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 the 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 Number SR–NYSEArca–2009–36 and should be submitted on or before October 19, 2009.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after publication for comment in the **Federal Register**.

In Amendment No. 1, the Exchange clarifies that, throughout the rule, the definition of ''Officer'' encompasses only Officers of the Corporation or such other senior level employee designee of the Corporation. In addition, in the context of rulings in Unusual Circumstances, the Exchange added the protection of investors and the public interest as a basis for using a reference price other than the consolidated last sale.

In the context of the Numerical Guidelines, the Exchange also clarifies that the execution time of the transaction under review determines whether the Numerical Guideline applied is Core Trading Session or Opening and Late Trading Session. In addition, the Exchange corrected a drafting error regarding the sales price at which certain numerical guidelines are applicable. The corrected language, which is reflected in the discussion above, now states that the proposed guidelines for sales greater than $0.00 up to and including $25.00 are 10% for the Core Trading Session and 20% for the Opening and Late Trading Sessions, and the proposed guidelines for sales greater than $25.00 up to and including $50.00 are 5% for the Core Trading Session and 10% for Opening and Late Trading Sessions.

In addition, as is reflected in the discussion above, the Exchange clarifies the percentage range at which volatility in the S & P 500 Futures would trigger the Exchange's ability to double or triple the applicable Numerical Guidelines. The Exchange also clarifies that, the context of appeals, in no case will a CEE Panel include a person affiliated with a party to the trade in question.

The changes proposed in Amendment No. 1, discussed above, seek to clarify the operation of the proposed rule and do not differ materially from the proposal as published in the **Federal Register** on May 5, 2009. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[10] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSEArca–2009–36), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–23358 Filed 9–25–09; 8:45 am]

BILLING CODE 8010–01–P

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

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60711; File No. SR–NYSEArca–2009–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment Nos. 1 and 3 and Order Granting Partial Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3 Thereto, Amending NYSE Arca Rule 6.72 and Expanding the Penny Pilot Program

September 23, 2009.

I. Introduction

On May 15, 2009, 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 its options trading rule to extend through December 31, 2010 and expand a program to quote certain options in smaller increments (''Pilot Program'' or ''Pilot'').[3] The proposed rule change was published for comment in the **Federal Register** on May 27, 2009.[4] The Commission received nine comment letters in response to the proposed rule change.[5] On August 18, 2009, the Exchange responded to the comment letters[6] and filed Amendment

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

[2] 17 CFR 240.19b–4.

[3] The current pilot is scheduled to expire on October 31, 2009. *See* Securities Exchange Act Release No. 60224 (July 1, 2009), 74 FR 32991 (July 9, 2009).

[4] *See* Securities Exchange Act Release No. 59944 (May 20, 2009), 74 FR 25294 (May 27, 2009) (''Notice'').

[5] *See* letter from Stephen Schuler and Daniel Tierney, Managing Members, Global Electronic Trading Company, dated June 10, 2009 (''GETCO Letter''); letter from Edward J. Joyce, President and COO, Chicago Board Options Exchange, dated June 12, 2009 (''CBOE Letter''); letter from Thomas Wittman, Vice President, The NASDAQ OMX Group, Inc., dated June 12, 2009 (''Nasdaq Letter''); letter from Christopher Nagy, Managing Director Order Routing Strategy, TD Ameritrade, Inc., dated June 17, 2009 (''Ameritrade Letter''); letter from Thomas F. Price, Managing Director, Securities Industry and Financial Markets Association, dated June 17, 2009 (''SIFMA Letter''); letter from Anthony J. Saliba, CEO, LiquidPoint LLC, dated June 17, 2009 (LiquidPoint Letter''); letter from Michael J. Simon, Secretary, International Securities Exchange, LLC, dated June 23, 2009 (''ISE Letter''); letter from John Ingrill, Gerard Satur, Karen Wendell, Managing Directors, UBS Securities LLC, dated June 30, 2009 (''UBS Letter''); and letter from Jerome Johnson, Vice President, Market Development, BATS Exchange, Inc., dated August 28, 2009 (''BATS Letter'') (collectively, the ''Comment Letters'').

[6] *See* letter from Janet M. Kissane, Senior Vice President—Legal & Corporate Secretary, NYSE Arca, to Elizabeth M. Murphy, Secretary,

Continued

No. 1 to the proposed rule change.[7] On September 21, 2009, the Exchange filed Amendment No. 2 to the proposed rule change. On September 22, 2009, the Exchange withdrew Amendment No. 2 and filed Amendment No. 3. Among other things, in Amendment No. 3 the Exchange consented to a bifurcation of the filing such that the portion of the proposed rule change proposing to quote IWM and SPY entirely in pennies would be subject to further notice and comment prior to Commission action.[8] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 1 and 3, and simultaneously is partially approving the proposed rule change, as modified by Amendment Nos. 1 and 3, on an accelerated basis.[9]

II. Description of the Proposal

Currently, all seven options exchanges participate in the Pilot Program, which is scheduled to expire on October 31, 2009.[10] The Exchange proposes to extend the time period of the Pilot Program through December 31, 2010 and expand the Pilot Program.

