

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75633; File No. SR-FINRA-2015-009)

August 6, 2015

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Adopt FINRA Rule 2272 to Govern Sales or Offers of Sales of Securities on the Premises of Any Military Installation to Members of the U.S. Armed Forces or their Dependents

I. Introduction

On April 23, 2015, 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 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt FINRA Rule 2272. Rule 2272 would govern sales or offers of sales of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents. The proposed rule was published for comment in the Federal Register on May 6, 2015.<sup>3</sup> The Commission received four comment letters in response to the proposal.<sup>4</sup> On June 18, 2015, FINRA granted the Commission an extension of time, until August 10, 2015, to act on the proposal.<sup>5</sup> FINRA responded to the comment letters on July 21, 2015.<sup>6</sup>

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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> See Notice of Filing of a Proposed Rule to Adopt FINRA Rule 2272 to Govern Sales or Offers of Sales of Securities on the Premises of Any Military Installation to Members of the U.S. Armed Forces or Their Dependents; Exchange Act Release No. 74890 (May 6, 2015), 80 FR 27220 (May 12, 2015) (“Notice”).

<sup>4</sup> See Letters from Jason T. Robinson, Georgia State University College of Law Investor Advocacy Clinic, dated May 30, 2015 (“GSU Letter”); Hugh D. Berkson, Public Investors Arbitration Bar Association, dated June 1, 2015 (“PIABA Letter”); David T. Bellaire, Esq., Financial Services Institute, dated June 2, 2015 (“FSI Letter”); David M. Rader, Michigan State University College of Law Investor Advocacy Legal Clinic, dated June 9, 2015 (“MSU Letter”).

<sup>5</sup> See Letter from Jeanette Wingler, Assistant General Counsel, FINRA, to Katherine England, Assistant Director, Division of Trading and Markets, Securities and Exchange Commission, dated June 18, 2015.

<sup>6</sup> See Letter from Jeanette Wingler, Assistant General Counsel, FINRA, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated July 21, 2015 (“FINRA Response Letter”).

This order approves the rule as proposed.

## II. Description of the Proposed Rule

### a. Background

As stated in the Notice, FINRA is proposing to adopt Rule 2272 to govern sales or offers of sales of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents.<sup>7</sup> Proposed Rule 2272 would impose a number of restrictions upon FINRA members engaged in the sales or offers of sales of securities, including a disclosure requirement, a suitability obligation, and a ban on referral fees to persons not associated with a FINRA member.<sup>8</sup>

### i. Statutory Basis

To comply with the requirements of Section 15A(b)(14) of the Exchange Act,<sup>9</sup> FINRA proposed rules governing the sales, or offers of sales, of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents.<sup>10</sup> Section 15A(b)(14) requires these rules mandate: (1) a broker-dealer performing brokerage services to military personnel or dependents disclose (a) that securities offered are not being offered or provided on behalf of the federal government, and that their offer is not sanctioned, recommended, or encouraged by the federal government and (b) the identity of the registered broker-dealer offering the securities; (2) such broker-dealer to perform an appropriate suitability determination prior to making a recommendation of a security to a member of the U.S. Armed

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<sup>7</sup> See Notice at 27221.

<sup>8</sup> See id.

<sup>9</sup> 15 U.S.C. 78o-3(b)(14).

<sup>10</sup> Congress amended Section 15A(b) of the Exchange Act in the Military Personnel Financial Services Protection Act ("Military Act"). Pub. L. No. 109-290, 120 Stat. 1317. The Military Act requires the rules of a registered national securities association to include provisions governing the sales, or offers of sales, of securities on the premises of any military installation to any member of the Armed Forces or a dependent thereof.

