pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–FINRA–2012–006 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–FINRA–2012–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2012–006 and should be submitted on or before February 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2403 Filed 2–2–12; 8:45 am]

BILLING CODE 8011–01–P

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

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66279; File No. SR–FINRA–2011–059]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rule 3230 (Telemarketing) in the FINRA Consolidated Rulebook

January 30, 2012.

I. Introduction

On October 13, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt FINRA Rule 3230 (Telemarketing) in the FINRA Consolidated Rulebook. The proposed rule change was published for comment in the **Federal Register** on November 2, 2011.[3] The Commission received one comment letter, from the Cornell Securities Law Clinic (the ''Clinic''), in response to the proposal,[4] and a response from FINRA to the Clinic's comments.[5] The text of the proposed rule change and FINRA's Response Letter are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

This order approves the proposed rule change.

II. Description of the Proposal

As described in more detail in the Notice,[6] FINRA proposed to adopt FINRA Rule 3230 (Telemarketing) based largely on NASD Rule 2212. FINRA also proposed to delete NYSE Rule 440A and its Interpretation,[7] but to include certain of their provisions in Rule 3230. These include caller identification rules based on Rule 440A(h) requiring members engaging in telemarketing to transmit caller identification information to persons they call and not to block the transmission of such information. In addition, FINRA proposed to include provisions substantially similar to those contained in rules of the Federal Trade Commission (''FTC'') that prohibit deceptive and other abusive telemarketing acts or practices. These include a provision requiring members making outbound telephone calls to maintain a record of a person's request not to receive such calls indefinitely rather than for only five years.

FINRA explained that NASD Rule 2212 and NYSE Rule 440A are similar rules that require members to maintain do-not-call lists, limit the hours of telephone solicitations and prohibit members from using deceptive and abusive acts and practices in connection with telemarketing. The Commission directed FINRA and NYSE to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[8] The Prevention Act requires the Commission to promulgate or direct any national securities exchange or registered securities association to promulgate rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[9]

In 2003, the FTC and the Federal Communications Commission (''FCC'') established a national do-not-call registry, and, pursuant to the Prevention

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 65645 (November 2, 2011), 76 FR 67787 (November 4, 2011) (''Notice'').

[4] *See* comment letter submitted by William A. Jacobson, Associate Clinical Professor and Director, Cornell Securities Law Clinic, and Tamara Gavrilova, Cornell Law School, Class of 2013, to Elizabeth M. Murphy, Secretary, SEC, dated November 21, 2011 (''Cornell Letter'').

[5] *See* letter from Matthew E. Vitek, Counsel, FINRA, to Elizabeth Murphy, Secretary, SEC, dated December 15, 2011 (''Response Letter'').

[6] *See* Notice, *supra* note 3.

[7] For convenience, the Notice referred to Incorporated NYSE Rules as NYSE Rules, and this order follows that convention.

[8] 15 U.S.C. 6101–6108.

[9] 15 U.S.C. 6102.

Act, the Commission requested that FINRA and NYSE amend their telemarketing rules to require that their members participate. In 2004, the Commission approved amendments to NASD Rule 2212 requiring member firms to participate in the national do-not-call registry.[10] The following year, the Commission approved amendments to NYSE Rule 440A, which were similar to the NASD rule amendments, but included additional provisions regarding the use of caller identification information, pre-recorded messages, telephone facsimiles and computer advertisements.[11]

Earlier this year, Commission staff directed FINRA to conduct a review of its telemarketing rule and propose rule amendments that provide protections at least as strong as those provided by the FTC's telemarketing rules.[12] Commission staff had expressed concerns to FINRA and the other SROs that, overall, their telemarketing rules may not have kept pace with the FTC's rules, for example by not requiring a firm-specific opt out to be honored indefinitely as under the FTC's rules, and thus may no longer meet the standards of the Prevention Act.[13] FINRA filed the proposed rule change in response to these concerns.[14]

FINRA advised that it would announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval, and that the implementation date would be no later than 180 days following Commission approval.[15]

III. Summary of Comments

In its comment letter,[16] the Clinic generally supported the proposed rule on the basis that it would comply with the Prevention Act and expressed the belief that it would be ''an important step in preventing members from using deceptive and abusive practices when telemarketing.'' The Clinic did, however, make some proposed recommendations.