NYSE Arca proposes to add the next 300 most actively traded, multiply listed options classes that are not currently included in the Pilot Program, excluding options with high premiums.[11] The Exchange proposes to phase-in these 300 classes in groups of 75 additional classes each quarter over four successive quarters on October 26, 2009, January 25, 2009, April 26, 2010 and July 26, 2010.[12] The Exchange will identify the classes to be added each quarter based on national average daily volume in the prior six calendar months immediately preceding their addition to the Pilot Program, using data compiled and disseminated by the Options Clearing Corporation. The Exchange will announce the classes to be added to the Pilot Program each quarter to the Exchange's membership in a Regulatory Bulletin and by publishing the information on its Web site, in addition to submitting a filing with the Commission.[13]

The minimum variation for all classes to be included in the Pilot, except for QQQQ, will continue to be $0.01 for all quotations in option series that are quoted at less than $3.00 per contract, and $0.05 for all quotations in option series that are quoted at $3.00 or greater. Options on QQQQ will continue to be quoted in $0.01 increments for all series. Further, the Exchange proposes to designate options on SPY (SPDR S&P 500 ETF) and IWM (iShares Russell 2000 Index Fund) as eligible to quote and trade all options series in one cent increments, regardless of premium value.[14]

The Exchange further proposes that any option class included in the Pilot Program that has been delisted may be replaced on a semi-annual basis by the next most actively traded, multiply listed options class that is not yet included in the Pilot, based on trading activity in the previous six months.[15] The replacements issue(s) would be added to the Pilot Program on the second trading day following January 1, 2010 and July 1, 2010.[16]

The Exchange will submit semi-annual reports to the Commission that will include sample data and analysis of information collected from April 1 through September 30, and from October 1 through March 31, for each year, for the ten most active and twenty least active options classes added to the Pilot Program, in addition to continuing to provide data concerning the existing Pilot Program classes. The Exchange also will identify, for comparison purposes, a control group consisting of the ten least active options classes from the existing Pilot Program classes. The report will include, but not be limited to the following: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of NYSE Arca's automated systems; (4) data reflecting the size and depth of markets; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

III. Discussion and Findings

After careful review of the proposed rule change, Amendment Nos. 1 and 3, the Comment Letters, and the NYSE Arca Response, the Commission finds that the proposed rule change, as amended, except for the portion of the proposal to quote IWM and SPY entirely in pennies, is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities exchange.[17] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[19]

On June 28, 2005, the Pacific Exchange (now known as NYSE Arca) announced its intention to begin quoting and trading all listed options in penny increments.[20] In June 2006, to

Commission, dated August 18, 2009 (''NYSE Arca Response'').

[7] In Amendment No. 1, the Exchange: (i) Clarified how replacement issues would be selected in the event that a Pilot class were delisted; (ii) proposed to begin the phased implementation of the expansion of the Pilot on September 28, 2009 and continue over four successive quarters; and (iii) clarified that under its proposal NYSE Arca would begin quoting SPY and IWM entirely in pennies on September 28, 2009. *See infra* note 17 with respect to that portion of the proposal to change the quoting increments for options on SPY and IWM.

[8] Also, in Amendment No. 3, the Exchange clarified the threshold levels for determining when an options class would not be eligible to participate in the Pilot due to a high premium. The Exchange also proposed to begin the phased implementation of the Pilot on October 26, 2009 and continue over four successive quarters. The Exchange has consented to an extension of time for the Commission to act until October 31, 2009.

[9] *See infra* note 17 and accompanying text.

[10] *See* Securities Exchange Act Release Nos. 55156 (January 23, 2007), 72 FR 4759 (February 21, 2007); 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007); 59628 (March 26, 2009), 74 FR 15025 (April 2, 2009); and 60224 (July 1, 2009) 74 FR 32991 (July 9, 2009).

[11] One commenter raised issues with the aspect of NYSE Arca's proposal that would exclude options with high premiums, claiming that the Exchange's proposal did not give guidance, definition or indication of what constitutes a ''high premium.'' *See* CBOE Letter, *supra* note 5, at 2. In response to this comment, NYSE Arca clarified in Amendment No. 3 that a class would be excluded from the Pilot for having a high premium if at the time of selection of new classes the underlying equity security was priced at $200 per share or above or the underlying index level was at 200 or above. The determination of whether a security is trading above $200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Pilot. *See supra* note 8, and NYSE Arca Response, *supra* note 6, at 3–4.

[12] *See supra* note 8.

[13] The Exchange has committed to file a proposed rule change under Section 19(b)(3)(A) of the Act to identify the option classes to be included each quarter.

[14] *See supra* note 8 and *infra* note 17.

[15] In Amendment No. 1, the Exchange clarified that the replacement classes also would exclude options with high premiums. *See supra* note 7.

[16] The replacement issues will be announced to the Exchange's membership in a Regulatory Bulletin and published by the Exchange on its Web site.

[17] The Commission is not at this time approving the portion of the proposed rule change that would designate options on IWM and SPY as eligible to quote all options series in one-cent increments. The Commission is soliciting further comment on that portion of the proposed rule change. *See infra* Section IV.

[18] 15 U.S.C. 78f(b)(5).

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

[20] PCX News Release, ''Pacific Exchange to Trade Options in Pennies,'' June 28, 2005.

facilitate the orderly transition to quoting a limited number of options in penny increments, the then Chairman of the Commission sent a letter to the six options exchanges urging the exchanges that chose to begin quoting in smaller increments to plan for the implementation of a limited penny pilot program to commence in January 2007.[21] The then existing options exchanges submitted proposals to permit quoting a limited number of classes in smaller increments, and, in January 2007, the Commission approved those proposals to implement the current Pilot Program.[22] The Pilot, which has since been extended and expanded, currently includes 63 classes and is scheduled to expire on October 31, 2009.[23] NYSE Arca now proposes to extend and further expand the Pilot.

