



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
TRADING AND MARKETS

May 13, 2020

Robert L.D. Colby  
Executive Vice President and Chief Legal Officer  
Financial Industry Regulatory Authority, Inc.  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: No-Action Letter: Financial Industry Regulatory Authority, Inc.  
Request Regarding Certain Requirements Arising From Sections  
19(b)(1) and 19(g)(1) of the Securities Exchange Act of 1934 and  
Exchange Act Rule 19b-4 Given the Health and Safety Concerns and  
Impacts of the COVID-19 Pandemic**

Dear Mr. Colby:

In your letter dated May 12, 2020 (the “Request”),<sup>1</sup> on behalf of the Financial Industry Regulatory Authority, Inc. (“FINRA”), you request that Division of Trading and Markets staff (the “Staff”) not recommend that the Securities and Exchange Commission (the “Commission”) take enforcement action against FINRA for noncompliance with Sections 19(b)(1) and 19(g)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> and Exchange Act Rule 19b-4<sup>3</sup> thereunder in connection with the actions described in your Request. More specifically, your Request pertains to targeted guidance and temporary, solely technical or ministerial regulatory relief FINRA provides from obligations under FINRA’s existing rules to member firms, associated persons and other individuals that are necessary or appropriate in light of the effects of the coronavirus (“COVID-19”) pandemic on such firms and persons (collectively, “COVID-19 Guidance and Temporary Regulatory Relief”), under the circumstances outlined below.

Section 19(g)(1) of Exchange Act, among other things, requires FINRA to comply with the Exchange Act, the rules and regulations thereunder, and FINRA’s own rules and, absent reasonable justification or excuse, to enforce compliance by its members and persons associated with its members with such provisions. Exchange Act

---

<sup>1</sup> A copy of the Request is attached.

<sup>2</sup> 15 U.S.C. 78s(b)(1), (g)(1).

<sup>3</sup> 17 CFR 240.19b-4.

Section 19(b) generally requires the Commission to review and approve FINRA's rule filings and rule changes before they can be put into effect. However, under certain enumerated circumstances, a rule change can become effective upon its filing with the Commission, as provided under Exchange Act Section 19(b)(3)(A) and Rule 19b-4(f) thereunder.

Based on the Request, we understand the relevant facts to be as follows:

FINRA is requesting that the Staff not recommend enforcement action against FINRA to the Commission under Exchange Act Section 19(g)(1) if FINRA, in certain limited circumstances, and only on a temporary basis, issues targeted, solely technical or ministerial COVID-19 Guidance and Temporary Regulatory Relief from obligations under FINRA's rules that, absent relief, may result in FINRA's not complying with Exchange Act Sections 19(b)(1) and 19(g)(1), and Exchange Act Rule 19b-4.

FINRA states that it recognizes that health and safety is of paramount importance in response to the COVID-19 pandemic. FINRA also states that, given the significant impacts that the COVID-19 pandemic has had on its member firms, investors and other stakeholders—including the various shelter-in-place and other similar government orders—FINRA has received numerous requests from member firms, associated persons and other individuals which demonstrate a clear need for targeted, solely technical or ministerial regulatory relief from obligations under FINRA rules.

FINRA states that it understands that the current pandemic environment has presented challenges that have made it difficult to comply with certain aspects of FINRA's rules. Accordingly, FINRA states that it has worked promptly to provide targeted COVID-19 Guidance and Temporary Regulatory Relief to member firms, associated persons and other individuals from some FINRA requirements through the issuance of FINRA staff statements, guidance, and FAQs. FINRA states that this relief is focused on assisting firms with obligations impacted by a shift to business continuity plans. For example, this relief has involved the extension of certain deadlines (such as extending the time for eligible persons to function as principals before passing the appropriate examination(s) and report filing deadlines) or addressing certain paper-based and other form requirements (such as the use of electronic acknowledgements rather than manual signatures) that member firms, associated persons, and other individuals may have difficulties complying with in the current pandemic environment.

