

not receive any additional benefit from having some of its shares listed on the Capital Market.

A company that listed upon emerging from bankruptcy currently pays the minimum annual fee for the year of listing and subsequent two years. Allowing such companies that opt in to the all-inclusive annual fee to also pay the minimum fee on that fee schedule during the same period, and forgiving a portion of the all-inclusive annual fee in certain merger situations where the annual fee is similarly forgiven, is not unreasonable or unfairly discriminatory because these proposed changes extend benefits available to companies under the existing fee schedule to companies that will be on the all-inclusive fee schedule, thereby perpetuating features that the Commission has previously concluded satisfy the statutory requirements. Clarifying when a company receives a credit, instead of a waiver, and which company involved in a merger receives that credit or waiver clarifies Nasdaq's rules and is not unreasonable or unfairly discriminatory because these clarifications give effect to the intent of the current waivers while respecting the difference between the two entities involved in a merger.

Finally, Nasdaq believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act²¹ in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest. Specifically, the fees are designed, in part, to ensure that there are adequate resources for Nasdaq's listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed, and the value provided by each listing. This rule proposal does not burden competition with other listing venues, which are similarly free to set their fees. Further, this proposed rule change would introduce an all-inclusive annual listing fee, which no other

market currently offers and which may therefore increase competition with other listing venues. Nasdaq believes that this innovative fee proposal reflects the existing competition between listing venues and will further enhance such competition. For these reasons, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²² and paragraph (f) of Rule 19b-4 thereunder.²³

At any time within 60 days of the filing of the 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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2014-087 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NASDAQ-2014-087. This file number should be included on the subject line if email 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 10:00 a.m. and 3:00 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-NASDAQ-2014-087 and should be submitted on or before December 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-27879 Filed 11-24-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73640; File No. SR-NYSEMKT-2014-93]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules Concerning Supervision To Harmonize the Rules With Certain Financial Industry Regulatory Authority, Inc. Rules and Making Other Conforming Changes

November 19, 2014.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder,² notice is hereby given that on November 5, 2014, NYSE MKT LLC ("NYSE MKT" or "Exchange") filed with the Securities and Exchange Commission ("SEC") or

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f).

²¹ 15 U.S.C. 78f(b)(5).

“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under Rule 19b-4(f)(6) of the Act,³ which renders the proposal effective upon receipt of this filing by the Commission.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its NYSE MKT rules concerning supervision to harmonize the rules with certain Financial Industry Regulatory Authority, Inc. (“FINRA”) rules and make other conforming change. The text of the proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to amend its rules concerning supervision to harmonize them with certain FINRA rules and make other conforming changes. Set forth below are descriptions of the harmonization process, the current NYSE MKT rules, and the proposed NYSE MKT rules. Specifically, the Exchange proposes to: (1) Adopt new rule text that is substantially similar to FINRA Rules 3110, 3120, 3150, and 3170; (2) delete the following rules: Rule 342—Equities (except for certain text in Rule 342.13—Equities regarding qualifications and exam requirements for individuals with

supervisory responsibilities), Rule 351(e)—Equities, Rule 354—Equities, Rule 401—Equities, and Rule 401A—Equities; and (3) make other conforming changes.⁴

Background

On July 30, 2007, FINRA’s predecessor, the National Association of Securities Dealers, Inc. (“NASD”), and NYSE Regulation, Inc. (“NYSE”) consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Act, New York Stock Exchange LLC (“NYSE”), NYSE, and FINRA entered into an agreement (the “Agreement”) to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for NYSE rules and rule interpretations (“FINRA Incorporated NYSE Rules”).⁵ The Exchange became a party to the Agreement effective December 15, 2008.⁶

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, the Exchange, and NYSE of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.⁷

FINRA recently harmonized NASD and FINRA Incorporated NYSE Rules and interpretations concerning supervision. More particularly, FINRA: (1) Adopted FINRA Rules 3110 and 3120 to largely replace NASD Rules 3010 and 3012, respectively; (2) incorporated into FINRA Rule 3110 and its supplementary material the requirements of NASD IM-1000-4, NASD IM-3010-1, FINRA Incorporated NYSE Rule 401A, and FINRA

Incorporated NYSE Rule 342.21; (3) replaced NASD Rule 3010(b)(2) with new FINRA Rule 3170; (4) replaced NASD Rule 3110(i) with new FINRA Rule 3150; and (5) deleted the following FINRA Incorporated NYSE Rules and NYSE Rule Interpretations: (i) NYSE Rule 342 and related NYSE Rule Interpretations; (ii) NYSE Rule 343 and related NYSE Rule Interpretations; (iii) NYSE Rule 351(e) and related NYSE Rule Interpretation; (iv) NYSE Rule 354; (v) NYSE Rule 401; and (vi) NYSE Rule 401A.⁸

FINRA has announced that the effective date for its rule change will be December 1, 2014. The Exchange proposes to make its proposed rule change effective on the same date as FINRA and will announce the effective date via an Information Memo.⁹

Current Supervision Rules

Rule 342(a)—Equities requires each office, department or business activity of a member or member organization (including foreign incorporated branch offices) to be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and responsibility. The person in charge of a group of employees must reasonably discharge his or her duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer and compliance with securities laws and regulations.

Rule 342(b)—Equities provides that the general partners or directors of each member organization must provide for appropriate supervisory control and must designate a general partner or principal executive to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations. This person must:

- Delegate to qualified principals or employees responsibility and authority

³ See Exchange Act Release No. 71179 (Dec. 23, 2013), 78 FR 79542 (Dec. 30, 2013) (SR-FINRA-2013-025).

⁴ There is one exception. On April 22, 2014, the Commission issued an order approving proposed rule changes that coincided with related changes to Form BR. Specifically, the Exchange deleted Rule 343—Equities, and FINRA deleted the related FINRA Incorporated NYSE Rule and NYSE Rule Interpretations. The proposed changes became effective as of April 7, 2014. See FINRA Regulatory Notices 14-10 and 14-11 and Exchange Act Release No. 71988 (Apr. 22, 2014), 79 FR 23393 (Apr. 28, 2014) (SR-NYSEMKT-2014-34). See also Exchange Act Release No. 73346 (Oct. 14, 2014), 79 FR 62693 (Oct. 20, 2014) (SR-NYSEMKT-2014-88) (conforming amendments related to the deletion of NYSE MKT Rule 343—Equities).

⁴ References to rules are to NYSE MKT rules unless otherwise indicated.

⁵ See Exchange Act Release Nos. 56148 (Jul. 26, 2007), 72 FR 42146 (Aug. 1, 2007) (File No. 4-544) (order approving the Agreement); 56147 (Jul. 26, 2007), 72 FR 42166 (Aug. 1, 2007) (SR-NASD-2007-054) (order approving the incorporation of certain NYSE Rules as “Common Rules”).

⁶ See Exchange Act Release No. 60409 (Jul. 30, 2009), 74 FR 39353 (Aug. 6, 2009) (File No. 4-587) (order approving the amended and restated Agreement, adding the Exchange as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or the Exchange to the substance of any of the Common Rules.

⁷ FINRA’s rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, see FINRA Information Notice, March 12, 2008.

³ 17 CFR 240.19b-4(f)(6).

for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control; and

- Establish a separate system of follow-up and review to determine that the delegated authority and responsibility is being properly exercised.

Rule 342(c)—Equities provides that prior consent of the Exchange must be obtained for each office established by a member or member organization, other than a main office.

Rule 342(d)—Equities provides that qualified persons acceptable to the Exchange must be in charge of:

- Any office of a member or member organization;
- Any regional or other group of offices; and
- Any sales department or activity.

Rule 342(e)—Equities provides that the amounts and types of credit extended by a member organization must be supervised by members or principal executives qualified by experience for such control in the types of business in which the member organization extends credit.

