

**SUPPLEMENTARY INFORMATION:** Section 8(a)(17) of the Small Business Act (Act), and 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or Participants in the SBA's 8(a) BD Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months.

The SBA defines "class of products" based on the NAICS. In addition, SBA uses PSCs to identify particular products within the NAICS code to which a waiver would apply.

SBA announced its decision to grant a Nonmanufacturer Rule class waiver for radio telephones in the **Federal Register** on July 20, 1998, 63 FR 38742. Radio telephones are identified in NAICS code 334220 and PSC 5805.

The SBA received a request on July 13, 2009 to terminate the Nonmanufacturer Rule class waiver previously granted based on the existence of a small business manufacturer for this item. SBA issued a **Federal Register** notice of its intent to terminate the class waiver on August 4, 2009, 74 FR 38675. In response to this notice, SBA did not receive nor did SBA discover additional small business manufacturers.

Therefore, SBA is terminating the Nonmanufacturer Rule class waiver previously granted for radio telephones, identified under PSC 5805, and NAICS code 334220.

Dated: September 15, 2009.

**Dean Koppel,**

*Acting Director, Office of Government Contracting.*

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**BILLING CODE 8025-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-9064; 34-60672; File No. 265-25-02]

### Investor Advisory Committee

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of meeting of SEC Investor Advisory Committee.

**SUMMARY:** The Securities and Exchange Commission Investor Advisory Committee is providing notice that it will hold a public meeting on Monday, October 5, 2009, in the Multipurpose Room, L-006, at the Commission's main offices, 100 F Street, NE., Washington, DC. The meeting will begin at 9 a.m. (EST) and will be open to the public, except for a period of approximately two hours when the Committee will adjourn and subcommittees will meet. The Committee meeting will be webcast on the Commission's Web site at <http://www.sec.gov>. Persons needing special accommodations to take part because of a disability should notify a contact person listed below. The public is invited to submit written statements to the Committee.

The agenda for the meeting includes: (i) A presentation by SEC staff of potential Commission initiatives; (ii) description of the composition and purpose of the Committee's subcommittees; (iii) consideration of a Committee recusal policy; (iv) reports from the Committee's subcommittees; and (v) discussion of next steps for the Committee, including regarding SEC resources.

**DATES:** Written statements should be received on or before September 28, 2009.

**ADDRESSES:** Written statements may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet submission form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail message to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 265-25-02 on the subject line.

#### *Paper Comments*

- Send paper statements in triplicate to Elizabeth M. Murphy, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. 265-25-02. This file number should be included on the subject line if e-mail is

used. To help us process and review your statements more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (<http://www.sec.gov/spotlight/investoradvisorycommittee.htm>). Statements also will be available for public inspection and copying 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. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Kayla J. Gillan, Deputy Chief of Staff, Office of the Chairman, at (202) 551-2100, or Owen Donley, Chief Counsel, Office of Investor Education and Advocacy, at (202) 551-6322, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6561.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, § 10(a), Kayla J. Gillan, Designated Federal Officer of the Committee, has approved publication of this notice.

Dated: September 15, 2009.

**Elizabeth M. Murphy,**

*Committee Management Officer.*

[FR Doc. E9-22511 Filed 9-18-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60669; File No. SR-FINRA-2009-058]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2232 (Customer Confirmations) in the Consolidated FINRA Rulebook and to Delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule 409(f)**

September 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("SEA" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 24, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities

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

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

Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to adopt a customer confirmation rule for purposes of the consolidated FINRA rulebook ("Consolidated FINRA Rulebook").<sup>3</sup> In particular, FINRA proposes to adopt FINRA Rule 2232 (Customer Confirmations) and to delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule 409(f).

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

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

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

##### 1. Purpose

As part of the process of developing a new Consolidated FINRA Rulebook,<sup>4</sup> FINRA is proposing to adopt a new, consolidated customer confirmation rule. FINRA proposes to adopt FINRA

<sup>3</sup> See *infra* note 4.

<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 FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

Rule 2232 (Customer Confirmations) and to delete NASD Rule 2230, NASD IM-2110-6 and NYSE Rule 409(f).<sup>5</sup>

##### (A) Background

NASD and NYSE Rules set forth certain basic requirements with respect to confirmations of transactions with customers.<sup>6</sup>

##### (1) NASD Rule 2230

NASD Rule 2230 provides that a member at or before the completion of each transaction<sup>7</sup> with a customer shall give or send to the customer written notification (*i.e.*, confirmation) disclosing: (a) whether the member is acting as a broker for the customer, as a dealer for its own account, as a broker for some other person, or as a broker for both the customer and some other person; and (b) in any case in which the member is acting as a broker for the customer or for both the customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for the customer and the date and time when the transaction took place or the fact that such information will be furnished upon the request of the customer, and the source and amount of any commission or other remuneration received or to be received by the member in connection with the transaction.

