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 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 publicly available. All submissions should refer to File Number SR–CBOE–2009–003 and should be submitted on or before February 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2528 Filed 2–5–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59335; File No. SR–FINRA–2008–061]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 5240 (Anti-Intimidation/Coordination) in the Consolidated FINRA Rulebook

February 2, 2009.

On December 11, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD IM–2110–5 as FINRA Rule 5240 in the consolidated FINRA rulebook (''Consolidated FINRA Rulebook'')[3] without material change. The proposed rule change was published for comment in the **Federal Register** on December 29, 2008.[4] The Commission received no comment letters in response to the proposed rule change. This order approves the proposed rule change.

NASD IM–2110–5 currently identifies three general types of conduct that are inconsistent with just and equitable principles of trade:[5] (1) Coordinating activities by members involving quotations, prices, trades, and trade reporting (*e.g.*, agreements to report trades inaccurately or maintain certain minimum spreads); (2) ''directing or requesting'' another member to alter prices or quotations; and (3) engaging in conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. The IM also sets forth seven specific exclusions that identify bona fide commercial activity that is permitted (*e.g.*, bona fide negotiations and unilateral decisions regarding spreads). The proposed rule change would renumber NASD IM–2110–5 as FINRA Rule 5240 in the Consolidated FINRA Rulebook.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association,[6] and in particular, with Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules 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. The Commission notes that FINRA originally adopted NASD IM–2110–5 to fulfill part of its 1996 settlement agreement[8] with the SEC.[9] FINRA's adoption of NASD IM–2110–5 as FINRA Rule 5240 in the Consolidated FINRA Rulebook provides notice to members of behavior that violates just and equitable principles of trade.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–FINRA–2008–061) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2530 Filed 2–5–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59340; File No. SR–FINRA–2008–047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Codes of Arbitration Procedure To Raise the Amount in Controversy Heard by a Single Chair-Qualified Arbitrator to $100,000

February 2, 2009.

I. Introduction

The 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'') on September 18, 2008, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together referred to as the ''Transitional Rulebook''). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). Dual members must also comply with NASD Rules. For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (''Rulebook Consolidation Process'').

[4] *See* Securities Exchange Act Release No. 59119 (December 18, 2008), 73 FR 79527.

[5] NASD Rule 2110 requires members to ''observe high standards of commercial honor and just and equitable principles of trade.'' On September 25, 2008, the Commission approved adopting NASD Rule 2110 into the Consolidated FINRA Rulebook as FINRA Rule 2010 without substantive change. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008). That rule change took effect on December 15, 2008. *See* FINRA *Regulatory Notice* 08–57 (October 2008).

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

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] *See* In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3–9056, Securities Exchange Act Release No. 37538 (August 8, 1996).

[9] *See* Securities Exchange Act Release No. 38845 (July 17, 1997), 62 FR 39564 (July 23, 1997). Although FINRA is not making material changes to the rule, one of the minor changes made by FINRA is to add the phrase ''or other person'' to paragraphs (a)(1) and (a)(3) of the rule to clarify that coordination with or intimidation of a non-FINRA member is covered by the rule.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

(''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and the Code of Arbitration Procedure for Industry Disputes (''Industry Code,'' and together with the Customer Code, the ''Codes'') to raise the amount in controversy that will be heard by a single chair-qualified arbitrator to $100,000.[3] The proposed rule change was published for comment in the **Federal Register** on October 2, 2008.[4] The Commission received seven comments in response to the proposed rule change.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

FINRA proposed to amend its Customer Code and Industry Code to raise the amount in controversy that would be heard by a single arbitrator to $100,000, exclusive of interest and expenses.[6] The arbitrator would be selected from the roster of arbitrators who are qualified to serve as chairpersons. This means that investors' claims for up to $100,000 would be heard by a public, chair-qualified arbitrator.