Supplementary Materials 342.10–.30—Equities provide additional guidance relating to the definition of branch offices, annual fees, foreign branch offices, the acceptability of supervisors, the experience of senior management, small offices, the supervision of registered representatives, the review of communications with the public, bookkeeping, the supervision of producing managers, information requests, trade review and investigation, the definition of related financial instrument, internal controls, annual branch office inspection, risk-based surveillance and branch office identification, criteria for inspection programs, and annual reports and certifications.

Rule 351(e)—Equities provides that each member not associated with a member organization and a principal executive of each member organization must take one or both of the following two actions in relation to the trades that are subject to the review procedures required by Rule 342.21(a)—Equities:

- Sign a written statement in the form specified in the rule and deliver it to the Exchange by the 15th day of the month following the calendar quarter in which the trade occurred.

- As to any such trade that is the subject of an internal investigation pursuant to Rule 342.21(b)—Equities, but has not been both resolved and included in the written statement, report in writing to the Exchange:

- The commencement of the internal investigation, the identity of the trade and the reason why the trade could not be the subject of the written statement (report by the 15th day of the month, following the calendar quarter in which the trade occurred);

- the quarterly progress of each open investigation (report by the 15th day of the month following the quarter); and

- the completion of the investigation, detailing the methodology and results of the investigation, any internal disciplinary action taken, and any referral of the matter to the Exchange, another self-regulatory organization (“SRO”), the Commission or another federal agency, and including, where no internal disciplinary action has been taken and no such referral has been made, a written statement in relation to the trade in the form specified below (report within one week after completion of the investigation).

Rule 351(e)—Equities also provides that when a statement pertains to one or more trades that have been the subject of an internal investigation pursuant to Rule 342.21(b)—Equities but as to which no internal disciplinary action has been taken and no referral of the matter to the Exchange, another SRO, or a federal agency has been made, the written statement must also refer to the particular trade(s) (rather than to the trades of a particular calendar quarter) and must omit the clause excepting trades reported as the subject of an investigation.

Rule 354(a)—Equities provides that, by April 1 of each year, each member organization must submit a copy of its Rule 342.30—Equities annual report on supervision and compliance to its control person(s) or, if the member organization has no control person, to the audit committee of its Board of Directors or its equivalent committee or group. In the case of a control person that is an organization (a “controlling organization”), the member organization must submit the report to the general counsel of the controlling organization and to the audit committee of the controlling organization’s Board of Directors or its equivalent committee or group.

Rule 354(b)—Equities provides that, for the purpose of Rule 354(a)—Equities, “control person” means a person who controls the member organization within the meaning of Rule 2—Equities otherwise than solely by virtue of being a director, general partner, or principal executive (or person occupying a similar status or performing similar functions) of the member organization.

Rule 401(b)—Equities provides that each member and member organization must maintain written policies and procedures, administered pursuant to the internal control requirements prescribed under Rule 342.23—Equities, specifically with respect to the following activities:

- Transmittals of funds (*e.g.*, wires, checks, etc.) or securities:
 - from customer accounts to third-party accounts (*i.e.*, a transmittal that would result in a change of beneficial ownership);
 - from customer accounts to outside entities (*e.g.*, banks, investment companies, etc.);
 - from customer accounts to locations other than a customer’s primary residence (*e.g.*, post office box, “in care of” accounts, alternate address, etc.); and
 - between customers and registered representatives (including the hand-delivery of checks).
- Customer changes of address.
- Customer changes of investment objectives.

The policies and procedures required under Rule 401(b)(1), (2), and (3)—Equities must include a means/method of customer confirmation, notification, or follow-up that can be documented.

Rule 401A(a)—Equities provides that, for every customer complaint they receive that is subject to the reporting requirements of Rule 4530(d)—Equities,¹⁰ members and member organizations must:

- Acknowledge receipt of the complaint within 15 business days of receiving it, and
- Respond to the issues raised in the complaint within a reasonable period of time.

Rule 401A(b)—Equities provides that each acknowledgement and response required by this rule must be conveyed to the complaining customer by an appropriate method. More specifically:

- Acknowledgements and responses to written complaints must be either:
 - in writing, mailed to the complaining customer’s last known address, or
 - electronically transmitted to the email address from which the complaint

¹⁰ Originally, firms had to acknowledge and respond to both written and oral customer complaints. However, as part of the effort to harmonize the NASD and NYSE MKT rules in the interim period before completion of the Consolidated FINRA Rulebook, current Rule 4530(d)—Equities was amended to limit the definition of “customer complaint” to include only written complaints, thereby making the definition substantially similar to that in FINRA Rule 4530(d). The Exchange adopted the text of FINRA Rule 4530 to replace comparable provisions in Rule 351. See Exchange Act Release No. 64784 (Jun. 30, 2011), 76 FR 39947 (Jul. 7, 2011) (SR-NYSEAmex-2011-42).

was sent (method only permissible for electronically transmitted complaints).

- Acknowledgements and responses to verbal complaints must be either:
 - in writing, mailed to the complaining customer's last known address, or
 - made verbally to the complaining customer, and recorded in a log of verbal acknowledgements and responses to customer complaints.

Rule 401A(c)—Equities provides that written records of the acknowledgements, responses, and logs required by this rule must be retained in accordance with Rule 440—Equities.

Proposed Rule Change

The Exchange proposes to delete the foregoing rules relating to supervision (except as noted below), which are, in main part, either duplicative of, or do not align with, the proposed supervision requirements discussed below, and adopt the text of FINRA Rules 3110, 3120, 3150, and 3170, subject to certain technical and conforming changes.¹¹ As noted in Rule 0—Equities, NYSE MKT rules that refer to NYSE, NYSE staff or departments, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the Agreement, as applicable.

The Exchange proposes to retain the requirements contained in Rule 342.13(a) and (b)—Equities regarding qualifications and exam requirements for individuals with supervisory responsibilities. The proposed new version of Rule 342(a)—Equities, corresponding to current Rule 342.13(a)—Equities, would provide that any member or employee identified as in charge of: (1) any office of a member or member organization, (2) any regional or other group of offices, or (3) any sales department or activity must have a creditable record and pass the General Securities Sales Supervisor Qualification Examination (Series 9/10) or another examination acceptable to the Exchange. The proposed new version of Rule 342(a) would also adopt the current requirement contained in the Interpretation to NYSE Rule 342¹²

that every branch office or sales manager must have at least three years' experience as a registered representative or substantial experience in a related sales or managerial position and must pass the Series 9/10.

Further, the proposed new version of Rule 342(a)—Equities would adopt the current examples of a related sales or managerial position in the Interpretation to NYSE Rule 342 and the requirement that in order to qualify as a supervisory person, a principal executive¹³ should have at least three years' experience as a registered representative unless granted an exception. The proposed new version of Rule 342(a)—Equities would also incorporate from the related NYSE Interpretation that the General Securities Principal Examination (Series 24) is an acceptable alternative for persons whose duties do not include the supervision of options or municipal securities sales activity and that the examination requirement may be waived at the discretion of the Exchange. Finally, the proposed new version of Rule 342(a)—Equities would incorporate the requirement from the NYSE Interpretation that in the case of a firm applying for registered broker-dealer status, the supervisory candidates must have at least one year of direct experience or two years of related experience in the subject area to be supervised in addition to the requirements outlined above.

The proposed new version of Rule 342(b)—Equities, corresponding to current Rule 342.13(b)—Equities, would provide that the individuals designated as having day-to-day compliance responsibilities for their respective firms, or who supervise ten or more persons engaged in compliance activities, have the knowledge necessary to carry out their job responsibilities (*i.e.*, overall knowledge of the securities laws and Exchange rules) and pass the Compliance Official Examination (the "Series 14") or, in the case of compliance supervisors of member organizations that conduct a Designated Market Maker ("DMM") business, the DMM Compliance Official Examination

(the "Series 14A"). The proposed new version of Rule 342(b)—Equities would also adopt the current requirement in the Interpretation to NYSE Rule 342 that member organizations engaged in a public business in addition to a DMM business must have a qualified compliance supervisor who has passed both the Series 14 and Series 14A Examinations. Finally, the proposed new version of Rule 342(b)—Equities would incorporate the following exemptions from the Series 14 Examination requirement contained in the Interpretation to NYSE Rule 342:

- Compliance supervisors at member organizations whose activities are solely related to execution of orders on the Exchange trading floor and who do not conduct any business with the public;
- Compliance supervisors at member organizations whose commissions and other fees from public business (retail and institutional) are under \$500,000 in the preceding calendar year and who introduce to another broker-dealer; and
- Supervisors of ten or more persons whose compliance responsibilities are limited to the registration of member organization employees with the various regulators and SROs.

