POSTAL REGULATORY COMMISSION

[Docket No. MC2009–29; Order No. 215]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to amend an earlier filing concerning the addition of Address Management Services to the Mail Classification Schedule. The amendment affects a Move Update service. This notice addresses procedural steps associated with this filing.

DATES: Comments are due May 19, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 15784 (April 7, 2009).

On May 8, 2009, the Postal Service filed a notice of an amendment to its March 10, 2009 request to add Address Management Services to the Mail Classification Schedule (MCS) as a market dominant product.[1] The Postal Service states that the amendment is occasioned by recent developments regarding the manner in which *FASTforward*® Move Update Notification (FFMUN) will be offered as a component of Address Management Services.[2] Effective June 1, 2009, FFMUN will no longer be offered as a stand-alone component of Address Management Services, but will, instead, be included in the existing *FASTforward* MLOCR service with no change in the annual fee for *FASTforward* MLOCR service. There will no longer be a separate charge for FFMUN service.

The Postal Service states that notice of the proposed changes has already been given to *FASTforward* licensees through the Postal Service's RIBBS Web site at *http://www.usps.com* and at the National Association of Presort Mailers conference.

The Commission will review the request and the comments of interested parties and may approve the request, institute further proceedings, permit the Postal Service to modify the request, or take other appropriate action under rule 3020.34.

In Order No. 198, the Commission appointed Robert Sidman to serve as the Public Representative in this proceeding. Mr. Sidman will continue to represent the interests of the general public with respect to the Amendment.

Pursuant to rule 3020.33, the Commission provides interested persons an opportunity to express views and offer comments on whether the planned modifications are consistent with the policies of 39 U.S.C. 3622 and 3642. Comments are due no later than May 19, 2009.

It is Ordered:

1. Comments on the Amendment are due no later than May 19, 2009.

2. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E9–11682 Filed 5–19–09; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Amendment to Its Request to Add Postal Products to the Mail Classification Schedule in Response to Order No. 154, May 8, 2009 (Amendment). Included as part of the Amendment are revised pages 4 and 8 to Attachment A to the Postal Service's initial filing in this docket. Address Management Services is one of seven postal services that the Postal Service has proposed to add to the MCS in this proceeding. The Commission's notice and order of the Postal Service's initial filing was issued on March 30, 2009. PRC Order No. 198, Notice and Order Concerning Request to Add Seven Postal Services to the Mail Classification Schedule Product Lists, March 30, 2009 (Order No. 198). Comments on the initial request have been received and are currently under review by the Commission.

[2] Address Management Services was one of the products proposed in its March 10, 2009 filing to add to the Market Dominant Product List. Order No. 198 at 3.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 21, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the item listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, May 21, 2009 will be: institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; and other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: May 14, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–11702 Filed 5–19–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Correction

In FR Doc. E9–11077 for Monday, May 11, 2009, (73 FR 21839) in the second column of the Sunshine Act Notice make the following correction:

Revise the sixth line of the third paragraph to read: ''The proposed amendments are designed to''.

Dated: May 14, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–11701 Filed 5–19–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59916; File No. SR–FINRA–2009–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change as Modified by Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Filing as Amended by Amendment No. 2 Relating to Changes to Forms U4, U5, and FINRA Rule 8312

May 13, 2009.

I. Introduction

On March 6, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and

Exchange Commission (''Commission'' or ''SEC''), 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 the Uniform Application for Securities Industry Registration or Transfer (''Form U4'') and the Uniform Termination Notice for Securities Industry Registration (''Form U5'') as well as FINRA Rule 8312 (FINRA BrokerCheck Disclosure).

The proposed rule change was published in the **Federal Register** on March 27, 2009.[3] The Commission received 1654 comment letters on the proposed rule change.[4] FINRA responded to the comments on May 6, 2009.[5] FINRA filed Amendment No. 1 to the proposed rule change on May 6, 2009.[6] On May 11, 2009, FINRA filed Amendment No. 2 to the proposed rule change.[7] This order approves the proposed rule change, as modified by Amendment No. 1 and issues notice of, and solicits comments on, Amendment No. 2, and approves the filing, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposed Rule Change

The proposed rule change would make certain changes to Forms U4 and U5 (together referred to as the ''Forms'') by:

- Revising questions on the Forms to reflect the most recent change to the definition of statutory disqualification[8] and to help more accurately identify individuals and firms (collectively referred to as ''persons'') subject to a statutory disqualification pursuant to Section 15(b)(4)(D) or (E) of the Act (referred to as ''willful violations'').
- Revising questions on the Forms regarding disclosure of arbitrations or civil lawsuits to require reporting of allegations of sales practice violations made against a registered person in arbitration or a civil suit regardless of whether that person is named as a party.
- Revising questions on the Forms regarding customer complaints, arbitrations or civil litigation to clarify the manner in which individuals and firms must report sales practice violations alleged against registered persons.
- Raising the monetary threshold that triggers reporting of settlements of customer complaints, arbitrations or civil lawsuits from $10,000 to $15,000, and making a conforming change in the description of ''Historic Complaints'' in FINRA Rule 8312.
- Revising the definition of ''Date of Termination'' in Form U5, and permitting firms to amend the ''Date of Termination'' and ''Reason for Termination'' sections of the Form U5.

The proposal would also make certain technical and conforming changes to the Forms.

A. Revisions to the Forms Regarding Willful Violations

The revised Forms would enable FINRA and other regulators[9] to query the Central Registration Depository (''CRD'') to identify persons who are subject to a statutory disqualification as a result of a willful violation. The proposal would add questions to Form U4, which would require a person to answer whether the SEC, the U.S. Commodity Futures Trading Commission (''CFTC'')[10] or any SRO[11] has ever:

- *Found* you to have willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board, or *found* you to have been unable to comply with any provision of such Act, rule or regulation?
- *Found* you to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board?
- *Found* you to have failed reasonably to supervise another person subject to your supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board?

FINRA proposes to require firms to amend Form U4 to respond to these new questions the first time they file an amendment to Form U4 after the effective date of the proposed rule change, but in any event, no later than 180 days following the effective date of the proposed rule change.[12] If a firm determines that the registered person must answer ''yes'' to any part of these questions, the amended U4 filing would have to include completed disclosure reporting pages (''DRP(s)'') covering the proceedings or action reported.[13]

FINRA proposes to add a question[14] to the Form U5 Regulatory Action DRP. After implementation, firms would be required to provide more detailed information about certain regulatory actions. In addition, for regulatory actions in which the SEC, CFTC or an SRO is involved, the proposal would require firms to answer questions eliciting whether the action involves a willful violation, which correspond to those questions proposed to be added to Form U4. A firm would not be required to amend Form U5 to answer this question and/or add information to a Form U5 Regulatory Action DRP that

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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. 59616 (March 20, 2009), 74 FR 13491 (''Notice'').

[4] Approximately 1,451 comment letters were form comment letters. Of these, 770 utilized ''Letter Type A'' (from financial advisors expressing their desire to have an opportunity to respond to unadjudicated allegations before they are reported to CRD and thus opposing the aspect of the proposal which would require reporting of allegations of sales practice violations in arbitrations or civil lawsuits in which the registered person is not a named party). Six hundred eighty one utilized ''Letter Type B'' (expressing similar thoughts as Letter Type A but from persons who are qualified as both insurance agents and financial advisors). Each of the letter types is posted on the Commission's Internet Web site (*http://www.sec.gov/comments/sr-finra-2009–008/finra2009008.shtml*). *See* Exhibit 1 for a list of individual comment letters.

[5] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, FINRA, dated May 5, 2009 (''Response Letter'').

