

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="17"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2011"/> - * <input type="text" value="067"/> Amendment No. (req. for Amendments *) <input type="text"/>
Proposed Rule Change by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>
Section 19(b)(2) * <input checked="" type="checkbox"/>		
Section 19(b)(3)(A) * <input type="checkbox"/>		
Section 19(b)(3)(B) * <input type="checkbox"/>		
Rule		
<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>	
Description Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). <input type="text" value="This proposal amends the Industry Code of Arbitration Procedure relating to whistleblower claims in arbitration."/>		
Contact Information Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change. First Name * <input type="text" value="Margo"/> Last Name * <input type="text" value="Hassan"/> Title * <input type="text" value="Assistant Chief Counsel, FINRA Dispute Resolution"/> E-mail * <input type="text" value="Margo.Hassan@finra.org"/> Telephone * <input type="text" value="(212) 858-4481"/> Fax <input type="text" value="(310) 527-4761"/>		
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer. Date <input type="text" value="11/21/2011"/> By <input type="text" value="Kenneth Andrichik"/> <input type="text" value="Senior Vice President and Chief Counsel, FINRA Dispute Resolution"/> (Name *) (Title *) NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. <input type="text" value="Kenneth Andrichik,"/>		

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 13201 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to align the rule with statutes that invalidate predispute arbitration agreements for whistleblower claims. The proposed rule change also would make a conforming amendment to FINRA Rule 2263.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

13201. Statutory Employment Discrimination Claims and Disputes Arising Under a Whistleblower Statute that Prohibits the Use of Predispute Arbitration Agreements

(a) Statutory Employment Discrimination Claims

A claim alleging employment discrimination, including sexual harassment, in violation of a statute, is not required to be arbitrated under the Code. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose. If the parties agree to arbitrate such a claim, the claim will be administered under Rule 13802.

¹ 15 U.S.C. 78s(b)(1).

(b) Disputes Arising Under a Whistleblower Statute that Prohibits the Use of Predispute Arbitration Agreements

A dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under the Code. Such a dispute may be arbitrated only if the parties have agreed to arbitrate it after the dispute arose.

* * * * *

2263. Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4

A member shall provide an associated person with the following written statement whenever the associated person is asked, pursuant to FINRA Rule 1010, to manually sign an initial or amended Form U4, or otherwise provide written (which may be electronic) acknowledgment of an amendment to the Form U4:

The Form U4 contains a predispute arbitration clause. It is in item 5 of Section 15A of the Form U4. You should read that clause now. Before signing the Form U4, you should understand the following:

- (1) You are agreeing to arbitrate any dispute, claim or controversy that may arise between you and your firm, or a customer, or any other person that is required to be arbitrated under the rules of the self-regulatory organizations with which you are registering. This means you are giving up the right to sue a member, customer, or another associated person in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(2) A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated under FINRA rules. Such a claim may be arbitrated at FINRA only if the parties have agreed to arbitrate it, either before or after the dispute arose. The rules of other arbitration forums may be different.

(3) A dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under FINRA rules. Such a dispute may be arbitrated only if the parties have agreed to arbitrate it after the dispute arose.

([3]4) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

([4]5) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

([5]6) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.

([6]7) The panel of arbitrators may include arbitrators who were or are affiliated with the securities industry or public arbitrators, as provided by the rules of the arbitration forum in which a claim is filed.

((7)8) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 21, 2011, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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.

Questions regarding this rule filing may be directed to Margo Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, at (212) 858-4481.

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

(a) Purpose

The proposed rule change would amend FINRA Rule 13201 (Statutory Employment Discrimination Claims) of the Industry Code, and FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4), to align the rules with statutes that invalidate predispute arbitration agreements for whistleblower claims.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)² amended the Sarbanes-Oxley Act of 2002 (“SOX”) by adding a new paragraph (e) to 18 U.S.C. § 1514A³ to provide that:

- (1) WAIVER OF RIGHTS AND REMEDIES – The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.
- (2) PREDISPUTE ARBITRATION AGREEMENTS – No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

Prior to the Dodd-Frank Act, it was FINRA staff’s articulated position that parties were required to arbitrate SOX whistleblower claims under the Industry Code.⁴

In light of the changes set forth in the Dodd-Frank Act that invalidate predispute arbitration agreements in the case of SOX whistleblower claims, the proposed rule change would amend FINRA Rule 13201 of the Industry Code to make clear that parties are not required to arbitrate SOX whistleblower claims, superseding the existing guidance to the contrary. While the main impetus for the proposed rule change is the

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 919 (2010).

³ See Dodd-Frank Section 922(c)(2), adding 18 U.S.C. § 1514A(e) (Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration of Disputes).

⁴ See Arbitrability of Sarbanes-Oxley Whistleblower Claims by Laurence S. Moy, Pearl Zuchlewski, Linda A. Neilan and Katherine Blostein, The Neutral Corner (Volume 1 – 2008).

need to update FINRA staff's stated position on SOX whistleblower claims, FINRA proposes to make the rule text broad enough to cover any statutes that prohibit predispute arbitration agreements for whistleblower claims.⁵

Rule 13201 of the Industry Code currently provides that a claim alleging employment discrimination, including sexual harassment, in violation of a statute, is not required to be arbitrated under the Industry Code. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose. The proposed rule change would amend Rule 13201 to add a new provision to provide that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under the Industry Code. The rule would state that such a dispute may be arbitrated only if the parties have agreed to arbitrate it after the dispute arose.