The Clinic recommended that the proposed rule should incorporate additional provisions in NYSE Rule 440A regarding prerecorded messages and the use of telephone facsimile or computer advertisements. The Clinic also recommended that FINRA revise its proposal to eliminate the exception from proposed Rule 3230(k), which would permit prerecorded messages the meet the conditions of the proposed ''safe harbor'' for abandoned calls under proposed subparagraph (j)(2). In addition, the Clinic opined that its proposed amendments to the proposed rule would provide customers with additional protection against invasive and abusive telemarketing techniques.

In its Response Letter,[17] FINRA stated that it did not believe it should amend the proposed rule change to adopt the Clinic's proposed amendments. FINRA stated that at the time the NYSE adopted Rule 440A's provisions regarding prerecorded messages and the use of telephone facsimile or computer advertisements, the NYSE stated that broker-dealers were subject to the FCC's telemarketing rules, and, accordingly, the NYSE modeled NYSE Rule 440A based on applicable FCC telemarketing rules.[18] Because broker-dealers remain subject to substantially similar FCC provisions regarding prerecorded messages and the use of telephone facsimile or computer advertisements, FINRA believes that adding the additional provisions of Rule 440A to the proposed rule is unnecessary.[19] Moreover, the proposed rule, at Supplementary Material .01, includes a reminder to member firms regarding their obligation to comply with relevant federal and state laws and rules, including FCC rules.

FINRA also stated that it did not believe it should eliminate the exception from proposed Rule 3230(k), which would permit prerecorded messages the meet the conditions of the proposed ''safe harbor'' for abandoned calls under proposed subparagraph (j)(2). FINRA stated that this exception would be substantially similar to FCC and FTC exemptions for prerecorded messages complying with a ''safe harbor'' for abandoned calls.[20] In addition, FINRA's Response Letter cited to the FTC's rationale that ''a total ban on abandoned calls would amount to a ban on predictive dialers, and would not strike the proper balance between addressing an abusive practice and allowing for a technology that reduces costs for telemarketers.'' [21] Further, FINRA restated the FTC's and FCC's recognition that ''a prerecorded message that provides identification information not only mitigates consumers' fears, but also makes it easier for consumers to make a do-not-call request of a company by calling the number provided in the message.'' [22]

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, the Cornell Letter, and FINRA's Response Letter, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.[23] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act and the rules and regulations thereunder.[24] Section 15A(b)(6) of the Act requires, among other things, that FINRA rules 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. The proposed rule change is designed to prevent fraudulent and manipulative acts and practices, protect investors and the public interest, and promote just and equitable principles of trade by strengthening protections against deceptive and other abusive telemarketing acts or practices in the securities industry. Accordingly, the Commission finds that good cause exists to approve the proposed rule change.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–FINRA–2011–059) be, and hereby is, approved.

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[10] *See* Exchange Act Release No. 49055 (January 12, 2004), 69 FR 2801 (January 20, 2004).

[11] *See* Exchange Act Release No. 52579 (October 7, 2005), 70 FR 60119 (October 14, 2005).

[12] *See* letter from Robert W. Cook, Director, Division of Trading and Markets, SEC, to Richard G. Ketchum, Chairman and Chief Executive Officer, FINRA, dated May 10, 2011.

[13] *Id.*

[14] *See* Notice, *supra* note 3.

[15] *Id.*

[16] *See* Cornell Letter, *supra* note 4.

[17] *See* Response Letter, *supra* note 5.

[18] *Id.* (citing Exchange Act Release No. 52308 (August 19, 2005), 70 FR 49961, 49964 (August 25, 2005)).

[19] *Id.* (citing 47 CFR 64.1200 and 47 CFR 68.318).

[20] *Id.* (citing 16 CFR 310.4(b)(1)(v)).

[21] *Id.* (citing FTC, *Telemarketing Sales Rule,* 68 FR 4580, 4642 (January 29, 2003)).