When NASD Rule 2230 was adopted in 1939<sup>8</sup> its requirements essentially duplicated those set forth in SEA Rule 15c1-4 as originally adopted by the SEC. The primary difference between the two rules was that the scope of Rule 15c1-4 was restricted to over-the-counter transactions while the NASD rule by its terms extended to all member

<sup>5</sup> For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

<sup>6</sup> The proposed rule change addresses basic customer confirmation requirements. FINRA Rules separately set forth confirmation requirements that are specific to certain types of financial products, such as the requirements set forth in FINRA Rule 2360 (adopted as part of FINRA's set of consolidated rules addressing index warrants, options and security futures). See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (Approval Order).

<sup>7</sup> SEA Rule 10b-10(d)(2) states that the term "completion of the transaction" has the meaning set forth in SEA Rule 15c1-1. The Rule 15c1-1 definition of "completion of the transaction" depends on whether the customer is purchasing or selling the security, the time when payment is made and the status of the custody/delivery of the security.

<sup>8</sup> Rule 2230, formerly designated as Section 12 of the Rules of Fair Practice, was adopted as part of FINRA's original rulebook. See Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939).

transactions with customers.<sup>9</sup> In 1977, the SEC rescinded Rule 15c1-4 and adopted SEA Rule 10b-10, indicating that it would apply "regardless of the manner in which a broker-dealer conducts its business or the marketplace where transactions are effected."<sup>10</sup> Since then, the SEC has amended Rule 10b-10 several times.<sup>11</sup>

##### (2) NASD IM-2110-6

NASD IM-2110-6 requires that any member providing a customer confirmation pursuant to SEA Rule 10b-10 in connection with any transaction in callable common stock<sup>12</sup> must disclose on the confirmation that the security is callable common stock and that a customer may contact the member for more information concerning the security. When IM-2110-6 was adopted in 2000, FINRA noted that an investor purchasing callable common stock is subject to unique risks not typically associated with ownership of common stock, even when such stock is called away at a premium.<sup>13</sup> FINRA also stated that the ability of an issuer's common stock to be called away from a shareholder generally is a material fact to an investor. Accordingly, in adopting the IM, FINRA stated that high standards of commercial honor and just and equitable principles of trade would require members to provide the

<sup>9</sup> See Securities Exchange Act Release No. 1330 (August 4, 1937).

<sup>10</sup> See Securities Exchange Act Release No. 13508 (May 5, 1977) (Securities Confirmations: Final Rule).

<sup>11</sup> See, e.g., Securities Exchange Act Release No. 19687 (April 18, 1983), 48 FR 17583 (April 25, 1983) (Securities Confirmations: Final Rule Amendments) (requiring, among things, disclosure to investors of certain yield and call feature information in connection with transactions in debt securities); Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612 (November 17, 1994) (Confirmation of Transactions: Final Rule Amendments) (generally requiring, among others, disclosure if a debt security is not rated by a nationally recognized statistical rating organization, disclosure if a broker-dealer is not a member of the Securities Investor Protection Corporation, and disclosure with respect to the availability of information with respect to transactions in collateralized debt securities); Securities Exchange Act Release No. 46471 (September 6, 2002), 67 FR 58302 (September 13, 2002) (Confirmation Requirements for Transactions of Security Futures Products Effected in Futures Accounts: Final Rule Amendments) (adopting, among others, requirements regarding transactions in securities futures products); Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS: Final Rules and Amendments) (making conforming amendments to Rule 10b-10 in connection with the adoption of Regulation NMS).

<sup>12</sup> Callable common stock is stock that is subject to being called away from a shareholder, either by the issuer or by a third party.

<sup>13</sup> See Securities Exchange Act Release No. 42761 (May 5, 2000), 65 FR 30459 (May 11, 2000) (Approval Order). See also *Notice to Members* 00-33 (May 2000) (Callable Common Stock).

disclosures as set forth in the IM. FINRA further emphasized that the disclosure of the call feature on the confirmation in no way relieves a member of its obligation to consider the callable nature of the security when complying with any applicable suitability obligations.

### (3) NYSE Rule 409(f)

NYSE Rule 409(f) requires that confirmation of all transactions in securities admitted to dealings on the NYSE—whether over-the-counter or on an exchange—sent by members or member organizations to their customers, must clearly set forth with a suitable legend the settlement date of each transaction. The rule provides that this requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from which the orders were received. The rule further contains a general cross-reference instructing members to refer to SEA Rule 10b–10.