[6] Amendment No. 1 is a technical amendment which corrects a minor error in the rule text.

[7] In Amendment No. 2, FINRA states that it will delay the effective date of the willful violation questions for 180 days following Commission approval of the proposed rule change and makes other adjustments concerned with implementation of the statutory disqualification change in response to issues raised by commenters, which changes are discussed *infra*.

[8] *See* Section 3(a)(39) of the Act.

[9] In addition to FINRA, regulators that use the Forms include other self-regulatory organizations (''SROs'') and securities regulators of states and other jurisdictions.

[10] Proposed Questions 14C(6)–(8), respectively.

[11] Proposed Questions 14E(5)–(7), respectively.

[12] The Commission notes that FINRA originally proposed 120 days for firms to comply with this aspect of the proposed rule change but amended the filing to state that these questions would not become effective for 180 days, which gives firms 180 days to comply with this provision. *See* Amendment No. 2, *supra* note 7.

[13] FINRA is not proposing any new questions addressing willful violations on the Form U4 Regulatory Action DRP, which elicits specific information regarding the status of the events reported in response to Questions 14C and 14E. *See* Notice at 13492.

[14] Question 12C.

was filed previously, unless it is updating a regulatory action that it reported as pending on the current DRP.

B. Revisions to Forms To Require Reporting of Allegations of Sales Practice Violations Against Registered Persons Made in Arbitrations or Civil Lawsuits in Which the Registered Person Is Not a Named Party

The proposed rule change would revise the Forms to require the reporting of allegations of sales practices violations made against registered persons in a civil lawsuit or arbitration in which the registered person is not a named party. Specifically, the proposal would amend the Forms to require the reporting of alleged sales practice violations made by a customer against persons identified in the body of a civil lawsuit or an arbitration claim, regardless of whether those persons are named as parties.[15] The proposed questions would apply only to arbitration claims or civil suits filed on or after the effective date of the proposed rule change.

A ''yes'' answer to the newly-proposed questions [16] would indicate that the applicant or registered person, though not named as a respondent/defendant in a customer-initiated arbitration or civil lawsuit, was either named in or could be reasonably identified from the body of the arbitration claim or civil suit as a registered person who was involved in one or more of the alleged sales practice violations. A firm would be required to answer yes only after it has conducted a reasonable investigation into the allegations in the arbitration claim or lawsuit and made a good faith determination that the alleged sales practice violation(s) involved the registered person.

As a result of the proposed rule change, alleged sales practice violations made by a customer against persons identified in the body of a civil lawsuit or arbitration claim would be treated the same way that customer complaints are currently treated in the Forms.[17] Such matters would be required to be reported no later than thirty days after receipt by the firm of the arbitration claim or lawsuit. In addition, as is currently the practice with respect to customer complaints reported to the CRD, registered persons would have an opportunity to provide context on the reported matter on Form U4. Persons not currently registered with a member firm, but who were registered within the previous two years, would be afforded an opportunity to provide context on the reported matter through a Broker Comment, which would be disclosed through BrokerCheck consistent with FINRA Rule 8312. To the extent a matter becomes non-reportable (if, for example, the arbitration or civil suit is dismissed and the dismissal is not part of a settlement, or it is settled for less than the monetary threshold designated on Form U4), it would, like other customer complaints that become non-reportable after a 24-month period, be eligible for disclosure through BrokerCheck as an ''Historic Complaint,'' provided it meets certain criteria.[18]

C. Revisions To Clarify the Manner in Which Individuals and Firms Must Report Sales Practice Violations Alleged Against Registered Persons

The proposed rule change would revise questions on the Forms [19] to clarify the manner in which individuals and firms must report allegations of sales practice violations against registered persons made in an arbitration filing or civil lawsuit or through consumer-initiated complaints.

D. Revisions To Raise the Monetary Threshold for Reporting Customer Complaints, Arbitration, or Civil Lawsuits From $10,000 to $15,000 on the Forms and Conforming Change to FINRA Rule 8312

Currently, the Forms require consumer-initiated arbitration or civil lawsuits to be reported only when they have been settled for $10,000 or more,[20] and customer complaints to be reported only when they have been settled for $10,000 or more.[21] The proposed rule change would raise these amounts to $15,000. In addition, the proposed rule change would amend the description of ''Historic Complaints'' in FINRA Rule 8312 to conform to these revised monetary thresholds for reporting of settlements of customer complaints, arbitrations or civil lawsuits in the Forms.[22]

E. Revisions To Clarify the Definition of ''Date of Termination'' in Form U5 and To Allow Firms To Amend the ''Date of Termination'' and ''Reason for Termination''

FINRA proposes to amend Form U5 by clarifying the definition of ''date terminated'' and to permit a firm to amend the ''Date of Termination'' and ''Reason for Termination,'' subject to certain conditions and notifications, provided the firm provides a reason for the amendment.

FINRA would notify other regulators and the broker-dealer with which the person is currently associated (if the person is associated with another firm) when the date of termination or reason for termination has been changed. The original date of termination or reason for termination would remain in the CRD in form filing history, which information is available only to regulators. Any changes to the ''Date of Termination'' filed by firms would not affect the manner in which FINRA determines whether an individual is required to requalify by examination or obtain an appropriate waiver upon reassociating with another firm, or whether FINRA has retained jurisdiction over the individual. Rather, FINRA would continue to determine such periods based on the original ''Date of Termination'' provided by the firm and/or the date that the original filing was processed by CRD, respectively.

F. Technical and Conforming Changes to the Forms

The proposed rule change would make various technical and conforming changes to the Forms, including, among others, converting certain free text fields to discrete fields on the DRPs of the Forms; adding to Section 7 of Form U5

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[15] The proposed rule change would add Questions 14I(4) and (5) to Form U4 and Questions 7E(4) and (5) to Form U5. These questions would, in most respects, reflect the language of the corresponding questions regarding alleged sales practice violations of persons identified in consumer complaints (*i.e.*, Questions 14I(2) and (3) in Form U4 and Questions 7E(2) and (3) in Form U5).

[16] Question 14I(4)–(5) on Form U4 and Question 7E(4)–(5) on Form U5.

[17] The proposed rule change would make corresponding changes to Customer Complaint/Arbitration/Civil Litigation DRPs to reflect the changes discussed. These changes would include, *e.g.*, eliciting specifically whether, in the case of an arbitration or lawsuit, the individual was named as a respondent or defendant. The DRPs would require disclosure of the alleged damages and disposition for matters in which sales practice violations are alleged against an individual who was not named in an arbitration or lawsuit.

[18] *See* FINRA Rule 8312(b)(7) and proposed conforming revisions. FINRA has proposed replacing NASD Rule 3070 and Incorporated NYSE Rule 351 with a single rule, proposed FINRA Rule 4530, in the Consolidated FINRA Rulebook. *See Regulatory Notice* 08–71 (November 2008). FINRA stated that it would consider whether corresponding changes to the reporting requirements currently found in NASD Rule 3070 and Incorporated NYSE Rule 351 would be warranted as a result of the proposed rule change. *See* Notice at 13494.

[19] Questions 14I on Form U4 and 7E on Form U5.

[20] *See* Question 14I(1)(c) on Form U4 and Question 7E(1)(c) on Form U5.

[21] *See* Question 14I(2) on Form U4 and Question 7E(2) on Form U5.

[22] The increase of the monetary threshold in Rule 8312 to $15,000 is a conforming change to the description of ''Historic Complaint'' that will only be applied to settlements that occur after the effective date of the proposed rule change. Under the proposal, matters settled for more than $10,000 before the proposed monetary change would continue to be disclosed through the BrokerCheck program. *See* Response to Comments at 8–9.

