

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62762; File No. SR-FINRA-2009-042]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Outside Business Activities of Registered Persons

August 23, 2010.

On June 8, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change relating to the outside business activities of registered persons. FINRA proposed to adopt NASD Rule 3030 (Outside Business Activities of an Associated Person) as FINRA Rule 3270 (Outside Business Activities of Registered Persons) in the consolidated FINRA rulebook with moderate changes. The proposed rule change would delete Incorporated NYSE Rule 346 (Limitations—Employment and Association with Members and Member Organizations) and its interpretations.

The proposed rule change was published for comment in the **Federal Register** on July 8, 2009.<sup>1</sup> The Commission received six comments on the proposed rule change.<sup>2</sup> On July 30, 2010, FINRA responded to the comments.<sup>3</sup> Also on July 30, 2010, FINRA filed Amendment No. 1 to the proposed rule change.

<sup>1</sup> See Securities Exchange Act Release No. 60199 (June 30, 2009), 74 FR 32668 (July 8, 2009).

<sup>2</sup> See letter from Dale E. Brown, CAE, Financial Services Institute, to Elizabeth M. Murphy, Secretary, Commission, dated July 29, 2009 ("FSI letter"); letter from Joan Hinchman, National Society of Compliance Professionals, to Elizabeth M. Murphy, Secretary, Commission, dated July 29, 2009 ("NSCP letter"); letter from Clifford E. Kirsch and Susan Krawczyk, Sutherland Asbill & Brennan LLP, on behalf of the Committee of Annuity Insurers, to Elizabeth M. Murphy, Secretary, Commission, dated July 29, 2009 ("NAIFA letter"); letter from James Livingston, National Planning Holdings, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated July 28, 2009 ("NPH letter"); and letter from Stephanie L. Brown, LPL Financial Corporation, to Elizabeth M. Murphy, Secretary, Commission, dated August 6, 2009 ("LPL letter").

<sup>3</sup> See letter from Gary L. Goldsholle, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated July 30, 2010 ("FINRA Response").

## II. Description of Proposed Rule Change

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>4</sup> FINRA proposed to adopt NASD Rule 3030 (Outside Business Activities of an Associated Person) as FINRA Rule 3270 (Outside Business Activities of Registered Persons) in the Consolidated FINRA Rulebook with moderate changes. The proposed rule change would delete NYSE Rule 346<sup>5</sup> (Limitations—Employment and Association with Members and Member Organizations) and its interpretations. However, as further described below, the proposed rule change would incorporate certain provisions of NYSE Rule 346 into new FINRA Rule 3270.

### *Proposed FINRA Rule 3270 (Outside Business Activities of Registered Persons)*

Proposed FINRA Rule 3270 would prohibit any registered person from being an employee, independent contractor, sole proprietor, officer, director or partner of another person, or being compensated, or having the reasonable expectation of compensation, from another person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member. The proposed rule change would expand the obligations imposed under NASD Rule 3030, which prohibits any registered person from being employed by or accepting any compensation from any person as a result of any outside business activity, other than passive investment, unless he has provided prompt written notice to his member firm. In contrast, NYSE Rule 346(b) generally prohibits any member (as defined in the NYSE rules) or employee of a member organization from being engaged in any other business, or being employed or compensated by any other person, or serving as an officer, director, partner or employee of another business organization or owning any stock or having any direct or indirect financial

<sup>4</sup> 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 new 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 FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>5</sup> For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

interest in any other organization engaged in any securities, financial or kindred business unless such person has made a written request to, and received prior written consent from, his or her member organization employer.