Forces or a dependent thereof; and (3) that no person receive referral fees or incentive compensation unless such person is an associated person of a registered broker-dealer and qualified pursuant to the rules of a self-regulatory organization.<sup>11</sup>

ii. Proposed Rule

Proposed FINRA Rule 2272 requires that, prior to engaging in sales or offers of sales of securities on the premises of a military installation to any member of the U.S. Armed Forces or a dependent thereof, a FINRA member must clearly and conspicuously disclose in writing: (1) the identity of the member offering the securities; and (2) that the securities offered are not being offered or provided by the member on behalf of the federal government, and that the offer of such securities is not sanctioned, recommended, or encouraged by the federal government.<sup>12</sup>

The proposed rule also mandates that a FINRA member satisfy the suitability obligations imposed by FINRA Rule 2111 when making a recommendation on the premises of a military installation to any member of the U.S. Armed Forces or a dependent thereof.<sup>13</sup>

Finally, the proposed rule requires that no FINRA member cause a person to receive a referral fee or incentive compensation in connection with sales or offers of sales of securities on the premises of a military installation with any member of the U.S. Armed Forces or a dependent thereof, unless such person is an associated person of a registered broker-dealer who is appropriately qualified consistent with FINRA rules, and the payment complies with applicable federal securities laws and FINRA rules.<sup>14</sup>

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<sup>11</sup> 15 U.S.C. 78o-3(b)(14).

<sup>12</sup> See proposed Rule 2722(b).

<sup>13</sup> See proposed Rule 2722(c).

<sup>14</sup> See proposed Rule 2722(d).

### III. Summary of Comments and FINRA's Response

As noted above, the Commission received four comment letters on the proposed rule change.<sup>15</sup> As discussed in more detail below, one commenter supported the rule in its entirety and stated that it was thorough and balanced.<sup>16</sup> Three commentators also supported the proposed rule, but also suggested some modifications.<sup>17</sup> The sections below outline the suggestions and specific concerns raised by the commenters, as well as FINRA's response.

#### a. Application to Off-Base Offers and Sales of Securities

Two commenters suggested extending the scope of the proposed rule to cover offers and sales of securities to members of the U.S. Armed Forces and their dependents both off and on the premises of a military installation.<sup>18</sup> One of these commenters stated that suitability challenges to service members exist irrespective of where the service member and his/her family live.<sup>19</sup> The other commenter stated that perpetrators of financial fraud operate both off and on military installations, and that expanding the proposed rule to cover sales in both locations would enhance compliance with FINRA rules.<sup>20</sup>

In its response, FINRA acknowledged that some of the concerns the rule is designed to address would also be raised by off-base sales.<sup>21</sup> However, FINRA stated that it drafted the rule to comply with the statutory requirements of the Exchange Act, which only apply in relevant part to offers and sales of securities on the premises of a military installation, rather than in any

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<sup>15</sup> See note 4, *supra*.

<sup>16</sup> See FSI Letter (stating that "FSI fully supports the Proposed Rule, and [FSI] applaud[s] FINRA's efforts").

<sup>17</sup> See GSU Letter, MSU Letter, and PIABA Letter.

<sup>18</sup> See GSU Letter, and PIABA Letter.

<sup>19</sup> See PIABA Letter.

<sup>20</sup> See GSU Letter.

<sup>21</sup> See FINRA Response Letter at 3.

location.<sup>22</sup> FINRA also noted that the potential of investor confusion regarding the involvement of the federal government in offering the securities may be reduced for activities occurring off the premises of a military installation.<sup>23</sup> In addition, FINRA noted that any such sales or offers of sales of securities off the premises of a military installation must comply with applicable FINRA rules and that any misleading representation would be otherwise prohibited by FINRA rules.<sup>24</sup>

b. Additional Disclosures

One commenter proposed the creation of a standardized disclosure form covering each element of Rule 2272, and requiring broker-dealers to offer a written attestation that proposed investments are suitable for the prospective investor.<sup>25</sup> The commenter stated that such a form would promote clear disclosure and draw attention to the protections available under the proposed rule.<sup>26</sup> That commenter expressed concern that without such a form, broker-dealers could otherwise conceal the disclosures required by the proposal.<sup>27</sup>

FINRA responded that a standard disclosure form would be unnecessary because FINRA allows a risk-based approach to documenting compliance with Rule 2111.<sup>28</sup> FINRA responded also that the rule explicitly requires member firms to make disclosures “clearly and

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<sup>22</sup> See id.