Under the proposal, parties would be permitted to request a panel of three arbitrators for claims of more than $25,000, but not more than $100,000, if all parties agreed in writing to the request.[7] Claims of more than $100,000, or claims that do not specify any amount in controversy, would continue to be heard by three arbitrators unless the parties agree in writing to one arbitrator.[8]

Currently, if the amount of a claim is $25,000 or less, a single arbitrator is appointed to resolve the matter. If the amount of a claim is more than $25,000, but not more than $50,000, a single arbitrator is appointed, unless a party asks for three arbitrators in its initial pleading. Claims for over $50,000, or claims that do not specify any amount in controversy, are heard by a panel of three arbitrators.[9]

FINRA also proposed to remove the current option for one party unilaterally to require three arbitrators in certain cases with claims for more than $25,000.[10] FINRA believes this is not an efficient use of resources, as it requires other parties to incur higher hearing session costs and additional delays caused by scheduling three arbitrators instead of one. Therefore, the proposed rule would mandate a single arbitrator in all such cases unless all parties agree, in writing, to request a three-person panel.

In FINRA's view, raising the threshold for claims heard by a single arbitrator would increase efficiencies and decrease costs for parties and FINRA. Parties would experience reduced case processing times because of the flexibility associated with scheduling conference calls and hearing dates with one arbitrator as opposed to three. Parties would save time in the arbitrator selection process because they would receive only one list of eight names from which to choose their arbitrator, rather than three lists of eight names.[11] This means they would only research the disclosures and histories of eight proposed arbitrators instead of 24.

Parties would also benefit from reduced hearing session fees. For claims between $25,000.01 and $50,000, parties would save $150 per hearing session[12] because hearing session fees would be reduced from $600 (for a hearing with three arbitrators) to $450 (for a hearing with one arbitrator).[13] For claims between $50,000.01 and $100,000, the savings would be $300 per hearing session because hearing session fees would be reduced from $750 (for a hearing with three arbitrators) to $450 (for a hearing with one arbitrator). The parties' cost for photocopying pleadings and exhibits would be reduced by two-thirds. FINRA would benefit from a more efficient use of its arbitrator roster since cases for $100,000 or less would use only one arbitrator instead of three. FINRA's photocopying costs and mailing expenses would also be reduced.

III. Comment Letters

The Commission received seven comments on the proposal, as well as FINRA's response to comments[14], all of which are discussed below.

Most commenters, particularly securities claimants' attorneys and legal clinics representing claimants, generally supported the proposal.[15] Some commenters supported the proposal in part.[16] One commenter, a registered broker-dealer, opposed the entire proposal.[17] Six commenters[18] supported increasing the monetary threshold under which disputes would be heard by a single arbitrator; four commenters[19] supported requiring the consent of all parties for a three-arbitrator panel for claims under $100,000; and three commenters[20] opposed requiring single arbitrators to

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

[2] 17 CFR 240.19b–4.

[3] The former NASD Rule 12000 Series (Customer Code) and 13000 Series (Industry Code) have been adopted as the FINRA 12000 Series (Customer Code) and 13000 Series (Industry Code) in the new consolidated rulebook pursuant to SR–FINRA–2008–021, which was approved by the Commission. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021) (approval order). The FINRA Rule 12000 Series (Customer Code) and 13000 Series (Industry Code), as set forth in SR–FINRA–2008–021, became effective on December 15, 2008. *See* FINRA Regulatory Notice 08–57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

[4] *See* Securities Exchange Act Release No. 58651 (September 25, 2008), 73 FR 57391 (October 2, 2008) (SR–FINRA–2008–047) (''Rulemaking Notice'').

[5] *See* Stephen B. Caruso, Esq., dated October 9, 2008 (''Caruso Letter''); Barry D. Estell, Esq., dated October 20, 2008 (''Estell Letter''); Laurence S. Schultz, Esq., Public Investors Arbitration Bar Association, dated October 20, 2008 (''PIABA Letter''); David P. Neuman, Esq., dated October 23, 2008 (''Neuman Letter''); William A. Jacobsen, Esq. and Seth M. Nadler, Cornell Securities Law Clinic, dated October 23, 2008 (''Cornell Securities Law Clinic Letter''); Gregory M. Scanlon, Esq., Charles Schwab & Co., Inc., dated October 23, 2008 (''Charles Schwab Letter''); and Jill Gross, Esq. and Stephanie Myers, John Jay Legal Services, Inc., dated October 23, 2008 (''John Jay Legal Services Letter'').

[6] *See* proposed amendments to Rules 12401(b) and 13401(b).