The primary difference between the existing NASD and NYSE rules is the timing of the required notice and the requirement in the NYSE rule for a member's prior written consent. With respect to timing, FINRA believes that registered persons should not be permitted to engage in outside business activities without the firm's prior knowledge. Potential investor harm could ensue in the interim period between the time the registered person commences an outside business activity and the time a firm receives "prompt" written notice. Also, because the term "prompt" is susceptible to differing interpretations, adopting a prior written notice standard in this context would promote consistency within the securities industry, though FINRA understands that, in practice, many firms already require prior written notice. Further, a prior written notice standard would allow a firm an opportunity to determine whether the proposed outside business activity is properly being characterized by the registered representative as an outside business activity, or whether it is an outside *securities* activity, subject to NASD Rule 3040 (Private Securities Transactions of an Associated Person).<sup>6</sup>

For these reasons, FINRA proposed that FINRA Rule 3270 require prior written notice whenever a registered representative will be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or will be compensated, or have the reasonable expectation of compensation, from any other person as a result of any outside business activity. With respect to the requirement in NYSE Rule 346(b) for prior written consent, FINRA believes that requiring prior written consent for outside business activities is unnecessary. To the extent that these activities may nevertheless raise investor protection concerns and adversely impact the individual's business within the firm, the proposed rule change has supplementary material, drawn in part from procedures required in NYSE Rule

<sup>6</sup> FINRA is proposing to replace NASD Rule 3040 with new provisions in proposed FINRA Rule 3110(b)(3), as part of the consolidated FINRA rules addressing supervision and supervisory controls. See Notice of Filing of Proposed Rule Change to Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook, Securities Exchange Act Release No. 62718 (August 13, 2010), 75 FR 51310 (August 19, 2010).

346(e), that sets forth the obligations of a member upon receipt of a written notice of a proposed outside business activity. Under the proposal as amended, the supplementary material states that, upon receiving written notice under Rule 3270, a member must consider whether the proposed activity will: (1) Interfere with or otherwise compromise the registered person's responsibilities to the member and/or the member's customers or (2) be viewed by customers or the public as part of the member's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. Based upon this review, the member must evaluate the advisability of imposing specific conditions or limitations on a registered person's outside business activity, including where circumstances warrant, prohibiting the activity. A member also must evaluate the proposed activity to determine whether the activity properly is characterized as an outside business activity or whether it should be treated as an outside securities activity subject to the requirements of NASD Rule 3040. A member must also keep a record of its compliance with these obligations with respect to each written notice received and must preserve this record for the period of time and accessibility specified in Rule 17a-4(e)(1) under the Securities Exchange Act of 1934.

The proposed rule change also harmonizes and simplifies the standards for what constitutes an outside business activity. Currently, the NASD and NYSE rules have a number of overlapping provisions. NYSE Rule 346(b) generally requires, subject to certain exceptions, written notice whenever a member or employee of a member organization is employed or compensated by any other person; serves as an officer, director, partner or employee of another organization; or owns any stock or has, directly or indirectly, any financial interest in any other organization engaged in any securities, financial or kindred business. NASD Rule 3030 generally requires notice whenever a registered person is employed by or accepts any compensation from any person as a result of any outside business activity, other than passive investment. In reconciling these two standards, the proposed rule change requires prior written notice whenever a registered representative will be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or will be compensated, or have the reasonable expectation of compensation, from any other person as a result of any outside business activity.

The inclusion of the phrase "or have the reasonable expectation of compensation" addresses situations in which an outside activity does not immediately yield compensation (e.g., where a registered person intends to work for a start-up business). FINRA believes that a registered person should not be able to engage in an activity in which he or she reasonably expects to be compensated without providing the firm with prior written notice, and FINRA believes that a rule dependent on the prior receipt of compensation is too narrow and may be susceptible to abuse. Proposed Rule 3270 retains the exemptions in NASD Rule 3030 for "passive investments" and activities subject to the requirements of NASD Rule 3040.<sup>7</sup>

In addition, the proposed rule would streamline the text by replacing the phrase "person associated with a member in any registered capacity" with "registered person" and would re-title the rule "Outside Business Activities of Registered Persons" to better reflect its application to registered persons.

