3. Applicants assert that the shareholders expect the Adviser and the Board to select the Subadvisers for the Funds that are best suited to achieve each Fund's investment objective. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of the individual portfolio managers employed by the Adviser. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreements and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to this application. Each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Subadviser, shareholders of the affected Fund will be furnished all information about the new Subadviser that would be included in a proxy statement. To meet this obligation, each Fund will provide shareholders within 90 days of the hiring of a new Subadviser an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of each Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or a Fund, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30226 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65787; File No. SR–FINRA–2011–044]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA's Code of Procedure

November 18, 2011.

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 8, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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's Code of Procedure that includes: (1) Allowing service of a complaint (and notices of certain expedited proceedings) on counsel or another person authorized to represent others when such representative agrees to accept service; (2) permitting electronic filing of papers with an adjudicator; (3) decreasing the number of copies required to be filed with the adjudicator; (4) giving counsel to the National Adjudicatory Council (''NAC'') authority to set the specifications and the number of copies of all papers to be filed with the NAC; (5) requiring an attorney seeking to withdraw from a disciplinary case to file a motion before withdrawal would be approved; (6) adding an additional, permissive subject for a pre-hearing conference; (7) allowing FINRA staff to set the rate for copies; (8) allowing Hearing Officers to manage the parties' pre-hearing submissions to reduce and eliminate duplicative filings; (9) giving Hearing Panels and the NAC additional

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

[2] 17 CFR 240.19b–4.

flexibility as to required statements in decisions; (10) clarifying that the Review Subcommittee may review certain default decisions; (11) allowing an adjudicator to cancel a previously scheduled oral argument; (12) clarifying the procedure for when an appealing party does not participate in a disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel; (13) allowing a Hearing Panel in an eligibility proceeding to extend time limits for the filing of any papers without consent of all the parties; and (14) allowing counsel to the NAC to decide a procedural motion in an eligibility proceeding or an expedited proceeding.

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 aspects of such statements.

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

#### 1. Purpose

FINRA's Code of Procedure (the ''Code'') contains detailed provisions for initiating and adjudicating various types of actions, including disciplinary, eligibility, expedited, and cease and desist proceedings.[3] Since implementation on August 7, 1997, FINRA staff has obtained significant experience using the Code, and believes that certain Code provisions should be amended to improve workability, provide more clarity and reduce unnecessary duplication. The proposed rule change, as described below, seeks generally to improve the efficient administration of FINRA proceedings, is procedural in nature, and will not affect any party's substantive rights under FINRA rules.

[3] The FINRA Rule 9000 Series is FINRA's Code of Procedure.

#### Service of Complaint

FINRA Rule 9131(a) requires a complaint to be served on each party by the Department of Enforcement or the Department of Market Regulation. Currently, the rule does not explicitly permit FINRA staff to serve the complaint on a party's counsel. Many parties, however, are represented by counsel when a complaint is ready to be served. FINRA proposes to accommodate respondents who have retained counsel and have authorized them to accept service. The proposed rule change amends FINRA Rule 9131(a) to clarify that only the Department of Enforcement or the Department of Market Regulation can serve a complaint and to allow for service on counsel or another person authorized to represent others when such representative agrees to accept service of the complaint. FINRA also seeks to address an issue created by the Rules of Professional Conduct in many states, which require that, once a person retains an attorney, unless the attorney specifically provides otherwise, all communications be directed to counsel.[4] The proposal harmonizes FINRA's rules with these state bar rules.

FINRA Rule 9131(a) also provides that a party initiating a proceeding shall serve a document initiating a proceeding on the other party. FINRA proposes to delete this provision because it has been superseded by other FINRA rules and no longer plays a role in expedited proceedings.[5] Further, the Code does not allow a party other than FINRA to initiate a proceeding.[6]

The FINRA Rule 9550 Series provides procedures for initiating and adjudicating expedited proceedings. The service provisions contained in the rules under the Rule 9550 Series are similar to FINRA Rule 9131(a) in that they require serving notice on a member, person associated with a member or person subject to FINRA's jurisdiction, but do not discuss service on counsel. For the reasons set forth above, FINRA is proposing to amend FINRA Rules 9551(b), 9552(b), 9553(b), 9554(b), 9555(b) and 9556(b) to allow for service on counsel or other person authorized to represent others when such representative agrees to accept service of a notice.