[7] *Id.*

[8] *See* proposed amendments to Rules 12401(c) and 13401(c).

[9] *See* Rules 12401 and 13401. The current threshold for appointing one or three arbitrators has been in effect since 1998. *See* Securities Exchange Act Release No. 38635 (May 14, 1997), 62 FR 27819 (May 21, 1997) (SR–NASD–97–22) (approval order) and NASD Notice to Members 98–90. Customer disputes are resolved by a single, chair-qualified public arbitrator or a majority-public panel consisting of a public arbitrator, a chair-qualified public arbitrator, and a non-public arbitrator. Industry disputes are resolved by a public panel or a non-public panel depending upon the parties to the controversy and the nature of the claims asserted (*see* Rules 13402 and 13802).

[10] *See* proposed amendments to Rules 12401(b) and 13401(b).

[11] For example, for customer cases, if the panel consists of one arbitrator, the Neutral List Selection System (''the System'') generates a list of eight public arbitrators from the chairperson roster. If the panel consists of three arbitrators, the System generates a list of eight public arbitrators from the chairperson roster, a list of eight arbitrators from the public roster, and a list of eight arbitrators from the non-public roster. FINRA sends the lists to the parties along with each arbitrator's employment history for the prior 10 years and other background information (*see* Rules 12403 and 13403).

[12] The term ''hearing session'' means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a pre-hearing conference. *See* Rules 12100(n) and 13100(n). For full day hearings, the savings would be $300 for claims between $25,000.01 and $50,000, and $600 for claims between $50,000.01 and $100,000.

[13] *See* Rules 12902 and 13902.

[14] Letter from Margo A. Hassan, FINRA, dated December 2, 2008 (''FINRA Letter'').

[15] Caruso, PIABA, Neuman, Cornell Securities Law Clinic, and John Jay Legal Services Letters.

[16] *See* Estell Letter.

[17] *See* Charles Schwab Letter.

[18] *See* Caruso, Estell, PIABA, Neuman, Cornell Securities Law Clinic, and John Jay Legal Services Letters.

[19] *See* PIABA, Cornell Securities Law Clinic, John Jay Legal Services and Neuman Letters.

[20] *See* Estell, PIABA, and Cornell Securities Law Clinic Letters.

be chair-qualified. One commenter noted that the proposed rule change did not mention any change to the filing fees that investors would pay to bring an arbitration claim.[21]

Detailed Discussion of Comments and FINRA Response

Increasing the Monetary Threshold Under Which Disputes Would Be Heard by a Single Arbitrator

Proposed amendments to Rules 12401(b) and 13401(b) would raise the amount in controversy that would be heard by a single arbitrator to $100,000, exclusive of interest and expenses. Most commenters supported increasing the monetary threshold under which disputes would be heard by a single arbitrator.[22] These commenters generally agreed with statements in the Rulemaking Notice that the increased threshold would reduce arbitration costs and increase efficiency for arbitration participants by saving them time and money.[23] Some commenters suggested increasing the threshold for one-arbitrator panels to $200,000[24] or $250,000.[25] One commenter opposed expanding the availability of single-arbitrator panels, stating that the maximum savings of $600 per day of hearings estimated by FINRA (or $300 per party per day) are insufficient to justify the rule change.[26] This commenter also stated that smaller hearing panels will degrade the decision making process for FINRA awards, because, under the current rule, decision making is a collaborative process in which all arbitrators benefit from one another's viewpoints. Moreover, this commenter opined that in some cases, one arbitrator's inaccurate view can be nullified by the arbitrator's colleagues' majority ruling.[27]

FINRA responded to these comments by indicating that it believes that the proposal, as filed, strikes the right balance between offering users an efficient and cost effective forum and providing three-arbitrator panels for disputes that involve greater amounts in controversy or that do not specify an amount in controversy. By raising the threshold as proposed, FINRA would be restoring the proportion of cases heard by a single arbitrator—roughly a third—to what it was when the single arbitrator threshold was last increased in 1998. In particular, FINRA expects that the proposal would double the percentage of single-arbitrator cases from approximately 17 percent to 34 percent. In addition, by eliminating the option for one party unilaterally to request three arbitrators in cases with claims of more than $25,000, FINRA stated that all parties will benefit by increased efficiencies and cost savings. For these reasons, FINRA declined to amend the proposed single arbitrator threshold.[28]