*Deleted Provisions of Incorporated NYSE Rule 346 and Its Supplementary Material and Interpretations*

FINRA proposes to delete other provisions of NYSE Rule 346 that are unnecessary and/or duplicative of provisions in the federal securities laws or the FINRA Rulebook and delete NYSE Rule Interpretations that are unnecessary or inconsistent with Proposed Rule 3270.

NYSE Rule 346(a) and related NYSE Interpretation 346/01 require natural persons not associated with entities that are registered broker-dealers to register with the Commission unless specifically exempted by the Exchange Act. FINRA has proposed to delete these provisions as redundant in light of Section 15(a) of the Exchange Act.<sup>8</sup>

NYSE Rule 346(c) provides that where a member organization approves an employee's participation in a private securities transaction in which regard the employee has or may receive selling compensation, the transaction shall be recorded on the books and records of the member organization, which shall supervise such participation as if the transaction were executed on its behalf. FINRA has proposed to delete this provision as redundant of NASD Rule

3040 (Private Securities Transactions of an Associated Person).<sup>9</sup>

NYSE Rule 346(d) provides that no member shall qualify more than one member organization for membership. This provision is inconsistent with FINRA's approach to membership, which allows the same individual to qualify more than one firm for membership, as appropriate. FINRA examines separately the merits of each membership application and has proposed to delete the prohibition in the NYSE rule.

NYSE Rule 346(e) requires every employee of a member organization who is assigned or delegated any responsibility or authority pursuant to NYSE Rule 342 to devote his entire time during business hours to the business of such member organization unless an alternative arrangement has been approved in writing by the member organization. FINRA believes that the existing and proposed rules on supervision and outside business activities adequately ensure that the member firm's business is not adversely affected by outside activities. Moreover, associated persons in the independent broker-dealer channel at times devote substantial time to non-member business and this provision would create unnecessary administrative burdens if applied to them. Accordingly, FINRA has proposed to delete this provision.

NYSE 346(f) provides that unless otherwise permitted by the Exchange, no member, member organization, approved person, employee or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any "statutory disqualification" defined in Section 3(a)(39) of the Exchange Act.<sup>10</sup> In connection with FINRA's consolidation transaction, FINRA amended its definition of disqualification in its By-Laws to align with the Exchange Act definition, thereby incorporating additional categories of statutory disqualification, including certain affiliated relationships.<sup>11</sup> Accordingly, FINRA has proposed to delete NYSE Rule 346(f) as redundant.

Finally, FINRA has proposed to delete NYSE Rule Interpretations 346/02 and /03, which address personal business

<sup>7</sup> FINRA is separately considering NASD Rule 3050 (Transactions for or by Associated Persons) as part of the rulebook consolidation process and will consider whether transactions subject to NASD Rule 3050, as proposed to be amended, also should be exempted from proposed FINRA Rule 3270.

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> See *supra* note 6.

<sup>10</sup> 15 U.S.C. 78c(a)(39).

<sup>11</sup> For further discussion, see Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (Order Approving SR-FINRA-2008-045).

expenses and factors to consider when approving outside activities, FINRA believes the Interpretations are unnecessary or inconsistent with proposed FINRA Rule 3270. In particular, the provisions in NYSE Rule Interpretation 346/02 requiring a firm to assume responsibility for all activities effected on its behalf and under its name are addressed by other FINRA rules, including supervision rules. In addition, FINRA has chosen not to impose a requirement for firms to approve all advertisements of an outside business, although a firm may impose such restrictions as part of its obligations under supplementary material .01. FINRA requires firms to approve all advertisements for member firm business, even if an advertisement relates to the firm's non-securities business; however, FINRA does not believe that approval should be required for outside business activities permitted under the proposed rule change.

For the reasons noted above, FINRA has proposed to transfer NASD Rule 3030 into the Consolidated FINRA Rulebook with the changes described herein. In addition, FINRA has proposed to delete NYSE Rule 346 and its interpretations from the Transitional Rulebook also as described herein.

