

Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: July 27, 2011.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-19458 Filed 8-1-11; 8:45 am]

BILLING CODE 8011-01-P

## 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 Tuesday, August 2, 2011 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)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)((5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, August 2, 2011 will be:

- Settlement of injunctive actions;
- Institution and settlement of administrative proceedings; and
- Other matters relating 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: July 29, 2011.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-19648 Filed 7-29-11; 4:15 pm]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64977; File No. SR-BX-2011-044]

### Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Position Limit for Options on the SPDR®

July 27, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on July 13, 2011, NASDAQ OMX BX (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter III, Section 7 (Position Limits) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to increase the position limit for options on the Standard and Poor's Depository Receipts ("SPDRs®").<sup>4</sup>

Although the proposed rule change would not amend the text of Chapter III, Section 9 of the BOX Rules (Exercise Limits), the proposed change would have the effect of increasing the exercise limits for options on SPDRs®. Chapter III, Section 9 of the BOX Rules establishes exercise limits that are similar to the position limits in Chapter III, Section 7 of the BOX Rules.<sup>5</sup>

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> "SPDRs®", "Standard & Poor's®", "S&P®", "S&P 500®", "Standard & Poor's 500", and "500" are trademarks of The McGraw-Hill Companies, Inc. SPDRs®, also sometimes referred to colloquially as "spiders", are exchange traded funds ("ETFs") based on the S&P 500® Index. Each share of the traditional SPDRs® ETF (SPDRs® Trust Series 1) holds a stake in the 500 stocks represented by the S&P 500®, SPDRs®, and options thereon, are generally used by large institutions and traders as bets on the overall direction of the market. They are also used by individual retail investors who believe in passive management (index investing).

<sup>5</sup> Index options position limits are established in Chapter XIV, Sections 5 and 6 of the BOX Rules and

The text of the proposed rule change is available at the Exchange's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, 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

The purpose of the proposal is to amend Supplementary Material .02 to Chapter III, Section 7 of the BOX Rules to increase the position limit applicable to options on SPDRs®, which are trading under the symbol SPY, from 300,000 to 900,000 contracts on the same side of the market.<sup>6</sup> This proposal is similar to a rule change recently proposed by the NASDAQ OMX PHLX, Inc. ("PHLX").<sup>7</sup>

BOX began trading options on SPDRs® on January 10, 2005. That year, the position limit for these options was increased to the current limit of 300,000 contracts on the same side of the market, and has remained unchanged.<sup>8</sup>

index options exercise limits are established in Chapter XIV, Section 8 of the BOX Rules, and have a relationship similar to that of Chapter III, Section 9 and Chapter III, Section 7 of the BOX Rules.

<sup>6</sup> By virtue of Chapter III, Section 9 of the BOX Rules, which is not amended by this filing, exercise limits on options on SPDRs® would be similar to position limits established in Chapter III, Section 7 of the BOX Rules.

<sup>7</sup> See Securities Exchange Act Release No. 64348 (April 27, 2011), 76 FR 24951 (May 3, 2011) (SR-Phlx-2011-58). See also Securities Exchange Act Release No. 64695 (June 17, 2011), 76 FR 36942 (June 23, 2011) (SR-Phlx-2011-58).

<sup>8</sup> See Securities Exchange Act Release No. 51069 (January 21, 2005), 70 FR 5260 (February 1, 2005) (SR-BSE-2005-05) (approval order increasing position and exercise limits for options on SPDRs® from 75,000 to 300,000 contracts on the same side of the market) (the "last position increase order"). See also Securities Exchange Act Release Nos. 51071 (January 21, 2005), 70 FR 4911 (January 31, 2005) (SR-Phlx-2005-05) (approval order); 51043 (January 14, 2005), 70 FR 3402 (January 24, 2005) (SR-Amex-2005-06) (approval order); 51041

Continued

However, institutional and retail traders have greatly increased their demand for options on SPDRs® for hedging and trading purposes, such that these options have experienced an explosive gain in popularity and have been the most actively traded options for the last two years. For example, options on SPDRs® (SPY), the most actively traded options in the U.S. in terms of volume, traded a total of 33,341,698 contracts across all exchanges from March 1, 2011 through March 16, 2011. In contrast, over the same time period options on the Nasdaq-100 Index® Tracking Stock ("QQQ<sup>SM</sup>"),<sup>9</sup> the third most actively traded options, traded a total of 8,730,718 contracts (less than 26.2% of the volume of options on SPDRs®).