FINRA also states that, through its engagement with FINRA member firms, it has been apparent that prompt and targeted regulatory relief was needed for member firms, associated persons and other individuals regarding compliance with certain deadlines and other aspects of FINRA rules and requirements that have been impacted due to circumstances arising from COVID-19. FINRA further states that, given the exigent circumstances and the need for prompt action to address these types of deadlines and other aspects of FINRA rules impacted by the pandemic, it provided the temporary regulatory relief through communications of the type noted above, rather than through other means, such as filing proposed rule changes under the Exchange Act.

In addition, FINRA believes that, in order to best respond expeditiously to the pressing challenges arising from the pandemic's impacts, reasonable, timely, common-sense and targeted relief can be issued to member firms, associated persons and other individuals through the issuance of FINRA staff statements, guidance, and FAQs. To the extent such relief would have necessitated proposed rule change filings, FINRA believes that given the current situation, the volume of potential rule filings under Exchange Act Section 19(b)(3)(A) would make it difficult to provide on a timely basis the type of temporary, targeted guidance or relief that FINRA provides (*e.g.*, involving temporary extensions of certain deadlines or temporary relief from certain paper-based or in-person requirements). However, recognizing the Commission's oversight role, FINRA has shared and will continue to share these communications with the Staff for review and comment prior to publication.

FINRA is continuing to monitor the situation and engage with member firms and the Staff to determine whether additional guidance and temporary regulatory relief from FINRA, or a temporary proposed rule change, may be appropriate. At this time, FINRA anticipates that additional prompt and targeted, solely technical or ministerial regulatory relief may be necessary to address other obligations that may present compliance difficulties or logistical challenges as the current pandemic environment continues.

Response:

Based on the facts and circumstances discussed in your Request, and without necessarily concurring in your conclusions and analysis, the Staff would not recommend enforcement action to the Commission against FINRA under Exchange Act Section 19(g)(1) if FINRA, in certain limited circumstances, and only on a temporary basis and under the circumstances below, issues targeted, solely technical or ministerial COVID-19 Guidance and Temporary Regulatory Relief from obligations under FINRA's rules that may result in FINRA not complying with Exchange Act Sections 19(b)(1) and 19(g)(1), and Exchange Act Rule 19b-4.<sup>4</sup>

---

<sup>4</sup> The Staff understands that for other filings, FINRA will follow the rule filing process under Exchange Act Section 19(b) and Rule 19b-4 thereunder. In addition, for technical or ministerial relief filings where time permits, FINRA will follow the rule filing process under Exchange Act Section 19(b) and Rule 19b-4 thereunder.

In taking this position, Staff notes that:<sup>5</sup>

- FINRA has concluded that prompt and targeted relief by FINRA is necessary based on requests from its member firms that demonstrate a good faith need for such relief given the current exigent circumstances;
- FINRA's COVID-19 Guidance and Temporary Regulatory Relief involves solely technical or ministerial relief from obligations under FINRA's existing rules, such as extensions of impacted regulatory deadlines or addressing the filing or submission requirements for certain documents (such as the temporary use of electronic delivery for paper document and using electronic acknowledgements rather than manual signatures) that member firms, associated persons, and other individuals may have difficulties complying with in the current pandemic environment;
- To the extent that FINRA's COVID-19 Guidance and Temporary Regulatory Relief would otherwise necessitate the filing of a proposed rule change, such rule change would have qualified for treatment as being effective upon filing under Exchange Act Section 19(b)(3)(A) and Rule 19b-4(f) thereunder;
- The Staff position is and will continue to be temporary and will not extend beyond the later of: June 30, 2020 or any extension of the Staff's no-action position;
- FINRA member firms, associated persons, or other individuals utilizing FINRA's COVID-19 Guidance and Temporary Regulatory Relief shall document and, where appropriate, publicly disclose their reliance on the particular relief provided;
- FINRA has engaged and will continue to engage with the Staff to discuss in which instances temporary regulatory relief will be issued consistent with this Staff position or a temporary proposed rule change will be filed; and
- FINRA shares drafts of its COVID-19 Guidance and Temporary Regulatory Relief communications (*e.g.*, Regulatory Notices or FAQs) with Staff, providing reasonable time for review and comment by Staff prior to publication.