[4] *See, e.g.,* American Bar Association Model Rule of Professional Conduct 4.2 (Communication with Person Represented by Counsel) (ABA Rule 4.2). ABA Rule 4.2 provides that, ''[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.'' Many states have rules regarding communication with a person represented by counsel that are based on ABA Rule 4.2.

[5] The references to a document initiating a proceeding have been rendered unnecessary in FINRA Rule 9131 because each of FINRA's expedited proceedings has a specific rule that typically states that FINRA staff will serve the FINRA member or associated person with a notice regarding the expedited proceeding. *See* FINRA Rules 9551(b), 9552(b), 9553(b), 9554(b), 9555(b), 9556(b), 9557(b) and 9558(b).

[6] The concept of allowing an aggrieved person to initiate an NASD disciplinary proceeding was eliminated, with Commission approval, in 1997. *See Russell A. Simpson,* 53 S.E.C. 1042, 1044 n.3, 1998 SEC LEXIS 2503, at *3 n.3 (1998).

#### Filing of Papers With Adjudicator

FINRA Rule 9135(a) prescribes the timing for the filing of papers with an adjudicator. Complaints are deemed timely filed upon mailing or delivery to the Office of Hearing Officers. Other papers required to be filed are deemed timely if, on the same day such papers are served, they are also hand-delivered, mailed via U.S. Postal service first class mail or sent by courier to FINRA. In recognition of the increased use of electronic mail, FINRA is proposing to amend FINRA Rule 9135(a) to allow the use of electronic mail as another delivery method for complaints and other papers required to be filed with an adjudicator.

FINRA Rule 9136 establishes the form for papers filed in connection with a disciplinary proceeding or a review of a disciplinary proceeding. FINRA is proposing to amend FINRA Rule 9136(a)(5) to require such papers to contain single-spaced footnotes. Additionally, to reduce duplication, FINRA is proposing to amend FINRA Rule 9136(c) by decreasing the number of copies required to be filed with the adjudicator from three to one, unless otherwise ordered. Finally, the proposed rule change amends FINRA Rule 9313 by giving counsel to the NAC the authority to set the specifications and the number of copies of all papers to be filed with the NAC. The proposed rule change is consistent with counsel to the NAC's other ministerial and administrative responsibilities under the rule, and it furthers the efficient administration of review proceedings.

#### Motion To Withdraw by Attorney

FINRA Rule 9142 requires an attorney for a party or person authorized to represent others seeking to withdraw to give notice setting forth good cause for the withdrawal at least 30 days prior to withdrawal, unless circumstances do not permit. It has been FINRA staff's experience that, on occasion, an attorney believes that his or her withdrawal is effective immediately upon filing the notice, and the attorney does not provide any contact

information for the party no longer being represented. To address these concerns, and to lessen the potential disruption to parties and pending proceedings caused by the withdrawal of counsel, FINRA is proposing to amend FINRA Rule 9142 to require an attorney for a party (or person authorized to represent others by FINRA Rule 9141) seeking to withdraw to file a motion that sets forth the good cause for withdrawal and contains the contact information of the party no longer being represented.

Subjects Discussed at Pre-Hearing Conference

FINRA Rule 9241(c) delineates the subjects that the Hearing Officer, in a pre-hearing conference, may consider and act upon. The proposed rule change amends FINRA Rule 9241 by adding an additional, permissive subject for a pre-hearing conference: designation of relevant portions of transcripts from investigative testimony or other proceedings and the inclusion of an index for such testimony. It has been FINRA staff's experience that parties sometimes introduce voluminous testimonial transcripts into evidence, without specifying the particular sections of such transcripts that are relevant to the proceeding and without an index. The proposed rule change promotes efficiency by bringing into focus the relevant portions of testimonial transcripts.

