

OMB APPROVAL

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Page 1 of 24

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 095

Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial	Amendment	Withdrawal
☒	☐	☐

Section 19(b)(2)

☒

Section 19(b)(3)(A)

☐

Section 19(b)(3)(B)

☐

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☐ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Pilot	Extension of Time Period for Commission Action	Date Expires
☐	☐	

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change to Adopt FINRA Rule 3240 (Borrowing From or Lending to Customers) in the Consolidated
FINRA Rulebook

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	Afshin	Last Name	Atabaki
Title	Assistant General Counsel		
E-mail	afshin.atabaki@finra.org		
Telephone	(202) 728-8902	Fax	(202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date By
(Name)

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add

Remove

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add

Remove

View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

Add

Remove

View

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

☐

Exhibit 4 - Marked Copies

Add

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add

Remove

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt NASD Rule 2370 (Borrowing From or Lending to Customers) as FINRA Rule 3240 (Borrowing From or Lending to Customers) in the consolidated FINRA rulebook with certain changes and to delete Incorporated NYSE Rules 352(e) (Limitations on Borrowing From or Lending to Customers), (f) (Loan Procedures) and (g). The proposed rule change also would add a Supplementary Material section regarding record retention requirements to proposed FINRA Rule 3240.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

(b) Upon Commission approval and implementation by FINRA of the proposed rule change, the corresponding NASD and Incorporated NYSE rules, or sections thereof, will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on July 16, 2009, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

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

The implementation date will be no later than 180 days following Commission approval.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),² FINRA is proposing to adopt NASD Rule 2370 as FINRA Rule 3240 in the Consolidated FINRA Rulebook with certain changes as described below. The proposed rule change also would delete Incorporated NYSE Rules 352(e) through (g)³ from the Transitional Rulebook.⁴ Further, the proposed rule change would add a Supplementary Material section regarding record retention requirements to proposed FINRA Rule 3240.

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

³ For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

⁴ NYSE Rules 352(a) through (d) were deleted as part of a prior rule change. See Securities Exchange Act Release No. 60701 (September 21, 2009), 74 FR 49425 (September 28, 2009) (Order Approving File No. SR-FINRA-2009-014).

Background

The purpose of NASD Rule 2370, which became effective in November 2003, is to give members the opportunity to evaluate the appropriateness of particular lending arrangements between their registered persons and customers, to the extent permitted by the member, and the potential for conflicts of interests between both the registered person and his or her customer and the registered person and the member with which he or she is associated.

To that end, NASD Rule 2370 prohibits registered persons from borrowing money from or lending money to their customers (collectively referred to as “lending arrangements”) unless certain conditions are met. More specifically, under Rule 2370, no registered person may borrow money from or lend money to his or her customer unless the firm has written procedures allowing such lending arrangements and (1) the customer is a member of the registered person’s immediate family;⁵ (2) the customer is in the business of lending money; (3) the customer and the registered person are both registered persons of the same firm; (4) the lending arrangement is based on a personal relationship outside of the broker-customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship.

Additionally, with the exception of lending arrangements between immediate family members and lending arrangements between registered persons and customers in the

⁵ NASD Rule 2370 defines the term “immediate family” to include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person whom the registered person supports, directly or indirectly, to a material extent.

business of lending money, members are required to pre-approve in writing the other lending arrangements described above.

With respect to lending arrangements between immediate family members, a member's written procedures may indicate that the member permits such lending arrangements and that registered persons need not notify the member or receive member approval for such lending arrangements.

With respect to lending arrangements between registered persons and customers in the business of lending money, a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval for such lending arrangements, provided that such lending arrangements have been made on commercial terms that the customer generally makes available to members of the general public who are similarly situated as to need, purpose and creditworthiness.⁶ Further, the member need not investigate such lending arrangements, but may rely on the registered person's representation that the terms of the loan meet these standards.

It is important to note that members can choose to permit registered persons to borrow money from or lend money to their customers consistent with the requirements of the rule or prohibit the practice in whole or in part.