The position of the Staff is based strictly on the facts and circumstances discussed in your Request, and any different facts or circumstances might require a different response. Furthermore, this response expresses the Staff's position regarding enforcement action only and does not purport to express any legal conclusions on the

---

<sup>5</sup> This list is not intended to capture or describe every aspect of the Request but rather highlight key aspects of the Request.

Robert L.D. Colby

May 13, 2020

Page 5

questions presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules. This position is subject to modification or revocation by the Staff at any time.

If you have any questions regarding this letter, please call me at (202) 551-5550.

Sincerely,

A handwritten signature in cursive script that reads "Emily Westerberg Russell".

Emily Westerberg Russell  
Chief Counsel

Attachment



May 12, 2020

Emily Westerberg Russell  
Chief Counsel  
U.S. Securities and Exchange Commission  
Division of Trading and Markets  
100 F Street, NE  
Washington, DC 20549

Dear Ms. Russell,

The Financial Industry Regulatory Authority, Inc. (FINRA) respectfully requests that the staff of the Division of Trading and Markets (Division) of the Securities and Exchange Commission (SEC) issue no action relief from Sections 19(b)(1) and (g)(1) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 19b-4 thereunder related to targeted guidance and temporary solely technical or ministerial regulatory relief that FINRA provides under FINRA's existing rules to member firms, associated persons and other individuals that are necessary or appropriate in light of the effects of the coronavirus (COVID-19) pandemic on such firms and persons (collectively, "COVID-19 Guidance and Temporary Regulatory Relief"), subject to the conditions outlined below and, to the extent required, those conditions established by Division staff.

Section 19(g)(1) of the Exchange Act, among other things, requires FINRA to comply with the Exchange Act, the rules and regulations thereunder, and FINRA's own rules and, absent reasonable justification or excuse, to enforce compliance by its members and persons associated with its members with such provisions. Exchange Act Section 19(b) generally requires the Commission to review and approve FINRA's rule filings and rule changes before they can be put into effect. However, under certain enumerated circumstances, a rule change can become effective upon its filing with the Commission, as provided under Exchange Act Section 19(b)(3)(A) and Rule 19b-4(f) thereunder.

FINRA believes that health and safety is of paramount importance in response to the COVID-19 pandemic. FINRA also notes that, given the significant impacts that the COVID-19 pandemic has had on its member firms, investors and other stakeholders—including the various shelter-in-place and other similar government orders—FINRA has received numerous requests from member firms, associated persons and other individuals which demonstrate a clear need for targeted solely technical or ministerial regulatory relief under FINRA rules.

Therefore, in certain limited circumstances and only on a temporary basis, FINRA issues targeted COVID-19 Guidance and Temporary Regulatory Relief providing solely technical or ministerial relief under FINRA's rules, which absent relief, may result in FINRA's not complying with Exchange Act Section 19(b)(1) and 19(g)(1) and Exchange Act Rule 19b-4.

Accordingly, given the exigent health and safety concerns and impacts of the COVID-19 pandemic, FINRA is requesting that the staff not recommend enforcement action against FINRA to the Commission under Exchange Act Section 19(g)(1) if FINRA's issuance of targeted COVID-19 Guidance and Temporary Regulatory Relief providing solely technical or ministerial relief under FINRA's rules may result in FINRA not complying with Exchange Act Sections 19(b)(1) and (g)(1) and Exchange Act Rule 19b-4, subject to the conditions outlined in this letter and Division staff's no-action letter.

### **Temporary Regulatory Relief**

FINRA understands that the current pandemic environment has presented challenges that have made it difficult to comply with certain aspects of FINRA's rules. FINRA has worked promptly to provide targeted COVID-19 Guidance and Temporary Regulatory Relief to member firms, associated persons and other individuals from some FINRA requirements through the issuance of FINRA staff statements, guidance, and FAQs. This relief is focused on assisting firms with obligations impacted by a shift to business continuity plans. For example, this relief has involved the extensions of certain deadlines (such as extending the time for eligible persons to function as principals before passing the appropriate examination(s) and report filing deadlines), or addressing certain electronic acknowledgements rather than manual signatures that member firms, associated persons, and other individuals may have difficulties complying with in the current pandemic environment.