Proposed Rule 3110—Equities (Supervision)

Proposed Rule 3110—Equities is based primarily on requirements in the FINRA rulebook and current Rule 342—Equities relating to, among other things, supervisory systems, written procedures, internal inspections, and review of correspondence.

Proposed Rule 3110(a)—Equities

Proposed Rule 3110(a)—Equities would cover supervisory systems and would require each member organization to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. Under the proposed rule, final responsibility for proper supervision would rest with the member organization. In addition, a member organization's supervisory system would be required to provide, at a minimum, for the following:

- The establishment and maintenance of written procedures as required by proposed Rule 3110—Equities.
- The designation, where applicable, of an appropriately registered principal with authority to carry out the supervisory responsibilities of the member organization for each type of business in which it engages for which

¹¹ The technical and conforming changes are that the Exchange would: (1) Substitute the term "member organization" for "member," (2) substitute the term "Exchange" for "FINRA," (3) change certain cross-references to FINRA rules to cross-references to Exchange rules, and (4) add supplementary material to define the term "associated person" in proposed Rules 3110—Equities, 3120—Equities, and 3150—Equities.

¹² Exchange Rule 342 is based on the counterpart rule of its NYSE affiliate, which recently amended its rules concerning supervision to harmonize with those of FINRA. See Exchange Act Release No.

73554 (Nov. 6, 2014), 79 FR 67508 (Nov. 13, 2014) (SR-NYSE-2014-56) (incorporating into NYSE Rule 342 the requirement from the related NYSE Interpretation that every branch office or sales manager must have at least three years' experience as a registered representative or substantial experience in a related sales or managerial position and must pass the Series 9/10).

¹³ The Interpretation to NYSE Rule 342 refers to "allied members," a category the NYSE and the Exchange eliminated and replaced with "principal executive," which has substantially the same meaning. See Exchange Act Release Nos. 58549 (Sept. 15, 2008), 73 FR 54444 (Sept. 19, 2008) (SR-NYSE-2008-80); 559022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10).

registration as a broker-dealer is required.

- The registration and designation as a branch office or an office of supervisory jurisdiction (“OSJ”) of each location, including the main office, that meets the definitions contained in proposed Rule 3110(e)—Equities.¹⁴

- The designation of one or more appropriately registered principals in each OSJ and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the member organization.

- The assignment of each registered person to an appropriately registered representative or principal who would be responsible for supervising that person’s activities.

- The use of reasonable efforts to determine that all supervisory personnel are qualified, either by virtue of experience or training, to carry out their assigned responsibilities.

- The participation of each registered representative and registered principal, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the member organization at which compliance matters relevant to the activities of the representative and principal are discussed, which may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative’s or principal’s place of business.

Proposed Rule 3110(b)—Equities

In proposed Rule 3110(b)—Equities, the Exchange proposes to consolidate provisions from current Rule 401A—Equities relating to the review of customer complaints, with various provisions and rules from the FINRA rulebook that currently require written procedures, including provisions relating to the supervision and review of registered representatives’ transactions and correspondence. In addition, proposed supplementary material, which is discussed in detail below, would codify and expand guidance in these areas.

Proposed Rule 3110(b)(1)—Equities would address written procedures and would require each member organization to establish, maintain, and enforce written procedures to supervise the types of business in which it

engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations and applicable Exchange rules.

Under proposed Rule 3110(b)(2)—Equities, the supervisory procedures required by proposed Rule 3110(b)—Equities would include procedures for the review by a registered principal, evidenced in writing, of all transactions relating to the investment banking or securities business of the member organization. Consistent with FINRA Rule 3110(b)(3), proposed Rule 3110(b)(3)—Equities would be marked “Reserved.”

Under proposed Rule 3110(b)(4)—Equities, the supervisory procedures required by proposed Rule 3110(b)—Equities would also include procedures for the review of incoming and outgoing written (including electronic) correspondence and internal communications relating to the member organization’s investment banking or securities business and be appropriate for the member organization’s business, size, structure, and customers. The supervisory procedures would require the member organization’s review of:

- Incoming and outgoing written (including electronic) correspondence to properly identify and handle in accordance with firm procedures, customer complaints, instructions, funds and securities, and communications that are of a subject matter that require review under Exchange rules and federal securities laws; and

- Internal communications to properly identify those communications that are of a subject matter that require review under Exchange rules and federal securities laws.

Such reviews must be conducted by a registered principal and must be evidenced in writing, either electronically or on paper. Those communications include (without limitation):

- Communications between non-research and research departments concerning a research report’s contents (Rule 472(b)(3)—Equities);

- Certain communications with the public that require a principal’s pre-approval (Rule 2210—Equities); and

- The identification and reporting to the Exchange of customer complaints (Rule 4530—Equities).¹⁵

Proposed Rule 3110(b)(5)—Equities, would require a member organization’s supervisory procedures to include procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints, essentially incorporating the customer complaint requirement in current Rule 401A—Equities, including the limitation on including only written (including electronic) customer complaints. The Exchange believes that oral complaints are difficult to capture and assess, and that they raise competing views as to the substance of the complaint being alleged. Consequently, the Exchange believes that oral complaints do not lend themselves as effectively to a review program as written complaints, which are more readily documented and retained. However, the Exchange reminds member organizations that the failure to address any customer complaint, written or oral, may be a violation of Rule 2010—Equities.

Under proposed Rule 3110(b)(6)—Equities, the supervisory procedures required by proposed Rule 3110(b)—Equities must set forth the supervisory system established by the member organization pursuant to proposed Rule 3110(a)—Equities, and would include:

- The titles, registration status, and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, applicable securities laws and regulations, and Exchange rules.

- A record, preserved by the member organization for a period of not less than three years, the first two years in an easily accessible place, of the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective.

- Procedures prohibiting associated persons who perform a supervisory function from:

- Supervising their own activities; and

- Reporting to, or having their compensation or continued employment determined by, a person or persons they are supervising.

- If a member organization determines, with respect to any of its supervisory personnel, that compliance with the preceding two bullets is not possible because of the member organization’s size or a supervisory personnel’s position within the firm, the member organization would be required to document:

- The factors the member organization used to reach such determination; and

¹⁴ Although to date the Exchange and FINRA have used the same definition for “branch office,” the Exchange has not previously designated OSJs. As such, the requirements relating to OSJs described hereinafter would be new for member organizations.

¹⁵ With respect to customer complaints, proposed Rule 3110(b)(5)—Equities also would affirmatively require members to capture, acknowledge, and respond to all written (including electronic) customer complaints.

- How the supervisory arrangement with respect to such supervisory personnel otherwise complies with proposed Rule 3110(a)—Equities.

- Procedures reasonably designed to prevent the supervisory system required pursuant to proposed Rule 3110(a)—Equities from being compromised due to the conflicts of interest that may be present with respect to the associated person being supervised, including the position of such person, the revenue such person generates for the firm, or any compensation that the associated person conducting the supervision may derive from the associated person being supervised.¹⁶

Proposed Rule 3110(b)(7)—Equities would require a member organization to keep and maintain a copy of its written supervisory procedures, or such relevant portions, in each OSJ and at each location where supervisory activities are conducted on behalf of the member organization. Each member organization would be required to promptly amend its written supervisory procedures to reflect changes in applicable securities laws or regulations, including Exchange rules, and as changes occur in its supervisory system. Each member organization would be responsible for promptly communicating its written supervisory procedures and amendments to all associated persons to whom such written supervisory procedures and amendments are relevant based on their activities and responsibilities.

