

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59946; File No. SR-FINRA-2009-032)

May 20, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to FINRA Rule 2360 (Options) Regarding Position Limits for Options on Exchange-Traded Funds and Registration Qualifications with Respect to Options Discretionary Accounts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 11, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend FINRA Rule 2360 (Options) to (1) establish higher position limits for options on selected exchange-traded funds, (2) clarify the application of position limits to conventional options on exchange-traded funds, and (3) clarify the appropriate registration qualifications for accepting and reviewing the acceptance of options discretionary accounts.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would add Supplementary Material to FINRA Rule 2360 (Options) to (1) establish higher position limits for options on selected exchange-traded funds ("ETFs") and (2) clarify the application of position limits to conventional options on ETFs. In addition, the proposed rule change would amend FINRA Rule 2360(b)(18) to clarify the appropriate registration qualifications for accepting and reviewing the acceptance of options discretionary accounts.

Options on ETFs

FINRA Rule 2360(b)(3) subjects standardized and conventional options⁴ to one of five different position limits with the maximum limit of 250,000 contracts. FINRA's position limits are consistent with those of the Options Exchanges.⁵ The Options Exchanges, however, have Supplementary Material that designates higher position limits for options on selected ETFs. The position limit for options on The DIAMONDS Trust (DIA) and the Standard and Poor's Depository Receipts Trust (SPY) is 300,000 contracts. The position limit for options on The iShares Russell 2000 Index Fund (IWM) is 500,000 contracts, and the position limit for options on The PowerShares QQQ Trust (QQQQ) is 900,000 contracts. FINRA proposes, in accordance with Rule 2360(b)(3)(A)(vi), to establish the same position limits on such options to ensure consistency with rules of the Options Exchanges.

In addition, FINRA proposes to clarify that the position limits for conventional options on ETFs should be the same as position limits for other equity securities. Thus, if an ETF underlying a conventional option also underlies a standardized option, then the position limit on the conventional ETF option shall be the same as the position limit for the standardized ETF

⁴ A "conventional option" is an option contract not issued, or subject to issuance by, The Options Clearing Corporation. See FINRA Rule 2360(a)(9). Currently, position limits for standardized and conventional options are the same with respect to the same underlying security.

⁵ See Rule 4.11 of the CBOE; Rule 412 of the ISE; Rule 1001 of NASDAQ OMX PHLX; Rule 904 of NYSE AMEX; Rule 6.8 of NYSE Arca; and Chapter III Section 7 of the BOX (collectively referred to as the "Options Exchanges"). The Commission notes that the NASDAQ Options Market ("NOM") also is an options exchange that has position limit rules that are consistent with the Options Exchanges. See Chapter III, Section 7 of the NOM rules.

option.⁶ However, if an ETF underlying a conventional option does not also underlie a standardized option, then the position limit for the conventional ETF option shall be the basic limit of 25,000 contracts.⁷ In order for such a conventional ETF option to qualify for a position limit greater than 25,000 contracts, a member must apply for an increased position limit in accordance with FINRA Rule 2360(b)(3)(A)(viii)b. by first demonstrating to FINRA's Market Regulation Department that the underlying ETF security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

Options Discretionary Accounts

On November 12, 2008, the SEC approved SR-FINRA-2008-032 (the "Options Transfer Filing"), which adopted NASD Rules 2840 through 2853 regarding Trading in Index Warrants, Currency Index Warrants and Currency Warrants, 2860 (Options), and 2865 (Security Futures) as FINRA Rules in the consolidated FINRA rulebook.⁸ The Options Transfer Filing renumbered NASD Rules 2840 through 2853 as FINRA Rules 2350 through 2359, NASD Rule 2860 as

⁶ Since 1999, FINRA has maintained position limit parity between conventional and standardized options on the same security. See Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930, 2931 (January 19, 1999). Prior to 1999, position limits on conventional options were three times greater than the limits for standardized options. See Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998).

⁷ See FINRA Rule 2360(b)(3)(A)(viii)a.1. Conventional options are generally subject to a position limit equal to the greater of (i) the basic limit of 25,000 contracts or (ii) any standardized option position limit as set forth in Rule 2360(b)(3)(A)(ii) through (v) (i.e., 50,000 to 250,000 contracts) for which the underlying security qualifies.

⁸ See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1; File No. SR-FINRA 2008-032).

FINRA Rule 2360 and NASD Rule 2865 as FINRA Rule 2370 in the consolidated FINRA rulebook. The FINRA rules became effective on February 17, 2009.⁹

In response to a comment letter to the Options Transfer Filing,¹⁰ FINRA proposed in Amendment No. 1, consistent with the rules of the Chicago Board Options Exchange (“CBOE”), to amend FINRA Rule 2360(b)(18) to permit greater flexibility and allow a Limited Principal-General Securities Sales Supervisor (“LP-GSSS”) (Series 9/10) in addition to a Registered Options Principal (“ROP”) (Series 4) to accept an options discretionary account.¹¹ Also, consistent with the CBOE provision, FINRA retained the requirement that the review of the acceptance of a discretionary options account may only be performed by a ROP (Series 4).¹² FINRA proposes to amend FINRA Rule 2360(b)(18)(A)(i)b. and (b)(18)(A)(ii) to ensure that the rule text more clearly reflects the policy approved in the Options Transfer Filing that either a ROP (Series 4) or a LP-GSSS (Series 9/10) may accept an options discretionary account, but that the review of the acceptance must be performed by a ROP (Series 4).

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30

⁹ See Regulatory Notice 08-78 (December 2008) (SEC Approves New Consolidated FINRA Rules).

¹⁰ See Letter from Melissa MacGregor, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association, to Florence E. Harmon, Acting Secretary, SEC, dated September 4, 2008.

¹¹ See CBOE Rule 9.2.01 specifying that Options Principals are qualified by passing either the Series 4 or the Series 9/10 and CBOE Rule 9.2.02 specifying that the review of the acceptance of a discretionary account must be performed by a Series 4 qualified individual.

¹² FINRA would leave unchanged the requirement that “frequent supervisory review by a ROP who is not exercising the discretionary authority” should be performed by a ROP (Series 4) as stated in Amendment No. 1 to the Options Transfer Filing.

days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹³ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change regarding options on ETFs will promote consistent regulation by harmonizing FINRA's position limits for options on ETFs with those of the Options Exchanges and clarifying the applicable position limits for conventional options on ETFs. In addition, FINRA believes that the proposed rule change regarding options discretionary accounts will clarify the appropriate registration qualifications that are required to approve and review the approval of such accounts.

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

FINRA 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.

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

Written comments were neither solicited nor received.

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

Because the foregoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission

¹³ 15 U.S.C. 78o-3(b)(6).

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁶ However, Rule 19b-4(f)(6)(iii)¹⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay. The Commission notes that FINRA's proposal is substantially similar to the rules of the Options Exchanges and does not raise any new substantive issues.¹⁸ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow FINRA to harmonize its rules with the rules of the Options Exchanges without undue delay. The Commission hereby grants FINRA's request and designates the proposal operative upon filing.¹⁹

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this notice requirement.

¹⁷ Id.

¹⁸ See supra note 5 and 11.

¹⁹ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-FINRA-2009-032 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-FINRA-2009-032. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00

pm. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-FINRA-2009-032 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).