

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- 74953; File No. SR-FINRA-2015-011)

May 13, 2015

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Reporting Requirements of FINRA Rule 4530(a)(1)(H)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 5, 2015, 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 and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 4530 (Reporting Requirements) to provide an exception from the requirements of paragraph (a)(1)(H) of the rule for dealings with a member or associated person subject to statutory disqualification, if that member or associated person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to be a member or to be associated with a member.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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.

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 Rule 4530 requires members to report to FINRA specified events, such as statutory disqualifications, and quarterly statistical and summary information regarding written customer complaints.<sup>4</sup> FINRA uses the information for regulatory purposes to identify and initiate investigations of firms, offices and associated persons that may pose a risk.

FINRA Rule 4530(a)(1)(H) requires a member to report whenever the member itself or an associated person of the member is subject to a "statutory disqualification" as defined in the Act. The rule also requires a member to report whenever the member or an associated person of the member is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities with any person that is subject to a "statutory disqualification" as defined in the Act. The report must include the name of the person subject to

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<sup>4</sup> The specified events and customer complaint information must be electronically reported to FINRA via an application on FINRA's Firm Gateway.

the statutory disqualification and details concerning the disqualification. In addition, the report must be submitted to FINRA within 30 calendar days after the member knows or should have known of the event.

The definition of “statutory disqualification” under the Act includes, among other events, findings by the SEC, Commodity Futures Trading Commission or a self-regulatory organization that a person: (1) willfully violated the federal securities or commodities laws, or the Municipal Securities Rulemaking Board rules; (2) willfully aided, abetted, counseled, commanded, induced or procured such violations; or (3) failed to supervise another person who commits violations of such laws or rules.<sup>5</sup> Thus, for instance, a member is currently required to report under FINRA Rule 4530(a)(1)(H) each time the member is involved in the sale of any financial instrument, such as participating in a selling syndicate or selling group, with a member that has been found to have willfully violated the federal securities laws. This would be true even if the member that is subject to the willful violation has been approved, or is otherwise permitted pursuant to FINRA rules and the federal securities laws, to continue in membership notwithstanding the disqualification.<sup>6</sup>

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<sup>5</sup> See 15 U.S.C. 78c(a)(39).

<sup>6</sup> In general, persons subject to a statutory disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. A firm seeking to continue in membership, notwithstanding the existence of such a disqualification, generally would be required to file an MC-400A application with FINRA. Similarly, a firm seeking to sponsor (*i.e.*, employ or associate with) a disqualified person generally would be required to file an MC-400 application with FINRA. However, as described in Regulatory Notice 09-19 (April 2009), a firm would not be required to file an application for approval for specific disqualifying events. For instance, a firm that is subject to a statutory disqualification based on a willful violation of the federal securities laws would not be required to file an MC-400A application with FINRA if the sanction is no longer in effect. Such a firm would be permitted to continue in membership notwithstanding the disqualification and without having to file an application with FINRA for approval.

For the following reasons, FINRA believes that there is no regulatory value in requiring a firm to report dealings with a disqualified member or associated person that has been approved or is otherwise permitted to be a member or associated with a member. First, FINRA is aware of the statutory disqualification status of such members and associated persons. Second, disqualified members and associated persons that have been approved to be members or associated with members typically are subject to special supervisory conditions, and FINRA periodically examines them to ensure compliance with the supervisory conditions and to monitor for other problems.

Therefore, FINRA is proposing to amend Rule 4530(a)(1)(H) to exclude activities with a disqualified member or associated person that has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to be a member or associated with a member.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be the date of filing.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> 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 rule change will further these purposes by eliminating unnecessary reporting of information to FINRA and allowing FINRA to use its resources more efficiently. FINRA also

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<sup>7</sup> 15 U.S.C. 78q-3(b)(6).

believes that the proposed rule change will serve to reduce potential compliance burdens on firms without compromising the regulatory information available to FINRA.

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.

The proposed rule change would reduce potential compliance burdens on firms by eliminating the requirement under FINRA Rule 4530(a)(1)(H) to report to FINRA each instance where a firm or an associated person is involved in a financial activity with a disqualified member or associated person that has been approved or is otherwise permitted to be a member or associated with a member.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has fulfilled this requirement.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA requested the Commission to waive the 30-day operative delay so it can implement the proposed rule change immediately. FINRA stated that waiver of the operative delay would eliminate unnecessary reporting requirements relating to dealings with members or associated persons that are subject to a statutory disqualification where FINRA already has access to information regarding the status of such persons and they have either been approved or are otherwise permitted to be a member or associated with a member. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 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).

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-011 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2015-011. 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 10:00 a.m. and 3:00 p.m. Copies of the 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-2015-011 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.<sup>13</sup>

Robert W. Errett  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).