NYSE Rules 352(e) through (g) also govern lending arrangements between registered persons and their customers. These provisions are substantially similar to the provisions of NASD Rule 2370, with one exception. NYSE Rule 352(f) provides an

⁶ The fact that a registered person can negotiate a better rate or terms for a loan that is not the product of the broker-customer relationship would not vitiate the idea that the loan occurred on terms generally offered to the public. See Notice to Members 04-14 (March 2004).

exception from the pre-approval requirements of the rule for loans totaling \$100 or less between registered persons of the same firm.

Proposal

FINRA proposes to adopt NASD Rule 2370 as FINRA Rule 3240 in the Consolidated FINRA Rulebook, subject to the following changes. FINRA proposes to amend paragraph (a) (Permissible Lending Arrangements; Conditions) of the rule to indicate more explicitly that such arrangements are subject to the procedural requirements set forth in paragraph (b) (Notification and Approval) of the rule. FINRA also proposes to amend paragraph (a)(2)(B) of the rule regarding permissible lending arrangements between registered persons and customers in the business of lending money to indicate more explicitly that such customers must be acting in the course of such business.

Further, FINRA proposes to amend paragraph (b)(1) of the rule to require expressly that registered persons notify their member firms of the lending arrangements that require member pre-approval (FINRA is proposing this change for purposes of consistency with paragraphs (b)(2) and (3) of the rule, which provide that a registered person is not required either to notify the member or receive member approval for certain specified lending arrangements) and to clarify that any modifications to such lending arrangements (including any extension of the duration of such arrangements) are also subject to notification and member pre-approval.

Additionally, FINRA proposes to amend the definition of “immediate family” in paragraph (c) (Definition of Immediate Family) of the rule to replace the reference that the term “includes” the enumerated persons to reflect that the term “means” such persons.

Finally, FINRA proposes to add Supplementary Material .01 (Record Retention) requiring that members preserve the written pre-approval required by the rule for at least three years after the date that the lending arrangement has terminated or for at least three years after the registered person's association with the member has terminated. FINRA proposes to delete NYSE Rules 352(e) through (g) as the provisions of the NYSE rules are substantially similar to NASD Rule 2370.

As noted above, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval. The implementation date will be no later than 180 days following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ 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 by giving members the opportunity to evaluate the appropriateness of certain lending arrangements between their registered persons and others, to the extent permitted by a member, and the potential that these lending arrangements could create certain conflicts of interest.

⁷ 15 U.S.C. 78o-3(b)(6).

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁸

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

⁸ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-095)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 3240 (Borrowing From or Lending to Customers) in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on ,
Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been 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 NASD Rule 2370 (Borrowing From or Lending to Customers) as FINRA Rule 3240 (Borrowing From or Lending to Customers) in the consolidated FINRA rulebook with certain changes and to delete Incorporated NYSE Rules 352(e) (Limitations on Borrowing From or Lending to Customers), (f) (Loan Procedures) and (g). The proposed rule change also would add a Supplementary Material section regarding record retention requirements to proposed FINRA Rule 3240.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt NASD Rule 2370 as FINRA Rule 3240 in the Consolidated FINRA Rulebook with certain changes as described below. The proposed rule change also would delete Incorporated NYSE Rules 352(e) through

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

(g)⁴ from the Transitional Rulebook.⁵ Further, the proposed rule change would add a Supplementary Material section regarding record retention requirements to proposed FINRA Rule 3240.

Background

The purpose of NASD Rule 2370, which became effective in November 2003, is to give members the opportunity to evaluate the appropriateness of particular lending arrangements between their registered persons and customers, to the extent permitted by the member, and the potential for conflicts of interests between both the registered person and his or her customer and the registered person and the member with which he or she is associated.

To that end, NASD Rule 2370 prohibits registered persons from borrowing money from or lending money to their customers (collectively referred to as “lending arrangements”) unless certain conditions are met. More specifically, under Rule 2370, no registered person may borrow money from or lend money to his or her customer unless the firm has written procedures allowing such lending arrangements and (1) the customer is a member of the registered person’s immediate family;⁶ (2) the customer is in the business of lending money; (3) the customer and the registered person are both registered

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

⁵ NYSE Rules 352(a) through (d) were deleted as part of a prior rule change. See Securities Exchange Act Release No. 60701 (September 21, 2009), 74 FR 49425 (September 28, 2009) (Order Approving File No. SR-FINRA-2009-014).