Consent of All Parties for a Three-Arbitrator Panel for Claims Under $100,000

Proposed amendments to Rules 12401(b) and 13401(b) would provide that a panel of three arbitrators would hear claims of more than $25,000, but not more than $100,000, if all parties agreed in writing to the request. Most commenters either specifically supported requiring the consent of all parties for a three-arbitrator panel for claims under $100,000,[29] or implicitly supported it by expressing support for the entire proposed rule change.[30] One commenter supported this provision, and to guarantee its effectiveness, urged FINRA to clarify that a party may only unilaterally procure a three-arbitrator panel if at least one of the parties asserts aggregate claims in excess of $100,000.[31] This commenter also expressed concern that the proposed rule could be interpreted to permit a single party to compel a three-arbitrator panel if multiple parties' claims exceed $100,000 when aggregated, even if no single party's claims exceed $100,000.[32]

FINRA responded that it does not intend to change its current practice with respect to aggregating claims. Currently, upon receipt of a statement of claim and an answer thereto, FINRA staff determines the total amount claimed by claimants and the total amount claimed by respondents, and appoints the number of arbitrators required by Rules 12401 and 13401. In doing so, FINRA staff only aggregates a claimant's claim with another claimant's claim, or a respondent's claim with another respondent's claim. FINRA staff does not aggregate all of the parties' claims (*e.g.*, claimants' claims with respondents' claims). FINRA stated that it will explain in the Regulatory Notice announcing the rule change how the $100,000 threshold will be applied and declined to revise the proposal as requested.[33]

Requiring Single Arbitrators To Be Chair-Qualified

Several commenters opposed the requirement that single arbitrators be chair-qualified.[34] One commenter noted that the chair-qualification requirement would make it more difficult for arbitrators to get the required ''service'' to become chair-qualified, and would reduce the pool of available chair-qualified arbitrators.[35] Another commenter posited that this requirement would produce a small, insulated pool of repeat arbitrators and undercut efforts to ensure non-biased hearings through random selection of arbitrators.[36] One commenter called this requirement ''a further erosion of investor rights,'' and expressed concern that chair-qualified arbitrators may be biased towards member firms.[37] The commenter also estimated, without explanation, that under the proposed rule change, it could take ten or more years for an otherwise qualified neutral arbitrator to become chair-qualified.[38]

FINRA responded by noting that it is not proposing to amend the rules relating to the chairperson rosters or the composition of arbitration panels. FINRA stated that it understands that raising the threshold for a single chair-qualified arbitrator will result in fewer arbitrators serving on certain cases. FINRA believes that appointing chair-qualified arbitrators to resolve claims up to $100,000 would ensure that parties have experienced arbitrators resolving their disputes. FINRA also noted that, in addition to completing FINRA's chairperson training, chair-qualified arbitrators must either (i) have a law degree and have served as an arbitrator through award on at least two cases, or (ii) have served as an arbitrator through award on at least three cases.[39]

Filing Fees That Investors Would Pay To Bring an Arbitration Claim

One commenter noted that the proposed rule change did not mention any change to the filing fees that investors would pay to bring an

[21] *See* Caruso Letter.

[22] *See* Caruso, Estell, PIABA, Neuman, Cornell Securities Law Clinic, and John Jay Legal Services Letters.

[23] *See* Caruso, PIABA, Neuman, and Cornell Securities Law Clinic Letters.

[24] *See* John Jay Legal Services Letter.

[25] *See* Caruso and PIABA Letters. The PIABA Letter supported raising the amount in controversy at the option of the investor.

[26] *See* Charles Schwab Letter.

[27] *Id.*

[28] *See* FINRA Letter.

[29] *See* PIABA, Cornell Securities Law Clinic, and John Jay Legal Services Letters.

[30] *See* Neuman Letter.

[31] *See* Cornell Securities Law Clinic Letter.

[32] *Id.*

[33] *See* FINRA Letter.

[34] *See* Estell, PIABA, and Cornell Securities Law Clinic Letters.