[22] *Id.* (citing 68 FR 4580, *supra* note 23, at 4644, and FCC, *Rules and Regulations Implementing the Telephone Consumer Protection Act,* 68 FR 44144, 44164 (July 25, 2003).

[23] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). Commenters did not raise concerns about the proposed rule's impact on efficiency, competition and capital formation.

[24] 15 U.S.C. 78*o*–3(b)(6).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2396 Filed 2–2–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66276; File No. SR–FINRA–2011–071]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change To Increase the Trading Activity Fee Rate for Transactions in Covered Equity Securities

January 30, 2012.

I. Introduction

On December 14, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change to increase FINRA's Trading Activity Fee (''TAF'') rate for transactions in covered equity securities. The proposed rule change was published for comment in the **Federal Register** on December 30, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

FINRA's proposal would amend Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's TAF for transactions in Covered Securities that are equity securities.[4] The rules governing the TAF also include a list of exempt transactions.[5] The TAF, along with the Personnel Assessment and the Gross Income Assessment fees, are used to fund FINRA's regulatory activities.[6]

The current TAF rate is $0.000090 per share for each sale of a covered equity security, with a maximum charge of $4.50 per trade.[7] In the Notice, FINRA stated that over 95% of TAF revenue is generated by transactions in Covered Securities that are equity securities. Thus, FINRA's revenue from the TAF is substantially affected by changes in trading volume in the equities markets. According to FINRA, since it previously increased the TAF in July 2011, there was a momentary spike in equity securities trading volume in the month of August followed by a general decline in volumes heading into the fourth quarter of 2011. FINRA states that, as a result of declining volume, it is necessary to adjust the TAF rate for 2012 to ''stabilize revenue flows necessary to support FINRA's regulatory mission.'' [8] Under the proposal, FINRA's TAF rate for Covered Securities that are equity securities would increase by $0.000005 per share, from $0.000090 per share to $0.000095 per share, while the per-transaction cap for Covered Securities that are equity securities would increase by $0.25, from $4.50 to $4.75. FINRA stated that increasing the TAF rate on these securities by $0.000005 per share is the minimum increase necessary to bring the revenue from the TAF to its needed levels to adequately fund FINRA's member regulatory obligations and that it intends the proposed increase to remain revenue neutral, as it did previously when it adjusted the TAF rate.[9]

FINRA stated that it intends to make the proposal effective on February 1, 2012.

III. Discussion and Commission's Findings

After carefully considering the proposed rule change, the Commission finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[10] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(5) of the Act,[11] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. The Commission believes that the proposal is reasonably designed to secure adequate funding to support FINRA's regulatory duties.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–FINRA–2011–071) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2394 Filed 2–2–12; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[License No. 07/07–0113]

C3 Capital Partners II, L.P.; Notice Seeking Exemption Under 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that C3 Capital Partners II, L.P., 4520 Main Street, Suite 1600, Kansas City, Missouri 64111–7700, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings Which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2006)). C3 Capital Partners II, L.P., proposes to provide financing to Findett LLC, P.O. Box 0960, St. Charles, MO 63302–0960. The financing is contemplated to provide working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because C3 Capital Partners, L.P., an Associate of C3 Capital Partners II, L.P., currently owns greater than 10 percent of Findett LLC, and therefore, Findett LLC, is considered an Associate of C3 Capital Partners II as defined in Sec. 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days, to the Associate Administrator for Investment, U.S. Small Business

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66050 (December 23, 2011), 76 FR 82334 (''Notice'')

[4] Covered Securities are defined in Section 1 of Schedule A to the FINRA By-Laws as: Exchange-registered securities wherever executed (except debt securities that are not TRACE-Eligible Securities); OTC Equity Securities; security futures; TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction); and all municipal securities subject to Municipal Securities Rulemaking Board reporting requirements.

[5] *See* FINRA By-Laws, Schedule A, § 1(b)(2).

[6] *See* FINRA By-Laws, Schedule A, § 1(a).

[7] The current TAF rates were approved by the Commission on June 2, 2011. *See* Securities Exchange Act Release No. 64590 (June 2, 2011), 76 FR 33388 (June 8, 2011).

[8] Notice, 76 FR at 82335.

[9] *See id.*

[10] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).