models and the risk profiles of their activities.

⁸ The terms "person associated with a member" and "associated person of a member" include, among others, registered representatives. See paragraph (rr) of Article I of the FINRA By-Laws.

⁹ See Securities Exchange Act Release No. 4924 (August 21, 1953).

¹⁰ FINRA historically has noted that the purpose of the rule (originally designated Article III, Section 28 of the Rules of Fair Practice) is to "help member firms discharge their supervisory responsibility over the securities activities conducted in their associated persons' personal securities accounts." Securities Exchange Act Release No. 23754 (October 28, 1986), 51 FR 40546 (November 7, 1986) (Proposed Rule Change; File No. SR-NASD-86-29).

have a financial interest in, or discretionary authority over, any existing or proposed account carried by the executing member, the executing member must:

(1) Notify the employer member in writing, prior to the execution of a transaction for the account, of the executing member's intention to open or maintain that account;

(2) Upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to the account; and

(3) Notify the person associated with the employer member of the executing member's intention to provide the notice and information required by (1) and (2).

- *Obligations of Associated Persons:* NASD Rules 3050(c) and Rule 3050(d), in combination, address associated persons, whether they open securities accounts or place securities orders through a member firm other than their employer or whether they do so through other types of financial services firms that are not FINRA members.¹¹ Specifically:

(1) NASD Rule 3050(c) requires that a person associated with a member, prior to opening an account or placing an initial order for the purchase or sale of securities with another member, must notify both the employer member and the executing member, in writing, of his or her association with the other member. The rule provides that if the account was established prior to the person's association with the employer member, the person must notify both members in writing promptly after becoming associated;

(2) NASD Rule 3050(d) provides that if the associated person opens a securities account or places an order for the purchase or sale of securities with a broker-dealer that is registered pursuant to SEA Section 15(b)(11) (a notice-registered broker-dealer), a domestic or foreign investment adviser, bank, or other financial institution (that is, firms that are not FINRA members), then he or she must: (i) Notify his or her employer member in writing, prior to the execution of any initial transactions, of the intention to open the account or place the order; and (ii) upon written request by the employer member, request in writing and assure that the notice-registered broker-dealer, investment adviser, bank, or other financial institution provides the

¹¹ NASD Rule 3050(e) provides that Rules 3050(c) and (d) apply only to accounts or orders in which an associated person has a financial interest or with respect to which the associated person has discretionary authority.

employer member with duplicate copies of confirmations, statements, or other information concerning the account or order. NASD Rule 3050(d) provides that if an account subject to Rule 3050(d) was established prior to the person's association with the member, the person must comply with the rule promptly after becoming associated;

(3) NASD Rule 3050(f) provides that the requirements of Rule 3050 do not apply to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, or to accounts which are limited to transactions in such securities.

NYSE Rule 407, similar in purpose to FINRA Rule 3050, addresses transactions by and for employees of member firms¹² as follows:

- NYSE Rule 407(a) is similar to NASD Rule 3050(b), except that Rule 407(a) imposes a requirement to obtain the prior written consent of the employer member.¹³ Specifically, the rule requires that no member or member organization may, without the prior written consent of the employer, open a securities or commodities account or execute any transaction in which a member or employee associated with another member or member organization is directly or indirectly interested. The rule requires that duplicate confirmations and account statements be sent promptly to the employer.

- NYSE Rule 407(b) is similar to NASD Rules 3050(c) and (d), except that, like NYSE Rule 407(a), it also sets forth a prior written consent requirement. The rule requires that no member associated with a member or member organization may establish or maintain any securities or commodities account¹⁴ or enter into any securities transaction with respect to which such person has any financial interest or the power, directly or indirectly, to make

¹² See note 10 *supra*. The NYSE noted that Rule 407 imposes obligations as to specified personal accounts of employees and associated persons and that one of the rule's purposes, among other things, is to help deter and detect violations of applicable federal securities laws and regulations. See *NYSE Information Memo* 09-50 (October 30, 2009) (Supervision of Trading in Proprietary, Employee and Employee-Related Securities and Commodities Accounts).

¹³ The term "employer member" is defined within the context of the NASD rule, not the NYSE rule. For purposes of discussing NYSE Rule 407, in this filing the term "employer member" is used interchangeably with "employer" for convenience.

¹⁴ NYSE Rule 407.11 states that the term "securities or commodities accounts" as used in Rule 407(b) includes, but is not limited to, limited or general partnership interests in investment

investment decisions, at another member or member organization, or a domestic or foreign non-member broker-dealer, investment adviser, bank, other financial institution,¹⁵ or otherwise without the prior written consent of another person designated by the member or member organization to sign such consents and review such accounts. The rule requires that persons having accounts or effecting transactions as covered by the rule must arrange for duplicate confirmations and statements (or their equivalents) to be sent to a person designated by the member or member organization to review such accounts and transactions. The rule further requires that all such accounts and transactions must periodically be reviewed by the member or member organization employer.¹⁶

- NYSE Rule 407.12 provides that the rule's requirement to send duplicate confirmations and statements does not apply to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, or to accounts which are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employer member requests receipt of duplicate confirmations and statements of such accounts. As such, the provision is similar to the corresponding provisions under NASD Rule 3050(f), except that Rule 3050(f) wholly excepts the specified transactions and accounts from the scope of Rule 3050.

