with Euro cash. ICC states that this change is intended to increase the Euro cash Non-Client Liquidity Requirements for Euro denominated products and create more consistent liquidity requirements across USD and Euro denominated products. In addition to updating its rules, ICC also proposes to update the ICC Treasury Operations Policies and Procedures to reflect the proposed change in ICC's Non-Client Liquidity Requirements for Euro denominated products. ICC states that the update to the ICC Treasury Operations Policies and Procedures will not require any operational changes.

ICC also proposes to remove redundant references to ''US cash'' in Schedule 401 of the ICC Rules, as US cash is included in all ''G7 cash'' references.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [4] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act [5] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act.[6] The proposed change provides ICC with increased available liquidity and is therefore consistent with the requirements of Section 17A(b)(3)(F) of the Act [7] of promoting the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, and helping to protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–ICC–2014–02) be, and hereby is, approved.[10]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10897 Filed 5–12–14; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78s(b)(2)(C).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(2).

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

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72118; File No. SR–ISEGemini–2014–09]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Related to Market Maker Risk Parameters

May 7, 2014.

On March 10, 2014, ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') 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 to amend ISE Gemini Rule 804 to mitigate market maker risk by adopting an Exchange-provided risk management functionality. The proposed rule change was published for comment in the **Federal Register** on March 26, 2014.[3] The Commission received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is May 10, 2014. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, so that it has sufficient time to consider this proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates June 24, 2014, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ISEGemini–2014–09).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10899 Filed 5–12–14; 8:45 am]

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71758 (March 20, 2014), 79 FR 16846.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72114; File No. SR–FINRA–2014–004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to Amendments to FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) As Amended

May 7, 2014.

On January 24, 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 to amend FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements). On February 4, 2014, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on February 11, 2014.[3] The Commission received one

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71486 (February 5, 2014), 79 FR 8226 (SR–FINRA–2014–004) (''Notice'').

comment letter on the proposal.[4] On March 31, 2014, FINRA responded to the comment letter.[5] This order approves the proposed rule change, as amended.

I. Description of the Proposed Rule Change [6]

FINRA Rule 5110, among other things, regulates underwriting compensation, requires the filing of specified information in connection with public offerings in which members will participate, and prohibits unfair arrangements in connection with public offerings of securities. FINRA proposes to amend the Rule's provisions regarding unfair arrangements to: (1) Expand the circumstances under which members and issuers may negotiate termination fees and rights of first refusal (''ROFR''), with specified conditions; (2) exempt from the filing requirements exchange-traded funds formed as grantor or statutory trusts; and (3) codify the electronic filing requirement.

Termination Fees and Rights of First Refusal

Rule 5110(f) (Unreasonable Terms and Arrangements) sets forth terms and arrangements that, when proposed in connection with a public offering of securities, are considered unfair and unreasonable. Rule 5110(f)(2)(D) addresses fees in connection with a public offering of securities that is not completed according to the terms of the agreement between the issuer and underwriter (''terminated offering''). Specifically, Rule 5110(f)(2)(D) generally provides that it is unfair and unreasonable for a member to arrange for the payment of any compensation by an issuer in connection with a terminated offering (''termination fee'' or ''tail fee''). Rule 5110(f)(2)(D) further clarifies that this prohibition does not include compensation negotiated and paid in connection with a separate transaction that occurs in lieu of the proposed offering, or reimbursement of out-of-pocket accountable expenses actually incurred by the member.[7] Currently, Rule 5110(f)(2)(E) provides that, in the event an issuer terminates an offering with an underwriter and subsequently consummates a similar transaction, a termination fee may be permissible under certain circumstances.

FINRA is proposing to amend Rule 5110(f)(2) (Prohibited Arrangements) to generally permit termination fees where: (1) The agreement between the participating member and the issuer specifies that the issuer has a right of ''termination for cause'' (*i.e.,* where a member fails materially to perform the underwriting services contemplated in the written agreement); [8] (2) the agreement specifies that an issuer's exercise of its right of ''termination for cause'' eliminates any obligations with respect to the payment of any termination fee; [9] (3) the amount of any specified termination fee is reasonable in relation to the services contemplated in the written agreement; and (4) the agreement specifies that the issuer is not responsible for paying the termination fee unless an offering or other type of transaction is consummated by the issuer (without involvement of the member) within two years of the date the issuer terminates the engagement with the member. FINRA indicated that the change to the rule would provide members with additional flexibility to negotiate termination fees.