The Commission believes that NYSE Arca's proposal is consistent with the Act in large measure because allowing market participants to quote in smaller increments has been shown to reduce spreads, thereby lowering costs to investors. An analysis of the current Pilot shows that the reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in classes included in the Pilot.[24] The reduction in spreads also has led the exchanges to reduce or eliminate their exchange-sponsored payment-for-order-flow programs.[25] The Commission believes that the proposed rule change, which will expand the Pilot to include 300 of the next most actively traded, multiply listed classes, is designed to allow the continuing narrowing of spreads.

One commenter stated that ''full access to penny increments provides investors with more flexibility to compete and determine the natural spread for each security independently.'' This commenter further stated that ''penny pricing gives market participants the flexibility to trade with spreads at six or eleven cents wide, as much as it facilitates trading in one or two cent spreads.'' [26] This commenter explained that even if spreads in a Pilot class increase, quoting in pennies mitigates the increase. For example, the commenter noted that CBOE's March Report showed that for the period August 1, 2008 through January 31, 2009, the average spread in OIH options increased from $0.13 to $0.19. The commenter pointed out that if this class were not quoting in pennies, the $0.06 increase in the spread could have been a $0.10 increase.

Several commenters expressed concern about the impact of NYSE Arca's proposal on displayed size that will be available at the best bid and offer in the additional classes to be included in the Pilot, and the impact that a decrease in displayed size would have on the market quality.[27] In particular, several commenters expressed concern that decreased liquidity in Pilot classes has made, and will continue to make, it harder for market participants to execute orders of large size.[28] They argue that decreased liquidity in Pilot classes is causing market participants to seek liquidity from off-exchange venues, such as the OTC market or off-exchange dark pools, which results in less transparent markets.[29] Several commenters also expressed concerns with the potential impact of increased quotation traffic on costs to exchanges and other market participants to process and store the additional quotations, and on the ability of market systems to effectively handle increased quotation traffic if NYSE Arca's proposal were approved.[30]

These commenters generally believe that to mitigate any concerns about the impact of decreased displayed size and increased quotation traffic from the Pilot, classes included in the Pilot Program should have a $1, rather than $3, breakpoint.[31] These commenters generally believe that a $1 breakpoint would appropriately balance the benefits of narrower spreads for an expanded number of options against the strain on systems capacity and increased costs due to increased quotation traffic and reduced liquidity at the national best bid and offer, by concentrating the benefits where

[21] Commission Press Release 2006–91, ''SEC Chairman Cox Urges Options Exchanges to Start Limited Penny Quoting,'' June 7, 2006.

[22] *See* Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (Amex–2006–106); 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007) (SR–BSE–2006–49); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73); and 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74).

[23] *See supra* note 3. Although the proposed rule changes approved by the Commission to implement and expand the Pilot provide for 65 classes in the current Pilot Program, the actual number of those classes still trading is 59.

[24] *See* Memorandum to Heather Seidel, from J. Daniel Aromi, Office of Economic Analysis (''OEA''), ''Volume and Spreads for Pilot and Non-Pilot Options Classes,'' dated July 24, 2009 (''OEA Memo''). *See also* Ameritrade Letter, *supra* note 5, at 1 (noting the firm's belief that overall, the Pilot has brought about tighter trading increments); GETCO Letter, *supra* note 5, at 1 (noting as a benefit of the Pilot the substantial decreases in quoted spreads); UBS Letter, *supra* note 5, at 1 (noting that spreads have narrowed as a result of penny quoting); and BATS Letter, *supra* note 5, at 1–2 (noting a reduction in spreads in Pilot classes).

Average spread width reductions for some options included in the Pilot were less during the period from approximately August 2008 through January 2009 than in prior periods. *See e.g.,* CBOE Penny Pilot Report, dated March 9, 2009 (''CBOE March Report'') at 2; CBOE Penny Pilot Report, dated September 4, 2008 (''CBOE September Report'') at 1 to 5; and Report by BOX, BOX Penny Pilot Report: Penny Pilot Report 5 (''BOX Penny Pilot Report 5'') at 7. However, this time frame covers a period of significant overall market volatility. The CBOE Volatility Index (''VIX'') was well above previous levels through most of this period. From late September 2008 through January 2009 (and beyond) the VIX was almost always above 40, peaking at 80 in October and November 2008. *See also* Report by NYSE Arca, The Options Penny Pilot, dated August 18, 2009 (''NYSE Arca Report'') at 7 to 10 and Report by NYSE Arca, Reporting Period 5 (''NYSE Arca Report 2'') (showing overall greater reductions in volume-weighted average spreads for the period February 1, 2009 through April 30, 2009 as compared to the period August 1, 2008 through January 31, 2009); CBOE March Report at 2 and CBOE Penny Pilot Report, dated July 31, 2009 (''CBOE July Report'') at 2 (these reports show that the average spread width decreased from the period of February 1, 2009 through April 30, 2009, as compared to the period of August 1, 2008 through January 1, 2009); and Report by BOX, BOX Penny Pilot Report: Penny Pilot Report 6 (''BOX Penny Pilot Report 6'') at 7 (stating that the average bid/ask spread narrowed in the period February 1, 2009 through April 30, 2009 as compared to the period from August 1, 2008 though January 31, 2009). Further, one exchange that measured average spreads in non-Pilot classes during the same time period for which it measured average spreads for Pilot classes showed that average spreads in non-Pilot classes also widened. *See* Report by ISE, Penny Pilot Analysis 5, dated May 2009 (''ISE Report'') at 4. ISE provides statistics showing volume-weighted spreads for the classes in each phase of the Pilot, for the 3 months prior to each group being included in the Pilot, the first year after inclusion in the Pilot, and the six months from November 2008 to April 2009, as well as volume-weighted spread statistics for comparable classes not included in the Pilot for the same time periods as used for the classes in phase 3 of the Pilot. The data shows that the spreads for the non-penny classes also widened in the time period from November 2008 to April 2009. *See also* CBOE March Report at 2 (stating that the exchange is aware that average spread width in many non-Pilot classes widened during the same reporting period due to the unusual market conditions that existed).