In addition, NYSE Rule 407A (Disclosure of All Member Accounts) requires members (*i.e.*, natural persons approved by the New York Stock Exchange (the "Exchange") and designated by a member organization to effect transactions on the floor of the Exchange or any facility thereof) to promptly report to the Exchange any securities account, including an error account, in which the member has, directly or indirectly, any financial interest or the power to make investment decisions. Such accounts include any account at a member or non-member broker-dealer, investment adviser, bank or other financial

¹⁵ NYSE Rule 407.13 states that, for purposes of the rule, the term "other financial institution" includes, but is not limited to, insurance companies, trust companies, credit unions and investment companies.

¹⁶ NYSE Rule 407.11 requires that members and member organizations must develop and maintain written procedures for reviewing such accounts and transactions and must assure that their associated persons are not improperly recommending or marketing such securities or products to others through members or member organizations.

institution. NYSE Rule 407A also requires a member having such an account to notify the financial institution that carries or services the account that it is a NYSE member. In addition, the rule requires that members report to the Exchange when any such securities account is closed.

NYSE Rule 407A was adopted in 2001 as part of a series of initiatives designed to strengthen the regulation of activities of NYSE floor brokers.¹⁷ This rule expands the obligations placed upon members under Rule 407 by requiring disclosure to the Exchange. These reporting requirements were designed to provide the NYSE with current information about where floor members carry securities accounts and to enhance its ability to investigate quickly the trading of securities by such members.

NYSE Rule Interpretation 407/01 addresses the process for determining whether the account of a spouse of an associated person should be subject to NYSE Rule 407.

NYSE Rule Interpretation 407/02 provides that NYSE Rule 407(b) applies when an associated person is also a majority stockholder of a non-public corporation that wishes to open a discretionary margin account at another member.

(B) Proposed FINRA Rule 3210

Proposed FINRA Rule 3210, consistent with the longstanding purposes of NASD Rule 3050 and NYSE Rule 407,¹⁸ is designed to enable members to monitor the personal accounts of their associated persons opened or established outside of the member firm. The new rule, in combination with new FINRA Rule 3110, takes the approach that a member is responsible for supervising its associated persons' trading activities.¹⁹

¹⁷ The Commission noted that these initiatives would aid the NYSE in fulfilling some of the undertakings included in the NYSE's 1999 settlement with the SEC regarding failure to enforce compliance with SEA Section 11(a) and SEA Rule 11a-1 and NYSE Rules 90, 95 and 111 with respect to activity of floor brokers. As noted by the Commission, broadly, those provisions were aimed at preventing NYSE floor broker members from exploiting their advantageous position on the NYSE floor for personal gain to the detriment of the investing public. See *In the Matter of New York Stock Exchange, Inc., Securities Exchange Act Release No. 41574* (June 29, 1999), Administrative Proceeding File No. 3-9925; *Securities Exchange Act Release No. 42381* (February 3, 2000), 65 FR 6673 (February 10, 2000) (Notice of Filing of Proposed Rule Change; File No. SR-NYSE-99-25); *Securities Exchange Act Release No. 44769* (September 6, 2001), 66 FR 47710 (September 13, 2001) (Order Granting Approval to Proposed Rule Change; File No. SR-NYSE-99-25).

¹⁸ See note 10 and note 12 *supra*.

¹⁹ See Supervisory Rules Filing and note 5 *supra*. In this connection, as discussed further in Item

The rule begins by setting forth a requirement that an associated person must obtain the prior written consent of his or her employer when opening a specified account at another member or other financial institution. Specifically, proposed FINRA Rule 3210(a) provides that no person associated with a member (“employer member”) shall, without the prior written consent of the member, open or otherwise establish at a member other than the employer member (“executing member”), or at any other financial institution,²⁰ any account in which securities transactions can be effected²¹ and in which the associated person has a beneficial interest.²² Proposed FINRA Rule 3210.02 provides that, for purposes of the rule, the associated person shall be deemed to have a beneficial interest in any account that is held by: (a) The spouse of the associated person; (b) a child of the associated person or of the associated person’s spouse, provided that the child resides in the same household as or is financially dependent upon the associated person;

I.A.1(C) below, FINRA is deleting the provision under NASD Rule 3050(a) as to the obligation of the executing member to use reasonable diligence with respect to the specified transactions.

²⁰ Based on NYSE Rule 407.13 and NASD Rule 3050(d), proposed FINRA Rule 3210.05 provides that, for the purposes of the rule, the terms “other financial institution” and “financial institution other than a member” include, but are not limited to, any broker-dealer that is registered pursuant to SEA Section 15(b)(11), domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company.

²¹ In the interest of helping facilitate supervision of securities transactions under new FINRA Rule 3110(d)(1), FINRA is specifying “any account in which securities transactions can be effected” so as to be clear that the proposed rule’s scope includes any account, regardless of type, where securities transactions can take place as specified under the rule.