<sup>23</sup> See id.

<sup>24</sup> See id.

<sup>25</sup> See GSU Letter.

<sup>26</sup> See id. (noting that such a form would “lend credibility to the spirit of Rule 2272 and draw attention to the disclosures, simplifying the process for all parties involved”).

<sup>27</sup> See id. (stating that such a form would “limit broker-dealers’ ability to hide these disclosures amongst the numerous other documents that potential investors are given to review before a transaction”).

<sup>28</sup> See FINRA Response Letter at 3.

conspicuously” and “in writing” prior to engaging in sales or offers of sales, and believes that these requirements reduce the potential for investor confusion.<sup>29</sup>

Another commenter stated that the disclosure obligations should be expanded to require that persons associated with any broker-dealer disclose, both verbally and in writing: (1) if they served in the U.S. Armed Forces and the status of their discharge; (2) that any former military service does not relate to their financial advice offered; and (3) that a service member should not feel compelled to invest because of that associated person’s former military service.<sup>30</sup>

In response to the commenter, FINRA noted that—as the commenter had observed<sup>31</sup>—the military inculcates a culture of deference to veterans, and that some veterans with prestigious careers or assignments may hold undue influence over current members of the Armed Forces.<sup>32</sup> FINRA stated that requiring disclosure of military service for persons associated with a member firm could have the unintentional effect of unduly influencing or pressuring current service members’ investment decisions.<sup>33</sup>

c. Suitability

One commenter proposed to expand the suitability requirements of the proposed rule to include military-specific factors for broker-dealers to consider when making sales or offers of sales of securities to military personnel, or alternatively that FINRA provide guidance to broker-dealers regarding the application of the proposed rule.<sup>34</sup> The commenter suggests specifically

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<sup>29</sup> See id. at 3 – 4.

<sup>30</sup> See MSU Letter (noting that “[f]ormer military personnel . . . hold a certain amount of influence over young service members that respect military tradition” and that “it is critical that persons serving military communities accurately disclose their history of service as well as discharge status”).

<sup>31</sup> See MSU Letter.

<sup>32</sup> See FINRA Response Letter at 4.

<sup>33</sup> See id.

<sup>34</sup> See MSU Letter.

including a service member's anticipated time remaining at their current duty station, as well as the time a service member has remaining on their contract as criteria a broker-dealer should consider, and believes that this will protect service members from incurring unsustainable financial commitments.<sup>35</sup> Another commenter proposed that FINRA members should be trained to understand issues relating to assets in government Thrift Savings Plan accounts.<sup>36</sup>

In response to both commenters, FINRA noted that recommendations concerning retirement accounts, including Thrift Savings Plan accounts, are subject to FINRA Rule 2111, requiring a member firm and its registered representatives to consider the customer's investment profile, including their financial situation, risk tolerance, and other concerns.<sup>37</sup> FINRA stated that suitability obligations imposed by Rule 2111 satisfy the commenters' concerns and the statutory requirement that FINRA adopt rules requiring its members to perform an appropriate suitability determination.<sup>38</sup> FINRA also noted that it has previously recommend that member firms train their representatives on retirement savings options and the tax, investment, and other consequences of those decisions.<sup>39</sup>

#### d. Education

One commenter encouraged FINRA to focus on financial education for members of the U.S. Armed Forces, and suggested that FINRA produce programs to reach service members and

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<sup>35</sup> See id. (stating that “[s]ervice members experience substantial income variability” due to duty station changes which have different housing allowances and cost of living adjustments).