[25] *See* Securities Exchange Act Release Nos. 55328 (February 21, 2007), 72 FR 9050 (February 28, 2007) (SR–Amex–2007–16); 55197 (January 30, 2007), 72 FR 5772 (February 7, 2007) (SR–BSE–2007–02); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR–CBOE–2007–11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR–ISE–2007–08); 55223 (February 1, 2007) 72 FR 6306 (February 9, 2007) (SR–NYSEArca–2007–07); and 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR–Phlx–2007–05).

[26] *See* BATS Letter, *supra* note 5, at 1–2.

[27] *See, e.g.,* CBOE Letter, *supra* note 5, at 2; LiquidPoint Letter, *supra* note 5, at 4; SIFMA Letter, *supra* note 5, at 4–5; and UBS Letter, *supra* note 5, at 1.

[28] *See, e.g.,* SIFMA Letter, *supra* note 5, at 4; and UBS Letter, *supra* note 5, at 1.

[29] *See* ISE Letter, *supra* note 5, at 3–4; and SIFMA Letter, *supra* note 5, at 4.

[30] *See, e.g.,* CBOE Letter, *supra* note 5, at 2; ISE Letter, *supra* note 5, at 5; and SIFMA Letter, *supra* note 5, at 4.

[31] *See, e.g.,* CBOE Letter, *supra* note 5, at 4; LiquidPoint Letter, *supra* note 5, at 3–4; SIFMA Letter, *supra* note 5, at 2–3; and UBS Letter, *supra* note 5, at 1.

customers trade the most and provide the most liquidity.[32]

The Commission continues to believe that the impact of the Pilot on displayed size, as well as on non-displayed depth-of-book, and the impact of decreased size on market and execution quality, is an area that requires careful analysis as the Pilot continues. The Commission further recognizes that the options exchanges have consistently shown in their reports that there has been a reduction in the displayed size available in the Pilot classes. However, the Commission does not believe that the decrease in displayed size that accompanies smaller increments and narrower spreads means that NYSE Arca's proposal to expand the Pilot is not consistent with the Act. A decrease in displayed size available at the best bid or offer may have a greater effect on the ability of market participants to execute large-sized orders as compared to smaller-sized orders, given the smaller size that would be available at that best price. The Commission does not believe that the data to date shows that retail customers have been adversely affected by the reduction in size at the inside price.[33]

Moreover, the Commission anticipates that market participants with large sized orders will adjust their trading strategies to accommodate smaller displayed size in additional classes quoting in pennies.[34] Importantly, the Commission notes that the new Options Order Protection and Locked/Crossed Market Plan (''Linkage Plan'') provides for the use of intermarket sweep orders (''ISOs''), which will allow market participants to more efficiently access liquidity at multiple price levels across exchanges.[35] Several commenters acknowledged the anticipated benefits of the new Linkage Plan, especially for options quoted in pennies, and requested that any expansion of the Pilot Program be contingent on the implementation of the new options linkage plan.[36] In response to these comments, NYSE Arca amended its proposed rule change to modify the phased roll-out of the additional 300 classes to begin following implementation of the Linkage Plan on August 31, 2009.[37] The Commission agrees with commenters that the ability of market participants to use ISOs to access liquidity across exchanges and at different price levels will help to address concerns that a decrease in displayed size at the BBO negatively impacts the ability to execute large sized orders.[38]

In addition, one commenter notes a decrease in average daily volume in the Pilot classes as a negative effect of the Pilot.[39] The Commission believes that the impact of smaller increments on trading volume is one of the more difficult aspects of the Pilot to assess. The bid-ask spread is only one factor that influences volume. Other factors that impact options volume are trading activity in the underlying security and in related products, volatility in the market and in the underlying security, as well as firm and market specific events. The Commission does not believe that exchange reports show a clear change in trading volume, and the Commission's Office of Economic Analysis looked at the change in average contract volume for classes included in the Pilot and a sample of classes not included in the Pilot, over two time periods, finding that volume increased for the Pilot classes as compared to the control group of non-Pilot classes (the difference for one time period was statistically significant).[40] Thus, based on the data viewed to date, the Commission cannot conclude that the Pilot has had an adverse impact on volume in the Pilot securities.

As anticipated, the Pilot has contributed to the increase in quotation message traffic from the options markets. However, while the increase in quotation message traffic is appreciable, it has been manageable by the exchanges and the Options Price Reporting Authority (''OPRA''), and the Commission did not receive any reports of disruptions in the dissemination of pricing information as a result of quotation capacity restraints.[41] While the Commission anticipates that NYSE Arca's proposed expansion of the Pilot Program will contribute to further increases in quotation message traffic, the Commission believes that NYSE Arca's proposal is sufficiently limited such that it is unlikely to increase quotation message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information. NYSE Arca has proposed to roll out the additional 300 classes over time, in groups of 75 classes each quarter beginning on October 26, 2009. The Commission further notes that a June 2, 2009 sustained message traffic peak of 852,350 messages per second reported by OPRA[42] is still well below

[32] *See, e.g.,* LiquidPoint Letter, *supra* note 5, at 4; SIFMA Letter, *supra* note 5, at 1–2; and UBS Letter, *supra* note 5, at 1–2.