Currently, SPY options have a position limit of only 300,000 contracts on the same side on the market while the significantly lesser-volume QQQ<sup>SM</sup> options, which are comparable to SPY options, have a position limit of 900,000 contracts on the same side of the market. BOX believes that SPY options should, like options on QQQ<sup>SM</sup>, have a position limit of 900,000 contracts. Given the increase in volume and continuous unprecedented demand for trading options on SPDRs®, BOX believes that the current position limit of 300,000 contracts<sup>10</sup> is entirely too low and inadequate and is a deterrent to the optimal use of the product for hedging and trading purposes. There are multiple reasons to increase the position limit for SPY options.

First, traders generally believe that the current SPY option position limit of 300,000 contracts, which has remained the same for more than five years despite the tremendous trading volume increase, is no longer sufficient for optimal trading and hedging purposes. SPY options are, as noted, used by large institutions and traders as a means to invest in or hedge the overall direction of the market. Second, options on SPDRs® are 1/10th the size of options on the S&P 500® Index, traded under the symbol SPX. Thus, a position limit of 300,000 contracts in options on SPDRs® is equivalent to a 30,000 contract position limit in options on SPX.<sup>11</sup> Traders who trade options on

SPDRs® to hedge positions in SPX options (and the SPDRs® ETF based on SPX, SPDRs® Trust Series 1) have indicated that the current position limit for options on SPDRs® is simply too restrictive,<sup>12</sup> which may adversely affect their (and BOX's) ability to provide liquidity in this product. And third, the products that are perhaps most comparable to options on SPDRs®, namely options on QQQ<sup>SM</sup>, are subject to a 900,000 contract position limit on the same side of the market.<sup>13</sup> This has, in light of the huge run-up in SPY option trading making them the number one nationally ranked option in terms of volume, resulted in a skewed and unacceptable SPY option position limit. Specifically, the position limit for options on SPDRs® at 300,000 contracts is but 33% of the position limit for the less active options on QQQ<sup>SM</sup> at 900,000 contracts.<sup>14</sup> The Exchange proposes that options on SPDRs® similarly be subject to a position limit of 900,000 contracts.<sup>15</sup>

The options reporting requirement would continue unabated. Thus, the Exchange would require that, just like for options on QQQ<sup>SM</sup>, each Options Participant that maintains a position in SPDRs® options on the same side of the market, for its own account or for the account of a customer, must report certain information. This information would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. In addition, the general reporting requirement for customer

is no position limit on SPX options. See CBOE Rule 24.4 and Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (SR-CBOE-2001-22) (order approving permanent elimination of SPX options position limit).

<sup>12</sup> See *supra* note 4.

<sup>13</sup> See Supplementary Material .02 to Chapter III, Section 7 of the BOX Rules and Securities Exchange Act Release No. 51317 (March 3, 2005), 70 FR 12254 (March 11, 2005) (SR-BSE-2005-10) (notice of filing and immediate effectiveness).

<sup>14</sup> Similarly to options on SPDRs® (SPY) being 1/10th the size of options on the related index S&P 500® Index (SPX), so options on the Nasdaq-100 Index® Tracking Stock (QQQ<sup>SM</sup>) are 1/10th the size of options on the related index NASDAQ-100 Index (NDX). The position limit for QQQ<sup>SM</sup> options and its related index NDX have a comparable relationship to that of SPY options and SPX. That is, the position limit for options on QQQ<sup>SM</sup> is 900,000 contracts and there is no positions limit for NDX options. See *supra* note 7 [sic] and Securities Exchange Act Release No. 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005) (SR-CBOE-2001-41) (order approving elimination of NDX options position limit).