⁶ NASD Rule 2370 defines the term “immediate family” to include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person whom the registered person supports, directly or indirectly, to a material extent.

persons of the same firm; (4) the lending arrangement is based on a personal relationship outside of the broker-customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship. Additionally, with the exception of lending arrangements between immediate family members and lending arrangements between registered persons and customers in the business of lending money, members are required to pre-approve in writing the other lending arrangements described above.

With respect to lending arrangements between immediate family members, a member's written procedures may indicate that the member permits such lending arrangements and that registered persons need not notify the member or receive member approval for such lending arrangements.

With respect to lending arrangements between registered persons and customers in the business of lending money, a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval for such lending arrangements, provided that such lending arrangements have been made on commercial terms that the customer generally makes available to members of the general public who are similarly situated as to need, purpose and creditworthiness.⁷ Further, the member need not investigate such lending arrangements, but may rely on the registered person's representation that the terms of the loan meet these standards.

⁷ The fact that a registered person can negotiate a better rate or terms for a loan that is not the product of the broker-customer relationship would not vitiate the idea that the loan occurred on terms generally offered to the public. See Notice to Members 04-14 (March 2004).

It is important to note that members can choose to permit registered persons to borrow money from or lend money to their customers consistent with the requirements of the rule or prohibit the practice in whole or in part.

NYSE Rules 352(e) through (g) also govern lending arrangements between registered persons and their customers. These provisions are substantially similar to the provisions of NASD Rule 2370, with one exception. NYSE Rule 352(f) provides an exception from the pre-approval requirements of the rule for loans totaling \$100 or less between registered persons of the same firm.

Proposal

FINRA proposes to adopt NASD Rule 2370 as FINRA Rule 3240 in the Consolidated FINRA Rulebook, subject to the following changes. FINRA proposes to amend paragraph (a) (Permissible Lending Arrangements; Conditions) of the rule to indicate more explicitly that such arrangements are subject to the procedural requirements set forth in paragraph (b) (Notification and Approval) of the rule. FINRA also proposes to amend paragraph (a)(2)(B) of the rule regarding permissible lending arrangements between registered persons and customers in the business of lending money to indicate more explicitly that such customers must be acting in the course of such business.

Further, FINRA proposes to amend paragraph (b)(1) of the rule to require expressly that registered persons notify their member firms of the lending arrangements that require member pre-approval (FINRA is proposing this change for purposes of consistency with paragraphs (b)(2) and (3) of the rule, which provide that a registered person is not required either to notify the member or receive member approval for certain

specified lending arrangements) and to clarify that any modifications to such lending arrangements (including any extension of the duration of such arrangements) are also subject to notification and member pre-approval.

Additionally, FINRA proposes to amend the definition of “immediate family” in paragraph (c) (Definition of Immediate Family) of the rule to replace the reference that the term “includes” the enumerated persons to reflect that the term “means” such persons. Finally, FINRA proposes to add Supplementary Material .01 (Record Retention) requiring that members preserve the written pre-approval required by the rule for at least three years after the date that the lending arrangement has terminated or for at least three years after the registered person’s association with the member has terminated. FINRA proposes to delete NYSE Rules 352(e) through (g) as the provisions of the NYSE rules are substantially similar to NASD Rule 2370.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval. The implementation date will be no later than 180 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,⁸ 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 by giving members the opportunity to evaluate the appropriateness of certain lending

⁸ 15 U.S.C. 78o-3(b)(6).

arrangements between their registered persons and others, to the extent permitted by a member, and the potential that these lending arrangements could create certain conflicts of interest.

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.

