Number SR–DTC–2010–15 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 submission should refer to File Number SR–DTC–2010–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010–11.pdf.* 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–DTC–2010–15 and should be submitted on or before December 14, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29401 Filed 11–22–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63324; File No. SR–ISE–2010–103]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Data Fees

November 17, 2010.

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 November 4, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. 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

The Exchange is proposing to amend its fees for its real-time depth of market data offering. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

ISE currently creates market data that consists of options quotes and orders and all trades that are executed on the Exchange. ISE also produces a Best Bid/Offer, or BBO, with the aggregate size from all outstanding quotes and orders at the top price level, or the "top of book." This "core"[3] data is formatted according to Options Price Reporting Authority ("OPRA") specification and sent to OPRA for redistribution to the public.

Pursuant to Securities and Exchange Commission ("SEC") approval, the Exchange also offers a "non-core" data feed on a subscription basis called the ISE Depth of Market Data Feed ("Depth Feed"). The Depth Feed offering aggregates all quotes and orders at the top five price levels on the Exchange, on both the bid and offer side of the market. The Depth Feed offering consists of non-marketable orders and quotes that a prospective buyer or seller has chosen to display. Depth Feed, which is distributed in real time, provides subscribers with a consolidated view of tradable prices beyond the BBO. Depth Feed also shows additional liquidity and enhances transparency for ISE traded options that are not currently available through the OPRA feed. The offering is available to members and non-members, and to both professional and non-professional subscribers.

The Exchange currently charges distributors[4] of Depth Feed $5,000 per month. In addition, the Exchange charges the distributor a monthly fee per controlled device[5] of (i) $50 per controlled device for Professionals at a distributor where the data is for internal use only, (ii) $50 per controlled device for Professionals who receive the data from a distributor where the data is further redistributed externally, and (iii) $5 per controlled device for Non-Professionals who receive the date from a distributor. The Exchange also has a fee cap currently in place where for any one month the combined maximum amount of fees payable by a distributor is as follows: (i) $7,500 for Professionals at a distributor where the data is for internal use only, (ii) $12,500 for

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

[2] 17 CFR 240.19b–4.

[3] "Core" data refers to the best-priced quotations and comprehensive last sale reports of all markets that the Commission requires a central processor to consolidate and distribute to the public pursuant to joint-SRO plans. "Non-core" data refers to products other than the consolidated products that markets offer collectively under joint industry plans.

[4] A "distributor" of a Depth Feed is defined on the ISE Schedule of Fees as any firm that receives the Depth of Market data feed directly from ISE or indirectly through a redistributor and then distributes it either internally or externally. A redistributor includes market data vendors and connectivity providers such as extranets and private network providers.

[5] A "controlled device" is defined on the ISE Schedule of Fees as any device that a distributor of the Depth of Market data feed permits to access the information in the Depth of Market Raw Data Feed.

Professionals where the data is further redistributed externally in a controlled device, and (iii) $10,000 for Non-Professionals who receive the data in a controlled device from a distributor. Additionally, in an effort to accommodate a distributor's development effort to integrate the Depth Feed offering, the Exchange charges distributors a flat fee of $1,000 for the first month after connectivity has been established between ISE and the distributor; the Exchange also waives all user fees during this one month period.

In differentiating between Professional and Non-Professional subscribers, the Exchange proposes to apply the same criteria for qualification as a Non-Professional subscriber as the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation System Plan Participants use. Accordingly, a "Non-Professional Subscriber" is an authorized end-user of Depth of Market data who is a natural person and who is neither: (a) Registered or qualified with the Securities and Exchange Commission (the "Commission"), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an "investment advisor" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act); nor (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt. A "Professional Subscriber" is an authorized end-user of Depth of Market data that has not qualified as a Non-Professional Subscriber.

The purpose of this filing is to lower the fee cap currently in place for Professionals who redistribute the data externally in a controlled device. Based on conversations ISE has had with prospective subscribers, the Exchange believes lowering the fee cap for this offering will lead to increased subscriptions. ISE therefore proposes to lower the cap for these professional subscribers from $12,500 to $10,000 per month. The Exchange is not proposing to make any other changes to the Depth Feed offering.

2. Statutory Basis

ISE believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of ISE data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on heir own internal analysis of the need for such data.[8]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barak Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or not the person is a member of the self-regulatory organization" after "due, fee or other charge imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, "At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved."

ISE believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a "due, fee or other charge imposed by the self-regulatory organization," the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. ISE believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or nonmembers, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission's determinations that

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* No. 09–1042 (DC Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' "[9]

The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

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

ISE 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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoaltion court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive.

For the reasons discussed above, ISE believes that the Dodd-Frank Act amendments to Section 19 materially alter the scope of the Commission's review of future market data filings, by creating a presumption that all fees may take effect immediately, without prior analysis by the Commission of the competitive environment. Even in the absence of this important statutory change, however, ISE believes that a record may readily be established to demonstrate the competitive nature of the market in question.

As recently noted by a number of exchanges,[10] there is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it.

Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decrease, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable. Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. "No one disputes that competition for order flow is 'fierce'."[11] However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's

[9] *NetCoalition,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

[10] *See* Securities Exchange Act Release Nos. 63084 (October 13, 2010), 75 FR 64379 (October 19, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise an Optional Depth Data Enterprise License Fee for Broker-Dealer Distribution of Depth-of-Book Data) (SR–NASDAQ–2010–125); and 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Data Feeds) (SR–PHLX–2010–121).