Fees for Copying Costs During Discovery

FINRA Rule 9251(f) allows a respondent to obtain a photocopy of all documents made available for inspection by the Department of Enforcement or the Department of Market Regulation. Unless otherwise ordered, charges for copies made at the request of a respondent shall be at a rate to be established by the Board of FINRA or FINRA Regulation. The proposed rule change amends FINRA Rule 9251(f) to identify FINRA staff as setting the rate for copies. Copying costs are based on rates charged by local copying vendors in the area where FINRA maintains the documents. FINRA staff is familiar with these copying rates and will base the rates accordingly.

Submission of Evidence

FINRA Rule 9261(a) addresses pre-hearing disclosures and requires each party to submit to all other parties and to the Hearing Officer copies of documentary exhibits the parties intend to introduce and the names of the witnesses each party intends to present at a hearing. Currently, pre-hearing, proposed documentary evidence submitted to the Hearing Officer becomes part of the record. At the hearing, all of the documents that are admitted into evidence also become part of the record.[7] This results in the record containing a duplicate of nearly every document that was admitted into evidence. When a Hearing Panel decision is appealed to the NAC, FINRA staff makes several copies of the record. The unnecessary duplication of pre-hearing exhibits is therefore multiplied on appeal.

The proposed rule change amends FINRA Rule 9261(a) to establish that documentary evidence submitted prior to a hearing shall not become part of the record, unless a Hearing Officer, Hearing Panel, or Extended Hearing Panel orders that it will be. Further, the Hearing Officer may order each party—who will continue to exchange proposed documentary evidence with other parties—to refrain from submitting its proposed documentary evidence to the Hearing Officer. The proposed amendment reduces duplication of documents in the record and will prevent the copying of thousands of pages of pre-hearing exhibits each year.

Hearing Panel and NAC Decisions

FINRA Rules 9268(b)(1) and 9349(b)(1) require that a statement describing the investigative or other origin of the disciplinary proceeding be included in the contents of a decision of the Hearing Panel or the NAC, respectively. The proposed rule change amends this provision to require such statement only if it is not otherwise contained in the record. The proposed amendment reduces unnecessary statements from disciplinary decisions.

Review Proceedings

FINRA Rule 9312(a)(2) requires that if a default decision issued pursuant to FINRA Rule 9269 is called for review by the General Counsel within 25 days after the date of service of the decision, such decision shall be reviewed by the NAC. FINRA proposes to amend the rule to clarify that the Review Subcommittee also may review such decisions.[8] The scope of review of default decisions is generally limited to address omissions or apparent mistakes in default decisions. The proposed rule change—in appropriate cases—allows for a speedier, more efficient review process, as the Review Subcommittee will typically be able to review a default decision and issue a short remand order more expeditiously than the NAC.

Oral Argument in Review of Proceedings

FINRA Rule 9341(a) establishes the procedure for a party requesting an oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee.[9] Currently, once oral argument is requested, there is no mechanism to cancel such argument if a respondent abandons his or her request for oral argument subsequent to filing a brief but prior to the date set for oral argument. The proposed rule change allows the Subcommittee or, if applicable, the Extended Proceeding Committee, to cancel in writing a previously scheduled oral argument, and decide the matter based on the briefs and the record without oral argument, if the adjudicator finds good cause due to a respondent abandoning his or her prior request, or similar unreasonable lack of availability. For example, a respondent may be viewed as abandoning a previously scheduled oral argument if the adjudicator has not received a response after attempting to confirm the attendance of the respondent. If the adjudicator cancels an oral argument but a respondent believes this action was taken in error, a respondent may file a motion seeking to reschedule oral argument. The proposed rule change promotes efficiency and conserves resources that would have been expended in traveling to an oral argument when a respondent does not attend.

