

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83407; File No. SR-FINRA-2018-024)

June 11, 2018

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Security Futures Risk Disclosure Statement to Reflect the T+2 Settlement Cycle, Incorporate Prior Supplements, and Make Other Non-Substantive Changes

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 June 7, 2018, 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. 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 update the 2002 security futures risk disclosure statement (“2002 Statement” or “Statement”)<sup>4</sup> that would incorporate prior supplements pertaining to Sections 5.2 (Settlement by Physical Delivery) and 8.1 (Corporate Events),<sup>5</sup> make a technical change to Section 5.2 to reflect that the normal clearance and settlement cycle for securities transaction is

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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).

<sup>4</sup> See infra note 8.

<sup>5</sup> See infra notes 10 and 11. The Commission notes that the exhibits referenced are exhibits to the proposed rule change, not to this Notice.

now two business days, amend Section 6.1 (Protections for Securities Accounts) to reflect the current address for the Securities Investor Protection Corporation (“SIPC”), and make other non-substantive and technical changes. FINRA is not proposing any textual changes to FINRA rules.

The proposed updated Statement is attached as Exhibit 3a. The proposed supplement pertaining to changes to the specified paragraphs under Sections 5.2 and 6.1, and the proposed non-substantive and technical changes to the other Sections as described herein are attached as Exhibit 3b.

The text [sic] 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

Rule 2370(b)(11)(A) requires a member to deliver the current security futures risk disclosure statement to each customer at or prior to the time such customer’s account is approved

for trading security futures.<sup>6</sup> Thereafter, the member must distribute each new or revised security futures risk disclosure statement to each customer having an account approved for such trading or, in the alternative, not later than the time a confirmation of a transaction is delivered to each customer that enters into a security futures transaction. The rule requires FINRA to advise members when a new or revised security futures risk disclosure statement is available. To comply with the requirements of Rule 2370(b)(11)(A), a member may distribute the new or revised statement (i.e., supplement) in various ways, including, but not limited to: (1) conducting a mass mailing of the supplement to all of its customers approved to trade security futures who have already received the Statement; or (2) distributing the supplement to a customer who has already received the Statement not later than the time a confirmation of a transaction is delivered to each customer that enters into a security futures transaction.<sup>7</sup>

The Statement is a uniform statement that was jointly developed by FINRA, the American Stock Exchange, the Chicago Board Options Exchange (“Cboe”), the National Futures Association (“NFA”), Nasdaq Liffe Markets, the New York Stock Exchange, OneChicago, and the Options Clearing Corporation (“OCC”), and approved by the SEC in 2002.<sup>8</sup> Two supplements were added to the 2002 Statement in 2010 and 2014, and they are

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<sup>6</sup> In general, the security futures risk disclosure statement provides customers with disclosures regarding the characteristics and potential risks of investing in standardized security futures contracts traded on regulated U.S. exchanges.

<sup>7</sup> See Information Notice, September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement); see also Regulatory Notice 14-24 (May 2014) (stating, a member may separately distribute new supplements to such customers and that a member is not required to redistribute the entire Statement or earlier supplements).

<sup>8</sup> See Securities Exchange Act Release No. 46862 (November 20, 2002), 67 FR 70993 (November 27, 2002) (Order Approving File No. SR-NASD-2002-129); see also Securities Exchange Act Release No. 46613 (October 7, 2002), 67 FR 64176 (October 17, 2002) (Notice of Filing and Effectiveness of File No. SR-NFA-2002-05).

intended to be read in conjunction with Statement.<sup>9</sup> The 2010 supplement<sup>10</sup> revised the third paragraph under Section 8.1 of the Statement to accommodate changes by OneChicago, an exchange listing security futures products, to list a class of security futures for which adjustments are made for ordinary dividends. The 2010 supplemental paragraph reads as follows:

Corporate issuers also occasionally issue special dividends. A special dividend is an announced cash dividend payment outside the normal and customary practice of a corporation. The terms of a security futures contract may be adjusted for special dividends. The adjustments, if any, will be based upon the rules of the exchange and clearing organization. In general, there will be no adjustments for ordinary dividends as they are a normal and customary practice of an issuer and are already accounted for in the pricing of security futures. However, adjustments for ordinary dividends may be made for a specified class of security futures contracts based on the rules of the exchange and the clearing organization.

The 2014 supplement<sup>11</sup> revised the first paragraph under Section 5.2 of the Statement to accommodate changes by OneChicago to list a product with a physical delivery settlement cycle shorter than three business days. The 2014 supplemental paragraph also indicates that the

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<sup>9</sup> See infra notes 10 and 11.