#### (B) Proposal

The proposed rule change would delete current NASD Rule 2230 from the FINRA rulebook and replace it with proposed FINRA Rule 2232, which would streamline and combine basic customer confirmation requirements in the NASD and NYSE Rules. Specifically:

- Proposed FINRA Rule 2232 would provide that confirmations must be given or sent to customers in conformity with the requirements of SEA Rule 10b–10. FINRA believes that incorporating by reference the requirements of Rule 10b–10, as opposed to replicating the SEC rule's detailed requirements in FINRA's rule, would make the proposed rule clear and serve the interests of regulatory efficiency.

- The proposed rule change would delete NASD IM–2110–6 from the FINRA rulebook and transfer its requirements to proposed FINRA Rule 2232. Proposed FINRA Rule 2232 would expand the coverage of those requirements to make clear that the requirement to disclose that the security is callable (and that further information is available from the member) applies to any callable equity security,<sup>14</sup> not just callable common stock. FINRA believes that, from the standpoint of investor protection, this change is necessary to ensure that the rule covers, for instance, callable preferred stock.<sup>15</sup>

<sup>14</sup> Exchange Act Section 3(a)(11) defines the term "equity security" to include, among others, "any stock or similar security."

<sup>15</sup> FINRA notes that SEA Rule 10b–10(a)(4) requires that, in the case of any transaction in a debt

- The requirement in NYSE Rule 409(f) to disclose the settlement date of the transaction would be transferred to the new rule, with two changes. First, consistent with FINRA's investor protection mission, the requirement to disclose the settlement date of the transaction would include all transactions in securities, not just NYSE-listed securities. Second, because the proposed rule would address customer confirmations, the elements of the NYSE rule addressing member-to-member communications would, consistent with the parameters of SEA Rule 10b–10, be deleted.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>16</sup> 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. FINRA believes that the proposed rule change will further the purposes of the Act because, as part of the FINRA rulebook consolidation process, the proposed rule change would streamline and reorganize existing rules that govern basic customer confirmation requirements. Further, the proposed rule change would provide greater regulatory clarity with respect to a member's customer confirmation obligations.

### B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

security subject to redemption before maturity, the confirmation must include a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that such a redemption could affect the yield represented and that additional information is available upon request.

<sup>16</sup> 15 U.S.C. 78o–3(b)(6).

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–FINRA–2009–058 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–2009–058. 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, 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-2009-058 and should be submitted on or before October 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-22513 Filed 9-18-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60664; File No. SR-NYSEArca-2009-81]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Its Schedule of Fees and Charges for Exchange Services

September 14, 2009.

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 September 4, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the "Schedule") in order to establish a fee for its Risk Management Gateway ("RMG") service. The amended section of the Schedule is included as Exhibit 5 hereto. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's

principal office and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

On August 28, 2009 the Exchange filed with the Securities and Exchange Commission to establish its RMG Service. RMG is a service designed to facilitate the ability of Sponsoring ETP Holders to monitor and oversee the sponsored access activity of their Sponsored Participants. NYXATS offers an order-verification service to Sponsoring ETP Holders that acts as a risk filter by causing the orders of Sponsored Participants to pass through RMG prior to entering the Exchange's trading system for execution. When a Sponsored Participant's order passes through RMG, RMG software determines whether the order complies with order criteria that the Sponsoring ETP Holder has established for that Sponsored Participant. The order criteria reviewed by RMG may include the size of the order or the credit limit that the Sponsoring ETP Holder has established for the Sponsored Participant. This proposed rule change establishes fees for the RMG service.

The Exchange proposes to charge each RMG user Three Thousand Dollars (\$3,000) per month for the first Connection plus One Thousand Dollars (\$1,000) per month for each additional Connection.

A "Connection" is defined as up to 1000 messages per second inbound, regardless of the connection's actual capacity (*i.e.*, if the NYXT infrastructure allows any single End User connection to support more than 1000 messages per second inbound, such connection will be deemed to be multiple Connections).

The Exchange believes that the proposed fee is fair and reasonable and

reflects an equitable allocation of charges among its members.

The fee compares favorably with the fees that the Exchange's competitors charge for similar services, and is the same as the fee charged by the NYSE for its similar service.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>3</sup> in general, and Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that RMG will promote marketplace efficiency by providing security safeguards to the trading of securities by means of sponsored access and believes that the proposed fee is fair and reasonable for the reasons cited above.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

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

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

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