<sup>36</sup> See PIABA Letter (noting that the “sale of investment services to military service members and their families provide unique suitability problems,” the primary issue of which “stems from recommendations that service members purchase products with increased fees when they move their savings out of their government savings plan”).

<sup>37</sup> See FINRA Response Letter at 4 – 5.

<sup>38</sup> See id. at 5.

<sup>39</sup> See id.

their dependents.<sup>40</sup> This commenter also stated that registered representatives should be trained concerning the special suitability needs of service members.<sup>41</sup> FINRA replied that it supported financial education for members of the U.S. Armed Forces, and that the FINRA Investor Education Foundation's Military Financial Readiness Program offers such financial education tools and training to the relevant population.<sup>42</sup> FINRA also responded that it has recommended that member firms train registered representatives concerning retirement savings options.<sup>43</sup>

#### IV. Discussion

After carefully considering the proposed rule, the comments submitted, and FINRA's response to the comments, the Commission is approving the rule change as proposed. Based on its review of the record, the Commission finds that FINRA Rule 2272 as proposed is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.<sup>44</sup> The Commission also finds that the proposed rule sufficiently addresses the concerns raised by commenters.

As discussed above, Rule 2272 would govern sales or offers of sales of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents. The proposed rule would require broker-dealers to disclose their identity and that the securities are neither offered nor approved by the federal government, as well as to comply with FINRA suitability obligations. The rule would also ban referral fees unless paid to an associated person

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<sup>40</sup> See PIABA Letter (noting that "service members typically receive very little financial training and have spent years not worrying about income and financial needs").

<sup>41</sup> See *id.*

<sup>42</sup> See FINRA Response Letter at 5 (stating that "the FINRA Investor Education Foundation's Military Financial Readiness Program has delivered free, unbiased financial education tools and training to service members, their spouses and on-base financial educators through a variety of programs and public awareness initiatives").

<sup>43</sup> See *id.* at 5 (citing FINRA Regulatory Notice 13-45 from December 2013).

<sup>44</sup> In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



of a FINRA member and the payment complies with applicable federal securities laws and FINRA rules.

The Commission takes note of the strong commenter support for both the specific provisions and broad aim of the underlying rule: protecting members of the U.S. Armed Forces from dishonest and unscrupulous practices.<sup>45</sup> The Commission acknowledges also the need, as one commenter expressed, for efficient regulations that keep investors, particularly American servicemen and women and their dependents, well-protected and effectively informed.<sup>46</sup> The Commission believes that Rule 2272 as proposed provides appropriate protections as called for by Congress, consistent with the Act for members of the U.S. Armed Forces and their dependents.

The Commission acknowledges the suggestion by two commenters to expand the scope of Rule 2272 to cover sales off as well as on military installations.<sup>47</sup> The Commission notes in particular the concern of one commenter, that military members are particularly susceptible to affinity fraud and that perpetrators of financial fraud may operate both on and off military installations.<sup>48</sup> Nonetheless, the Commission agrees with FINRA that the statutory requirements of the Exchange Act apply to offers and sales of securities on the premises of a military installation to members of the U.S. Armed Forces and their dependents,<sup>49</sup> and believes that current FINRA rules are designed to address many of the potential harms commenters have highlighted. The Commission notes that the registration requirements for broker-dealers under

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<sup>45</sup> See FSI Letter, GSU Letter, MSU Letter, and PIABA Letter.

<sup>46</sup> See FSI Letter.

<sup>47</sup> See GSU Letter, and PIABA Letter.

<sup>48</sup> See GSU Letter. See also FINRA Response Letter at 3 (acknowledging “offers and sales of securities off the premises of a military installation may present some of the same issues as with offers and sales of securities on the premises of a military installation”).