²² As proposed in the *Notice*, the rule would have specified accounts in which the associated person has a “personal financial interest.” Commenters suggested that this language was unclear. *See* Item I.C.2 of this filing. FINRA is proposing the term “beneficial interest” because that term is an established and well-understood standard. *See, e.g.*, FINRA Rule 5130(i)(1), which defines “beneficial interest” to mean, in part, any economic interest, such as the right to share in gains or losses. FINRA believes that the proposed term is consistent with the purpose of NYSE Rule 407, which in part addresses transactions in which the associated person is “directly or indirectly interested” (NYSE Rule 407(a)) or with respect to which the associated person “has any financial interest” (NYSE Rule 407(b)) and with NASD Rules 3050(b) through (d), which in part address accounts or transactions in which the associated person has a “financial interest.” Further, the proposed term would align the rule with “beneficial interest” as specified under new FINRA Rule 3110(d)(1)(B), which, for purposes of the transaction review and investigation provisions set forth under new FINRA Rule 3110(d)(1), specifies in part accounts “in which a person associated with the member has a beneficial interest.” *See* note 5 *supra*.

(c) any other related individual over whose account the associated person has control; or (d) any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes.²³ The types of accounts specified pursuant to proposed FINRA Rule 3210.02 are designed to align with “covered accounts” as defined pursuant to new FINRA Rule 3110(d)(4)(A) for purposes of the transaction review and investigation provisions pursuant to Rule 3110(d)(1).²⁴ Further, FINRA believes the proposed language is consistent with the broad approach of NASD Rule 3050 and NYSE Rule 407 as historically understood to facilitate the monitoring of associated persons’ personal and related accounts.²⁵ FINRA notes that the proposed new language eliminates the language in the current rules that references accounts or transactions where the associated person has “the power, directly or indirectly, to make investment decisions,” as set forth in NYSE Rule 407(b), and accounts where the associated person has “discretionary authority,” as set forth in NASD Rule 3050(b).²⁶

²³ Some commenters expressed concerns as to addressing spouse accounts in the proposed rule. FINRA notes that spouse accounts have long been addressed under NYSE Rule Interpretation 407/01. *See* Item I.C.2 of this filing.

²⁴ *See* note 5 *supra*.

²⁵ For example, with respect to the approach of the current rules, as noted earlier, NYSE Rule Interpretation 407/01 addresses spouse accounts. In the context of amendments to NASD Rule 3050 (then designated Article III, Section 28 of the Rules of Fair Practice) adopted in 1983 that extended the rule to include accounts over which the associated person exercises discretion, FINRA noted its intent to enable the rule’s scope to reach accounts of relatives of associated persons where the associated person places the orders. *See* Securities Exchange Act Release No. 19347 (December 16, 1982), 47 FR 58416 (December 30, 1982) (Proposed Rule Change; File No. SR-NASD-82-25); Securities Exchange Act Release No. 19550 (February 28, 1983), 48 FR 9413 (March 4, 1983) (Order Approving Proposed Rule Change; File No. SR-NASD-82-25). FINRA believes that because the proposed rule specifies, in language that aligns with new FINRA Rule 3110(d)(4)(A), the types of personal relationships that would be within the scope of “beneficial interest,” the rule’s precise parameters should be more clear.

²⁶ FINRA believes that this will serve to more clearly demarcate the respective scope of the new rule vis-à-vis current NASD Rule 3040, which addresses the obligations of associated persons and members in connection with private securities transactions. NASD Rule 3040(e)(1) defines private securities transactions to include, in part, “any securities transaction outside the regular course or scope of an associated person’s employment with a member” and excludes from the rule’s specified notification requirements, among other things, transactions subject to the notification requirements of NASD Rule 3050. FINRA believes that, to the extent associated persons make investment decisions or have discretionary authority in contexts that involve private securities transactions

Similar to the current rules, the new rule places notification obligations on associated persons with respect to the executing member or other financial institution. Specifically, proposed FINRA Rule 3210(b) is based in large part on NASD Rules 3050(c) and 3050(d) and provides that any associated person, prior to opening or otherwise establishing an account subject to the rule, must notify in writing the executing member, or other financial institution, of his or her association with the employer member.

Also similar to the current rules, the new rule specifies obligations for executing members. Specifically, proposed FINRA Rule 3210(c) is based in large part on NASD Rule 3050(b)(2) and provides that an executing member must, upon written request by the employer member, transmit duplicate copies of confirmations and statements, or the transactional data contained therein, with respect to an account subject to the rule.²⁷

Similar to current provisions in NASD Rules 3050(c) and 3050(d), the proposed rule makes allowance for accounts opened by an associated person prior to his or her association with the employer member. Specifically, proposed FINRA Rule 3210.01 provides that, if the account was opened or otherwise established prior to the person’s association with the employer member, the associated person, within 30 calendar days of becoming so associated, must obtain the written consent of the employer member to maintain the account and must notify in writing the executing member or other financial institution of his or her

within the scope of NASD Rule 3040, as opposed to accounts in which they have a beneficial interest as specified by the new rule, such transactions are properly addressed by the requirements set forth in Rule 3040 and other FINRA rules as applicable. FINRA believes that this approach is consistent, as noted earlier, with the historical approach of NASD Rule 3050 and NYSE Rule 407 that is intended to facilitate monitoring of associated persons’ personal and related accounts.