(Disclosure Questions) an optional ''Disclosure Certification Checkbox'' that would enable firms to affirmatively represent that all required disclosure for a terminated person has been reported and the record is current at the time of termination; and incorporating the definition of ''found'' from the Form U4 Instructions into the Form U5 Instructions.

III. Discussion of Comments and Commission Findings

The Commission received 1,451 form comment letters, and 203 individual comment letters, regarding this proposal. FINRA responded to the comment letters on May 6, 2009.[23] After careful review of the proposal and consideration of the comment letters and the Response Letter, the Commission finds, for the reasons discussed below, 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.[24] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[25] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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.

A. Revisions to the Forms Regarding Willful Violations

Approximately forty-two commenters provided comments on this aspect of the proposal.[26] While most support the policy in general,[27] many were concerned with the potential administrative burden firms face in complying with this provision and offered a variety of ways to lessen the burden on the industry.[28] Specifically, these commenters requested, in combination or separately, among other suggestions, (1) a time period of more than 120 days (commenters asked for up to eight months) to submit amended Forms U4 with answers to the new questions; (2) disabling the CRD ''completeness check'' so that U4 amendments may continue to be processed without firms having to respond to the new questions the first time they submit an amended U4 for a registered representative; (3) eliminating the requirement that a registered person sign the U4 amendment; (4) providing a mechanism to ''batch file'' answers to the new questions for those persons who have all ''no'' answers; and (5) that FINRA pre-populate the new questions with a ''no'' answer until the final time period to comply with the provision.

FINRA stated that it appreciates the industry's concerns, and as a result, has determined to provide firms with 180 days to comply with the proposed rule change.[29] In order to accomplish this, pursuant to Amendment No. 2, the questions regarding willful violations will not become effective until 180 days after Commission approval of this proposal.[30] In addition, FINRA stated in Amendment No. 2 that during the 180-day period, answers to the new questions will be provisional, indicating that ''no'' answers may change to ''yes'' answers as of the 181st day. Furthermore, FINRA will allow firms to batch file Form U4 amendments for purposes of filing ''no'' answers to the six new questions for as many as 65,000 registered persons at one time for 180 days after implementation of the proposal, up to the effective date of these questions, at which time all answers provided to these questions must be complete and accurate.[31] Finally, FINRA noted that it filed a proposal to allow firms to file amendments to the U4 disclosure information without obtaining the registered person's manual signature under certain circumstances.[32]

The Commission believes this aspect of the proposal is consistent with the Act and will provide more accurate disclosure regarding individuals who are subject to statutory disqualification as a result of willful violations. This should enable FINRA and other regulators to more easily identify persons subject to these disqualifications.[33] Furthermore, in Amendment No. 2, FINRA provided firms with a number of accommodations which should address the concerns raised by the firms regarding the administrative burden associated with answering the revised questions.

B. Revisions to Forms To Require Reporting of Allegations of Sales Practice Violations Against Registered Persons Made in Arbitrations or Civil Lawsuits in Which the Registered Person Is Not a Named Party

Registered persons, who comprised a majority of the commenters, objected to the new requirement to report arbitration claims or lawsuits alleging sales practice violations in which the registered person is not named as a respondent.[34] Among the objections raised by the commenters were their inability to defend themselves against a claim in arbitration or lawsuit if they were not named as a respondent; that the charge would in effect render them guilty without any finding by an arbitration panel or court; that they

[23] *See* Response Letter, *supra* note 5.

[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] *See, e.g.,* comment letters from PIABA, NSCP, Torngren, S. Brown/LPL, T. Rowe Price, Hefren-Tillotson, Janney, ARM, Raymond James, CGMI, Goldman Sachs, Mougey/Kraszewski, NASAA, Fidelity, Wells Fargo, SIFMA, UBS, St. John's, Morgan Stanley, NAIBD, Sherman, BofA, Deutsche Bank, Charles Schwab, Sutherland, Malecki, Edward Jones, PFS, TIAA–CREF, Capital Investment, Nelson, Genworth, MWA, FSI, St. Bernard Financial, Farmers Financial, Silver, Ilgenfritz, T. Greene/Woodforest, Lincoln Investment, MML, and NPH.

[27] *See, e.g.,* comment letters from PIABA, NSCP, Torngren, S. Brown/LPL, T. Rowe Price, Hefren-Tillotson, Janney, ARM, Raymond James, CGMI, Goldman Sachs, Mougey/Kraszewski, NASAA, Fidelity, Wells Fargo, SIFMA, UBS, St. John's, Morgan Stanley, NAIBD, Sherman, BofA, Deutsche Bank, Charles Schwab, Sutherland, Malecki, Edward Jones, PFS, TIAA–CREF.

[28] Other comments relate to fees and the proposed language. A few commenters requested that FINRA waive the fees associated with the U4 amendments filed to comply with the proposal. *See, e.g.,* T. Rowe Price, FSI, and MML. FINRA responded that it would not charge for ''no'' answers; however, as is FINRA's current practice, it would charge a disclosure review fee for ''yes'' answers, given that FINRA staff must review these events. *See* Response Letter at 3. Some commenters objected to the language in FINRA's proposed questions and requested that FINRA use less legalese and restate the questions in ''plain English.'' *See, e.g.,* St. Bernard Financial, NPH, and Sutherland. FINRA responded that its language tracks the language in the Act. Persons should contact FINRA or other regulators if needed for further guidance on compliance with the Forms. *See* Response Letter at 4.

[29] *See* Response Letter at 2.

[30] For persons filing their initial U4, the Commission would expect firms to get the correct answer to these questions before filing the U4 and not merely to check no.

[31] FINRA stated that it believes this approach represents an effective alternative to relaxing Web CRD system completeness checks, which FINRA is unable to accomplish due to system constraints. This would achieve the same result and provides firms with the full 180 days to conduct the due diligence necessary to respond to the new questions. *See* Response Letter at 2–3. After 180 days, starting on the date the answers become effective, for any ''no'' answers provided, whether batched or not, the firm and registered person will have represented that the person has not been the subject of any finding addressed by the question(s).

[32] *See* Securities Exchange Act Release No. 59784 (April 17, 2009), 74 FR 18779 (April 24, 2009) (SR–FINRA–2009–019).

[33] The Commission believes it is reasonable for FINRA to charge disclosure review fees, consistent with FINRA's current practice, for persons who respond ''yes'' to the newly-proposed questions regarding willful violations to help defray costs associated with review of the disclosure event.

[34] *See, e.g.,* form comment letters, Letter Type A and Letter Type B, *infra* note 4, and comment letters from Morey, NEXT, FNIC, McDaniel, Jeff White, Herrick, H. Garrett/Financial Network, Calley, Preston, Johns, and Livingston.

would not have notice of a claim or lawsuit if they were not respondents; and that this change could lead to inaccurate information being included in CRD.

Those in support of the change state that this change will fill a loophole in FINRA's rules, that written customer complaints are currently reported, and that it does not make sense to distinguish between a written complaint and an arbitration filing or lawsuit.[35] Commenters also note that a variety of legitimate reasons exist for not naming a registered person in an arbitration claim or lawsuit. For example, one commenter noted that under FINRA's arbitration rules, each separately-represented party in an arbitration claim has four opportunities to strike a participant from the panel. Accordingly, if a firm and registered representative are both named and separately represented, the defense has eight opportunities to strike potential arbitrators, whereas the plaintiff would only have four.[36]

Other commenters note that attorneys use CRD to screen industry arbitrators to determine whether to strike a particular arbitrator from the list of potential arbitrators.[37] With this change to the reporting requirements, registered representatives will have to update their arbitration disclosure forms to reflect these new disclosures. These commenters believe that customers should have access to information with respect to whether a potential arbitrator has a claim in arbitration or is being sued for allegations involving sales practice violations.[38] This additional information should enable claimants and their attorneys to make a more informed judgment with respect to striking a particular industry arbitrator from the arbitration selection list.

