

Rule 17f-2 (17 CFR 270.17f-2) under the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a-1) is entitled: "Custody of Investments by Registered Management Investment Company." Rule 17f-2 establishes safeguards for arrangements in which a registered management investment company ("fund") is deemed to maintain custody of its own assets, such as when the fund maintains its assets in a facility that provides safekeeping but not custodial services. The rule includes several recordkeeping or reporting requirements. The fund's directors must prepare a resolution designating not more than five fund officers or responsible employees who may have access to the fund's assets. The designated access persons (two or more of whom must act jointly when handling fund assets) must prepare a written notation providing certain information about each deposit or withdrawal of fund assets, and must transmit the notation to another officer or director designated by the directors. Independent public accountants must verify the fund's assets at least three times a year and two of the examinations must be unscheduled.

The requirement that directors designate access persons is intended to ensure that directors evaluate the trustworthiness of insiders who handle fund assets. The requirements that access persons act jointly in handling fund assets, prepare a written notation of each transaction, and transmit the notation to another designated person are intended to reduce the risk of misappropriation of fund assets by access persons, and to ensure that adequate records are prepared, reviewed by a responsible third person, and available for examination by the Commission's examination staff. The requirement that auditors verify fund assets without notice twice each year is intended to provide an additional deterrent to the misappropriation of fund assets and to detect any irregularities.

The Commission staff estimates that each fund makes 974 responses and spends an average of 252 hours annually in complying with the rule's requirements.¹ Commission staff estimates that on an annual basis it takes: (i) 0.5 hours of fund accounting personnel at a total cost of \$82.50 to

draft director resolutions;² (ii) 0.5 hours of the fund's board of directors at a total cost of \$2,000 to adopt the resolution; (iii) 244 hours for the fund's accounting personnel at a total cost of \$60,388 to prepare written notations of transactions;³ and (iv) 7 hours for the fund's accounting personnel at a total cost of \$1,155 to assist the independent public accountants when they perform verifications of fund assets.⁴ Approximately 243 funds rely upon rule 17f-2 annually.⁵ Thus, the total annual hour burden for rule 17f-2 is estimated to be 61,236 hours.⁶ Based on the total costs per fund listed above, the total cost of the Rule 17f-2's collection of information requirements is estimated to be \$15.5 million.⁷

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Complying with the collections of information required by rule 17f-2 is mandatory for those funds that maintain custody of their own assets. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive

² This estimate is based on the following calculation: 0.5 (burden hours per fund) × \$165 (fund senior accountant's hourly rate) = \$82.50.

³ Respondents estimated that each fund makes 974 responses on an annual basis and spent a total of 0.25 hours per response. The fund personnel involved are Fund Payable Manager (\$157 hourly rate), Fund Operations Manager (\$331 hourly rate) and Fund Accounting Manager (\$257 hourly rate). The weighted hourly rate of these personnel is \$248. The estimated cost of preparing notations is based on the following calculation: 974 × 0.25 × \$248 = \$60,388.

⁴ This estimate is based on the following calculation: 7 × \$165 (fund senior accountant hourly rate) = \$1,155.

⁵ Based on a review of Form N-17f-2 filings for calendar years 2008–2010, each year approximately 243 funds file Form N-17f-2 with the Commission.

⁶ This estimate is based on the following calculation: 243 (funds) × 252 (total annual hourly burden per fund) = 61,236 hours for rule. The annual burden for rule 17f-2 does not include time spent preparing Form N-17f-2. The burden for Form N-17f-2 is included in a separate collection of information.

⁷ This estimate is based on the following calculation: \$63,625.50 (total annual cost per fund) × 243 funds = \$15,460,997.

Office Building, Washington, DC 20503, or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 20, 2012.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, *Copies Available From:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 9b–1, OMB Control No. 3235–0480, SEC File No. 270–429

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the existing collection of information provided for in the following rule: Rule 9b–1 (17 CFR 240.9b–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 9b–1 (17 CFR 240.9b–1) sets forth the categories of information required to be disclosed in an options disclosure document ("ODD") and requires the options markets to file an ODD with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b–1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers. Finally, Rule 9b–1 requires a broker-dealer to furnish to each customer an ODD and any amendments, prior to accepting an order to purchase or sell an option on behalf of that customer.

There are 9 options markets that must comply with Rule 9b–1. These respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to

¹ The 971 responses are: 1 (one) response to draft and adopt the resolution and 973 notations. Estimates of the number of hours are based on conversations with individuals in the mutual fund industry. The actual number of hours may vary significantly depending on individual fund assets.

the ODD. These respondents file approximately 3 amendments per year. The staff calculates that the preparation and filing of amendments should take no more than eight hours per options market. Thus, the total compliance burden for options markets per year is 216 hours (9 options markets \times 8 hours per amendment \times 3 amendments). The estimated cost for an in-house attorney is \$354 per hour,¹ resulting in a total cost of compliance for these respondents of \$76,464 per year (216 hours at \$354 per hour).