Failure to Participate in Disciplinary Proceeding

FINRA Rule 9344(a) gives the NAC or the Review Subcommittee discretion on how to proceed when an appealing party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel.[10] The proposed rule change eliminates the first sentence of the rule because that sentence merely introduces the concept that the NAC could either remand an appeal from a default decision or consider the appeal without

[7] *See* FINRA Rule 9267(a)(3).

[8] The Review Subcommittee is authorized to determine whether disciplinary decisions should be called for review by the NAC. *See* FINRA Regulation By-Laws, Article V, Section 5.13.

[9] Upon consideration of the volume and complexity of the certified record, the NAC or the Review Subcommittee may appoint an Extended Proceeding Committee. *See* FINRA Rule 9331(a)(2).

[10] Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other material factors, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and such matter shall be considered by an Extended Hearing Panel. *See* FINRA Rule 9231(c).

a remand.[11] The proposal specifies that the NAC or the Review Subcommittee will remand the disciplinary proceeding with instructions when a party shows good cause for failing to participate below. If, on the other hand, a party does not show good cause, the Subcommittee or other adjudicator will decide the case based on the briefs and the record and without oral argument. By amending this section, FINRA intends to make the rule easier to understand.

The proposed rule change substitutes the word ''shall'' for ''may'' when describing the NAC's action when a party shows good cause because the applicable remedy in this circumstance is always a remand with instructions. Default decisions against a respondent allow the Hearing Officer to deem the allegations in the complaint admitted, a practice that is widely followed in FINRA proceedings.[12] Consequently, when a party shows good cause, the NAC would find it impracticable to review the merits of the appeal because the NAC would have no record evidence to review regarding the substance of alleged violations. Given the state of the record, the NAC should order a remand with instructions when a respondent shows good cause for failing to participate below.

Filing of Papers in Eligibility Proceedings

FINRA Rule 9524(a)(5) gives a Hearing Panel in an eligibility proceeding the ability, after obtaining consent of all the parties, to extend or shorten any time limits prescribed by the Code for the filing of any papers. The proposed rule change removes the consent requirement for any extension of such time limits to empower Hearing Panels with authority over such scheduling matters. This change makes eligibility proceedings consistent with disciplinary proceedings.[13]

Procedural Motions in Eligibility or Expedited Proceedings

FINRA Rule 9146(j)(3) requires that in the FINRA Rule 9500 Series, a motion shall be decided by an adjudicator. FINRA proposes to amend the rule by allowing Counsel to the NAC to decide a procedural motion made pursuant to an eligibility proceeding or an expedited proceeding. This proposed rule change enables Counsel to the NAC to handle procedural motions in a more efficient and expeditious manner, and is similar to Counsel to the NAC's authority to dispose of procedural motions in disciplinary proceedings.[14] Counsel will not be authorized to rule on dispositive motions.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval. Once effective, the proposed rules will apply immediately to all new and pending matters governed by FINRA's Code of Procedure.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(8) of the Act,[15] which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members, and Section 15A(b)(6) of the Act,[16] 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's Code has been used in hundreds of disciplinary cases since its adoption and has provided fair procedures. It has allowed disciplinary cases to proceed in an orderly manner and thereby facilitated Hearing Panel and NAC decisions that, in turn, protect investors and the public interest. The proposed rule change will allow FINRA to continue to uphold the purposes of the Act by improving FINRA's case management of disciplinary cases, reducing costs, and promoting an effective disciplinary system.

First, FINRA believes that the proposed rule change promotes fair procedures by improving the ability of adjudicators and their advisors to manage efficiently cases at both the trial level and on appeal. Several proposed revisions give specific authority to Hearing Officers, the Review Subcommittee, and counsel to the NAC such as: (1) Adding an additional subject at a pre-hearing conference that brings into focus the relevant portions of testimonial transcripts; (2) clarifying that the Review Subcommittee may review certain default decisions rather than the NAC; (3) giving counsel to the NAC authority to set the specifications and the number of copies of all papers to be filed with the NAC; (4) allowing counsel to the NAC to decide a procedural motion made in an eligibility proceeding or an expedited proceeding; (5) allowing a Hearing Panel in an eligibility proceeding to extend time limits for the filing of any papers; and (6) allowing FINRA staff to determine copying costs. These improvements to and confirmations of case management authority will allow adjudicators and advisors to follow fair procedures by applying appropriate rules to a suitable case.