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. Please include File Number SR-FINRA-2009-095 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-095. 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-2009-095 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon

Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

**Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 2370; NASD Rule 2370 to be Deleted in
its Entirety from the Transitional Rulebook)**

* * * * *

**3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED
PERSONS**

* * * * *

3200. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

* * * * *

[2370]3240. Borrowing From or Lending to Customers

(a) Permissible Lending Arrangements; Conditions

No person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person unless:

(1) the member has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member;
[and]

(2) the [lending or] borrowing or lending arrangement meets one of the following conditions:

- (A) the customer is a member of such person's immediate family;
- (B) the customer (i) is a financial institution regularly engaged in

the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business and (ii) is acting in the course of such business;

(C) the customer and the registered person are both registered persons of the same member [firm];

(D) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the [associated] registered person not maintained a relationship outside of the broker[/]-customer relationship; or

(E) the lending arrangement is based on a business relationship outside of the broker-customer relationship[.]; and

(3) the requirements of paragraph (b) of this Rule are satisfied.

(b) [Procedures]Notification and Approval

(1) The registered person shall notify the member of the borrowing or lending arrangements described in paragraphs (a)(2)(C), (D), and (E) above prior to entering into such arrangements and the [M]member[s must] shall pre-approve in writing [the lending or borrowing] such arrangements [described in subparagraphs (a)(2)(C), (D), and (E) above]. The registered person shall also notify the member and the member shall pre-approve in writing any modifications to such arrangements, including any extension of the duration of such arrangements.

(2) With respect to the [lending or] borrowing or lending arrangements described in [sub]paragraph (a)(2)(A) above, a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval either prior to or subsequent to entering into such [lending or] borrowing or lending arrangements.

(3) With respect to the [lending or] borrowing or lending arrangements described in [sub]paragraph (a)(2)(B) above, a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval either prior to or subsequent to entering into such [lending or] borrowing or lending arrangements, provided that, the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose and creditworthiness. For purposes of this subparagraph, the member may rely on the registered person's representation that the terms of the loan meet the above-described standards.

(c) Definition of Immediate Family

The term "immediate family" [shall include] means parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and [shall also include] any other person whom the registered person supports, directly or indirectly, to a material extent.

• • • Supplementary Material: -----

.01 Record Retention. For purposes of paragraph (b)(1) of this Rule, members shall preserve the written pre-approval for at least three years after the date that the borrowing

or lending arrangement has terminated or for at least three years after the registered person's association with the member has terminated.

* * * * *

**Text of Incorporated NYSE Rule to be Deleted in its
Entirety from the Transitional Rulebook**

* * * * *

[Rule 352. Guarantees, Sharing in Accounts, and Loan Arrangements]

[(a) Reserved.]

[(b) Reserved.]

[(c) Reserved.]

[(d) Reserved.]

[Limitations on Borrowing From or Lending to Customers]

[(e) A person associated with a member organization in any registered capacity may borrow money from or lend money to a customer of such person only if the member organization has written supervisory procedures permitting the borrowing and lending of money between such registered persons and their customers; and the lending or borrowing arrangement meets one of the following conditions:]

[(1) the customer is a member of such registered person's immediate family; or]

[(2) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business; or]

[(3) the customer and the registered person are both registered persons of the same member organization; or]

[(4) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker/customer relationship; or]

[(5) the lending arrangement is based on a business relationship outside of the broker-customer relationship.]

[Loan Procedures]

[(f) The following loan procedures shall apply:]

[(1) Member organizations must pre-approve in writing the lending or borrowing arrangements described in subparagraphs (e)(3), (4), and (5) above, except that no pre-approval is required for loans totaling \$100 or less between registered persons pursuant to subparagraph (e)(3).]

[(2) With respect to the lending or borrowing arrangements described in subparagraph (e)(1) above, a member organization's written procedures may indicate that registered persons are not required to notify the member organization or receive member organization approval either prior to or subsequent to entering into such lending or borrowing arrangements.]

[(3) With respect to the lending or borrowing arrangements described in subparagraph (e)(2) above, a member organization's written procedures may indicate that registered persons are not required to notify the member organization or receive approval either prior to or subsequent to entering into such lending or

borrowing arrangements, provided that the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose and creditworthiness. For purposes of this subparagraph, member organization may rely on the registered person's written representation that the terms of the loan meet the above-described standards.]

[(g) For purposes of this Rule, other than in section (c), the term "immediate family" shall include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and shall also include any other person whom the registered person supports, directly or indirectly, to a material extent.]

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