Proposed Rule 3110(c)—Equities

Proposed Rule 3110(c)—Equities would cover internal inspections. Proposed Rule 3110(c)(1)—Equities would require each member organization to conduct a review, at least annually (on a calendar-year basis), of the businesses in which it engages. The review must be reasonably designed to assist the member organization in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable Exchange rules. Each member organization would be required to review the activities of each office, which would include the periodic examination of customer accounts to detect and prevent irregularities or abuses. Each member organization would also be required to retain a written record of the date upon which each review and inspection is conducted.

In addition, proposed Rule 3110(c)(1)—Equities would require each member organization to inspect at least annually (on a calendar-year basis) every OSJ and any branch office that supervises one or more non-branch locations. Each member organization would also be required to inspect at least every three years every branch office that does not supervise one or more non-branch locations. In establishing how often to inspect each non-supervisory branch office, the member organization would be required to consider whether the nature and complexity of the securities activities for which the location is responsible, the volume of business done at the location, and the number of associated persons assigned to the location require the non-supervisory branch office to be inspected more frequently than every three years. If a member organization establishes a more frequent inspection cycle, the member organization would be required to ensure that at least every three years, the inspection requirements enumerated in proposed Rule 3110(c)(2)—Equities have been met. The member organization's written supervisory and inspection procedures would have to set forth the non-supervisory branch office examination cycle, an explanation of the factors the member organization used in determining the frequency of the examinations in the cycle, and the manner in which a member organization would comply with proposed Rule 3110(c)(2)—Equities if using more frequent inspections than every three years.

Under proposed Rule 3110(c)(1)—Equities, each member organization would also be required to inspect every non-branch location on a regular, periodic schedule. In establishing such schedule, the member organization would be required to consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers. The member organization's written supervisory and inspection procedures would have to set forth the schedule and an explanation regarding how the member organization determined the frequency of the examination.

Proposed Rule 3110(c)(2)—Equities would require that the inspection and review by a member organization pursuant to proposed Rule 3110(c)(1)—Equities be reduced to a written report and kept on file by the member organization for a minimum of three years, unless the inspection is being conducted pursuant to proposed Rule 3110(c)(1)(C)—Equities and the regular

periodic schedule is longer than a three-year cycle, in which case the report would have to be kept on file at least until the next inspection report has been written. If applicable to the location being inspected, proposed Rule 3110(c)(2)(A)—Equities would require that location's written inspection report to include, without limitation, the testing and verification of the member organization's policies and procedures, including supervisory policies and procedures in the following areas:

- Safeguarding of customer funds and securities;
- Maintaining books and records;
- Supervision of supervisory personnel;
- Transmittals of funds (*e.g.*, wires or checks, etc.) or securities from customers to third-party accounts; from customer accounts to outside entities (*e.g.*, banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (*e.g.*, post office box, "in care of" accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks; and
- Changes of customer account information, including address and investment objectives changes and validation of such changes.

Under proposed Rule 3110(c)(2)(B)—Equities, the policies and procedures regarding transmittals of funds must include a means or method of customer confirmation, notification, or follow-up that can be documented. Member organizations could use reasonable risk-based criteria to determine the authenticity of the transmittal instructions. Under proposed Rule 3110(c)(2)(C)—Equities, the policies and procedures regarding changes in customer account information would have to include, for each change processed, a means or method of customer confirmation, notification, or follow-up that can be documented and that complies with Rules 17a-3(a)(17)(i)(B)(2) and 17a-3(a)(17)(i)(B)(3) under the Act.¹⁷

Pursuant to proposed Rule 3110(c)(2)(D)—Equities, if a member organization does not engage in all of the activities enumerated in the bullets immediately above at the location being inspected, the member organization would be required to identify those activities in the member organization's written supervisory procedures or the location's written inspection report and document in the member organization's written supervisory procedures or the

¹⁶ The Exchange currently does not have a comparable rule.

¹⁷ 17 CFR 240.17a-3(a)(17)(i)(B)(2) and 17 CFR 240.17a-3(a)(17)(i)(B)(3).

location's written inspection report that supervisory policies and procedures for such activities must be in place at that location before the member organization can engage in them.

Under proposed Rule 3110(c)(3)—Equities, for each inspection conducted pursuant to the proposed rule, a member organization would be required to:

- Have procedures reasonably designed to prevent the effectiveness of inspections from being compromised due to conflicts of interest that may be present with respect to the location being inspected, including but not limited to, economic, commercial, or financial interests in the associated persons and businesses being inspected; and

- Ensure that the person conducting an inspection is not an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to the location.¹⁸

By way of comparison, under current Rules 342.24—Equities and 342.25—Equities, each branch office must be inspected annually, unless the member organization obtained an exemption by submitting to the Exchange written policies and procedures for systematic risk-based surveillance of its branch offices, in which case each branch office must be inspected at least every three years. The proposed subject matter requirements for inspection reports are substantially the same as the current subject matter requirements.

Proposed Rule 3110(d)—Equities

Section 15(g) of the Act, adopted as part of the Insider Trading and Securities Fraud Enforcement Act of 1988,¹⁹ requires every registered broker or dealer to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the broker or dealer or any associated person of the broker or dealer.²⁰ Current Rule 342.21—Equities sets forth specific supervisory procedures for compliance with Section 15(g) by requiring firms to review trades in Exchange-listed or Exchange-traded

securities and related financial instruments that are effected for the member organization's account or for the accounts of the member organization's employees and family members. Current Rule 342.21—Equities also requires member organizations to promptly conduct an internal investigation into any trade the firm identifies that may have violated insider trading laws or rules.

Proposed Rule 3110(d)—Equities incorporates provisions of current Rule 342.21—Equities, with some modifications, and extends the requirement beyond Exchange-listed and Exchange-traded securities and related financial instruments to cover all securities.

Proposed Rule 3110(d)—Equities would cover transaction reviews and investigations. Proposed Rule 3110(d)(1)—Equities would require each member organization to include in its supervisory procedures a process for the review of securities transactions reasonably designed to identify trades that may violate the provisions of the Act, the rules thereunder, or Exchange rules prohibiting insider trading and manipulative and deceptive devices that are effected for the:

- Accounts of the member organization;
- Accounts introduced or carried by the member organization in which a person associated with the member organization has a beneficial interest or the authority to make investment decisions;
- Accounts of a person associated with the member organization that are disclosed to the member organization pursuant to Rule 407—Equities or NASD Rule 3050, as applicable; and
- Covered accounts.

Under proposed Rule 3110(d)(2)—Equities, each member organization would be required to promptly conduct an internal investigation into any such trade to determine whether a violation of those laws or rules has occurred.

In addition, under proposed Rule 3110(d)(3)—Equities, a member organization engaging in investment banking services would be required to file written reports with the Exchange, signed by a senior officer of the member organization, at such times and, without limitation, including such content, as follows:

- Within ten business days of the end of each calendar quarter, a written report describing each internal investigation initiated in the previous calendar quarter pursuant to proposed Rule 3110(d)(2)—Equities, including the identity of the member organization, the date each internal investigation

commenced, the status of each open internal investigation, the resolution of any internal investigation reached during the previous calendar quarter, and, with respect to each internal investigation, the identity of the security, trades, accounts, associated persons of the member organization, or associated person of the member organization's family members holding a covered account, under review, and that includes a copy of the member organization's policies and procedures required by proposed Rule 3110(d)(1)—Equities.

- Within five business days of completion of an internal investigation pursuant to proposed Rule 3110(d)(2)—Equities in which it was determined that a violation of the provisions of the Act, the rules thereunder, or Exchange rules prohibiting insider trading and manipulative and deceptive devices had occurred, a written report detailing the completion of the investigation, including the results of the investigation, any internal disciplinary action taken, and any referral of the matter to the Exchange, another SRO, the SEC, or any other federal, state, or international regulatory authority.