Second, the proposed rule change promotes fair procedures by reducing costs, conserving resources, and making participation in the disciplinary process somewhat easier. By decreasing the number of copies that the parties must file with the adjudicator, the proposed rule change to FINRA Rule 9136(e) will reduce costs to the parties. From the perspective of FINRA and its adjudicators, moreover, the proposed rule change to FINRA Rule 9261(a) will prevent the inclusion in the record of hundreds of duplicate exhibits that are otherwise contained in the record. Moreover, the proposed rule change to FINRA Rules 9268(b)(1) and 9349(b)(1) reduces duplication by requiring a statement describing the origin of a disciplinary proceeding be included only if it is not otherwise contained in the record. And by authorizing an adjudicator to cancel a previously scheduled oral argument that has been abandoned by a respondent, the proposed rule change to FINRA Rule 9341(a) prevents unnecessary travel by adjudicators and FINRA staff. These latter revisions will reduce FINRA's costs.

Another aspect of the proposed rule change promotes fair procedures by allowing the parties to comply with the Code more easily. Parties will be allowed to, but not required to, file papers with an adjudicator by email. Respondents also will have the option of authorizing their attorney or representative to accept service of a complaint and notices of certain expedited proceedings. Additionally, the proposed rule change promotes clarity by stating more directly the process for a party who seeks to appeal from a default decision.

The proposed rule change also reserves an adjudicator's ability to customize an order to promote fairness, based on the facts of that case. For example, a Hearing Officer may order that a particular pre-hearing submission

[11] The proposed rule change also removes the potentially confusing language that the NAC would dismiss an appeal and remand the matter. In practice, when the NAC has remanded a default decision to a Hearing Officer, for example, the NAC remand order does not also state that the appeal is dismissed.

[12] *See* FINRA Rule 9269(a)(1).

[13] *See* FINRA Rule 9322(a).

[14] *See* FINRA Rule 9146(j)(2).

[15] 15 U.S.C. 78*o*–3(b)(8).

[16] 15 U.S.C. 78*o*–3(b)(6).

be included in the record pursuant to FINRA Rule 9261(a), which could be based on fairness concerns.

Third, the proposed rule change protects the public interest by requiring an attorney seeking to withdraw from a disciplinary case to file a motion (which will provide contact information for the party previously represented) before withdrawal would be approved. The proposed revision seeks to reduce any uncertainly as to whether a respondent is represented by an attorney. By requiring an attorney to file a motion for withdrawal, adjudicators and the parties will know that an attorney continues to represent the respondent until the motion is granted. This proposed revision promotes an effective disciplinary system in which cases can proceed to a hearing. By furthering an effective disciplinary system, the proposed rule change is consistent with the public interest in imposing disciplinary sanctions on FINRA firms and associated persons who violate FINRA Rules or the federal securities laws.

For each of these reasons, FINRA believes that the proposed rule change will improve the process and procedures that govern the adjudication of disciplinary cases and expedited proceedings.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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:

*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–FINRA–2011–044 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–FINRA–2011–044. 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 a.m. and 3 p.m. 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 publicly available. All submissions should refer to File Number SR–FINRA–2011–044 and should be submitted on or before December 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30255 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65779; File No. SR–Phlx–2011–152]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Perform a Test of Routing Functionality

November 17, 2011.

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 10, 2011, NASDAQ OMX PHLX LLC (the ''Exchange'' or ''PHLX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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**

PHLX is filing this proposed rule change to allow a limited use of its broker-dealer affiliate, Nasdaq Execution Services LLC (''NES''), to perform a test of routing functionality to be introduced by NASDAQ OMX PSX (''PSX''). PHLX proposes to implement the rule change prior to November 14, 2011. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx*, at PHLX's principal office, 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

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

[2] 17 CFR 240.19b–4.