The Commission has weighed the arguments on both sides of the issue and, on balance, believes that the benefit to investors of having information in BrokerCheck regarding registered representatives who are the subject of an arbitration claim or lawsuit involving a sales practice violation outweighs the potential harm to registered representatives of having to disclose the information. BrokerCheck already includes information on written customer complaints. It is difficult to justify different reporting requirements for a written customer complaint and an arbitration claim or lawsuit, merely because the registered representative was named as a respondent. The commenters note that there are a number of reasons why an attorney might decide not to name a registered representative as a respondent.[39] The Commission agrees with the commenters that disclosure in CRD should not depend on a tactical decision made by an attorney who is representing a claim in an arbitration proceeding or civil suit. Investors are entrusting registered representatives with their savings and should have sufficient pertinent information available to enable them to select a registered representative with whose background they are comfortable. Furthermore, FINRA provides registered representatives with the ability to respond to the arbitration claim or lawsuit in Web CRD, which information will also be public in BrokerCheck.

Given the central role of CRD as the repository for information on registered persons in the securities industry, its use by firms, regulators, and the public,[40] and the Congressional mandate in Section 15A(i) of the Act, the Commission believes that FINRA should continuously strive to improve CRD and BrokerCheck. The changes proposed in this filing should enhance CRD and BrokerCheck by including more relevant information that should prove useful to regulators, brokerage firms, and the investing public.

C. Revisions To Clarify the Manner in Which Individuals and Firms Must Report Sales Practice Violations Alleged Against Registered Persons

Approximately four commenters opined that the proposed clarification regarding written or oral complaints would expand what constitutes a complaint and represents a significant change in the current reporting requirements.[41] FINRA responded that it has issued interpretive guidance for approximately the past decade indicating that an oral complaint by itself is not reportable,[42] but an oral complaint that alleges a sales practice violation that is settled for $10,000 or more is reportable.[43] FINRA stated that this rule proposal would not alter or expand this interpretation. The Commission agrees with FINRA and believes that this clarification should be helpful to persons in complying with reporting requirements.

D. Proposal To Raise the Monetary Threshold for Reporting Customer Complaints, Arbitration, or Lawsuits from $10,000 to $15,000 on the Forms and Conforming Change to FINRA Rule 8312

Approximately eleven commenters expressly wrote in support of increasing the monetary threshold for reporting a customer complaint, arbitration or lawsuit from $10,000 to $15,000.[44] Two commenters suggested raising the threshold to higher amounts, $25,000[45] and $30,000.[46] One commenter postulates that raising the threshold would increase the ability of public investors with small claims to receive compensation without the necessity of participating in a hearing.[47]

Eight commenters oppose the proposed revision of the monetary threshold.[48] These commenters believe that the monetary threshold should be eliminated completely and that all settled matters should be reported. The commenters state that public investors should have access to information on all settled matters so that they may determine how, or whether, such matters affect a registered person's integrity and trustworthiness.[49]

The Commission understands that firms and registered persons may wish to settle claims they consider non-meritorious rather than incur the costs associated with litigation. The Commission believes that it is reasonable for FINRA to raise the monetary threshold amount below which settled matters are not reported from $10,000 to $15,000, to reflect an increase in costs that has occurred since the $10,000 threshold was established in 1998.

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[35] *See, e.g.,* Aidikoff, Bakhtiari, Caruso, Layne, Lewins, Lipner, J. Miller, Meyer, NASAA, Neuman, PIABA, Pounds, Sadler, Silver, Stark, and Torngren.

[36] *See* comment letter from Shewan.

[37] *See, e.g.,* comment letters from Kruske, Meissner, Shockman, and Davis.

[38] *Id.*

[39] *See, e.g.,* comment letters from from Pounds, Layne, Caruso, Bakhtiari, Neuman, Stephens, Sadler, PIABA, Stark, Buchwalter, J. Miller, Torngren, Aidikoff, Lipner, Feldman, Rosca, Dunlap, Haigney, Fellows, Thompson, Schultz, Banks, Davis, Keeney, Ilgenfritz, Ostwald, Silver, Van Kampen, Meissner, Lewins, Kruske, Graham, Harrison, Cornell, Carlson, Burke, St. John's, Port, Krosschell, Vasquez, Shockman, Bernstein, Gladden, Gana, Shewan, and Malecki.

[40] *See, e.g.,* FINRA's Web site encouraging investors to use BrokerCheck at *http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/index.htm.*

[41] *See, e.g.,* comment letters from T. Rowe Price, Lincoln Investment, FSI, and Sutherland.

[42] *See* Form U4, Question 14I(3).

[43] *See* Form U4, Question 14I(2).

[44] *See, e.g.,* comment letters from Capital Investment, S. Brown/LPL, T. Rowe Price, Canning, Cornell, NASAA, FSI, St. John's, NAIBD, Charles Schwab, and TIAA–CREF.

[45] *See* comment letter from T. Greene/Woodforest.

[46] *See* comment letter from Sutherland.

[47] *See* comment letter from Cornell.

[48] *See* comment letters from Layne, PIABA, Torngren, Steiner, Meyer, Mougey/Kraszewski, NAIBD, and Malecki.

[49] *Id.* One commenter supports the proposed rule change with respect to the Forms, but opposes the conforming change to FINRA Rule 8312 and argues that all historic complaints in FINRA Rule 8312 should be revealed by FINRA for the use of public investors. *See* comment letter from NASAA at 3.

E. Revisions To Clarify the Definition of ''Date of Termination'' in Form U5 and to Allow Firms to Amend the ''Date of Termination'' and ''Reason for Termination''

Twelve commenters support the proposal to allow firms to amend the ''Date of Termination'' and the ''Reason for Termination'' sections of the Form U5.[50] Some of these commenters note that the change will help to ensure the accuracy of information contained in the CRD.[51]

Approximately six commenters oppose the proposal to allow firms to amend the ''Reason for Termination'' section of the Form U5.[52] At least one commenter notes that firms should know at the time they file a Form U5 why they are terminating a registered representative.[53] In general, these commenters believe that allowing firms to make such a change increases the potential for abuse by firms and collusion between a firm and a registered representative in changing the reason for termination. All of the commenters who oppose the change, except for one, believe that firms should continue to be required to obtain a court order or an arbitration award to revise the ''Reason for Termination'' section of the Form U5.[54] That commenter suggests that firms be allowed to amend the reason for termination without a court order or arbitration award only in those circumstances where the change is based on a clerical error.[55] Similarly, the commenter also suggests that firms be allowed to amend the date of termination only in those cases involving clerical errors.[56] In its Response Letter, FINRA stated that given the safeguards in place, which include a firm's requirement to provide a reason for the amendment, FINRA's monitoring of the amendments, and notification to regulators, it did not want to restrict changes to the date of or reason for termination due to clerical errors.

The Commission believes that it is reasonable for FINRA to amend its rules to allow firms to modify the ''Reason for Termination'' and ''Date of Termination'' filed on a Form U5 through an amendment to that original filing, and that it is acceptable for FINRA to not restrict this aspect of the proposal to situations of clerical error. However, the Commission expects FINRA to monitor all changes to the date of and reason for termination, and to notify other regulators and the broker-dealer with which the person is currently associated (if the person is associated with another firm) when a date of termination or reason for termination is amended,[57] as it has represented it will do, to assure these amendments are not made for inappropriate reasons.[58] The Commission believes that under the proposal, safeguards are in place to help prevent abuse of the ability to change the date and reason for termination and that the proposal should make it more efficient for firms to correct inaccurate information in the CRD.