For purposes of proposed Rule 3110(d)(4)—Equities, the following definitions would apply:

- The term “covered account” would include any account introduced or carried by the member organization that is held by:
 - The spouse of a person associated with the member organization;
 - A child of the person associated with the member organization or such person's spouse, provided that the child resides in the same household as or is financially dependent upon the person associated with the member organization;
- Any other related individual over whose account the person associated with the member organization has control; or
- Any other individual over whose account the associated person of the member organization has control and to whose financial support such person materially contributes.

- The term “investment banking services” would include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer, or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.

¹⁸ If a member organization determines that compliance with this requirement is not possible either because of a member organization's size or its business model, the member organization would be required to document in the inspection report both the factors the member organization used to make its determination and how the inspection otherwise complies with proposed Rule 3110(c)(1)—Equities.

¹⁹ See Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. 100–704, 102 Stat. 4677.

²⁰ 15 U.S.C. 78o(g).

Proposed Rule 3110(e)—Equities

Proposed Rule 3110(e)—Equities would define “OSJ” and “branch office.” As noted above, “OSJ” would be a new designation for the Exchange and the definition of the term would substantially mirror FINRA’s definition. The term “OSJ” would mean any office of a member organization at which any one or more of the following functions take place:

- Order execution or market making;
- Structuring of public offerings or private placements;
- Maintaining custody of customers’ funds or securities;
- Final acceptance (approval) of new accounts on behalf of the member organization;
- Review and endorsement of customer orders;
- Final approval of retail communications for use by persons associated with the member organization, pursuant to Rule 2210(b)(1)—Equities, except for an office that solely conducts final approval of research reports; or
- Responsibility for supervising the activities of persons associated with the member organization at one or more other branch offices of the member organization.

The definition of “branch office” would be substantially the same as current Rule 342.10—Equities. It would mean any location where one or more associated persons of a member organization regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such, excluding:

- Any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;
- Any location that is the associated person’s primary residence, provided that:

- Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

- The location is not held out to the public as an office and the associated person does not meet with customers at the location;

- Neither customer funds nor securities are handled at that location;
- The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;

- The associated person’s correspondence and communications with the public are subject to the firm’s supervision in accordance with proposed Rule 3110—Equities;

- Electronic communications (e.g., email) are made through the member organization’s electronic system;

- All orders are entered through the designated branch office or an electronic system established by the member organization that is reviewable at the branch office;

- Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member organization; and

- A list of the residence locations is maintained by the member organization.

- Any location, other than a primary residence, that is used for securities business for less than 30 business days²¹ in any one calendar year, provided the member organization complies with the first eight of the nine immediately preceding bullet points;

- Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;²²

- Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;

- The floor of a registered national securities exchange where a member organization conducts a direct access business with public customers; or

- A temporary location established in response to the implementation of a business continuity plan.

Notwithstanding the exclusions for branch offices described above, any location that is responsible for supervising the activities of persons associated with the member organization at one or more non-branch

²¹ The term “business day” would not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

²² Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules and regulations and applicable rules and regulations of other SROs, and securities and banking regulators could be displayed and would not be deemed “holding out” for purposes of this section.

locations of the member organization would be considered a branch office.

Proposed Supplementary Materials to Proposed Rule 3110—Equities

Proposed Supplementary Material .01 to Rule 3110—Equities would require a member organization’s main office location to be registered and designated as a branch office or OSJ if it meets the definitions of a “branch office” or “office of supervisory jurisdiction” as set forth in proposed Rule 3110(e)—Equities. In general, the nature of activities conducted at a main office will satisfy the requirements of such terms.

Proposed Supplementary Material .02 to Rule 3110—Equities would provide that, in addition to the locations that meet the definition of OSJ in proposed Rule 3110(e)—Equities, each member organization must also register and designate other offices as OSJs as is necessary to supervise its associated persons in accordance with the standards set forth in proposed Rule 3110—Equities. In making a determination as to whether to designate a location as an OSJ, the member organization should consider the following factors:

- Whether registered persons at the location engage in retail sales or other activities involving regular contact with public customers;

- Whether a substantial number of registered persons conduct securities activities at, or are otherwise supervised from, such location;

- Whether the location is geographically distant from another OSJ of the firm;

- Whether the member organization’s registered persons are geographically dispersed; and

- Whether the securities activities at such location are diverse or complex.

Proposed Supplementary Material .03 to Rule 3110—Equities would provide additional guidance relating to proposed Rule 3110(a)(4)—Equities, which would require a member organization to designate one or more appropriately registered principals in each OSJ with the authority to carry out the supervisory responsibilities assigned to that office (“on-site principal”). The proposed Supplementary Material would provide that the designated on-site principal for each OSJ must have a physical presence, on a regular and routine basis, at each OSJ for which the principal has supervisory responsibilities. Consequently, there would be a general presumption that a principal will not be designated and assigned to be the on-site principal pursuant to proposed Rule 3110(a)(4)—

Equities to supervise more than one OSJ. If a member organization determines it is necessary to designate and assign one appropriately registered principal to be the on-site principal pursuant to proposed Rule 3110(a)(4)—Equities to supervise two or more OSJs, the member organization would be required to take into consideration, among others, the following factors:

- Whether the on-site principal is qualified by virtue of experience and training to supervise the activities and associated persons in each location;
- Whether the on-site principal has the capacity and time to supervise the activities and associated persons in each location;
- Whether the on-site principal is a producing registered representative;
- Whether the OSJ locations are in sufficiently close proximity to ensure that the on-site principal is physically present at each location on a regular and routine basis; and
- The nature of activities at each location, including size and number of associated persons, scope of business activities, the nature and complexity of products and services offered, volume of business done, the disciplinary history of persons assigned to such locations, and any other indicators of irregularities or misconduct.

The proposed Supplementary Material would provide that a member organization must establish, maintain, and enforce written supervisory procedures regarding the supervision of all OSJs. In all cases where a member organization designates and assigns one on-site principal to supervise more than one OSJ, the member organization would be required to document in the member organization's written supervisory and inspection procedures the factors used to determine why the member organization considers such supervisory structure to be reasonable, and the determination by the member organization will be subject to scrutiny.

Proposed Supplementary Material .04 to Rule 3110—Equities would provide that a member organization is not required to conduct in-person meetings with each registered person or group of registered persons to comply with the annual compliance meeting (or interview) required by proposed Rule 3110(a)(7)—Equities. A member organization that chooses to conduct compliance meetings using other methods (e.g., on-demand webcast or course, video conference, interactive classroom setting, telephone, or other electronic means) would be required to ensure, at a minimum, that each registered person attends the entire meeting (e.g., an on-demand annual

compliance webcast would require each registered person to use a unique user ID and password to gain access and use a technology platform to track the time spent on the webcast, provide click-as-you-go confirmation, and have an attestation of completion at the end of a webcast) and is able to ask questions regarding the presentation and receive answers in a timely fashion (e.g., an on-demand annual compliance webcast that allows registered persons to ask questions via an email to a presenter or a centralized address or via a telephone hotline and receive timely responses directly or view such responses on the member organization's intranet site).

Proposed Supplementary Material .05 to Rule 3110—Equities would provide that a member organization could use a risk-based review system to comply with proposed Rule 3110(b)(2)—Equities' requirement that a registered principal review all transactions relating to the investment banking or securities business of the member organization. A member organization would not be required to conduct detailed reviews of each transaction if it is using a reasonably designed risk-based review system that provides the member organization with sufficient information that permits it to focus on the areas that pose the greatest numbers and risks of violation.