Through our engagement with member firms it has been apparent that prompt and targeted regulatory relief was needed for member firms, associated persons and other individuals regarding compliance with certain deadlines and other aspects of FINRA rules and requirements that have been impacted due to circumstances arising from COVID-19. Given the exigent circumstances and the need for prompt action to address challenges arising from the pandemic, FINRA provided the temporary regulatory relief through communications of the type listed above, rather than through other means, such as rulemaking subject to the Exchange Act. FINRA believes that, to the extent that the COVID-10 Guidance and Temporary Regulatory Relief would have necessitated the filing of a proposed rule change, such rule change would have qualified for treatment as being effective upon filing under Exchange Act Section 19(b)(3)(A) and Rule 19b-4(f) thereunder.

FINRA believes that, in order to best respond expeditiously to the pressing challenges arising from the pandemic's impacts, reasonable, timely, common-sense and targeted relief can be issued to member firms, associated persons and other individuals through the issuance of

FINRA staff statements, guidance, and FAQs. To the extent such relief would have necessitated proposed rule change filings, FINRA believes that given the current situation, the volume of potential rule filings under Exchange Act Section 19(b)(3)(A) would make it difficult to provide on a timely basis the type of temporary, targeted guidance or relief that FINRA provides (e.g., involving temporary extensions of certain deadlines or temporary relief from certain paper-based or in-person requirements). However, recognizing the Commission's oversight role, FINRA has shared and will continue to share these communications with the Division staff for review and comment prior to publication.

FINRA is continuing to monitor the situation and engage with member firms and the Division staff to determine whether additional guidance, temporary regulatory relief from FINRA or a temporary proposed rule change may be appropriate. At this time, FINRA anticipates that additional prompt and targeted technical or ministerial relief may be necessary to address other obligations that may present compliance difficulties or logistical challenges as the current pandemic environment continues. To the extent such additional relief would have necessitated the filing of a proposed rule change, such rule change would have qualified for treatment as being effective upon filing under Exchange Act Section 19(b)(3)(A) and Rule 19b-4(f) thereunder. For all other filings, FINRA will follow the rule filing process under Exchange Act Section 19(b) and Rule 19b-4 thereunder. In addition, for technical or ministerial relief filings where time permits, FINRA will follow the rule filing process under Exchange Act Section 19(b) and Rule 19b-4 thereunder. Furthermore, FINRA member firms, associated persons, or other individuals utilizing FINRA's COVID-19 Guidance and Temporary Regulatory Relief shall document and, where appropriate, publicly disclose their reliance on the particular relief provided.

### **Termination of the Temporary Regulatory Relief**

As COVID-19-related risks decrease, FINRA stated in *Regulatory Notice* 20-08 that member firms should expect to return to meeting any regulatory obligations for which relief has been provided. When appropriate, FINRA will publish one or more *Regulatory Notices* or similar communications announcing termination date(s) for the regulatory relief that will provide member firms with time to make necessary operational adjustments. FINRA will share with Division staff for review and comment prior to publication any communication indicating that an instance of regulatory relief has terminated. FINRA would expect the required no-action relief from the Commission to cease on June 30, 2020 (or other date set by Division staff).

### **Conclusion**

For the foregoing reasons, FINRA respectfully requests that the Division staff not recommend enforcement action to the Commission against FINRA under Exchange Act Section 19(g)(1) if FINRA's issuance of targeted COVID-19 Guidance and Temporary Regulatory Relief providing solely technical or ministerial relief under FINRA's rules may result in FINRA's not complying

with Sections 19(b)(1) and (g)(1) of the Exchange Act and Rule 19b-4, subject to the conditions outlined in this letter and Division staff's no-action letter.

Regards,

A handwritten signature in black ink, appearing to read "Robert Colby", with a long horizontal flourish extending to the right.

Robert L.D. Colby  
Executive Vice President and Chief Legal Officer  
FINRA

cc:  
Brett Redfearn, Director, SEC Trading and Markets