F. Technical and Conforming Changes to the Forms

Four commenters wrote in support of these proposed changes.[59] One commenter believes that the proposed revisions to the Forms would make them more user-friendly and, in the case of the Form U4, more likely to elicit from a registered person all pertinent information necessary to complete the form accurately and completely.[60] Another commenter states that the incorporation of the definition of the term ''found'' into the Form U5 instructions would remove any possible ambiguity and achieve consistency in the interpretation and application of the reporting requirements.[61] The Commission agrees that these technical and conforming changes should add clarity and consistency to the Forms and should assist persons in completing the Forms more accurately and completely.

IV. Solicitation of Comments Concerning Amendment No. 2

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 including whether the filing, as amended, 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–008 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–2009–008. 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 inspection and copying in the Commission's Public Reference Room 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–2009–008 and should be submitted on or before June 10, 2009.

V. Accelerated Approval of Filing as Amended by Amendment No. 2

The Commission finds good cause to approve the filing, as amended, prior to the thirtieth day after publication in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[62] As discussed above, in Amendment No. 2, FINRA is proposing to delay the effective date of the questions regarding willful

[50] *See* comment letters from Capital Investment, S. Brown/LPL, T. Rowe Price, Canning, NASAA, Lincoln Investment, FSI, AALU, Charles Schwab, Sutherland, PFS, and TIAA–CREF.

[51] *See, e.g.*, comment letters from Canning and FSI.

[52] *See* comment letters from Layne, PIABA, Torngren, Cornell, Mougey/Kraszewski, and Malecki.

[53] *See* comment letter from Cornell.

[54] *See* comment letter from Cornell.

[55] This commenter, unlike the other commenters, also opposes allowing firms to amend the date of termination, other than in circumstances of clerical error, contending that a change in the date of termination for any other reason may be subject to manipulation and negotiation. *See* comment letter from Cornell.

[56] *Id.*

[57] *See* Notice at 13496 and Response Letter at 9–10.

[58] *See e.g.*, comment letters from Layne, Smiley, Mougey/Kraszewski, Silver, and Ilgenfritz.

[59] *See* comment letters from T. Rowe Price, Lincoln Investment, FSI, and Charles Schwab.

[60] *See* comment letter from T. Rowe Price.

[61] *See* comment letter from Charles Schwab.

[62] 15 U.S.C. 78s(b)(2).

violations for 180 days and providing other adjustments with respect to the willful violation questions to lessen the burden on the industry of complying with the change in response to the concerns raised by the commenters. The Commission believes that the proposed change in Amendment No. 2 should substantially lessen the burden of complying with the changes. The Commission notes that the changes to the questions relating to willful violations are to reflect changes made to the definition of statutory disqualification in the Act. The Commission believes that it is important to implement the other changes to the Forms as soon as practicable, and FINRA will implement the remainder of the changes upon Commission approval. Accordingly, pursuant to Section 19(b)(2) of the Act,[63] the Commission finds good cause exists to approve the filing as amended by Amendment No. 2 prior to the thirtieth day after notice in the **Federal Register.**

VI. Conclusion

For the foregoing reasons, 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, and, in particular, with Section 15A(b)(6) of the Act.[64]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[65] that the proposed rule change (SR–FINRA–2009–008), 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.[66]

Florence E. Harmon,

Deputy Secretary.

EXHIBIT 1

Comments on FINRA Rulemaking

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Proposed Changes to Forms U4 and U5

(Release No. 34–59616; File No. SR–FINRA–2009–008)

Total Number of Comment Letters Received—1654

Comments have been received from individuals and entities using the following Letter Types:

a. 770 individuals or entities using Letter Type A.

b. 681 individuals or entities using Letter Type B.

1. Robert Keenan, CEO, St. Bernard Financial Services, Inc., dated March 26, 2009 (''St. Bernard Financial'')
2. Patricia A. Nelson, dated March 26, 2009 (''Nelson'')
3. Edward J. Wiles, Jr., SVP, CCO Genworth Financial Securities Corp., received April 1, 2009 (''Genworth'')
4. John L. Small, dated April 3, 2009 (''Small'')
5. Herb Pounds, dated April 3, 2009 (''Pounds'')
6. Richard M. Layne, Law Office of Richard M. Layne, received April 6, 2009 (''Layne'')
7. Steven B. Caruso, Esq., Maddox Hargett Caruso, P.C., dated April 7, 2009 (''Caruso'')
8. Ryan K. Bakhtiari, Aidikoff, Uhl & Bakhtiari, dated April 7, 2009 (''Bakhtiari'')
9. Neal E. Nakagiri, President, CEO, CCO, NPB Financial Group, LLC, dated April 8, 2009 (''NPB'')
10. John Morey, Financial Advisor, Raymond James Financial Services, dated April 8, 2009 (''Morey'')
11. John Dardis, Division Manager, NEXT Financial Group, dated April 8, 2009 (''NEXT'')
12. J. Richard Coe, President, Coe Financial Services, dated April 8, 2009 (''Coe Financial'')
13. Michael Klimis, President and CEO, Klimis & Associates, Inc., dated April 8, 2009 (''Klimis'')
14. Mary Allen, Financial Advisor, Royal Alliance Associates, Inc., dated April 8, 2009 (''M. Allen/Royal Alliance'')
15. Marsha Williams, Woodforest Financial Services, dated April 8, 2009 (''M. Williams/Woodforest'')
16. Daniel Thomas, Jr., Certified Financial Planner, Thomas Financial Group LLC, dated April 8, 2009 (''Thomas Financial'')
17. Jerome Bonnett, President, Bonnett Financial Services, Inc., dated April 8, 2009 (''Bonnett Financial'')
18. Gregory J. Spinazze, Senior Vice President, Cambridge Wealth Strategies, dated April 9, 2009 (''Cambridge Wealth'')
19. Charles Robertson, Financial Planner/Advisory Rep., Triad Advisors, dated April 9, 2009 (''Triad'')
20. Thomas Schirmer, Registered Representative & Principal, FNIC, dated April 9, 2009 (''FNIC'')
21. Jude McDaniel, President, McDaniel & McDaniel, dated April 9, 2009 (''McDaniel'')
22. Jeff White, CFP, Retirement-Coach, dated April 9, 2009 (''Jeff White'')
23. Henry W. Garrett, Investment Adviser Representative, Financial Network, dated April 9, 2009 (''H. Garrett/Financial Network'')
24. David P. Neuman, Stoltmann Law Offices, P.C., dated April 9, 2009 (''Neuman'')
25. Richard A. Stephens, Esq., dated April 9, 2009 (''Stephens'')
26. J. Pat Sadler, Esq., Sadler Hovdesven, P.C., dated April 9, 2009 (''Sadler'')
27. Daniel W. Roberts, dated April 9, 2009 (''Roberts'')
28. John Austin, Registered Principal, Financial Network, dated April 9, 2009 (''J. Austin/Financial Network'')
29. Arthur F. Grant, President, Cadaret Grant, dated April 9, 2009 (''Cadaret Grant'')
30. William Grace, Registered Representative, dated April 10, 2009 (''Grace'')
31. Charles Lutrick, Registered Representative, dated April 10, 2009 (''Lutrick'')
32. Suzanne Seay, CFP, dated April 10, 2009 (''Seay'')
33. Ken Loebel, Vice President, BankFinancial, dated April 10, 2009 (''BankFinancial'')
34. Brian N. Smiley, President, Public Investors Arbitration Bar Association, received April 10, 2009 (''PIABA'')
35. Alan Freedman, Financial Advisor, Geronimo Financial, LLC, dated April 10, 2009 (''Geronimo Financial'')
36. Hugh Nichols, Registered Representative, Mutual Service Corporation, dated April 10, 2009 (''Mutual Service'')
37. Pam Fritz, Chief Compliance Officer, MWA Financial Services, Inc., dated April 13, 2009 (''MWA'')
38. Brent Johnson, President, Financial Synergies, Inc., dated April 13, 2009 (''Financial Synergies'')
39. Leonard Steiner, dated April 13, 2009 (''Steiner'')
40. Steve A. Buchwalter, Esq., dated April 13, 2009 (''Buchwalter'')
41. Bradley R. Stark, P.A., dated April 13, 2009 (''Stark'')
42. Joan Hinchman, Executive Director, President and CEO, The National Society of Compliance Professionals, Inc., dated April 13, 2009 (''NSCP'')
43. Ronald L. King, Chief Compliance Officer, Capital Investment Companies, dated April 13, 2009 (''Capital Investment'')
44. Keith Miller, dated April 13, 2009 (''K. Miller'')