Proposed Supplementary Material .06 to Rule 3110—Equities would provide that, by employing risk-based principles, a member organization must decide the extent to which additional policies and procedures for the review of:

- Incoming and outgoing written (including electronic) correspondence that fall outside of the subject matters listed in proposed Rule 3110(b)(4)—Equities are necessary for its business and structure. If a member organization's procedures do not require that all correspondence be reviewed before use or distribution, the procedures must provide for:
 - The education and training of associated persons regarding the firm's procedures governing correspondence;
 - The documentation of such education and training; and
 - Surveillance and follow-up to ensure that such procedures are implemented and followed.
- Internal communications that are not of a subject matter that require review under Exchange rules and federal securities laws are necessary for its business and structure.

Proposed Supplementary Material .07 to Rule 3110—Equities would provide that the evidence of review required in proposed Rule 3110(b)(4)—Equities

must be chronicled either electronically or on paper and must clearly identify the reviewer, the internal communication or correspondence that was reviewed, the date of review, and the actions taken by the member organization as a result of any significant regulatory issues identified during the review. Merely opening a communication would not be sufficient review.

Proposed Supplementary Material .08 to Rule 3110—Equities would provide that, in the course of the supervision and review of correspondence and internal communications required by proposed Rule 3110(b)(4)—Equities, a supervisor/principal may delegate certain functions to persons who need not be registered. However, the supervisor/principal would remain ultimately responsible for the performance of all necessary supervisory reviews, irrespective of whether he or she delegates functions related to the review. Accordingly, supervisors/principals would have to take reasonable and appropriate action to ensure delegated functions are properly executed and would be required to evidence performance of their procedures sufficiently to demonstrate overall supervisory control.

Proposed Supplementary Material .09 to Rule 3110—Equities would provide that each member organization must retain the internal communications and correspondence of associated persons relating to the member organization's investment banking or securities business for the period of time and accessibility specified in Rule 17a-4(b) under the Act. The names of the persons who prepared outgoing correspondence and who reviewed the correspondence would have to be ascertainable from the retained records, and the retained records would have to be readily available to the Exchange, upon request.

Proposed Supplementary Material .10 to Rule 3110—Equities would provide that a member organization's determination that it is not possible to comply with proposed Rules 3110(b)(6)(C)(i)—Equities or (b)(6)(C)(ii)—Equities prohibiting supervisory personnel from supervising their own activities and from reporting to, or otherwise having compensation or continued employment determined by, a person or persons they are supervising generally will arise in instances where:

- The member organization is a sole proprietor in a single-person firm;
- A registered person is the member organization's most senior executive officer (or similar position); or
- A registered person is one of several of the member organization's most

senior executive officers (or similar positions).

Proposed Supplementary Material .11 to Rule 3110—Equities would provide that a member organization may use electronic media to satisfy its obligation to communicate its written supervisory procedures, and any amendment thereto, pursuant to proposed Rule 3110(b)(7)—Equities, provided that:

- The written supervisory procedures have been promptly communicated to, and are readily accessible by, all associated persons to whom such supervisory procedures apply based on their activities and responsibilities through, for example, the member organization's intranet system;
- All amendments to the written supervisory procedures are promptly posted to the member organization's electronic media;
- Associated persons are notified when amendments relevant to their activities and responsibilities have been made to the written supervisory procedures;
- The member organization has reasonable procedures to monitor and maintain the security of the material posted to ensure that it cannot be altered by unauthorized persons; and
- The member organization retains current and prior versions of its written supervisory procedures in compliance with the applicable record retention requirements of Rule 17a-4(e)(7) under the Act.

Proposed Supplementary Material .12 to Rule 3110—Equities would provide that, in fulfilling its obligations under proposed Rule 3110(c)—Equities, each member organization must conduct a review, at least annually, of the businesses in which it engages. The review would have to be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations and with Exchange rules. Each member organization would be required to establish and maintain supervisory procedures that must take into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of the firm's offices, the nature and complexity of the products and services offered by the firm, the volume of business done, the number of associated persons assigned to a location, the disciplinary history of registered representatives or associated persons, and any indicators of irregularities or misconduct (*i.e.*, "red flags"), etc. The procedures established and reviews conducted would have to provide that the quality of supervision at remote locations is sufficient to

ensure compliance with applicable securities laws and regulations and with Exchange rules. A member organization would have to be especially diligent in establishing procedures and conducting reasonable reviews with respect to a non-branch location where a registered representative engages in securities activities. Based on the factors outlined above, member organizations might need to impose reasonably designed supervisory procedures for certain locations or may need to provide for more frequent reviews of certain locations.

Proposed Supplementary Material .13 to Rule 3110—Equities would provide additional guidance to proposed Rule 3110(c)(1)(C)—Equities, which would require a member organization to inspect on a regular periodic schedule every non-branch location. In establishing a non-branch location inspection schedule, there would be a general presumption that a non-branch location will be inspected at least every three years, even in the absence of any indicators of irregularities or misconduct (*i.e.*, "red flags"). If a member organization establishes a longer periodic inspection schedule, the member organization would be required to document in its written supervisory and inspection procedures the factors used in determining that a longer periodic inspection cycle is appropriate.

Proposed Supplementary Material .14 to Rule 3110—Equities would provide that a member organization's determination that it is not possible to comply with proposed Rule 3110(c)(3)(B)—Equities with respect to who is not allowed to conduct a location's inspection will generally arise in instances where:

- The member organization has only one office; or
- The member organization has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices' branch office manager.

Proposed Supplementary Material .15 to Rule 3110—Equities would provide a definition for "associated person" for the purposes of proposed Rule 3110—Equities.

Proposed Rule 3120—Equities (Supervisory Control System)

Proposed Rule 3120(a)—Equities, which is based on FINRA Rule 3120(a), would provide that each member organization must designate and specifically identify to the Exchange one or more principals who must establish, maintain, and enforce a system of supervisory control policies and procedures that:

- Test and verify that the member organization's supervisory procedures are reasonably designed with respect to the activities of the member organization and its associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules; and
- Create additional or amend supervisory procedures where the need is identified by such testing and verification.

Similar to the requirements of current Rule 342.30—Equities, the designated principal or principals would be required to submit to the member organization's senior management no less than annually, a report detailing each member organization's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

Proposed Rule 3120(b)—Equities would provide that each report provided to senior management pursuant to proposed Rule 3120(a)—Equities in the calendar year following a calendar year in which a member organization reported \$200 million or more in gross revenue must include, to the extent applicable to the member organization's business:

- A tabulation of the reports pertaining to customer complaints and internal investigations made to the Exchange during the preceding year; and
- Discussion of the preceding year's compliance efforts, including procedures and educational programs, in each of the following areas:
 - Trading and market activities;
 - Investment banking activities;
 - Antifraud and sales practices;
 - Finance and operations;
 - Supervision; and
 - Anti-money laundering.

The categories listed above are incorporated from the annual report content requirements of current Rule 342.30—Equities, which apply to all member organizations regardless of revenue. The proposed rule change seeks to mitigate compliance costs and burdens with respect to proposed Rule 3120—Equities' annual reporting requirements by requiring that only member organizations reporting \$200 million or more in gross revenues in the preceding year include in their annual reports supplemental information from current Rule 342.30—Equities' annual report content requirements. The Exchange also believes that the proposed threshold strikes the appropriate balance as it encompasses larger member organizations, member

organizations engaged in significant underwriting activities and substantial trading activities or market making business, and member organizations with extensive sales platforms.

Proposed Rule 3120(c)—Equities would provide that, for purposes of proposed Rule 3120(b)—Equities, “gross revenue” is defined as:

- Total revenue as reported on FOCUS Form Part II or IIA (line item 4030) less commodities revenue (line item 3990), if applicable; or
- Total revenue as reported on FOCUS Form Part II CSE (line item 4030) less, if applicable:
 - Commissions on commodity transactions (line item 3991); and
 - Commodities gains or losses (line items 3924 and 3904).

Proposed Supplementary Material .01 to Rule 3120—Equities would provide a definition for “associated person” for the purposes of proposed Rule 3120—Equities.