²⁷ As published in the *Notice*, the proposed rule would have *required* the employer member to instruct the associated person to have the executing member provide the specified duplicate account statements and confirmations to the employer member. As discussed further in Item I.C.1 of this filing, commenters expressed concern that the rule as proposed in the *Notice* would burden members with collecting the specified information without regard to whether such collection is warranted by the member’s business model and risk profile. In response to commenter suggestion, FINRA has revised the proposed rule so that the specified information is provided upon written request by the employer member, which is consistent with the approach of current NASD Rule 3050 and which FINRA believes permits members flexibility to craft appropriate supervisory policies and procedures according to their business model and the risk profile of their activities.

association with the employer member.²⁸

Similar to the current rules, the new rule makes allowance for specified information that executing members need not transmit to employer members. Specifically, proposed FINRA Rule 3210.03 is based in large part on NYSE Rule 407.12 and NASD Rule 3050(f) and provides that the requirement (pursuant to paragraph (c) of Rule 3210) that the executing member provide the employer member, upon the employer member's written request, with duplicate account confirmations and statements, or the transactional data contained therein, shall not be applicable to transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D-12,²⁹ qualified tuition programs pursuant to Section 529 of the Internal Revenue Code and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts.³⁰

Proposed FINRA Rule 3210.04 is new and provides that, with respect to an account subject to the rule at a financial institution other than a member, the employer member must consider the extent to which it will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the non-member financial institution in determining whether to provide its written consent to an

²⁸ As published in the *Notice*, the proposed rule would have specified 15 business days. In response to comment, the proposed rule as revised specifies 30 calendar days so as to reduce burdens on member firms and their associated persons. See Item I.L.C.3 of this filing.

²⁹ MSRB Rule D-12 defines municipal fund security to mean "a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940."

³⁰ The approach to the referenced types of transactions reflects a longstanding intention under the NASD and NYSE rule that members not be burdened with information collection for transactions that pose limited risk from the standpoint of the rule's supervisory purposes. See, e.g., Securities Exchange Act Release No. 19347 (December 16, 1982), 47 FR 58416 (December 30, 1982) (Proposed Rule Change; File No. SR-NASD-82-25). As discussed further in Item I.L.C.5 of this filing, the proposed requirement is largely as published in the *Notice*. In response to commenter suggestion, FINRA has added municipal fund securities as defined under MSRB Rule D-12 and Section 529 plans to the transactions set forth under the rule. FINRA is adding these transactions because FINRA believes these types of products are reasonably classed with the types of transactions specified under the current rule in posing limited risk from the standpoint of the rule's supervisory purposes.

associated person to open or maintain such account.³¹ FINRA believes that the proposed requirement serves a valid regulatory purpose in view of the employer member's responsibility for supervising its associated persons' trading activities.

(C) Deleted Requirements

Proposed FINRA Rule 3210 deletes a number of requirements in NASD Rule 3050 and NYSE Rule 407 that are rendered outdated by the new rule or are otherwise addressed elsewhere by FINRA rules.

- The proposed rule eliminates NASD Rule 3050(a)'s requirement that the executing member use reasonable diligence to determine that the execution of the transaction will not "adversely affect the interests of the employer member." FINRA proposes to delete this requirement because FINRA believes that it is appropriate for the new rule, in combination with new FINRA Rule 3110,³² to take the approach that the employer member is responsible for supervising its associated persons' trading activities.³³

- FINRA proposes to delete the account review requirements set forth in NYSE Rule 407(b) and the requirements for written procedures set forth in NYSE Rule 407.11 because these issues are addressed by the proposed rule in combination with FINRA's new supervisory rules, in particular new FINRA Rule 3110(d), which sets forth the new supervisory framework for securities transactions review and investigation.³⁴

- As noted earlier, NYSE Rule 407A was intended to address activities of NYSE floor brokers. FINRA proposes to delete NYSE Rule 407A in its entirety from the Transitional Rulebook because proposed FINRA Rule 3210 requires disclosure at the member firm level of the same types of information that Rule 407A requires with respect to the NYSE as to floor brokers. FINRA believes it is more appropriate to require member firms to obtain the required information

³¹ As published in the *Notice*, the proposed rule would have *required* the associated person to provide an instruction to the non-member financial institution to provide the specified information to the employer member. As discussed further in Item I.L.C.1 of this filing, FINRA believes that the requirement as revised permits members flexibility to craft appropriate supervisory policies and procedures in determining whether to provide written consent as to the specified accounts at non-member financial institutions.

³² See Supervisory Rules Filing.

³³ FINRA notes that, notwithstanding this approach, the rule retains the longstanding duty of the executing member to assist the employer member by providing the specified information upon request.

³⁴ See note 5 *supra* and Supervisory Rules Filing.

and to supervise the accounts of their associated persons for improper trading, rather than requiring that such information be sent directly to FINRA. Moreover, as noted above, these reporting requirements were designed to provide the NYSE with current information about where floor members carry securities accounts and to enhance its ability to investigate quickly the trading of securities by such members.

- FINRA proposes to delete NYSE Rule Interpretation 407/01 because it would be superseded by proposed FINRA Rule 3210.02, which as noted earlier expressly provides, among other things, that an associated person is deemed to have a beneficial interest in any account that is held by the spouse of the associated person.

- FINRA proposes to delete NYSE Rule Interpretation 407/02 because it is rendered redundant by new FINRA Rule 3210(a), the scope of which by its terms reaches accounts as specified by the rule in which the associated person has a beneficial interest.