In addition, approximately 1,500 broker-dealers must comply with Rule 9b-1. Each of these respondents will process an average of 3 new customers for options each week and, therefore, will have to furnish approximately 156 ODDs per year. The postal mailing or electronic delivery of the ODD takes respondents no more than 30 seconds to complete for an annual compliance burden for each of these respondents of 78 minutes or 1.3 hours. Thus, the total compliance burden per year is 1,950 hours (1,500 broker-dealers \times 1.3 hours). The estimated cost for a general clerk of a broker-dealer is \$50 per hour,² resulting in a total cost of compliance for these respondents of \$97,500 per year (1,950 hours at \$50 per hour).

The total compliance burden for all respondents under this rule (both options markets and broker-dealers) is 2,166 hours per year (216 + 1,950), and the total compliance cost is \$173,964 (\$76,464 + \$97,500).

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following Web site: <http://www.reginfo.gov>. Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory

Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted within 30 days of this notice.

Dated: January 20, 2012.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66203; File No. SR-FINRA-2011-057]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Adopt FINRA Rule 5123 (Private Placements of Securities) in the Consolidated FINRA Rulebook

January 20, 2012.

I. Introduction

On October 5, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt FINRA Rule 5123. The proposed rule change was published for comment in the **Federal Register** on October 24, 2011.³ The Commission received 16 comment letters in response to the proposed rule change.⁴ On

November 17, 2011, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to January 20, 2012. On January 19, 2012, FINRA filed Partial Amendment No. 1 to the proposed rule change and a letter responding to comments.⁵ The Commission is publishing this notice and order to solicit comments on Partial Amendment No. 1 to the proposed rule change from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1.

Institution of these proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately approve or disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input from interested parties on the issues presented by the proposed rule change, as modified by Partial Amendment No. 1, and on FINRA's Response Letter.

Buckholz, Chair, Committee on Securities Regulation, New York City Bar Association, dated November 9, 2011 ("NYC Bar"); Richard B. Chess, President, Real Estate Investment Securities Association, dated November 14, 2011 ("REISA"); Alicia M. Cooney, Managing Director, Monument Group ("Monument Group"), dated January 12, 2012 (Monument Group); Martel Day, Chairman, Investment Program Association, dated November 14, 2011 ("IPA"); Jack E. Herstein, President, North American Securities Administrators Association, Inc., dated November 17, 2011 ("NASAA"); Joan Hinchman, Executive Director, National Society of Compliance Professionals, dated November 14, 2011 ("NSCP"); William A. Jacobson, Associate Clinical Professor, and Carolyn L. Nguyen, Cornell Law School, dated November 14, 2011 ("Cornell"); Stuart J. Kaswell, Executive Vice President, Managed Funds Association, dated November 14, 2011 ("MFA"); William H. Navin, Senior Vice President, The Options Clearing Corporation, dated November 9, 2011 ("OCC"); Jeffrey W. Rubin, Chair, Federal Regulation of Securities Committee, American Bar Association, dated November 14, 2011 ("ABA"); Sullivan & Cromwell LLP, dated November 10, 2011 ("S&C"); Osamu Watanabe, Deputy General Counsel, Moelis & Co., dated November 28, 2011 ("Moelis"); and Donald S. Weiss, K&L Gates LLP, dated November 14, 2011 ("K&L Gates"). Comment letters are available at www.sec.gov.

⁵ See Letter from Stan Macel, FINRA, to Elizabeth Murphy, Secretary, SEC, dated January 19, 2012 ("Response Letter"). The text of proposed Partial Amendment No. 1 and FINRA's Response Letter are 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. FINRA's Response Letter is also available on the Commission's Web site at www.sec.gov.

¹ The \$354 per hour figure for an Attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

² The \$50 per hour figure for a General Clerk is from SIFMA's *Office Salaries in the Securities Industry 2010*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The staff believes that the ODD would be mailed or electronically delivered to customers by a general clerk of the broker-dealer or some other equivalent position.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 65585 (Oct. 18, 2011), 76 FR 65758 (Oct. 24, 2011) (Notice of Filing of Proposed Rule Change to Adopt New FINRA Rule 5123 (Private Placements of Securities), SR-FINRA-2011-057) ("Notice of Filing"). The comment period closed on November 18, 2011.

⁴ See Letters from Ryan Adams, Christine Lazaro, Esq., and Lisa Catalano, Esq., St. John's School of Law Securities Arbitration Clinic, dated November 10, 2011 ("St. John's"); Ryan K. Bakhtiari, President, Public Investors Arbitration Bar Association, dated November 14, 2011 ("PIABA"); David T. Bellaire, Esq., Financial Services Institute, Inc., dated November 14, 2011 ("FSI"); Robert E.