[63] 15 U.S.C. 78s(b)(2).

[64] 15 U.S.C. 78*o*–3(b)(6).

[65] 15 U.S.C. 78s(b)(2).

[66] 17 CFR 200.30–3(a)(12).

45. John Miller, Swanson Midgley, LLC, dated April 14, 2009 (''J. Miller'')
46. Stephen P. Meyer, Esq., dated April 14, 2009 (''Meyer'')
47. William P. Torngren, dated April 14, 2009 (''Torngren'')
48. Philip M. Aidikoff, Esq., dated April 14, 2009 (''Aidikoff'')
49. Seth E. Lipner, Prof. of Law, Zicklin School of Business, Baruch College, CUNY, Member, Deutsch Lipner, dated April 14, 2009 (''Lipner'')
50. Jeffrey A. Feldman, Law Offices of Jeffrey A. Feldman, dated April 14, 2009 (''Feldman'')
51. Gregory C. Sernett, Vice President and Chief Compliance Officer, Ameritas Investment Corp., dated April 14, 2009 (''G. Sernett/Ameritas'')
52. Stephanie L. Brown, Managing Director, General Counsel, LPL Financial Corporation, dated April 15, 2009 (''S. Brown/LPL'')
53. Michael J. Frailey, LUTCF, dated April 15, 2009 (''Frailey'')
54. Jill Clark, dated April 15, 2009 (''Clark'')
55. Stephen D. Mann, dated April 15, 2009 (''Mann'')
56. Christopher Taggart, dated April 15, 2009 (''Taggart'')
57. David Moffet, dated April 15, 2009 (''Moffet'')
58. Lawrence A. Wanek, CFP, ChFC, LUTCF, dated April 15, 2009 (''Wanek'')
59. Tom Schmidt, dated April 15, 2009 (''Schmidt'')
60. Bradley J. Green, dated April 15, 2009 (''Green'')
61. Ralph Barringer, dated April 15, 2009 (''Barringer'')
62. Norajane McIntyre, dated April 15, 2009 (''McIntyre'')
63. Shaun Seedhouse, CFP, dated April 15, 2009 (''Seedhouse'')
64. Terry Lewis, LUTCF, dated April 15, 2009 (''Lewis'')
65. Laura Drake, dated April 15, 2009 (''Drake'')
66. Lori Susalla Oancea, J.D., dated April 15, 2009 (''Oancea'')
67. Douglas Olawsky, ChFC, FIC, dated April 15, 2009 (''Olawsky'')
68. Courtney L. Livingston, LUTCF, FIC, dated April 15, 2009 (''Livingston'')
69. Robert T. MacDonald, dated April 15, 2009 (''MacDonald'')
70. Richard N. Preston, ChFC Wealth Management Advisor, dated April 15, 2009 (''Preston'')
71. Jan Carpenter, CPCU, ChFC, Agent, dated April 15, 2009 (''Carpenter'')
72. Stephen Coon, dated April 15, 2009 (''Coon'')
73. James A. White, CLU, ChFC, dated April 15, 2009 (''James White'')
74. Cynthia Jo Johns, dated April 15, 2009 (''Johns'')
75. Gary R. Young, dated April 15, 2009 (''G. Young'')
76. Roger Gainer, ChFC, dated April 15, 2009 (''Gainer'')
77. Steven P. Brooks, dated April 15, 2009 (''Brooks'')
78. Harold A. Schwartz, dated April 15, 2009 (''Schwartz'')
79. Raymond Kojetin, dated April 15, 2009 (''Kojetin'')
80. Steve Klein, Chief Compliance Officer, Farmers Financial Solutions, LLC, dated April 15, 2009 (''Farmers Financial'')
81. Jerry R. Neill, CLU, ChFC, dated April 15, 2009 (''Neill'')
82. Marian H. Desilets, President, Association of Registration Management, dated April 15, 2009 (''ARM'')
83. James Schuberth, dated April 15, 2009 (''Schuberth'')
84. Sarah McCafferty, Vice President and Chief Compliance Officer, T. Rowe Price, dated April 15, 2009 (''T. Rowe Price'')
85. R. Drew Kistler, Vice Chairman & Chief Compliance Officer, Hefren-Tillotson, Inc., dated April 15, 2009 (''Hefren-Tillotson'')
86. Frederick T. Greene, Senior Vice President and Portfolio Manager, Woodforest Financial Services, Inc., dated April 15, 2009 (''T. Greene/Woodforest'')
87. Lance B. Kolbet, RHU, LUTCF, President, University Financial Group, Inc., dated April 15, 2009 (''University Financial'')
88. Nancy Kay, CCO, Wall Street Financial Group, dated April 15, 2009 (''Wall Street Financial'')
89. Michael Kish, dated April 16, 2009 (''Kish'')
90. Blair M. Broussard, LUTCF, dated April 16, 2009 (''Broussard'')
91. Steven Van Scoik, dated April 16, 2009 (''Van Scoik'')
92. Tim Chisholm, dated April 16, 2009 (''Chisholm'')
93. Paul Dougherty, dated April 16, 2009 (''Dougherty'')
94. Bert Reames, CLU, dated April 16, 2009 (''Reames'')
95. Joseph Kosek, dated April 16, 2009 (''Kosek'')
96. J. P. Hildebrand, dated April 16, 2009 (''Hildebrand'')
97. Anthony P. Ladas, CLU, ChFC, dated April 16, 2009 (''Ladas'')
98. Charlene Logan, dated April 16, 2009 (''Logan'')
99. Richard J. Cooney, ChFC, dated April 16, 2009 (''Cooney'')
100. Nancy A. Dorsett, dated April 16, 2009 (''Dorsett'')
101. Nicola Young, dated April 16, 2009 (''N. Young'')
102. Mark J. Miller, dated April 16, 2009 (''M. Miller'')
103. Maria Buss, LUTCF, RFC, dated April 16, 2009 (''Buss'')
104. Jay Mccluskey, dated April 16, 2009 (''Mccluskey'')
105. Joseph W. Guess, dated April 16, 2009 (''Guess'')
106. Rick Theobald, dated April 16, 2009 (''Theobald'')
107. Michael Kidd, dated April 16, 2009 (''Kidd'')
108. Daniel G. Stockemer, dated April 16, 2009 (''Stockemer'')
109. Alin L. Rosca, Attorney at Law, John S. Chapman & Associates, LLC, dated April 16, 2009 (''Rosca'')
110. Linda L. Paulsen, dated April 16, 2009 (''Paulsen'')
111. Thomas F. Taylor, CLU, ChFC, dated April 16, 2009 (''Taylor'')
112. R. Graham Self, dated April 16, 2009 (''Self'')
113. James A. Dunlap Jr., Esq., James A. Dunlap Jr. & Associates LLC, dated April 16, 2009 (''Dunlap'')
114. William B. (Blake) Woodard, dated April 16, 2009 (''Woodard'')
115. Dayton P. Haigney, III, dated April 16, 2009 (''Haigney'')
116. Gwendolyn L. Wood, dated April 16, 2009 (''Wood'')
117. Henry D. (''Hank'') Fellows, Jr., Esq., Fellows LaBriola LLP, dated April 16, 2009 (''Fellows'')
118. Charles M. Thompson, Attorney at Law, dated April 16, 2009 (''Thompson'')
119. Laurence S. Schultz, Driggers, Schultz and Herbst, dated April 16, 2009 (''Schultz'')
120. Robert S. Banks, Jr., Banks Law Office, P.C., dated April 16, 2009 (''Banks'')
121. Ronald M. Amato, Shaheen, Novoselsky, Staat, Filipowski, Eccleston, PC, dated April 16, 2009 (''Amato'')
122. Steven W. Stambaugh, Registered Principal, LPL Financial Corporation, dated April 16, 2009 (''S. Stambaugh/LPL'')
123. Theodore M. Davis, Esq., dated April 16, 2009 (''Davis'')
124. James D. Keeney, Esq., James D. Keeney, P.A., dated April 16, 2009 (''Keeney'')
125. Sharon Herrick, dated April 16, 2009 (''Herrick'')
126. Merrell Dean, Registered Representative, Ameritas Investment Corp., received April 16, 2009 (''M. Dean/Ameritas'')
127. Gerald Calley, dated April 16, 2009 (''Calley'')
128. Roscoe O. Orton, CLU, President, Eastern Idaho Association of Insurance and Financial Advisors, dated April 16, 2009 (''EIAIFA'')
129. Scott C. Ilgenfritz, Esq., Johnson, Pope, Bokor, Ruppel Burns, LLP, dated April 16, 2009 (''Ilgenfritz'')