- FINRA proposes to delete language referring to accounts or transactions where the associated person has "the power, directly or indirectly, to make investment decisions," as set forth in NYSE Rule 407(b), and accounts where the associated person has "discretionary authority," as set forth in NASD Rule 3050(b). As discussed above, FINRA believes that, to the extent associated persons make investment decisions or have discretionary authority in contexts that involve private securities transactions within the scope of NASD Rule 3040, as opposed to accounts in which they have a beneficial interest, such transactions are properly addressed by the requirements set forth in Rule 3040 and other FINRA rules as applicable.³⁵

If the Commission approves the proposed rule change, 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,³⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and

³⁵ See note 26 *supra*.

³⁶ 15 U.S.C. 78o-3(b)(6).

equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act because, as part of the FINRA rulebook consolidation process, the proposed rule change will help to protect investors and the public interest by streamlining and reorganizing existing rules that promote effective oversight of accounts opened or established by associated persons of members at firms other than the firm with which they are associated. By setting forth the requirements pursuant to which associated persons will seek the prior written consent of the employer member to open or otherwise establish accounts as specified under the rule, and pursuant to which the specified information will be transmitted to the employer member upon the employer member's request, the proposed rule will facilitate the supervision of the trading activities of associated persons within the framework of FINRA's new supervisory rules as approved by the Commission. The proposed rule will also help members ensure that such activities, engaged in at executing members or other financial institutions, do not violate provisions of the Act, its regulations, or FINRA rules, thereby helping to ensure orderly markets.

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. Commenters expressed concern that the proposed rule change, as originally published in *Regulatory Notice* 09-22, would have been burdensome to implement and would have resulted in employer members being required to request information from executing members and non-member financial institutions bearing little or no relationship to the scope and nature of the employer member's activities. In response to commenter suggestion, FINRA revised the proposed rule so as to permit members discretion, consistent with their supervisory obligations under new FINRA Rule 3110(d), to request the specified information of executing members and non-member financial institutions, thereby permitting members reasonable flexibility to craft appropriate supervisory policies and procedures according to their business model and the risk profile of their activities. The proposed rule change as revised is thereby consistent with the approach of current NASD Rule 3050,

which commenter suggestion supported. FINRA believes that because the proposed rule change, as revised, is consistent with current requirements and longstanding practice, it will not impose additional burdens on members.

The proposed rule change permits members to implement supervisory procedures that align with their business models, without diminishing members' supervisory obligations with respect to the activities of their associated persons. FINRA believes that this proposed approach imposes less cost on members without reducing investor protections. In addition, the proposed rule change deletes a number of requirements in NASD Rule 3050 and NYSE Rule 407 that are rendered outdated by the proposed new rule or are otherwise addressed elsewhere by other FINRA rules, which further minimizes the potential compliance burden on members in light of the objectives of the proposed rule change. FINRA recognizes that providing such flexibility to members may require increased monitoring of members' compliance with this rule as part of FINRA's examination program.

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

The proposed rule change was published for comment in *Regulatory Notice* 09-22 (April 2009). A copy of the *Notice* is attached as Exhibit 2a. Thirty-three commenters responded to the *Notice*, and a list of the commenters is attached as Exhibit 2b.³⁷ Copies of the comment letters received in response to the *Notice* are attached as Exhibit 2c.

1. Core Proposed Rule Requirements: Obligation To Provide Duplicate Account Statements and Confirmations

As published in the *Notice*, proposed FINRA Rule 3210(a) in part would have required an employer member, as a condition to giving prior written consent for opening or establishing an account pursuant to the rule, to instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member. Paragraph (b) set forth requirements pertaining to the associated person's obligation to notify the executing member or other financial institution in writing of his or her association with the employer member. Paragraph (c) of the rule would have provided in part that the executing member must promptly obtain and

implement an instruction from the associated person directing that duplicate account statements and confirmations be provided to the employer member. (With respect to accounts opened at a financial institution other than a member, proposed FINRA Rule 3210.02 as published in the *Notice* would have required the associated person to provide the instruction to the financial institution.)

Commenters generally expressed concern that, as published in the *Notice*, the requirements of proposed Rules 3210(a), (b) and (c) and 3210.02, singly or in combination, are unnecessary for regulatory purposes, are burdensome or difficult for firms to implement, or the rule should be designed to permit members the discretion to determine whether, based on their business model and the risk profile of their activities, they need to require duplicate account statements and confirmations to carry out their supervisory responsibilities.³⁸ Some of these commenters suggested that involving the associated person in the process of requesting the required data vis-à-vis the executing member creates supervisory risks.³⁹ A number suggested that it is better practice and more efficient to have the employer member obtain the required data directly from the executing member or non-member institution.⁴⁰ A few of the commenters raised concerns about potential difficulties in obtaining the required information from non-members (including foreign non-members).⁴¹ Many questioned the supervisory and regulatory value of requiring firms to collect data pertaining to associated person accounts and transactions bearing little or no relationship to the scope and nature of their firms' activities.⁴² Some suggested that current NASD Rule 3050 generally permits members to exercise such discretion and that retaining the approach of the NASD rule would be conducive to more efficient use of regulatory or supervisory resources.⁴³

In response, FINRA agrees that the proposal as published in the *Notice* raises issues with respect to the efficient use and conservation of regulatory and

³⁸ ACLI, CAI, Channel Capital, Charles Schwab, Farmers Financial, FSI, GWFS, Hillard, IBSI, ICI, MWA, NAIBD, National Planning, NMIS, NSCP, PFSI, PSI, Quasar, SIFMA, State Farm, SunTrust, Sykes, UBS, WFA and Witthaut.