Current Rule 5110(f)(2)(F) and (G) addresses ROFRs, which provide a member with the right to underwrite or participate in future public offerings, private placements or other financings of the issuer. Rule 5110(f)(2)(F) deems as unfair and unreasonable any ROFR provided to a member that: (1) Has a duration of more than three years from the date of effectiveness or commencement of sales of the public offering, or (2) provides more than one opportunity to waive or terminate the ROFR in consideration of any payment or fee.[10] Rule 5110(f)(2)(G) prohibits any payment or fee to waive or terminate a ROFR regarding future public offerings, private placements or other financings that exceed specified values or that is not paid in cash.

FINRA also proposes amendments to permit ROFRs in both successful and terminated offerings. ROFRs would be permissible where: (1) The agreement between the participating member and issuer specifies that the issuer has a right of termination for cause (*i.e.,* where a member fails materially to perform the underwriting services contemplated in the written agreement); (2) an issuer's exercise of its right of termination for cause eliminates any obligations with respect to the provision of any ROFR; and (3) any fees arising from services provided under a ROFR are customary for those types of services. The Rule would continue to provide that the duration of any ROFR must be less than three years from the date of commencement of sales of the public offering (in the case of a successful offering). In the case of a terminated offering, the duration must be less than three years from the date the issuer terminates the engagement. The agreement may not provide for more than one opportunity to waive or terminate the ROFR in consideration of any payment or fee.[11]

Filing Requirements for Certain Exchange-Traded Funds

Rule 5110(b)(8) (Exempt Offerings) generally provides an exemption for investment companies from the filing requirements of the Rule.[12] Due to this exemption, exchange-traded funds (''ETFs'') that are structured as investment companies generally are exempt. However, this exemption does not include certain other ETFs that are not investment companies. FINRA

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[4] *See* Letter from Stephen E. Roth and Susan S. Krawczyk, Sutherland Asbill & Brennan LLP, on behalf of the Committee of Annuity Insurers (''CAI''), Washington, District of Columbia to Elizabeth M. Murphy, Secretary, Commission, dated March 4, 2014 (''CAI Letter'').

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

[6] A more detailed description of the proposal is contained in the Notice. *See supra* note 4.

[7] Rule 5110(f)(2)(C) prohibits payment of commissions or reimbursement of expenses to an underwriter prior to the commencement of the sale of the securities being offered, except for a reasonable advance against out-of-pocket accountable expenses actually anticipated to be incurred by the underwriter. If the expenses are not actually incurred, any advance received must be returned to the issuer. Paragraph (D) currently provides that the reimbursement of out-of-pocket accountable expenses actually incurred by the member will not be presumed to be unfair or unreasonable under normal circumstances. The proposed amendment modifies paragraph (D) to specify that out-of-pocket accountable expenses must be *bona fide.*

[8] The specific meaning of ''termination for cause'' would be dictated by the agreement. For purposes of this proposal, FINRA has defined a ''termination for cause'' to include a member's material failure to perform the underwriting services contemplated in the written agreement, but events that are outside the participating member's control are not required to be included in the definition.

[9] Members would continue to be permitted to receive reimbursement of out-of-pocket, *bona fide,* accountable expenses actually incurred by the participating member in connection with a terminated offering.

[10] Historically, FINRA has interpreted the Rule to permit ROFRs only in the case of successful offerings.

[11] FINRA is proposing to redesignate Rule 5110(f)(2)(G) as Rule 5110(f)(2)(F), which prohibits any payment or fee to waive or terminate a ROFR regarding future public offerings, private placements or other financings that exceed specified values or that is not paid in cash.

[12] Rule 5110(b)(8)(C) exempts from the Rule's filing requirements securities of ''open-end'' investment companies as defined in Section 5(a)(1) of the Investment Company Act of 1940 (''Investment Company Act'') and securities of any ''closed-end'' investment company as defined in Section 5(a)(2) of the Investment Company Act that: (1) Make periodic repurchase offers pursuant to Rule 23c–3(b) under of the Investment Company Act; and (2) offer their shares on a continuous basis pursuant to Rule 415(a)(1)(xi) of SEC Regulation C.

proposes to add an exemption for these ETFs that are not included in the definition of an ''investment company'' because the creation structure of ETFs is not a distribution model that Rule 5110 was designed to address. Specifically, FINRA is proposing to exempt offerings of securities issued by a pooled investment vehicle, whether formed as a trust, partnership, corporation, limited liability company or other collective investment vehicle, that is not registered as an investment company under the Investment Company Act and has a class of equity securities listed for trading on a national securities exchange, provided that such equity securities may be created or redeemed on any business day at their net asset value per share.