130. Culpepper Webb, dated April 16, 2009 (''Webb'')
131. Kevin Vasilik, dated April 16, 2009 (''Vasilik'')
132. Janice K. Nielsen, dated April 16, 2009 (''Nielsen'')
133. Mitchell S. Ostwald, Law Offices of Mitchell S. Ostwald, dated April 16, 2009 (''Ostwald'')
134. Mario Dalla Valle, dated April 16, 2009 (''Valle'')
135. Scott L. Silver, Esq., Blum & Silver, LLP, dated April 16, 2009 (''Silver'')
136. William J. Gladden, Securities Arbitration Attorney, dated April 16, 2009 (''Gladden'')
137. John M. Ivan, Senior Vice President and General Counsel, Janney Montgomery Scott LLC, dated April 16, 2009 (''Janney'')
138. Adam J. Gana, Napoli Bern Ripka, LLP, dated April 16, 2009 (''Gana'')
139. Scott R. Shewan, Born Pape Shewan, LLP, dated April 16, 2009 (''Shewan'')
140. Tim Canning, Law Offices of Timothy A. Canning, dated April 17, 2009 (''Canning'')
141. Al Van Kampen, Attorney at Law, dated April 17, 2009 (''Van Kampen'')
142. Diane Anderson, Registrations Manager, Raymond James & Associates, Inc., received April 17, 2009 (''Raymond James'')
143. Justin Slattery, dated April 17, 2009 (''Slattery'')
144. James Livingston, President/Chief Executive Officer, National Planning Holdings, Inc., dated April 17, 2009 (''NPH'')
145. Charles Maurice, dated April 17, 2009 (''Maurice'')
146. Richard G. Wallace, Foley Lardner LLP, dated April 17, 2009 (''Wallace'')
147. Stuart D. Meissner, Esq., Stuart D. Meissner LLC, dated April 17, 2009 (''Meissner'')
148. Richard A. Lewins, Esq., Special Counsel, Burg Simpson Eldredge Hersh Jardine PC, dated April 17, 2009 (''Lewins'')
149. Jeffrey Kruske, Law Office of Jeffrey S. Kruske, P.A., dated April 17, 2009 (''Kruske'')
150. David Shrom, Shrom Associates/ FSC Securities Corporation, dated April 17, 2009 (''Shrom/FSC'')
151. Nicholas J. Taldone, Attorney, dated April 17, 2009 (''Taldone'')
152. Evan J. Charkes, Managing Director and Deputy General Counsel, Citigroup Global Markets, Inc., dated April 17, 2009 (''CGMI'')
153. John W. Curtis, General Counsel Global Compliance, Goldman, Sachs Co., dated April 17, 2009 (''Goldman Sachs'')
154. Jan Graham, Graham Law Offices, dated April 17, 2009 (''Graham'')
155. David Harrison, Esq., Law Offices of David Harrison, dated April 17, 2009 (''Harrison'')
156. William A. Jacobson, Esq., Associate Clinical Professor of Law, Director, Cornell Securities Law Clinic, dated April 17, 2009 (''Cornell'')
157. Peter J. Mougey, Esq. and Kristian P. Kraszewski, Esq., dated April 17, 2009 (''Mougey/Kraszewski'')
158. Fred Joseph, President, North American Securities Administrators Association, Inc., Colorado Securities Commissioner, received April 17, 2009 (''NASAA'')
159. Robert K. Savage, Esq., The Savage Law Firm, P.A., dated April 17, 2009 (''Savage'')
160. Gary A. Sanders, Vice President, Securities and State Government Relations, National Association of Insurance and Financial Advisors, dated April 17, 2009 (''NAIFA'')
161. Kert Martin, dated April 17, 2009 (''Martin'')
162. Carl J. Carlson, Attorney, dated April 17, 2009 (''Carlson'')
163. Nancy L.H. Boyd, Director of Compliance, Lincoln Investment Planning, Inc., dated April 17, 2009 (''Lincoln Investment'')
164. John S. Burke, Esq., Higgins Burke, P.C., dated April 17, 2009 (''Burke'')
165. Charles V. Senatore, Senior Vice President, Chief Compliance Officer, Fidelity Investments, dated April 17, 2009 (''Fidelity'')
166. Jonathan W. Evans, Esq., dated April 17, 2009 (''J. Evans'')
167. William S. Shepherd, Managing Partner, Shepherd, Smith & Edwards, LLP, received April 17, 2009 (''Shepherd'')
168. Ronald C. Long, Director, Regulatory Affairs, Wells Fargo Advisors, dated April 17, 2009 (''Wells Fargo'')
169. Dale E. Brown, President & CEO, Financial Services Institute, Inc., dated April 17, 2009 (''FSI'')
170. Amal Aly, Managing Director and Association General Counsel, Securities Industry and Financial Markets Association, dated April 17, 2009 (''SIFMA'')
171. W. Scott Greco, Greco & Greco, P.C., received April 17, 2009 (''Greco'')
172. Eileen O'Connell Arcuri, UBS Financial Services Inc., dated April 17, 2009 (''UBS'')
173. Colin S. Casey, dated April 17, 2009 (''Casey'')
174. Christine Lazaro and Lisa Catalano, Securities Arbitration Clinic, St. John's University School of Law, dated April 17, 2009 (''St. John's'')
175. Laura Lang, IBSI, received April 17, 2009 (''IBSI'')
176. Barry D. Estell, Attorney at Law, received April 17, 2009 (''Estell'')
177. Robert S. Rosenthal, Chief Legal Officer, MML Investors Services, Inc., dated April 17, 2009 (''MML'')
178. Michael P. Corry, President, Association for Advanced Life Underwriting, dated April 17, 2009 (''AALU'')
179. Michelle Oroschakoff, Managing Director, and Jill Ostergaard, Managing Director, Morgan Stanley, dated April 17, 2009 (''Morgan Stanley'')
180. Geoffrey Boyer, President, Boyer Financial Group, received April 17, 2009 (''Boyer Financial'')
181. David M. Koll, dated April 17, 2009 (''Koll'')
182. Robert C. Port, Esq., Cohen, Goldstein, Port Gottlieb, LLP, dated April 17, 2009 (''Port'')
183. Lisa M. Roth, National Association of Independent Broker-Dealers Member Advocacy Committee Chair, Keystone Capital Corporation, CEO/CCO, dated April 17, 2009 (''NAIBD'')
184. Steven M. Sherman, Law Offices of Steven M. Sherman, received April 17, 2009 (''Sherman'')
185. Douglas G. Preston, Senior Vice President, Head of Regulatory Affairs, Bank of America Securities LLC, dated April 17, 2009 (''BofA'')
186. Stephen Krosschell, Goodman & Nekvasil, P.A., dated April 17, 2009 (''Krosschell'')
187. Jessica Vasquez, Willeford Law Firm, dated April 17, 2009 (''Vasquez'')
188. Rosemary J. Shockman, Shockman Law Office, dated April 17, 2009 (''Shockman'')
189. John R. Tait, dated April 17, 2009 (''Tait'')
190. Margie Adams, Director, Deutsche Bank Securities Inc., received April 17, 2009 (''Deutsche Bank'')
191. Bari Havlik, SVP and Chief Compliance Officer, Charles Schwab & Co., Inc., dated April 17, 2009 (''Charles Schwab'')
192. Clifford Kirsch and Susan Krawczyk, Sutherland Asbill & Brennan LLP, dated April 17, 2009 (''Sutherland'')
193. Jenice L. Malecki, Esq., Malecki Law, dated April 17, 2009 (''Malecki'')
194. Jesse Hill, Director of Regulatory Relations, Edward Jones, dated April 17, 2009 (''Edward Jones'')
195. Scot Bernstein, Law Offices of Scot D. Bernstein, A Professional Corporation, dated April 18, 2009 (''Bernstein'')