FINRA also would amend the title of Rule 13201 to reflect the addition of the new provision relating to whistleblower claims. FINRA structured the proposed rule change to separate the provision relating to statutory employment discrimination claims from the provision relating to whistleblower claims. While parties may agree to arbitrate a statutory employment discrimination claim either before or after a dispute arises, the Dodd-Frank Act invalidates predispute agreements to arbitrate certain whistleblower claims.

The proposed rule change also would make a conforming amendment to FINRA Rule 2263, which requires firms to provide each associated person with certain written

⁵ The Dodd-Frank Act also invalidated predispute arbitration agreements in other whistleblower statutes, including, for example, 7 USCA § 26(n) relating to Commodity Exchange Whistleblower Incentives and Protections.

disclosures regarding the nature and process of arbitration proceedings whenever the firm asks an associated person, pursuant to FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms), to manually sign a new or amended Form U4, or to otherwise provide written acknowledgment of an amendment to the form. The proposed rule change would amend FINRA Rule 2263 to add a disclosure provision stating that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under FINRA rules, and that such a dispute may be arbitrated at FINRA only if the parties have agreed to arbitrate it after the dispute arose.

As noted in Item 2 of this filing, 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 30 days following publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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 amendments are consistent with the provisions of the Act noted above because they serve to align FINRA rules with those

⁶ 15 U.S.C. 78o-3(b)(6).

provisions in the Dodd-Frank Act that invalidate predispute arbitration agreements in the context of certain whistleblower claims.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁷

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

⁷ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2011-067)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Whistleblower Claims in Arbitration

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 18, 2011, the 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 Rule 13201 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to align the rule with statutes that invalidate predispute arbitration agreements for whistleblower claims. The proposed rule change also would make a conforming amendment to FINRA Rule 2263.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The proposed rule change would amend FINRA Rule 13201 (Statutory Employment Discrimination Claims) of the Industry Code, and FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4), to align the rules with statutes that invalidate predispute arbitration agreements for whistleblower claims.

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")³ amended the Sarbanes-Oxley Act of 2002 ("SOX") by adding a new paragraph (e) to 18 U.S.C. § 1514A⁴ to provide that:

- (1) WAIVER OF RIGHTS AND REMEDIES – The rights and remedies provided for in this section may not be waived by any agreement,

³ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 919 (2010).

⁴ See Dodd-Frank Section 922(c)(2), adding 18 U.S.C. § 1514A(e) (Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration of Disputes).

policy form, or condition of employment, including by a predispute arbitration agreement.

- (2) PREDISPUTE ARBITRATION AGREEMENTS – No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

Prior to the Dodd-Frank Act, it was FINRA staff's articulated position that parties were required to arbitrate SOX whistleblower claims under the Industry Code.⁵

In light of the changes set forth in the Dodd-Frank Act that invalidate predispute arbitration agreements in the case of SOX whistleblower claims, the proposed rule change would amend FINRA Rule 13201 of the Industry Code to make clear that parties are not required to arbitrate SOX whistleblower claims, superseding the existing guidance to the contrary. While the main impetus for the proposed rule change is the need to update FINRA staff's stated position on SOX whistleblower claims, FINRA proposes to make the rule text broad enough to cover any statutes that prohibit predispute arbitration agreements for whistleblower claims.⁶

Rule 13201 of the Industry Code currently provides that a claim alleging employment discrimination, including sexual harassment, in violation of a statute, is not required to be arbitrated under the Industry Code. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose. The

⁵ See Arbitrability of Sarbanes-Oxley Whistleblower Claims by Laurence S. Moy, Pearl Zuchlewski, Linda A. Neilan and Katherine Blostein, The Neutral Corner (Volume 1 – 2008).

⁶ The Dodd-Frank Act also invalidated predispute arbitration agreements in other whistleblower statutes, including, for example, 7 USCA § 26(n) relating to Commodity Exchange Whistleblower Incentives and Protections.

proposed rule change would amend Rule 13201 to add a new provision to provide that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under the Industry Code. The rule would state that such a dispute may be arbitrated only if the parties have agreed to arbitrate it after the dispute arose.

FINRA also would amend the title of Rule 13201 to reflect the addition of the new provision relating to whistleblower claims. FINRA structured the proposed rule change to separate the provision relating to statutory employment discrimination claims from the provision relating to whistleblower claims. While parties may agree to arbitrate a statutory employment discrimination claim either before or after a dispute arises, the Dodd-Frank Act invalidates predispute agreements to arbitrate certain whistleblower claims.

The proposed rule change also would make a conforming amendment to FINRA Rule 2263, which requires firms to provide each associated person with certain written disclosures regarding the nature and process of arbitration proceedings whenever the firm asks an associated person, pursuant to FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms), to manually sign a new or amended Form U4, or to otherwise provide written acknowledgment of an amendment to the form. The proposed rule change would amend FINRA Rule 2263 to add a disclosure provision stating that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under FINRA rules, and that such a dispute may be arbitrated at FINRA only if the parties have agreed to arbitrate it after the dispute arose.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ 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 amendments are consistent with the provisions of the Act noted above because they serve to align FINRA rules with those provisions in the Dodd-Frank Act that invalidate predispute arbitration agreements in the context of certain whistleblower claims.

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

⁷ 15 U.S.C. 78o-3(b)(6).

(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 e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2011-067 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-2011-067. 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 website(<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 website 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 available publicly. All submissions should refer to File Number SR-FINRA-2011-067 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.⁸

Elizabeth M. Murphy

Secretary

⁸ 17 CFR 200.30-3(a)(12).