### III. Summary of Comments and Amendment No. 1

#### *Prior Member Consent to Outside Business Activities of Registered Persons*

Certain commenters suggested that FINRA amend proposed FINRA Rule 3270 to require a member's consent before a registered person may engage in any outside business activity. One commenter noted that in practice most registered persons are required to get written acknowledgement from their firm prior to engaging in outside business activities, and believes that requiring member consent ensures that the registered person does not engage in an outside business activity before the member completes its due diligence as required under the proposed Supplementary Material in proposed FINRA Rule 3270.<sup>12</sup> According to two commenters, allowing a registered person to engage in outside business activities upon notice of the proposed activity without a requirement that the firm consent to such activity places the firm in a position of risk during the interim period since the firm may not have had ample time to review the matter.<sup>13</sup> Certain commenters believed the proposed rule should require an

affirmative written response from the member<sup>14</sup> or a written response noting any objections or concerns to the proposed activity.<sup>15</sup> One commenter supported the proposal not to incorporate a member consent requirement but notes that the requirements of proposed Supplementary Material .01 are the functional equivalent of requiring prior consent from the member.<sup>16</sup>

FINRA responded that it does not plan to amend the proposal to incorporate a prior member consent requirement for a registered person's outside business activities as such a requirement is not necessary for all types of firms. FINRA noted that the proposal does not preclude any member from including a prior member consent requirement as part of its procedures to manage the outside business activities of its registered persons.

#### *"Compensation" and "Reasonable Expectation of Compensation"*

One commenter believed that the "reasonable expectation of compensation" standard in proposed FINRA Rule 3270 is too vague, particularly if this initial determination is made by the registered person, and expressed concern that FINRA will question the initial determinations made by registered persons and/or their supervisors.<sup>17</sup> Another commenter requested that FINRA define the term "compensation."<sup>18</sup> FINRA, in its response, stated that it believes that the standards in the proposed rule are appropriate and workable; that members will demand sufficient information to enable them to make the necessary determinations; and that the reasonableness of a determination will not be judged in hindsight, but rather based on the information requested and obtained at the time of the registered person's prior written notice. Also in its response, FINRA stated that it does not intend to amend the proposal to adopt a definition for the term "compensation" in the proposed rule. FINRA notes that neither NASD Rule 3030 nor NYSE Rule 346, upon which the proposed rule

change is based, includes a definition of the term "compensation," and FINRA believes that incorporating a definition of this term in the proposed rule may frustrate the intent and application of the rule as it may encourage registered persons to structure outside business arrangements to purposefully evade the requirements of the proposed rule.

Also, a commenter suggested changing language in the general requirement of proposed FINRA Rule 3270.<sup>19</sup> The proposed rule provides that "[n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation from any other person as a result of any business activity outside the scope of the relationship with his or her member." The commenter requested that the phrase "as a result of any business activity" be replaced with "in conjunction with an established business enterprise." The commenter advocated a revised approach noting that an individual is an employee, officer or director in a business entity or not, so it does not make sense to connect these relationships to the phrase "as a result of any business activity." In its response, FINRA notes that the reference to "as a result of any business activity" is from NASD Rule 3030 and has not been changed under the proposal. FINRA states that the phrase the compensation language directly preceding it and, accordingly, the proposed rule prohibits a registered person from either acting in one of the enumerated roles or from being compensated by, or having the reasonable expectation of compensation from, any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior notice to the member. FINRA does not intend to amend the proposal to incorporate the suggested language.

#### *Reporting Material Changes to Outside Business Activities*

A few commenters requested that the proposed rule impose an ongoing obligation on registered persons to provide prior written notice to a member should an outside business activity undergo a material change.<sup>20</sup> Two commenters noted that without such a requirement, a member has no way to make knowledgeable decisions regarding these activities subjecting the firm to regulatory risk and harm.<sup>21</sup> One

<sup>14</sup> FSI letter, LPL letter.