Proposed Rule 3150—Equities (Holding of Customer Mail)

Proposed Rule 3150(a)—Equities would provide that a member organization may hold mail for a customer who will not be receiving mail at his or her usual address, provided that:

- The member organization receives written instructions from the customer that include the time period during which the member organization is requested to hold the customer’s mail. If the requested time period included in the instructions is longer than three consecutive months (including any aggregation of time periods from prior requests), the customer’s instructions must include an acceptable reason for the request (*e.g.*, safety or security concerns). Convenience is not an acceptable reason for holding mail longer than three months;
- The member organization:
 - Informs the customer in writing of any alternate methods, such as email or access through the member organization’s Web site, that the customer may use to receive or monitor account activity and information; and
 - Obtains the customer’s confirmation of the receipt of such information; and
- The member organization verifies at reasonable intervals that the customer’s instructions still apply.

Proposed Rule 3150(b)—Equities would provide that, during the time that a member organization is holding mail for a customer, the member organization must be able to communicate with the customer in a timely manner to provide important account information (*e.g.*,

privacy notices and the Securities Investor Protection Corporation information disclosures required by Rule 2266—Equities), as necessary.

Proposed Rule 3150(c)—Equities would provide that a member organization holding a customer’s mail pursuant to proposed Rule 3150—Equities must take actions reasonably designed to ensure that the customer’s mail is not tampered with, held without the customer’s consent, or used by an associated person of the member organization in any manner that would violate Exchange rules or the federal securities laws.

The Exchange currently does not have a rule comparable to proposed Rule 3150—Equities. The Exchange believes that adding proposed Rule 3150—Equities would help protect customers.

Proposed Supplementary Material .01 to Rule 3150—Equities would provide a definition for “associated person” for the purposes of proposed Rule 3150—Equities.

Proposed Rule 3170—Equities (Tape Recording of Registered Persons by Certain Firms)

Proposed Rule 3170(a)—Equities would provide the following definitions for purposes of proposed Rule 3170—Equities:

- The term “registered person” would mean any person registered with the Exchange.
- The term “disciplined firm” would mean:
 - A member organization that, in connection with sales practices involving the offer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry SRO or is subject to an order of the SEC revoking its registration as a broker-dealer;
 - A futures commission merchant or introducing broker that has been formally charged by either the Commodity Futures Trading Commission or a registered futures association with deceptive telemarketing practices or promotional material relating to security futures, those charges have been resolved, and the futures commission merchant or introducing broker has been closed down and permanently barred from the futures industry as a result of those charges; or
 - A futures commission merchant or introducing broker that, in connection with sales practices involving the offer, purchase, or sale of security futures is subject to an order of the SEC revoking its registration as a broker or dealer.

• The term “disciplinary history” would mean a finding of a violation by a registered person in the past five years by the SEC, an SRO, or a foreign financial regulatory authority of one or more of the following provisions (or comparable foreign provision) or rules or regulations thereunder:

• Violations of the types enumerated in Section 15(b)(4)(E) of the Act;

- Section 15(c) of the Act;
- Section 17(a) of the Securities Act of 1933;

• Rules 10b–5 and 15c–1 through 15c–9 under the Act;

• NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade) or FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) or Rule 2010—Equities (Standards of Commercial Honor and Principles of Trade) or NYSE MKT Rule 476(a)(6) (Failure to Observe High Standards of Commercial Honor and Just and Equitable Principles of Trade) (only if the finding of a violation of NASD Rule 2110, FINRA Rule 2010, Rule 2010—Equities or NYSE MKT Rule 476(a)(6) is for unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, front-running, trading ahead of research reports or excessive markups), FINRA Rule 5280 (Trading Ahead of Research Reports), NASD Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) or FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices) or Rule 2020—Equities (Use of Manipulative, Deceptive or Other Fraudulent Devices) or NYSE MKT Rule 476(a)(5) (effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance), NASD Rule 2310 (Recommendations to Customers (Suitability)) or FINRA Rule 2111 (Suitability) or Rule 405—Equities (Diligence as to Accounts), NASD Rule 2330 (Customers’ Securities or Funds) or FINRA Rule 2150 (Improper Use of Customers’ Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) or Rule 2150—Equities (Improper Use of Customers’ Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts), NASD Rule 2440 (Fair Prices and Commissions), NASD Rule 3010 (Supervision) or FINRA Rule 3110 (Supervision) or Rule 3110—Equities (Supervision) or NYSE MKT Rule 342 (Offices—Approval, Supervision and Control) (failure to supervise only for both NASD Rule 3010, FINRA Rule 3110, Rule 3110—Equities or NYSE

MKT Rule 342), NASD Rule 3310 (Publication of Transactions and Quotations) or FINRA Rule 5210 (Publication of Transactions and Quotations), and NASD Rule 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising) or FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security), and MSRB Rules G-19, G-30, and G-37(b) & (c).

- The term “tape recording” would include without limitation, any electronic or digital recording that meets the requirements of proposed Rule 3170—Equities.

- The term “taping firm” would mean:

- A member organization with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years;

- A member organization with at least ten but fewer than twenty registered persons, where four or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years;

- A member organization with at least twenty registered persons where 20% or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years.

- For purposes of calculating the number of registered persons who have been associated with one or more disciplined firms in a registered capacity within the last three years pursuant to proposed Rule 3170(a)(5)—Equities, member organizations should not include registered persons who:

- Have been registered for an aggregate total of 90 days or less with one or more disciplined firms within the past three years; and

- Do not have a disciplinary history.

Proposed Rule 3170(b)—Equities would provide that each member organization that either is notified by the Exchange or otherwise has actual knowledge that it is a taping firm must establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all of its registered persons. A taping firm required to establish, maintain, and enforce special written procedures pursuant to proposed Rule 3170(b)—Equities would have to establish and implement the procedures within 60 days of receiving notice from the Exchange or obtaining actual knowledge that it is a taping firm.

The procedures required by proposed Rule 3170(b)—Equities would include procedures for tape recording all telephone conversations between the taping firm’s registered persons and both existing and potential customers and for reviewing the tape recordings to ensure compliance with applicable securities laws and regulations and applicable Exchange rules. The procedures would have to be appropriate for the taping firm’s business, size, structure, and customers, and must be maintained for a period of three years from the date that the taping firm establishes and implements the procedures. All tape recordings made pursuant to the requirements of proposed Rule 3170(b)—Equities would have to be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each taping firm would be required to catalog the retained tapes by registered person and date. By the 30th day of the month following the end of each calendar quarter, each taping firm subject to the requirements of proposed Rule 3170(b)—Equities would have to submit to the Exchange a report on the taping firm’s supervision of the telemarketing activities of its registered persons.

Proposed Rule 3170(c)—Equities would provide that a member organization that becomes a taping firm for the first time may reduce its staffing levels to fall below the threshold levels within 30 days after receiving notice from the Exchange pursuant to the provisions of proposed Rule 3170(b)(1)—Equities or obtaining actual knowledge that it is a taping firm, provided the member organization promptly notifies the Exchange’s Department of Member Regulation in writing of its becoming subject to the rule. Once the member organization has reduced its staffing levels to fall below the threshold levels, it could not rehire a person terminated to accomplish the staff reduction for a period of 180 days. On or prior to reducing staffing levels pursuant to proposed Rule 3170(c)—Equities, a member organization would be required to provide the Exchange’s Department of Member Regulation with written notice identifying the terminated person(s).

Proposed Rule 3170(d)—Equities would provide that the Exchange may, in exceptional circumstances, taking into consideration all relevant factors, exempt any taping firm unconditionally or on specified terms and conditions from the requirements of proposed Rule 3170—Equities. A taping firm seeking an exemption would be required to file a written application with the

Exchange²³ within 30 days after receiving notice from the Exchange or obtaining actual knowledge that it is a taping firm. A member organization that becomes a taping firm for the first time could elect to reduce its staffing levels pursuant to the provisions of proposed Rule 3170(c)—Equities or, alternatively, could seek an exemption pursuant to proposed Rule 3170(d)—Equities, as appropriate. A taping firm could not seek relief from proposed Rule 3170—Equities by both reducing its staffing levels pursuant to proposed Rule 3170(c)—Equities and requesting an exemption.