[35] *See* PIABA Letter. FINRA Rule 13400 requires an arbitrator to have served in a minimum number of cases to be eligible to be chair-qualified.

[36] *See* Cornell Securities Law Clinic Letter.

[37] *See* Estell Letter.

[38] *See* Estell Letter.

[39] *See* FINRA Letter.

arbitration claim.[40] This commenter suggested that the economic benefits that will inure to FINRA from reduced arbitration costs should be passed through to public investors in terms of reduced filing fees.[41]

FINRA responded by stating that it considered the effect of the proposal on all fees imposed by the forum. FINRA indicated that the significant cost savings for hearing sessions with a single arbitrator represent the greatest impact of the proposal to users of the forum. For example, under the proposal the forum fees for a dispute involving $75,000 will decrease from $750 to $450 per four-hour hearing session. FINRA has not proposed to amend the initial filing fees, which are already based on the amount in dispute, and which may be reallocated by the panel at the end of the case. The Codes will continue to provide that the Director of Arbitration may defer payment of all or part of the filing fee if a claimant has demonstrated a financial hardship. Moreover, parties will continue to be able to request that the panel consider assessing all or part of any filing fee on other parties in the case. For these reasons, FINRA declined to revise the forum's filing fees.[42]

IV. Discussion and Findings

After careful review of the proposed rule change, the comments, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.[43] In particular, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[44] 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. The Commission believes that the proposed rule change will reduce costs for participants in FINRA arbitration proceedings with claims of greater than $25,000 but no more than $100,000 who have their matters heard before a single arbitrator, while preserving the parties' ability to agree to have their case heard by a panel of three arbitrators.

The Commission believes that FINRA has responded adequately to the comments regarding increasing the monetary threshold under which disputes would be heard by a single arbitrator. The Commission agrees that the proposal, as filed, balances offering users an efficient and cost-effective forum for disputes of $100,000 or less and providing three-arbitrator panels for disputes that involve greater amounts or that do not specify an amount in controversy. The Commission also agrees that parties in these cases will experience reduced case processing times because of the flexibility associated with scheduling conference calls and hearing dates with one arbitrator rather than three, and that FINRA would benefit from a more efficient use of its arbitrator roster.

The Commission also believes that FINRA has adequately responded to comments regarding the aggregation of claims in calculating whether the $100,000 threshold has been met. The Commission notes that FINRA is not changing its current practice with respect to aggregating claims, and clarifying this practice in the Regulatory Notice announcing the rule change should help to resolve any ambiguity about how FINRA will determine whether a matter may be heard by a single arbitrator.

The Commission also believes that FINRA has adequately responded to comments regarding the requirement that single arbitrators be chair-qualified arbitrators. The Commission agrees that appointing chair-qualified arbitrators to resolve claims up to $100,000 would ensure that parties have experienced arbitrators resolving their disputes.

The Commission also believes that FINRA has adequately responded to comments regarding filing fees that investors would pay to bring a claim. The Commission agrees that parties will realize cost savings for hearing sessions with a single arbitrator.

V. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–FINRA–2008–047) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2531 Filed 2–5–09; 8:45 am]

BILLING CODE 8011–01–P

[40] *See* Caruso Letter.

[41] *Id.*

[42] *See* FINRA Letter.

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

[44] 15 U.S.C. 78o–3(b)(6).

[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59332; File No. SR–NYSEArca–2008–136]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(6) Relating to the Initial Listing Standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities

January 30, 2009.

I. Introduction

On December 10, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 5.2(j)(6), which sets forth listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities (''Index-Linked Securities''). The proposed rule change was published in the **Federal Register** on December 31, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend one of the requirements of NYSE Arca Equities Rule 5.2(j)(6), which sets forth the listing standards for Index-Linked Securities. Rule 5.2(j)(6) permits the Exchange to consider for listing and trading Index-Linked Securities pursuant to Rule 19b–4(e) under the Act, provided that, among other things, in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds twice the performance of an underlying Reference Asset. The Exchange proposes to amend Rule 5.2(j)(6)(A)(d) to provide that in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds *three* times the performance of an underlying Reference Asset. The Exchange proposes this change to allow it to list and trade Index-Linked Securities that employ

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59146 (December 22, 2008), 73 FR 80504.