<sup>15</sup> NAIFA letter.

<sup>16</sup> NAIFA letter.

<sup>17</sup> Sutherland letter. This commenter requested guidance on facts and circumstances that would be relevant in making this initial determination. Also, the commenter recommended that FINRA clarify that the initial determination should be made by the member, based on information provided by the registered person, and that it would not be triggered absent a concrete understanding or agreement between the registered person and its outside business that compensation will or will likely be paid over time.

<sup>18</sup> FSI letter.

<sup>19</sup> FSI letter.

<sup>20</sup> FSI letter, LPL letter, NPH letter.

<sup>21</sup> FSI letter, LPL letter.

<sup>12</sup> NPH letter.

<sup>13</sup> FSI letter, LPL letter.

commenter requested clarification on a member's liability in the event an outside business activity changes over time.<sup>22</sup> In its response, FINRA states that it believes that the requirement for a registered person to amend or supplement the nature of the prior written notice is implicit in the proposed rule change. FINRA explains that a registered person's prior written notice is valid only to the extent that it continues to accurately describe the outside business activity and, thus, it is incumbent on the registered person to provide prior written notice before altering the nature of any outside business activity previously disclosed in writing to the firm. FINRA also notes that a member's supervisory system should demand that each registered person notify the member in the event of a material change to his or her outside business activities.

*Supplementary Material .01  
(Obligations of Member Receiving  
Notice)*

All of the comment letters received by the Commission addressed proposed Supplementary Material .01. The Supplementary Material initially had provided that firms must review the registered person's participation in the outside activity to determine whether it raises investor protection concerns. As initially proposed, the Supplementary Material would have required that a member must make a determination as to whether the proposed activity raises investor protection concerns, and if so, the firm must implement procedures or restrictions on the activity to protect investors, or prohibit the activity. Certain commenters opposed the proposed Supplementary Material, in whole or in part, and request that it be removed from the proposal.<sup>23</sup>

Generally, the commenters believed that the proposal exceeds FINRA's jurisdiction by imposing on members a supervisory obligation for the outside business activities of its registered persons.<sup>24</sup> The commenters stated that members do not have the resources to supervise the wide variety of outside business activities in which their registered persons engage. One commenter further provided that this limited knowledge or expertise would impede the determination of whether an outside business activity raises investor protection concerns.<sup>25</sup> Certain other commenters believed that the proposed

Supplementary Material would distract members from core supervisory functions by requiring supervision of activities beyond their purview or practical control.<sup>26</sup>

Certain commenters suggested that FINRA clarify the due diligence required in making a determination whether a proposed outside business activity raises "investor protection concerns"<sup>27</sup> and, further, how FINRA would define the terms "investor," "protect investors" and "investor protection concerns" for purposes of the proposed rule.<sup>28</sup> One commenter noted that the term "investor protection concerns" could be subject to interpretation and applied differently across member firms.<sup>29</sup> Another commenter stated that almost any activity could raise investor protection concerns and suggests that, unless this term is defined as it relates to non-securities activities, FINRA should remove it from the proposal.<sup>30</sup> One commenter believed the Supplementary Material, as initially proposed, was overly broad because many outside business activities have nothing to do with traditional investors or investor protection issues.<sup>31</sup>

In response to the comments received by the Commission, FINRA is amending proposed Supplementary Material .01. Under the Supplementary Material, as amended, FINRA will expect members to assess the impact of the outside activity on the member's business and the member's customers, as well as the extent to which customers or the public would perceive the outside activity to be part of the member's business. Specifically, the revised proposal provides that, upon receipt of a written notice under proposed FINRA Rule 3270, a member shall consider whether the proposed activity will: (1) Interfere with or otherwise compromise the registered person's responsibilities to the member and/or the member's customers or (2) be viewed by customers or the public as part of the member's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. Additionally, based on the member's review of such factors, the member would be required to evaluate the advisability of imposing specific conditions or limitations on a registered person's outside business activity,

including where circumstances warrant, prohibiting the activity.