³⁹ National Planning, PSI, SIFMA and UBS.

⁴⁰ Charles Schwab, FSI, NMIS, SIFMA and UBS.

⁴¹ Charles Schwab, SIFMA and UBS.

⁴² ACLI, CAI, Farmers Financial, GWFS, Hillard, ICI, MWA, National Planning, Quasar, State Farm, SunTrust, Sykes and Witthaut.

⁴³ CAI, Charles Schwab, Farmers Financial, FSI, National Planning, PFSI and SunTrust.

³⁷ All references to commenters under this Item are to the commenters as listed in Exhibit 2b.

supervisory resources, as well as to implementation. FINRA has revised proposed FINRA Rule 3210, consistent with NASD Rule 3050, to provide that an executing member must, *upon written request by an employer member*, transmit the duplicate copies of confirmations and statements, or the transactional data contained therein.⁴⁴ With respect to accounts at a financial institution other than a member, FINRA has revised the rule to provide that the employer member must consider the extent to which it will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the institution in determining whether to provide its written consent to an associated person to open or maintain an account subject to the rule.⁴⁵ FINRA believes that this approach, based in large part on the longstanding approach of NASD Rule 3050, should provide members reasonable flexibility to craft appropriate supervisory policies and procedures according to their business model and the risk profile of their activities. FINRA reminds members that, in permitting such flexibility, the rule in no way lessens members' supervisory obligations under FINRA rules with respect to the activities of their associated persons.⁴⁶

2. Personal Financial Interest of the Associated Person

As published in the *Notice*, the accounts covered by proposed FINRA Rule 3210 would have reached in part those in which the associated person has a "personal financial interest." The *Notice* stated that "personal financial interest" would as a general matter extend to a spouse's account. Commenters expressed concern as to the scope and meaning of the term "personal financial interest" and requested that FINRA further define the term, limit its scope, or otherwise provide more specific guidance.⁴⁷ Several commenters suggested generally that it would be more effective for the rule to speak to accounts with respect to which the associated person exercises control or authority, rather than having a "personal financial interest."⁴⁸

In response, FINRA is proposing a standard that is consistent with the purpose of NASD Rule 3050 and NYSE

Rule 407⁴⁹ while also aligning more clearly with new FINRA Rule 3110(d). Specifically, FINRA has revised the proposed rule to extend to specified accounts in which the associated person has a *beneficial interest*. As discussed earlier, FINRA believes the term "beneficial interest" is appropriate because that term is an established and well-understood standard⁵⁰ and is consistent with the terms "directly or indirectly interested," as used in NYSE Rule 407(a), "has any financial interest," as used in NYSE Rule 407(b), and accounts or transactions in which the associated person has a "financial interest," as applicable under NASD Rules 3050(b) through (d). Further, the proposed term would align the rule with "beneficial interest" as specified under new FINRA Rule 3110(d)(1)(B), which, for purposes of the transaction review and investigation provisions set forth under new FINRA Rule 3110(d)(1), specifies in part accounts "in which a person associated with the member has a beneficial interest."⁵¹ In addition, FINRA is proposing, as Supplementary Material .02 to the rule, to provide that the associated person shall be deemed to have a beneficial interest in any account that is held by: (a) The spouse of the associated person; (b) a child of the associated person or of the associated person's spouse, provided that the child resides in the same household as or is financially dependent upon the associated person; (c) any other related individual over whose account the associated person has control; or (d) any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes. As noted earlier, this proposed language is designed to align with "covered accounts" as defined pursuant to new FINRA Rule 3110(d)(4)(A) for purposes of the transaction review and investigation provisions pursuant to Rule 3110(d)(1).⁵²

⁴⁹ See note 10 and note 12 *supra*.

⁵⁰ FINRA Rule 5130(j)(1) defines "beneficial interest" to mean, in part, any economic interest, such as the right to share in gains or losses. See note 22 *supra*.

⁵¹ See note 5 *supra*.

⁵² See proposed FINRA Rule 3210.02. Some commenters questioned whether it is legally viable for the proposed rule to reach spouse accounts. See Charles Schwab and NPB. In response, FINRA notes that spouse accounts have long been addressed under NYSE Rule Interpretation 407/01. Further, FINRA notes that the rule addresses such accounts as a supervisory matter under FINRA rules for purposes of investor protection and market integrity. See also note 5 *supra* and new FINRA Rule 3110(d).