<sup>15</sup> The position limit for IWM options on yet another large ETF entitled iShares Russell 2000 Index Fund, (which options have significantly less trading volume than the number one ranked SPY options, as also the QQQ<sup>SM</sup> options) are set at 500,000 contracts.

accounts that maintain an aggregate position of 200 or more option contracts ("large positions") would remain at this level for options on SPDRs®.<sup>16</sup>

BOX believes that position and exercise limits, at their current levels, no longer serve their stated purpose. There has been a steadfast and significant increase over the last decade in the overall volume of exchange-traded options; position limits, however, have not kept up with the volume. Part of this volume is attributable to a corresponding increase in the number of overall market participants, which has, in turn, brought about additional depth and increased liquidity in exchange-traded options.<sup>17</sup>

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.<sup>18</sup>

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.<sup>19</sup> Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the previously noted reporting requirement in Chapter III, Section 10 of the BOX Rules that Options Participants file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of the Exchange's surveillance efforts.

BOX believes that the current financial requirements imposed by the Exchange and by the Commission

<sup>16</sup> For reporting requirements, see Chapter III, Section 10 of the BOX Rules.

<sup>17</sup> The Commission has previously observed that: Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise.

These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes. See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-97-11) (order approving).

<sup>18</sup> These procedures have been effective for the surveillance of SPY options trading and will continue to be employed.

<sup>19</sup> 17 CFR 240.13d-1.

(January 14, 2005), 70 FR 3408 (January 24, 2005) (SR-CBOE-2005-06) (approval order); and 51042 (January 14, 2005), 70 FR 3412 (January 24, 2005) (SR-ISE-2005-05) (approval order).

<sup>9</sup> QQQ<sup>SM</sup> options were formerly traded under the ticker symbol QQQQ<sup>SM</sup>. QQQ<sup>SM</sup>, Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, Nasdaq-100 Index Tracking Stock<sup>SM</sup>, and are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq").

<sup>10</sup> Supplementary Material .02 to Chapter III, Section 7 of the BOX Rules.

<sup>11</sup> Chicago Board Options Exchange, which lists and trades SPX options, has established that there

adequately address concerns that an Options Participant or its customer may try to maintain an inordinately large unhedged position in an option, particularly on SPDRs®. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that an Options Participant must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under Chapter XIII, Section 4(b) of the BOX Rules to impose a higher margin requirement upon a BOX Options Participant when the Exchange determines a higher requirement is warranted. In addition, the Commission's net capital rule, Rule 15c3-1 under the Act,<sup>20</sup> imposes a capital charge on Participants to the extent of any margin deficiency resulting from the higher margin requirement.

BOX believes that the position limit increase [sic] on options on QQQs<sup>SM</sup>, which as noted are similar to options on SPDRs® have been gradually increased from 75,000 contracts in 2005 to the current level of 900,000 contracts, and there has been no adverse effects on the market as a result of this increase. Likewise, there have been no adverse effects on the market from the expansion of the position limit for options on SPDRs® from 75,000 contracts to the current level of 300,000 contracts.

BOX believes that restrictive option position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to and hedging protection through the use of options on SPDRs®. This can result in lost liquidity in both the options market and the equity market. The proposed position limit increase will remedy this situation to the benefit of large as well as retail traders, investors, and public customers. BOX believes that increasing position and exercise limits for options on SPDRs® would lead to a more liquid and competitive market environment for these options and would benefit customers interested in this product.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>22</sup> in particular, in that it is designed to

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange is proposing to expand the position limit on options on SPDRs®. The Exchange believes that this proposal will be beneficial to large market makers (which generally have the greatest potential and actual ability to provide liquidity and depth in the product), as well as retail traders, investors, and public customers.

### *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 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 either solicited or received.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>23</sup> and Rule 19b-4(f)(6) (iii) thereunder.<sup>24</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>25</sup> normally does not

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>26</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because increasing position and exercise limits for SPY options would lead to a more liquid and competitive market environment that would benefit customers interested in this product. Additionally, it would allow the Exchange to seamlessly continue to offer traders and the investing public the ability to use this product as an effective hedging and trading vehicle. Lastly, it will enable the Exchange's position and exercise limits for SPDR® options to be consistent with those of other exchanges that have already adopted the higher position and exercise limits. Therefore, the Commission designates the proposal operative upon filing.<sup>27</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 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-BX-2011-044 on the subject line.

such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

<sup>26</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>27</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 17 CFR 240.15c3-1.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>25</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or