#### IV. Discussion and Finding

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>32</sup> The Commission believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>33</sup> The proposed rule change will clarify and streamline NASD Rule 3030 for adoption as a FINRA rule in the new Consolidated FINRA Rulebook, while also implementing additional protections such as the need for registered persons to provide prior written notice to its member firms of proposed outside business activities and for firms to implement a system to assess the risk that these outside business activities may cause potential harm to investors and to manage these risks by taking appropriate actions as prescribed by the proposed rule.

#### V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> for approving the proposed rule change, as amended by Amendment No. 1 thereto, prior to the 30th day after the date of publication in the **Federal Register**. The changes proposed in Amendment No. 1 do not raise novel regulatory concerns. Moreover, accelerating approval of this proposal should benefit FINRA member firms and investors by streamlining and clarifying a member's obligations upon receipt of notice of a proposed outside business activity by a registered person.

#### VI. 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:

<sup>22</sup> NSCP letter.

<sup>23</sup> FSI letter, LPL letter, NAIFA letter, Sutherland letter.

<sup>24</sup> FSI letter, LPL letter, NAIFA letter, NPH letter, NSCP letter, Sutherland letter.

<sup>25</sup> NPH letter.

<sup>26</sup> FSI letter, NAIFA letter.

<sup>27</sup> LPL letter, NPH letter, NSCP letter.

<sup>28</sup> FSI letter, NSCP letter, Sutherland letter.

<sup>29</sup> LPL letter.

<sup>30</sup> NSCP letter.

<sup>31</sup> Sutherland letter.

<sup>32</sup> In approving the proposed rule change, the Commission has considered the rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>33</sup> See 15 U.S.C. 78o-3(b)(6).

<sup>34</sup> 15 U.S.C. 78s(b)(2).

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-042 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-042 and should be submitted on or before September 21, 2010.

**VII. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>35</sup> that the proposed rule change (SR-FINRA-2009-042), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-21606 Filed 8-30-10; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62763; File Nos. SR-BATS-2010-018; SR-BX-2010-044; SR-CBOE-2010-065; SR-CHX-2010-14; SR-EDGA-2010-05; SR-EDGX-2010-05; SR-FINRA-2010-033; SR-ISE-2010-66; SR-NYSE-2010-49; SR-NYSEAmex-2010-63; SR-NYSEArca-2010-61; SR-NASDAQ-2010-079; SR-NSX-2010-08]

**Self-Regulatory Organizations; BATS Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Changes Relating to Trading Pauses Due to Extraordinary Market Volatility**

August 24, 2010.

On June 30, 2010, each of BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex LLC, and NYSE Arca, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> proposed rule changes to amend certain of their respective rules to add securities to the single-stock circuit breaker pilot program.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that, within thirty-five days of the

publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission shall either approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission extended this time period from August 11, 2010 to August 25, 2010.<sup>6</sup> The Commission is again extending this time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule changes so that it has sufficient time to consider these proposed rule changes, which relate to the addition of securities to the single-stock circuit breaker pilot program, and issues raised in the comment letters that have been submitted in connection with these filings.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> designates September 10, 2010, as the date by which the Commission should either approve or institute proceedings to determine whether to disapprove the proposed rule changes.

By the Commission.

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-21630 Filed 8-30-10; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62766; File No. SR-Phlx-2010-117]

**Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees, the Monthly Cap and Electronic Auctions**

August 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 23, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II,

<sup>6</sup> See Securities Exchange Act Release No. 62688A (August 11, 2010), 75 FR 51138 (August 18, 2010).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>36</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The single-stock circuit breaker pilot program was initially approved on June 10, 2010. See Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010); 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> 15 U.S.C. 78s(b)(2).