3. Accounts Opened Prior to Association With the Employer Member

As published in the *Notice*, proposed FINRA Rule 3210.01 would have required that if the associated person's account was opened or otherwise established prior to his or her association with the employer member, the associated person would be required to obtain the employer member's written consent to maintain the account within 15 business days of becoming so associated. Commenters suggested that the 15-business-day requirement is too short or restrictive and that the rule should require "prompt" notification by the associated person, as under current NASD Rule 3050, or permit a longer specified period.⁵³ One commenter believed that the rule should not cover previously opened accounts at all.⁵⁴

In response, FINRA notes that it serves a valid regulatory purpose that the proposed rule should extend to accounts opened prior to the associated person's association with the employer member, given that the associated person would have the ability to effect transactions in such accounts. FINRA believes that it is reasonable, from the standpoint of reducing burdens on member firms and their associated persons, to permit a longer amount of time for notification with respect to already-opened accounts and has accordingly revised the rule to permit 30 calendar days.⁵⁵

4. Revocation of Consent To Maintain the Account

As published in the *Notice*, proposed FINRA Rule 3210.04 would have created a new requirement providing that if the employer member does not receive the associated person's duplicate statements and confirmations in a timely manner, the employer member would be required to revoke its consent to maintaining the account and would be required to so notify the executing member or other financial institution in writing. The rule would have required the employer member to promptly obtain records from the executing member that the account was closed.

Commenters generally expressed concern that the proposed requirement is burdensome, poses various difficulties as to implementation, or that FINRA should provide guidance as to how accounts should be closed

⁵³ ACLI, CAI, Charles Schwab, FSI, National Planning, NMIS, NSCP, SIFMA and WFA.

⁵⁴ Fischer.

⁵⁵ See proposed FINRA Rule 3210.01.

⁴⁴ See proposed FINRA Rule 3210(c).

⁴⁵ See proposed FINRA Rule 3210.04.

⁴⁶ See note 5 *supra* and Supervisory Rules Filing.

⁴⁷ CAI, Charles Schwab, Farmers Financial, IBSI, ICI, NAIBD, NMIS, NPB, NSCP and SIFMA.

⁴⁸ Charles Schwab, Farmers Financial, FSI, NMIS and SIFMA.

pursuant to the rule.⁵⁶ In response, FINRA has reconsidered the proposed requirement and agrees that it is not necessary, from the standpoint of the rule's regulatory purpose, to prescribe how employer members should respond to the delayed receipt, or non-receipt, of duplicate copies of confirmations, statements or the transactional data contained therein. First, FINRA believes that if an employer member determines, pursuant to the rule, to request such information and does not receive it in a timely fashion, then as a matter of sound supervisory practice the employer member should have in place policies and procedures to address the issue.⁵⁷ Second, FINRA notes that the proposed rule as revised requires executing members, upon written request by an employer member, to transmit the duplicate copies of confirmations and statements, or the transactional data contained therein.⁵⁸ Finally, FINRA takes note that many commenters requested that FINRA Rule 3210 be designed to permit firms flexibility based upon their business model and the risk profile of their activities.⁵⁹ As such, FINRA believes it is appropriate that employer members determine for themselves what would constitute timely receipt of the information required pursuant to the rule, provided such determination is reasonable within the context of their overall supervisory obligations. Accordingly, FINRA has deleted the requirement from the proposed rule as revised.

5. Transactions and Accounts Not Subject to Transmission Requirement

As published in the *Notice*, proposed FINRA Rule 3210.03 would have provided that the requirement to provide to the employer member duplicate account statements and confirmations is not applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to

Monthly Investment Plan type accounts, unless the employer member requests receipt of such duplicate account statements and confirmations.

Commenters suggested that, because they believe the referenced types of transactions and accounts pose little in the way of supervisory risk, they should be exempted from the proposed rule's requirements altogether, similar to the provisions under current NASD Rule 3050(f), or that the proposed rule should expand and update types of transactions and accounts that would be exempted from the rule.⁶⁰

FINRA appreciates members' concern that the new rule should adhere closely to the current NASD requirement. However, FINRA believes that the proposed approach, similar to that reflected in NYSE Rule 407.12, serves a valid regulatory and supervisory purpose, specifically, that the associated person must obtain the employer member's prior written consent with respect to the referenced transactions and accounts, in the manner and to the extent required by the proposed rule. Accordingly, FINRA is proposing FINRA Rule 3210.03 largely as published in the *Notice*. Some commenters made specific suggestions as to the types of transactions and accounts that should be excluded from the requirement that the executing member provide duplicate account confirmations and statements to the employer member upon the employer member's written request.⁶¹ In response, FINRA has added municipal fund securities as defined under MSRB Rule D-12 and qualified Section 529 plans to the referenced types of transactions, as FINRA believes that, of the suggestions proffered, these are similar to the types of transactions specified under current NASD Rule 3050(f) and NYSE Rule 407.12 in posing limited risk from the standpoint of the rule's supervisory purposes. Accordingly, proposed FINRA Rule 3210.03 as revised provides that the requirement (pursuant to paragraph (c) of the proposed rule) that the executing member provide the employer member, upon the employer member's written request, with duplicate account confirmations and statements, or the transactional data contained therein, shall not be applicable to transactions in unit investment trusts, municipal fund

securities as defined under MSRB Rule D-12, qualified tuition programs pursuant to Section 529 of the Internal Revenue Code and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts.

6. Information Gathering, Processes and Controls

The *Notice* requested comment on the methodologies that members employ to obtain information pursuant to NASD Rule 3050 and NYSE Rule 407 and the processes and controls that members implement upon receipt of the required information.