Electronic Filing

Rule 5110(b) (Filing Requirements) generally provides that no member or person associated with a member shall participate in any manner in a public offering of securities subject to Rules 2310, 5110 or 5121 unless the specified documents and information relating to the offering have been filed with and reviewed by FINRA. FINRA proposes to amend the Rule to make clarifying, non-substantive changes regarding documents filed through FINRA's electronic filing system.[13]

II. Discussion of Comments and FINRA's Response

In response to the Commission's request for comment on the proposed rule change,[14] the Commission received one comment letter from the CAI.[15] CAI stated that it has no objection to FINRA's proposed rule change, but CAI stated its belief that, consistent with the proposal to treat different types of ETFs the same, FINRA should also exempt different types of insurance contracts from the filing requirements of the Corporate Financing Rule.[16] The commenter points out that in its current form, Rule 5110(b)(8) provides exemptions for only three types of insurance contracts,[17] but not for other offerings of insurance contracts.[18] Consequently, CAI proposes that ''FINRA also consider an additional 'catch-all' exemption for offerings of insurance contracts not explicitly described in existing exemptions from the Corporate Financing Rule in order to clarify and confirm that offerings of insurance contracts are not subject to the filing requirements of the Corporate Financing Rule.'' [19] CAI states that these presently non-exempt contracts share a number of features with the contract types that are exempt from the Corporate Financing Rule.[20] CAI therefore proposes that FINRA amend Rule 5110(b)(8) to exempt offerings of insurance premium funding programs and any other types of insurance contracts issued by an insurance company (not otherwise covered in an exemption above), except contracts which are exempt securities pursuant to Section 3(a)(8) of the Securities Act of 1933.[21]

In its response, FINRA stated that it appreciates CAI's comments, but considers the comments to be outside the scope of the proposal.[22] FINRA stated that it will separately consider the comments and determine whether any future action is appropriate.[23]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comment letter, and FINRA's response to the comment letter, and believes that FINRA has adequately addressed the comment letter. 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.[24] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[25] 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 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 proposes to amend Rule 5110(f) to expand the circumstances under which members and issuers may negotiate termination fees and ROFR. The Commission believes that the proposed rule change is reasonable because it may provide more flexibility to issuers and participating members in negotiating termination fees and terms and arrangements for ROFR, while also promoting the protection of issuers where a member fails materially to perform the underwriting services contemplated in the written agreement.

Additionally, as discussed above, FINRA proposes to amend Rule 5110(b) to extend the exemption from the filing requirements of Rule 5110(b)(8) that is generally afforded to ETFs structured as investment companies to ETFs formed as grantor or statutory trusts. The Commission believes that extending this exemption to these ETFs is reasonable because it will ensure that similarly situated ETFs are treated the same under Rule 5110.

Lastly, FINRA proposes amendments to Rule 5110 to codify the electronic filing requirement. The Commission believes that this amendment is reasonable because it will provide clarification regarding the manner by which documents are filed with FINRA.

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,[26] that the proposed rule change (SR–FINRA–2014–004) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

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[13] The effective date of the electronic filing requirements under Rule 5110 was July 12, 2002. *See* Notice *supra* note 4.

[14] *See* Notice *supra* note 4.

[15] *See supra* note 5.

[16] *See supra* note 5, at 2.

[17] *See supra* note 5, at 2–3. Specifically, these contracts are: exempted securities, as defined in Section 3(a)(12) of the Act; variable contracts, as defined in FINRA Rule 2320(b); and modified guaranteed annuity contracts and modified guaranteed life insurance policies. *See id.*

[18] Such insurance contracts could include annuity and life insurance contracts using an indexed method for crediting interest, synthetic guaranteed withdrawal benefit products (also known as contingent annuities), and combination long-term care insurance with cash value annuities and life insurance products. *See supra* note 5, at 3.

[19] *See supra* note 5, at 1–2.

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

[21] *See id.*

[22] *See supra* note 6, at 2.

[23] *See id.*

[24] 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).

[25] 15 U.S.C. 78*o*–3(b)(6).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).