196. Robert Mabe, Registered Representative, dated April 18, 2009 (''Mabe'')
197. John R. Still, dated April 20, 2009 (''Still'')
198. David Farrell, dated April 20, 2009 (''Farrell'')
199. Daniel Woodring, V.P. and Chief Compliance Officer, PFS Investments Inc., dated April 20, 2009 (''PFS'')
200. James Rice, Registered Principal, Royal Alliance Associates, dated April 21, 2009 (''J. Rice/Royal Alliance'')
201. Hattie Evans, Registered Representative, Financial Network, dated April 21, 2009 (''H. Evans/ Financial Network'')
202. Doria G. Bachenheimer, VP, Associate General Counsel, Regulatory Law, and Pamela Lewis Marlborough, Associate General Counsel, TIAA–CREF, dated April 22, 2009 (''TIAA–CREF'')
203. Doug Richards, dated April 27, 2009 (''Richards'')

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59924; File No. SR–Phlx–2009–23]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc., Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto To Amend the By-Laws, Rules, and Option Floor Procedure Advices Concerning Governance of the Exchange

May 14, 2009.

On March 13, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or the ''Exchange'') 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 its By-Laws, Rules of the Board of Governors, Options Rules, and Option Floor Procedure Advices to make changes to certain standing committees and governance processes of the Exchange. On March 25, 2009, Phlx filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on April 9, 2009.[3] On April 30, 2009, Phlx filed Amendment No. 2 to the proposed rule change.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

In its filing, the Exchange proposes to conform its governance structure to more closely resemble that of its corporate siblings, The NASDAQ Stock Market LLC (''Nasdaq'') and NASDAQ OMX BX, Inc. (''BX'').[5] In particular, Phlx proposes to eliminate the Admissions Committee and the Options Allocation, Evaluation and Securities Committee (''Allocation Committee''); consolidate the Options Committee and the Foreign Currency Options Committee into the Quality of Markets Committee; and eliminate the use of the Weekly Bulletin.[6] Phlx also proposes to change the membership structure of the Business Conduct Committee and eliminate the Hearing Officer; make the Finance Committee optional at the discretion of the Board; and authorize the Board or its designee to take certain actions in the event of an emergency or extraordinary market conditions. Finally, the Exchange proposes technical changes that, among other things, delete obsolete references to departments and positions that have been re-named or no longer exist.

Pursuant to this proposed rule change, the eleven current standing committees of the Board of Governors of the Exchange (''Board'') would be reduced to eight.[7] Of those eight, the Finance Committee would become optional at the discretion of the Board.[8]

The Commission has carefully reviewed the proposed rule change and 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 exchange[9] including, in particular, Section 6(b)(1) of the Act,[10] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; Section 6(b)(3) of the Act,[11] which requires that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer; and Section 6(b)(5) of the Act,[12] which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The proposed rule change will conform certain of the By-Laws and rules of the Exchange to those of Nasdaq, while maintaining the fair representation of the Exchange's members in the administration of the affairs of the Exchange. Among other things, the Exchange proposes to eliminate the Admissions Committee, and to have the Phlx Membership Department perform the functions that are currently performed by the Admissions Committee. In this respect, the proposed change would reflect the practice at Nasdaq, which does not have an Admissions Committee and whose staff handles membership application

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59697 (April 2, 2009), 74 FR 16249 (''Notice'').

[4] In Amendment No. 2, Phlx made technical and conforming changes to certain By-Laws, including changes to the paragraph numbering in Article I, Section 1–1 (Definitions) and revisions to the marking of new rule text in Article X, Sections 10–1 (Standing Committees) and 10–15 (Finance Committee). These changes were designed to reflect intervening amendments to those By-Laws proposed in a preceding Phlx filing (File No. SR–Phlx–2009–17) that were recently approved by the Commission. *See* Securities Exchange Act Release No. 59794 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR–Phlx–2009–17). Because Amendment No. 2 is technical in nature, the Commission is not required to publish it for comment.

[5] The Exchange, Nasdaq, and BX are subsidiaries of The NASDAQ OMX GROUP, Inc. *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (order approving changes to the Exchange's governing documents in connection with its acquisition by The NASDAQ OMX Group, Inc.).

[6] The Weekly Bulletin contained, among other things, notice of changes in permit holder and member organization status and applications. Currently, if the Admissions Committee votes favorably regarding a request by an applicant, Phlx posts his or her name in the Weekly Bulletin and on its Web site for seven days to invite readers to report information regarding applications and applicants. The Exchange proposes to eliminate the Weekly Bulletin and instead provide notification regarding membership approvals on its Web site.

[7] The remaining standing committees would be: Executive Committee, Audit Committee, Business Conduct Committee, Compensation Committee, Finance Committee, Nominating Committee, Member Nominating Committee, and Quality of Markets Committee. *See* Phlx By-Law Article X, Section 10–1. *See also* Amendment No. 2 (reflecting changes made by SR–Phlx–2009–17 to create the Nominating Committee and the Member Nominating Committee).

[8] The Exchange noted that Nasdaq's Finance Committee is also optional at the discretion of Nasdaq's board of directors. *See* Notice, *supra* note 3, at 74 FR 16254.

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

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78f(b)(3).

[12] 15 U.S.C. 78f(b)(5).