[33] *See, e.g.,* BOX Penny Pilot Report 6, *supra* note 24, at 6 (stating that the quantity at the top of the BOX book was sufficient to satisfy the average trade size in the Pilot classes); CBOE July Report, *supra* note 24, at 2, 4 and 6 (showing the change in quoted size in Pilot classes); ISE Report, *supra* note 24, at 5 (showing the change in volume weighted size at the ISE's best bid or best offer in Pilot classes); Nasdaq OMX Phlx, Options Penny Pilot Expansion Report 4, dated February 27, 2009, at 3 and 6 (showing the change in quoted size at the NBBO in Pilot Classes); NYSE Arca Report, *supra* note 24, at 3–5 (showing that 100 percent of customer and firm orders up to 100 contracts in the Pilot classes were filled during the periods February 1, 2008 through July 31, 2008 and February 1, 2009 through April 30, 2009); and NYSE Arca Report, *supra* note 24, at 3 (showing that 100% of customer orders up to 50 contracts in the Pilot classes were filled during the period August 1, 2008 to January 31, 2009, and 94% of all customer orders in the Pilot classes were filled during the same period).

[34] *See* NYSE Arca Response, *supra* note 6, at 5 (stating that the current mechanisms for sourcing block-sized liquidity will continue to grow and evolve to meet the demands of users).

[35] *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (order approving Linkage Plan). The Linkage Plan was implemented on August 31, 2009.

The Commission encourages the options exchanges to consider measures that would facilitate access to depth of book quotations. The Commission notes that currently several exchanges make available quotations and orders on their respective books below their best bid and offer. The Commission anticipates that to the extent display of this information proves to be valuable to the options market as a whole, other exchanges may choose to make this information available as well.

[36] *See* CBOE Letter, *supra* note 5, at 3; and UBS Letter, *supra* note 5, at 2.

[37] *See supra* note 7. In Amendment No. 3, the Exchange proposed to begin the phased implementation on October 26, 2009. *See supra* note 8.

[38] Several commenters noted that the introduction of ISOs and improvements in order routing technology anticipated as part of the new linkage plan would provide an improved trading environment for the expansion of penny quoting and permit market participants to simultaneously access better priced quotations across all options exchanges. *See* GETCO Letter, *supra* note 5, at 4 and UBS Letter, *supra* note 5, at 2. *See also* NYSE Arca Response, *supra* note 6, at 5 (stating that the soon-to-be implemented ISO will allow block-sized liquidity to be sourced at prices inferior to the NBBO and let it trade, offering institutional investors the certainty of both trade and price that they need and desire).

[39] *See* SIFMA Letter, *supra* note 5, at 4 (citing to CBOE March Report, *supra* note 24).

[40] Memorandum from J. Daniel Aromi, OEA, to Heather Seidel, Assistant Director, Division of Trading and Markets, Commission, dated August 14, 2009 (''OEA Memo 2'') (looking at the change in volume from August to September 2007 to April to May 2008, and from August to September 2007 to May to June 2009).

[41] One commenter states that although the exchange reports have shown that quotation traffic has increased significantly, the quotation volume has not resulted in significant problems for exchanges or market participants. *See* UBS Letter, *supra* note 5, at 1. Another commenter noted that the risks associated with OPRA's capacity being overwhelmed appear to be mitigated. *See* GETCO Letter, *supra* note 5, at 3. Another commenter notes that market participants will continue to make the investment in technology that results in more efficient markets and states that many of the exchanges have doubled the number of physical network connections between themselves and OPRA as a result. *See* BATS Letter, *supra* note 5, at 2.

[42] *See* NYSE Arca Report, *supra* note 24, at 11 (noting a sustained five second peak of 852,350 messages per second as reported by OPRA on June 2, 2009, and noting OPRA's current output capacity

OPRA's current messages per second capacity limit of 2,050,000.[43] Moreover, NYSE Arca has adopted and will continue to utilize quote mitigation strategies that should continue to mitigate the expected increase in quotation traffic.[44]

As noted above, NYSE Arca has proposed to expand the current Pilot Program to the 300 next most actively traded, multiply listed options classes, and to continue the existing $3 breakpoint for classes included in the Pilot (with the exception of options on QQQQ, IWM, and SPY).[45] The Commission believes that NYSE Arca's proposal is consistent with the Act. The Commission believes that the proposed rule change is designed to continue the narrowing of spreads in options included in the Pilot. NYSE Arca's proposal will provide the opportunity for reduced spreads where a significant amount of trading occurs, thus maximizing the economic benefits of the Pilot while minimizing the impact of increased quotation traffic.[46] Further, the Commission believes that the proposal will provide an opportunity for increased transparency in the options markets, by allowing market participants to display their trading interest in one-cent increments in the consolidated quotation stream.