The Exchange does not currently have a rule comparable to proposed Rule 3170—Equities. The Exchange believes that adopting proposed Rule 3170—Equities would provide for more effective supervision of member organizations that have a significant number of registered persons with disciplinary history, thereby resulting in enhanced customer protection.

Conforming Changes

The Exchange also proposes to make certain conforming changes to Rules 476A, 36—Equities, 70—Equities, 86—Equities, 345—Equities, 405—Equities, 407—Equities, 408—Equities, 410—Equities, 416A—Equities, 472—Equities, and 2210—Equities to delete or update cross-references to the proposed rules as applicable. The Exchange also proposes certain technical changes within Rule 86—Equities, which are unrelated to this proposal.²⁴

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁶ in particular, because it is designed to promote just and equitable

²³ FINRA Rule 3170(d) requires written applications for an exemption to be made pursuant to the FINRA Rule 9600 Series, which sets forth the procedures for seeking exemptive relief. The Exchange has not adopted the FINRA Rule 9600 Series, and therefore proposes that a taping firm seeking an exemption file a written application with the Exchange within 30 days after receiving notice from the Exchange or obtaining actual knowledge that it is a taping firm.

²⁴ The Exchange proposes to update a cross reference in Rule 86—Equities, which should refer to Rule 4522—Equities instead of Rule 440—Equities. See Exchange Act Release No. 64887 (Jul. 14, 2011), 76 FR 43357 (Jul. 20, 2011) (SR-NYSEAmex-2011-51). NYSE submitted a similar proposal at that time, which included the change to NYSE Rule 86 that the Exchange is proposing herein. See Exchange Act Release No. 64888 (Jul. 14, 2011), 76 FR 43366 (Jul. 20, 2011) (SR-NYSE-2011-33). The Exchange also proposes to update a reference to Rules 17a-3 and 17a-4 of the Act.

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, Exchange member organizations that are also FINRA members are subject to Exchange supervisory rules and FINRA Rules 3110, 3120, 3150, and 3170, and harmonizing these rules by adopting proposed Rules 3110–Equities, 3120–Equities, 3150–Equities, and 3170–Equities would promote just and equitable principles of trade by requiring a single standard for supervision. The Exchange believes that to the extent it has proposed changes that differ from the FINRA version of the Exchange rules, such changes are generally technical in nature and do not change the substance of the proposed rules. The Exchange also believes that the proposed rule change would update and add specificity to the requirements governing supervision, which would promote just and equitable principles of trade and help to protect investors. As such the Exchange believes that the proposed rule change meets the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change is not intended to address competitive issues but rather to achieve greater consistency between the Exchange's rules and FINRA's rules concerning supervision.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁷ and Rule

19b–4(f)(6) thereunder.²⁸ 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.²⁹ However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter period of time if such action is consistent with the protection of investors and the public interest.³⁰ The Exchange has asked the Commission to 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 it allows the Exchange to immediately conform its supervision rules to corresponding FINRA rules. This will ensure that dual members of the Exchange and FINRA generally will be subject to a single set of rules governing supervision. As noted by the Exchange, the proposal will harmonize NYSE MKT and FINRA rules, resulting in less burdensome and more efficient regulatory compliance. In addition, the proposal will update and add specificity to the Exchange's requirements governing supervision, which will promote just and equitable principles of trade and help to protect investors. For these reasons, the Commission designates the proposed rule change to be operative upon filing.³¹

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. If the Commission takes such action, the Commission shall institute proceedings

under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.³²

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 email to rule-comments@sec.gov. Please include File Number SR–NYSEMKT–2014–93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–NYSEMKT–2014–93. This file number should be included on the subject line if email 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 Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office. 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–NYSEMKT–2014–93 and should be submitted on or before December 16, 2014.

²⁸ 17 CFR 240.19b–4(f)(6).

²⁹ *Id.*

³⁰ 17 CFR 240.19b–4(f)(6)(iii).

³¹ For purposes of waiving the 30-day operative delay, the SEC has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³² 15 U.S.C. 78s(b)(2)(B).

²⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-27839 Filed 11-24-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73644; File No. SR-NSCC-2014-10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify That Federal Reserve Banks, Central Counterparties, and Central Securities Depositories Shall Not Be Considered Either "Mandatory Purchaser Participants" or "Voluntary Purchaser Participants"

November 19, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 12, 2014, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(1)⁴ thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Rule 64 Rules & Procedures ("Rules") of NSCC in order to clarify that Federal Reserve Banks, central counterparties, and central securities depositories shall not be considered either "Mandatory Purchaser Participants" or "Voluntary Purchaser Participants" as such terms are defined therein, as more fully described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to the Third Amended and Restated Shareholders Agreement, dated as of December 7, 2005 ("Shareholders Agreement"), by and among The Depository Trust & Clearing Corporation ("DTCC"), The Depository Trust Company ("DTC"), NSCC, Fixed Income Clearing Corporation ("FICC") and the other parties thereto, and NSCC Rule 64: (1) Members (as such term is defined in the Rules⁵) other than non-U.S. based central securities depositories are required to be "Mandatory Purchaser Participants" (as such term is defined in Rule 64) and be parties to the Shareholders Agreement; (2) users whose use of NSCC is more limited and does not include the guaranteed services, *i.e.*, Fund Members, Insurance Carrier/Retirement Services Members, Municipal Comparison Only Members, and Mutual Fund/Insurance Services Members (as such terms are defined in the Rules), are permitted, but not required, to purchase and own shares of DTCC common stock ("Common Shares") and be parties to the Shareholders Agreement; and (3) all other users *i.e.*, Data Services Only Members, Commission Billing Members, Settling Bank Only Members, Investment Manager/Agent Members, TPP Members, TPA Members, AIP Members, and AIP Settling Bank Only Members (as such terms are defined in the Rules), are not permitted to purchase and own Common Shares or be parties to the Shareholders Agreement.

NSCC is proposing to amend Rule 64, as marked on Exhibit 5 hereto, in order to make clear Federal Reserve Banks, central counterparties, and central securities depositories shall not be considered either Mandatory Purchaser Participants or Voluntary Purchaser

Participants (as such terms are defined in Rule 64). NSCC has interpreted Rule 64 to exclude from its provisions: (1) Federal Reserve Banks, because it was never intended that such governmental authorities should be required to own shares in DTCC notwithstanding that they may use certain services of NSCC; and (2) central counterparties and central securities depositories, because link arrangements between NSCC and these entities are for the purpose of extending clearing agency services across borders or among closely related activities and products, but not for ownership purposes.

2. Statutory Basis

The proposed rule change is consistent with the Act, and the rules and regulations thereunder, in particular Section 17A(b)(3)(C) which requires that the rules of NSCC "assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs . . . [and the Commission] may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency."⁶ NSCC implements and meets this requirement through NSCC Rule 64, which afford NSCC's Members a reasonable opportunity to acquire voting stock indirectly in the clearing agency in reasonable proportion to their use of the clearing agency.⁷ The proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of this existing rule.

(B) Clearing Agency's Statement on Burden on Competition

The proposed rule change will not have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify

⁶ 15 U.S.C. 78q-1(b)(3)(C).

⁷ See Commission orders approving NSCC and DTC's rule filings which implemented the current stock ownership structure that satisfies the fair representation requirements. Securities Exchange Act Release No. 41800 (August 27, 1999), 64 FR 48694 (September 7, 1999) (SR-NSCC-1999-10); and Securities Exchange Act Release No. 41786 (August 24, 1999), 64 FR 47882 (September 1, 1999) (SR-DTC-1999-17).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(1).

⁵ NSCC's Rules are available at <http://dtcc.com/legal/rules-and-procedures.aspx>.