Commenters suggested the rule should not impose requirements as to the methodologies that members must use (e.g., receiving the information electronically versus in hard copy) or otherwise limit flexibility as to receiving and handling the information.⁶² One commenter suggested FINRA should encourage firms to use a consistent electronic format in transmitting the information.⁶³ One suggested the proposed rule should state that the information can be received in electronic format.⁶⁴ One requested that FINRA specify in the rule a retention period for information received pursuant to the rule.⁶⁵

In response to comments, FINRA has determined not to specify in the proposed rule any particular methodology. To this end, FINRA has revised proposed FINRA Rule 3210(c) to provide for transmission of "duplicate copies of confirmations and statements, or the transactional data contained therein." FINRA does not propose to specify in the rule a particular retention period because such concerns are adequately addressed elsewhere under SEA Rule 17a-4 and FINRA Rule 4511 as appropriate.

7. Implementation Period

Several commenters suggested that FINRA should permit an extended period for implementation of the proposed rule once approved.⁶⁶ In response, in establishing an implementation date, FINRA will take into account that firms would need to modify their compliance systems to reflect the new rule's requirements. As stated earlier in this filing, FINRA will

⁵⁶ CAI, Charles Schwab, FSI, ICI, J.A. Glynn, National Planning, NSCP, Pagemill, SIFMA, UBS and WFA.

⁵⁷ FINRA notes that, with respect to accounts at non-member financial institutions, the proposed rule as revised provides that the employer must consider the extent to which it will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the non-member financial institution in determining whether to provide its written consent to an associated person to open or maintain such an account.

⁵⁸ See proposed FINRA Rule 3210(c).

⁵⁹ See, e.g., Item ILC.1 of this filing.

⁶⁰ ACLI, CAI, Charles Schwab, FSI, Hillard, National Planning, NMIS, NPB, Pacific Select, SIFMA and UBS.

⁶¹ Four commenters specifically suggested qualified Section 529 plans under the Internal Revenue Code. See CAI, FSI, NMIS and SIFMA. One suggested all municipal fund securities. See FSI. One suggested in addition ETFs and registered insurance products. See CAI.

⁶² FSI, H & L Equities, ICI, Investors Security, NAIBD, NPB, NSCP, Pagemill, PSI and Taurus.

⁶³ Pacific Select.

⁶⁴ FSI.

⁶⁵ H & L Equities.

⁶⁶ ACLI, CAI, FSI and SIFMA.

announce such implementation date in a *Regulatory Notice*.

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 email to rule-comments@sec.gov. Please include File Number SR-FINRA-2015-029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-029. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2015-029 and should be submitted on or before September 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁷

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-20006 Filed 8-13-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549-2736.

Extension:

Rules 3a68-2 and 3a68-4(c);
SEC File No. 270-641, OMB Control No. 3235-0685.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("SEC") is soliciting comments on the existing collection of information provided for Rules 3a68-2 and 3a68-4(c). The SEC plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 3a68-2 creates a process for interested persons to request a joint interpretation by the SEC and the Commodity Futures Trading Commission ("CFTC") (together with the SEC, the "Commissions") regarding whether a particular instrument (or class of instruments) is a swap, a security-based swap, or both (*i.e.*, a mixed swap). Under Rule 3a68-2, a person provides to the Commissions a copy of all material information regarding the terms of, and a statement of the economic characteristics and purpose of, each relevant agreement, contract, or transaction (or class thereof), along with that person's determination as to whether each such

agreement, contract, or transaction (or class thereof) should be characterized as a swap, security-based swap, or both (*i.e.*, a mixed swap). The Commissions also may request the submitting person to provide additional information.

The SEC expects 25 requests pursuant to Rule 3a68-2 per year. The SEC estimates the total paperwork burden associated with preparing and submitting each request would be 20 hours to retrieve, review, and submit the information associated with the submission. This 20 hour burden is divided between the SEC and the CFTC, with 10 hours per response regarding reporting to the SEC and 10 hours of response regarding third party disclosure to the CFTC.¹ The SEC estimates this would result in an aggregate annual burden of 500 hours (25 requests × 20 hours/request).

The SEC estimates that the total costs resulting from a submission under Rule 3a68-2 would be approximately \$12,000 for outside attorneys to retrieve, review, and submit the information associated with the submission. The SEC estimates this would result in aggregate costs each year of \$300,000 (25 requests × 30 hours/request × \$400).

Rule 3a68-4(c) establishes a process for persons to request that the Commissions issue a joint order permitting such persons (and any other person or persons that subsequently lists, trades, or clears that class of mixed swap) to comply, as to parallel provisions only, with specified parallel provisions of either the Commodity Exchange Act ("CEA") or the Securities Exchange Act of 1934 ("Exchange Act"), and related rules and regulations (collectively "specified parallel provisions"), instead of being required to comply with parallel provisions of both the CEA and the Exchange Act.

The SEC expects ten requests pursuant to Rule 3a68-4(c) per year. The SEC estimates that nine of these requests will have also been made in a request for a joint interpretation pursuant to Rule 3a68-2, and one will not have been. The SEC estimates the total burden for the one request for which the joint interpretation pursuant to 3a68-2 was not requested would be 30 hours, and the total burden associated with the other nine requests would be 20 hours per request because some of the information required to be submitted pursuant to Rule 3a68-4(c) would have already been submitted pursuant to Rule 3a68-2. The burden in both cases is evenly divided between the SEC and the CFTC.

¹ The burdens imposed by the CFTC are included in this collection of information.

⁶⁷ 17 CFR 200.30-3(a)(12).