<sup>49</sup> See FINRA Response Letter at 3.

the Exchange Act and current FINRA rules restrict the payment of referral fees to unregistered persons.<sup>50</sup> The Commission also concurs with FINRA’s assessment that sales or an offer of sales of securities off-base implicates a lesser risk of confusion as to whether those securities are endorsed or otherwise offered by the federal government.<sup>51</sup>

The Commission also acknowledges the concerns raised by some commenters that Rule 2272 should incorporate a requirement for a standardized disclosure form.<sup>52</sup> In response, FINRA declined to propose such a requirement, pointing to its risk-based approach to documenting compliance with Rule 2111.<sup>53</sup> The Commission notes that the proposed rule explicitly requires that disclosures be made both “in writing” and “clearly and conspicuously” before engaging in any sales or offers of sales, which should reduce the likelihood of investor confusion.<sup>54</sup> The Commission also notes that neither the Exchange Act nor the proposed rule impose specific requirements about the form that disclosure should take, and believes that this flexible requirement will be more likely to allow broker-dealers to make the sort of disclosures best suited to individual investors.

The Commission also notes the concern raised by a commenter that military veterans associated with member firms could assert undue influence upon service members.<sup>55</sup> FINRA, however, notes that requiring a registered representative to disclose his or her service history and discharge status could unduly influence or pressure current service members’ investment

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<sup>50</sup> See id. (noting that “any such sales or offers of sales of securities off the premises of a military installation must comply with applicable FINRA rules, including suitability and referral fee requirements”).

<sup>51</sup> See id.

<sup>52</sup> See e.g. GSU Letter.

<sup>53</sup> See FINRA Response Letter at 3, note 11 (citing Regulatory Notice 12-25 which states that Rule 2111 does not include explicit documentation requirements, but does require a firm to show compliance).

<sup>54</sup> See id. at 3.

<sup>55</sup> See MSU Letter.

decisions.<sup>56</sup> The Commission agrees that requiring disclosure of a FINRA member's military service could have the counter-productive effect of causing that member to gain the sort of influence which such a requirement would seek to avoid.

Finally, while the Commission appreciates the concerns raised by one commenter suggesting that additional suitability criteria be considered, including those related to the government's Thrift Savings Plan,<sup>57</sup> the Commission agrees with FINRA that the suitability obligations imposed by Rule 2111 satisfy the commenters' concerns.<sup>58</sup> Thus, the Commission believes that such concerns are already addressed by the rule as proposed.

In light of the statutory requirements under Section 15A(b)(14) of the Exchange Act,<sup>59</sup> and the need to protect members of the U.S. Armed Forces from unscrupulous practices regarding the sales of investment products, the Commission believes that the proposed rule is consistent with the Act in that it is 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.<sup>60</sup>

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<sup>56</sup> See FINRA Response Letter at 4.

<sup>57</sup> See PIABA Letter. Both FINRA and the Commission's Office of Compliance Inspections and Examinations ("OCIE") have recently identified sales practices relating to retirement accounts and rollovers as examination priorities. See FINRA 2015 Regulatory and Examination Priorities Letter, January 6, 2015, available at <http://www.finra.org/sites/default/files/p602239.pdf> (discussing Individual Retirement Account (IRA) Rollovers (and Other "Wealth Events")). See also National Exam Program Examination Priorities for 2015, available at <http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2015.pdf> ("[OCIE] will assess whether registrants are using improper or misleading practices when recommending the movement of retirement assets from employer-sponsored defined contribution plans into other investments and accounts, especially when they pose greater risks and/or charge higher fees").

<sup>58</sup> See FINRA Response Letter at 4.

<sup>59</sup> 15 U.S.C. 78o-3(b)(14).

<sup>60</sup> See 15 U.S.C. 78o-3(b)(6).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>61</sup> that the proposed rule change (SR-FINRA-2015-009), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>62</sup>

Robert W. Errett  
Deputy Secretary

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<sup>61</sup> 15 U.S.C. 78s(b)(2).

<sup>62</sup> 17 CFR 200.30-3(a)(12).