One commenter stated its belief that NYSE Arca's proposal, which would be expanded to the next most-active, multiply-traded 300 classes, rather than all classes, does not provide a stringent process to renew names that will be eliminated from the Pilot due to delisting, merger or other circumstances, and that the proposal in this regard would represent an ongoing administration that would be costly to the commenter.[47] The Commission notes that NYSE Arca's proposal explicitly includes a process for replacing, on a semi-annual basis, any Pilot class that has been delisted with the next most actively traded, multiply listed class that is not already included in the Pilot, based on trading activity in the previous six months.[48] While there may be other approaches to address Pilot classes that have been delisted, none have been submitted to the Commission for its consideration. The Commission believes that NYSE Arca's proposal to replace delisted classes from the Pilot is reasonable and consistent with the Act.[49]

The Commission has published for comment proposed rule changes from CBOE and ISE that propose alternative approaches to expanding the Pilot.[50] In recognition of these other proposals, several commenters express the view that uniformity is necessary for an expansion of the Pilot Program.[51] These commenters argue that approval of multiple plans permitting exchanges to adopt different breakpoints would create confusion,[52] and that a uniform approach is necessary to assure that there is a fair and orderly national market system.[53] Several commenters state that adopting different penny pilot rules would cause technological and implementation problems for all participants in the National Market System, and that varied breakpoints will impact order entry, routing, quoting and compliance systems for each venue.[54]

While the Commission agrees that a uniform approach may be preferable, the Commission must analyze each exchange's proposed rule change on its own merits for consistency with the Act. As discussed above, the Commission has analyzed NYSE Arca's proposal and finds that it is consistent with the Act. In this case, the Commission does not believe the choice of other exchanges to propose different quoting increments, or to not expand the current Pilot, makes NYSE Arca's proposed rule change inconsistent with the Act. The Commission notes, however, that if an options exchange chooses not to permit quoting in one-cent increments in a particular option at the same time as another exchange, it would nevertheless remain obligated to comply with the provisions of the Linkage Plan, as well as its own rules, to avoid trading at prices worse than those offered by other exchanges, including prices in pennies.

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of 2,050,000 messages per second, which is scheduled to increase to over 3,000,000 messages per second in January 2010).

[43] *See* NYSE Arca Response, *supra* note 6, at 6 (stating that ''there has been no outcry from vendors or firms in response to quote traffic projections through mid-year 2011, as published by [OPRA]'').

[44] *See* Securities Exchange Act Release No. 56157 (July 27, 2007), 72 FR 42459 (August 2, 2007) (SR–NYSEArca-2007–71) (notice and immediate effectiveness of a proposed rule change to implement the Exchange's quote mitigation strategy); and NYSE Arca Response, *supra* note 6, at 6 (representing that the Exchange will retain and continue to employ its quotation mitigation strategy).

[45] One commenter argues that NYSE Arca's proposal is confusing to investors because it will provide for 355 classes to be quoted in pennies and nickels, three classes to be quoted in all pennies, and the rest of the classes to be quoted in nickels and dimes (*see* CBOE Letter, *supra* note 5, at 2), while another commenter states its belief that a single break point for all classes will provide consistency for the industry and investors (*see* LiquidPoint Letter, *supra* note 5, at 3). The Commission does not believe that NYSE Arca's proposal will result in increased confusion. The Commission notes that the proposal will continue the same breakpoint as the existing Pilot, and thus changes to the structure of the Pilot will be minimal. *See* Ameritrade Letter, *supra* note 5, at 3 (noting that the current Pilot program carries a $3.00 breakpoint and thus changes to the pilot securities would be minimal, thus reducing any investor confusion related to the expansion of the Pilot).

[46] One commenter that supports retaining the $3 breakpoint noted that the majority of its customers' trades occur at or below the $3 breakpoint. This commenter believes that a $3 breakpoint is in the best interest of retail investors. *See* Ameritrade Letter, *supra* note 5, at 2–3 (stating that in April 2009, 71% of its customers' trades and 89% of its customers' volume was in series priced up to $3, and that in May 2009, 74% of its customers' trades and 88% of its customers' volume was in series priced up to $3). Another commenter that supports quoting in one-cent increments in all series in all options classes included in the Pilot believes that doing so would make the benefits of penny pricing available to more options. *See* GETCO Letter, *supra* note 5, at 3. Further, the Commission's Office of Economic Analysis estimates that, under NYSE Arca's proposal, approximately 70% of options contract volume would be quoted in one-cent increments. *See* OEA Memo 2, *supra* note 39.

One commenter noted that if the Pilot were rolled back, as is proposed by several of the commenters, this would eliminate much of the benefit experienced by the options markets and customers due to the Pilot. *See* GETCO Letter, *supra* note 5, at 3. Another commenter similarly stated that a rollback of the Pilot would be ''unfortunate'' given the benefits from the Pilot that participants have realized and recommended that the Pilot move forward. *See* BATS Letter, *supra* note 5, at 2.

[47] *See* Ameritrade Letter, *supra* note 5, at 3 (also noting its belief that the proposal would lead to investor confusion as it would not be representative of all classes).

[48] *See* Notice, *supra* note 4, at 4.

[49] One commenter believes the incidence of locked markets in Pilot classes has increased since the introduction of quoting in pennies. In addition, this commenter believes that an expansion of the Pilot could exacerbate the friction that it believes exists between competing payment models among the exchanges. The commenter believes that this issue could be mitigated if the Commission adopts the Linkage Plan. *See* Ameritrade Letter, *supra* note 5, at 2. The Commission notes that it approved the Linkage Plan on July 30, 2009. *See* Securities Exchange Act Release No. 60405, *supra* note 34. The commenter also urges the Commission to consider expanding the provisions of Rule 610 of Regulation NMS to options trading. *See* Ameritrade Letter, *supra* note 5, at 2. The Commission staff is currently considering the issue of access and access fees in the context of its ongoing consideration of a petition for rulemaking requesting that the Commission impose a cap of $.20 on certain transaction fees. *See* Letter from John C. Nagel, Managing Director & Deputy General Counsel, Citadel, to Nancy M. Morris, Secretary, Commission, dated July 15, 2008.