### 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-BX-2011-044. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 No. SR-BX-2011-044 and should be submitted on or before August 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-19451 Filed 8-1-11; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64969; File No. SR-FINRA-2009-028]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 to Proposed Rule Change To Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook

July 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "SEA")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 22, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on May 21, 2009.<sup>3</sup> On July 12, 2011, FINRA filed Amendment No. 1 to the proposed rule change, which addresses the comments and proposes responsive amendments. Amendment No. 1 is 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 Amendment No. 1 to 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 this Amendment No. 1 to SR-FINRA-2009-028, a proposed rule change to adopt NASD Rule 2340 (Customer Account Statements) as FINRA Rule 2231 in the consolidated FINRA rulebook with moderate changes. The proposed rule change would delete Incorporated NYSE Rule 409 (Statements of Accounts of Customers), except for paragraph (f),<sup>4</sup>

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

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

<sup>3</sup> Amendment No. 1 to SR-FINRA-2009-028 responds to comments received on the original proposed rule change and proposes amendments to the original rule change pursuant to the comments. See Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) ("Notice").

<sup>4</sup> The SEC approved the deletion of Incorporated NYSE Rule 409(f) in connection with the adoption of FINRA Rule 2232 (Customer Confirmations). See Securities Exchange Act Release No. 63150 (October 21, 2010); 75 FR 66173 (October 27, 2010) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rule 2232 (Customer Confirmations) in the Consolidated FINRA Rulebook and To Delete NASD Rule 2230, NASD IM-2110-6 and

and certain of its related interpretations. FINRA filed SR-FINRA-2009-028 with the Commission on April 22, 2009. On May 21, 2009, the Commission published the proposed rule change for comment in the **Federal Register**<sup>5</sup> and received 12 comment letters.<sup>6</sup> Based on the comments received, FINRA is filing this Amendment No. 1 to respond to the comments received and to propose amendments, where appropriate. FINRA requests that the Commission publish Amendment No. 1 in the **Federal Register** to allow interested parties the ability to comment on changes made to the proposal in light of comments.

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

Incorporated NYSE Rule 409(f)). The rule change became effective on June 17, 2011. See *Regulatory Notice* 10-62 (December 2010).

<sup>5</sup> See Securities Exchange Act Release No. 59921 (May 19, 2009), 75 FR 23912 (May 21, 2009) ("Proposing Release"). The comment period closed on June 11, 2009.

<sup>6</sup> Letter from Gene Woodham, Chief Operating Officer, Sterne Agee Group, Inc., dated June 9, 2009 ("Sterne Agee Letter"); letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated June 10, 2009 ("ICI Letter"); letter from Jesse Hill, Director of Regulatory Services, Edward Jones, dated June 10, 2009 ("Edward Jones Letter"); letter from Dale E. Brown, President & CEO, Financial Services Institute, Inc., dated June 11, 2009 ("FSI Letter"); letter from Sean C. Davy, Managing Director, Corporate Credit Markets Division, Securities Industry and Financial Markets Association (SIFMA), New York, New York, dated June 11, 2009 ("SIFMA Letter"); letter from David J. Pearlman, Chair, Regulatory Affairs Committee, College Savings Foundation, dated June 11, 2009 ("College Savings Foundation Letter"); letter from John S. Markle, Deputy General Counsel, Regulatory Operations, TD AMERITRADE Holding Corporation, dated June 11, 2009 ("TD Ameritrade Letter"); letter from Bari Havlik, Chief Compliance Officer, Senior Vice President, Charles Schwab & Co., Inc., dated June 11, 2009 ("Schwab Letter"); letter from John Muschalek, Managing Director, Clearing Services Division, First Southwest Company, dated June 11, 2009 ("First Southwest Company Letter"); letter from Jonathan Feigelson, SVP, General Counsel, TIAA-CREF, New York, New York, dated June 11, 2009 ("TIAA-CREF June Letter"); letter from Sutherland Asbill & Brennan LLP on behalf of the Committee of Annuity Insurers, dated June 11, 2009 ("Sutherland Asbill & Brennan Letter"); and letter from Jonathan Feigelson, SVP, General Counsel, TIAA-CREF, New York, New York, dated June 13, 2009 ("TIAA-CREF July Letter").

<sup>28</sup> 17 CFR 200.30-3(a)(12).