[11] *NetCoalition*, at 24.

joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including numerous self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("BDs") and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless. The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

Competition among platforms has driven ISE continually to improve its platform data offerings and to cater to customers' data needs. For example, ISE has developed and maintained multiple delivery mechanisms that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. ISE offers front end applications such as its PrecISE Trade application which helps customers utilize data. ISE offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. ISE also offers an enterprise license option to help reduce the administrative burden and costs to firms that purchase market data. Despite these enhancements and a dramatic increase in message traffic, ISE's fees for market data have, for the most part, remained flat or, as is the case with this proposal, decreased.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 Act [12] and Rule 19b–4(f)(2) [13] thereunder. 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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:

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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–ISE–2010–103 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2010–103. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2010–103 and should be submitted by December 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29402 Filed 11–22–10; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63325; File No. SR–FINRA–2010–039]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook

November 17, 2010.

I. Introduction

On July 30, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability) in the consolidated FINRA rulebook ("Consolidated FINRA Rulebook").[3] The Commission published the proposed rule change in the Federal Register.[4]

The Commission received 22 comments in response to the proposed rule change.[5] On September 21, 2010, FINRA responded to the comments [6] and filed Amendment No. 1 to the proposed rule change.[7] The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposed Rule Change

As part of the process of developing the Consolidated FINRA Rulebook, FINRA proposed FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability). The "know your customer" and suitability obligations are critical to ensuring investor protection and fair dealing with customers. FINRA's proposed rule change was designed to retain the core features of these obligations (set forth in NYSE Rule 405(1) and NASD Rule 2310), while modifying both rules to strengthen and clarify them.

The proposed rule change built on a similar proposed rule change on which

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

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 ("Rulebook Consolidation Process"). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[4] *See* Exchange Act Release No. 62718 (August 13, 2010), 75 FR 51310 (August 19, 2010). This release was later amended to correct footnote cross-references. Exchange Act Release No. 62718A (August 20, 2010), 75 FR 52562 (August 26, 2010). The Commission also published the corrected notice on its Web site.

[5] *See* Letters from Steven B. Caruso, Maddox Hargett & Caruso, P.C. (Sept. 8, 2010) ("Caruso Letter"); Barry D. Estell, Attorney (Sept. 9, 2010) ("Estell Letter"); Barbara Black, Charles Hartsock Professor of Law and Director, Corporate Law Center, University of Cincinnati College of Law, and Jill I. Gross, Professor of Law and Director of Legal Skills and Director, Pace Investor Rights Clinic, Pace University School of Law (Sept. 9, 2010) ("Black-Gross Letter"); David P Neuman, Stoltmann Law Offices, PC (Sept. 9, 2010) ("Neuman Letter"); Richard M. Layne (Sept. 9, 2010) ("Layne Letter"); William A. Jacobson, Associate Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic (Sept. 9, 2010) ("Jacobson Letter"); Scott R. Shewan, President, Public Investors Arbitration Bar Association (Sept. 9, 2010) ("PIABA Letter"); Pamela Lewis Marlborough, Associate General Counsel, Advocacy & Oversight, TIAA–CREF (Sept. 9, 2010) ("TIAA–CREF Letter"); Gary A. Sanders, Vice President, Securities and State Government Relations, National Association of Insurance and Financial Advisors (Sept. 9, 2010) ("NAIFA Letter"); Stephen Krosschell, Goodman Nekvasil, P.A. (Sept. 9, 2010) ("Krosschell Letter"); Sutherland Asbill & Brennan LLP, on behalf of the Committee of Annuity Insurers (Sept. 9, 2010) ("CAI Letter"); Lisa Catalano, Director, St. John's University School of Law Securities Arbitration Clinic, (Sept. 9, 2010) ("Catalano Letter"); G. Mark Brewer, Esquire (Sept. 9, 2010) ("Brewer Letter"); Bari Havlik, SVP and Chief Compliance Officer, Charles Schwab & Co. Inc. (Sept. 9, 2010) ("Schwab Letter"); Peter J. Mougey, Levin, Papantonio, Thomas, Mitchell, Echsner, Rafferty, Proctor, P.A. (Sept. 9, 2010) ("Mougey Letter"); Al Van Kampen, Esquire (Sept. 10, 2010) ("Van Kampen Letter"); James T. McHale, Managing Director and Associate General Counsel, SIFMA (Sept. 14, 2010) ("SIFMA Letter"); John S. Markle, Deputy General Counsel, TD Ameritrade (Sept. 15, 2010) ("TD Ameritrade Letter"); Scott C. Ilgenfritz, Johnson, Pope, Bokor, Ruppel & Burns, LLP (Sept. 24, 2010) ("Ilgenfritz Letter"); Dale E. Brown, President and CEO, Financial Services Institute, Inc. (Sept. 27, 2010) ("FSI Letter"); Timothy R. Wing, President and CEO, CME Stock/Option Consulting Services, Inc. (Sept. 28, 2010) ("CME/OCS Letter").

[6] *See* Letter from James Wrona, Associate Vice President and Associate General Counsel, FINRA to Elizabeth M. Murphy, Secretary, Commission, dated October 21, 2010 ("FINRA Response").

[7] *See* Amendment No. 1 to FINRA–2010–039, dated October 21, 2010 ("Amendment No. 1"). The text of Amendment No. 1 is available on FINRA's Web site at *http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p122318.pdf,* at the principal office of FINRA, and on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/finra.shtml*).