[50] *See* Securities Exchange Act Release Nos. 60018 (June 1, 2009), 74 FR 27211 (June 8, 2009) and 60146 (June 19, 2009), 74 FR 30346 (June 25, 2009).

[51] *See, e.g.,* ISE Letter, *supra* note 5, at 1 and 3; Nasdaq Letter, *supra* note 5; SIFMA Letter, *supra* note 5, at 5–6; and UBS Letter, *supra* note 5, at 2.

[52] *See, e.g.,* CBOE Letter, *supra* note 5, at 4; LiquidPoint Letter, *supra* note 5, at 2; and UBS Letter, *supra* note 5, at 2.

[53] *See* ISE Letter, *supra* note 5, at 1; and LiquidPoint Letter, *supra* note 5, at 2.

[54] *See* LiquidPoint, *supra* note 5, at 2–3; and Nasdaq Letter, *supra* note 5, at 2. Another commenter further states that multiple plans would subject members and ultimately investors to the elevated costs of excessive systems modifications and personnel training activities. *See* SIFMA Letter, *supra* note 5, at 6.

The continued operation and phased expansion of the Pilot Program will provide further valuable information to the exchanges, the Commission, and others about the impact of penny quoting in the options market. In particular, extending and expanding the Pilot Program as proposed by NYSE Arca will allow further analysis of the impact of penny quoting in the Pilot classes over a longer period of time on, among other things: (1) Spreads; (2) peak quotation rates; (3) quotation message traffic; (4) displayed size; (5) ''depth of book'' liquidity; and (6) market structure. NYSE Arca has committed to provide the Commission with periodic reports, which will analyze the impact of the expanded Pilot Program. The Commission expects the Exchange to include statistical information relating to these factors in its periodic reports.

IV. Partial Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[55] for partially approving the proposed rule change,[56] as modified by Amendment Nos. 1 and 3 thereto, prior to the 30th day after the date of publication in the **Federal Register.** In its proposed rule change, the Exchange proposed that any option class included in the Pilot Program that has been delisted be replaced on a semi-annual basis by the next most actively traded, multiply listed options class that is not yet included in the Pilot, based on trading activity in the previous six months. In Amendment No. 1, the Exchange provided clarification that the Exchange will employ the same parameters to prospective replacement issues as approved and applicable under the Pilot Program, including the exclusion of high-priced underlying securities and indexes. In Amendment No. 3, the Exchange clarified that the threshold for ''high priced'' designation is $200 per share or a calculated index value of 200, at the time of selecting new issues to be included in the Pilot. The Exchange also represented that the threshold and the Exchange's approach for excluding high priced underlying securities is consistent with the Exchange's prior process in determining issues to be included in the Pilot. The Exchange stated that the determination of whether a security is trading above $200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Pilot. These changes clarify the operation of the proposal and do not differ materially from the proposal as noticed in the **Federal Register.** Also, in response to commenters, in Amendment No. 1 the Exchange proposes to delay the start of the phased implementation of the expansion of the Pilot from July 28, 2009 to September 28, 2009. In Amendment No. 3 the Exchange proposed to begin the phased implementation on October 26, 2009. The proposed change to the implementation date is responsive to concerns expressed by commenters. Accordingly, the Commission finds that good cause exists to approve the proposed rule change, as modified by Amendment Nos. 1 and 3, on an accelerated basis.[57]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 3, including whether Amendment Nos. 1 and 3 are consistent with the Act.

The Commission also is soliciting additional comment on NYSE Arca's proposal to quote two classes entirely in pennies, SPY and IWM, in addition to QQQQs. In response to the initial notice of this proposal,[58] the Commission received several comment letters with respect to the portion of the proposal that would allow quoting of all series of options on IWM and SPY in one-cent increments. One commenter supported NYSE Arca's proposal to eliminate a breakpoint for options on these two exchange-traded funds, as a way to expand the benefits of penny quoting to more options,[59] while two other commenters did not support this aspect of NYSE Arca's proposal and question NYSE Arca's basis for the proposal.[60] In particular, one commenter did not find persuasive NYSE Arca's rationale that because IWM and SPY have more series trading at premiums between $3 and $10, the $3 breakpoint should be eliminated, noting that only 11% of IWM's national average daily volume and 18% of SPY's national average daily volume is in series with premiums greater than $3.[61]

The Commission's Office of Economic Analysis estimated that for a four month period earlier this year, approximately 40.9 million contracts for SPY and approximately 4.5 million contracts for IWM traded at premia of $3 or greater, as compared to approximately 2.7 million contracts for QQQQ that traded at premia of $3 or greater.[62] The Commission specifically requests comment on these findings.

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–NYSEArca–2009–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–44. 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 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

[55] 15 U.S.C. 78s(b)(2).

[56] *See supra* 8 and *supra* note 9.

[57] In its proposed rule change, the Exchange proposed to quote SPY and IWM entirely in pennies. In Amendment No. 1, the Exchange stated that this proposed change to the minimum quoting increment in these classes would take place on September 28, 2009. The Commission notes, however, that it is not approving this aspect of the proposal in this order.

[58] *See* Notice, *supra* note 4.

[59] *See* GETCO Letter, *supra* note 5, at 2–3.

[60] *See* CBOE Letter, *supra* note 5, at 2 to 3, and SIFMA Letter, *supra* note 5, at 5.

[61] *See* CBOE Letter, *supra* note 5, at 3. This commenter further noted that the average spread width in series with a premium $3 or greater is $0.27 for SPY and $0.25 for IWM. *Id.*

[62] *See* OEA Memo 2, *supra* note 40 (measuring from February 2, 2009 to May 27, 2009). These numbers represent approximately 29% of contract volume for SPY and 18% of contract volume for IWM.

submissions should refer to File No. SR–NYSEArca-2009–44 and should be submitted on or before October 19, 2009.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[63] that the proposed rule change (SR–NYSEArca–2009–44) as modified by Amendment Nos. 1 and 3 thereto, be, and hereby is, partially approved on an accelerated basis, as discussed above.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–23374 Filed 9–25–09; 8:45 am]

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[63] 15 U.S.C. 78s(b)(2).

[64] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60701; File No. SR–FINRA–2009–014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) in the Consolidated FINRA Rulebook

September 21, 2009.

I. Introduction

On March 24, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'' 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 as part of the process of developing a new consolidated rulebook (the ''Consolidated FINRA Rulebook'').[3] FINRA proposed to adopt NASD Rules 2330(a), 2330(e) and 2330(f) as FINRA Rules 2150(a), 2150(b) and 2150(c), respectively, in the Consolidated FINRA Rulebook, with certain changes as described below.[4] Proposed FINRA Rule 2150 also would take into account certain provisions of NYSE Rule 352. In addition, proposed FINRA Rule 2150 includes a ''Supplementary Material'' section that contains certain clarifications and codifications of existing staff guidance. FINRA further proposed to delete NYSE Rule 352 (with the exception of paragraphs (e), (f) and (g)) [5] from the Transitional Rulebook. The proposed rule change was published for public comment in the **Federal Register** on June 24, 2009.[6] The Commission received no comment letters regarding proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

FINRA proposed to adopt certain paragraphs, as specified below, of NASD Rule 2330 (Customers' Securities or Funds) as FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) in the Consolidated FINRA Rulebook taking into account certain provisions of Incorporated NYSE Rule 352 (Guarantees, Sharing in Accounts, and Loan Arrangements) [7] and to delete NYSE Rule 352, with the exception of NYSE Rules 352(e) (Limitations on Borrowing From or Lending to Customers), 352(f) (Loan Procedures) and 352(g).

The proposed rule change would renumber NASD Rule 2330(a) (Improper Use) as FINRA Rule 2150(a) (Improper Use), NASD Rule 2330(e) (Prohibition Against Guarantees) as FINRA Rule 2150(b) (Prohibition Against Guarantees) and NASD Rule 2330(f) (Sharing in Accounts; Extent Permissible) as FINRA Rule 2150(c) (Sharing in Accounts; Extent Permissible) in the consolidated FINRA rulebook. The proposed rule change also would add a ''Supplementary Material'' section to proposed FINRA Rule 2150 that contains certain clarifications and codifications of existing staff guidance.

A. Improper Use of Customers' Securities or Funds (Proposed FINRA Rule 2150(a))

NASD Rule 2330(a) prohibits members and associated persons from making improper use of a customer's securities or funds. The improper use of customer securities or funds threatens the fundamental relationship between a broker and a customer and undermines the integrity of the securities industry. FINRA proposed to adopt NASD Rule 2330(a) as FINRA Rule 2150(a) in the Consolidated FINRA Rulebook without changes.

B. Prohibition Against Guarantees (Proposed FINRA Rule 2150(b))

NASD Rule 2330(e) prohibits members and their associated persons from guaranteeing a customer against loss in connection with any securities transaction or in any securities account of the customer. The reason for the prohibition is that such guarantees create the expectation that the customer is insulated from market risk intrinsic in securities ownership and may induce the customer to engage in a securities transaction that is not otherwise appropriate for the customer.

FINRA proposed to adopt NASD Rule 2330(e) as FINRA Rule 2150(b) in the Consolidated FINRA Rulebook without changes and delete NYSE Rule 352(a) (Prohibitions Against Guarantees) because its provisions are substantially similar to proposed FINRA Rule 2150(b).

C. Sharing in Accounts (Proposed FINRA Rule 2150(c))

NASD Rule 2330(f) prohibits members and associated persons from sharing in the profits or losses in a customer's account except under certain limited conditions specified in the Rule.

FINRA proposed to adopt NASD Rule 2330(f) as FINRA Rule 2150(c) in the Consolidated FINRA Rulebook, with only minor changes.

FINRA proposed to delete NYSE Rules 352(b), (c) and (d) as they are substantially similar to proposed FINRA Rule 2150(c) or are otherwise incorporated as part of the supplementary material to proposed FINRA Rule 2150.

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

[2] 17 CFR 240.19b–4.

[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* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] Other provisions that set forth certain financial and operational requirements, including, NASD Rules 2330(b) (General Provisions), 2330(c) (Authorization to Lend), 2330(d) (Segregation and Identification of Securities) and Interpretive Material 2330 (Segregation of Customers' Securities) would remain in the Transitional Rulebook to be addressed as part of a later phase of the consolidation process.

[5] NYSE Rules 352(e), 352(f) and 352(g) govern borrowing from or lending to customers. These provisions generally are equivalent to the provisions of NASD Rule 2370 (Borrowing From or Lending to Customers). NASD Rule 2370 and the corresponding NYSE provisions would remain in the Transitional Rulebook to be addressed as part of a later phase of the rulebook consolidation process.

[6] Securities Exchange Act Release No. 60135 (June 18, 2009), 74 FR 30198 (''Notice'').

[7] For convenience, Incorporated NYSE Rule 352 is hereinafter referred to as ''NYSE Rule 352.''