<sup>10</sup> See Securities Exchange Act Release No. 62787 (August 27, 2010), 75 FR 53998 (September 2, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2010-045).

<sup>11</sup> See Securities Exchange Act Release No. 71981 (April 21, 2014), 79 FR 23034 (April 25, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-019).

normal clearance and settlement cycle for securities transactions is three business days and reads as follows:

Settlement by physical delivery is carried out by clearing brokers or their agents with National Securities Clearing Corporation (“NSCC”), an SEC-regulated securities clearing agency. Such settlements are made in much the same way as they are for purchases and sales of the underlying security. Promptly after the last day of trading, the regulated exchange’s clearing organization will report a purchase and sale of the underlying stock at the previous day’s settlement price (also referred to as the “invoice price”) to NSCC. In general, if NSCC does not reject the transaction by a time specified in its rules, settlement is effected pursuant to the rules of the exchange and NSCC’s Rules and Procedures within the normal clearance and settlement cycle for securities transactions, which currently is three business days. However, settlement may be effected on a shorter timeframe based on the rules of the exchange and subject to NSCC’s Rules and Procedures.

FINRA is proposing to update the 2002 Statement in several ways. First, the proposed update to the Statement would incorporate the 2010 supplement pertaining to Section 8.1, with one corrective non-substantive change, into the main body of the Statement. The proposed non-substantive change would insert the words, “recognized as,” within the fifth sentence in the third paragraph under Section 8.1 as these words were inadvertently omitted from the 2010

supplement. The proposed insertion of the words, “recognized as,” would correct the sentence to read as follows: “In general, there will be no adjustments for ordinary dividends as they are recognized as a normal and customary practice of an issuer and are already accounted for in the pricing of security futures.” This proposed insertion of the words, “recognized as,” would make the sentence identical to the fifth sentence in the third paragraph under Section 8.1 of NFA’s Statement.<sup>12</sup>

Second, the proposed updated Statement would incorporate the 2014 supplement pertaining to Section 5.2, with one technical change, into the main body of the Statement. The proposed technical change would indicate that the normal clearance and settlement cycle for securities transactions is now two business days by replacing the word “three” with the word “two” in the phrase “three business days.”<sup>13</sup>

Third, Section 6.1 of the Statement currently provides that a customer may check whether a firm is a SIPC member by accessing SIPC’s website at [www.sipc.org](http://www.sipc.org), calling the SIPC Membership Department at (202) 371-8300, or writing to the SIPC Membership Department at 805 Fifteenth Street, NW, Suite 800, Washington, DC 20005-2215. FINRA is proposing to amend the second paragraph under Section 6.1 to reflect that SIPC’s address is now 1667 K

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<sup>12</sup> See generally Securities Exchange Act Release No. 62787 (August 27, 2010), 75 FR 53998 (September 2, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2010-045) and Securities Exchange Act Release No. 62624 (August 2, 2010), 75 FR 47666 (August 6, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR-NFA-2010-02).

<sup>13</sup> See Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017) (Securities Transaction Settlement Cycle; Final Rule) (File No. S7-22-16); see also Securities Exchange Act Release No. 80004 (February 9, 2017), 82 FR 10835 (February 15, 2017) (Order Approving File No. SR-FINRA-2016-047) and Securities Exchange Act Release No. 80004A (March 6, 2017), 82 FR 13517 (March 13, 2017) (Correction to Order Approving File No. SR-FINRA-2016-047); and Regulatory Notice 17-19 (May 2017).

Street NW, Suite 1000, Washington, DC 20006-1620.<sup>14</sup> The website address and telephone number would remain unchanged.

Finally, FINRA is proposing to incorporate other non-substantive and technical changes into the proposed updated Statement.<sup>15</sup> FINRA is proposing to correct a cross-reference appearing within the last sentence in the second paragraph under Section 2.4 (How Security Futures Differ from the Underlying Security),<sup>16</sup> and to remove the extraneous word, “apply,” appearing within the first sentence in the second paragraph under Section 8.2 (Position Limits and Large Trader Reporting). FINRA expects conforming changes to be made to NFA’s Statement.

Currently, the 2002 Statement, to which the 2010 and 2014 supplements are appended, is posted on FINRA’s website,<sup>17</sup> and the 2010 and 2014 supplements are also posted on the website<sup>18</sup> as separate documents to facilitate a member’s compliance with Rule 2370(b)(11)(A). In accordance with existing guidance, a member could meet its Rule 2370(b)(11)(A) obligations

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<sup>14</sup> See Securities Investor Protection Corporation, Contact Us, <https://www.sipc.org/contact-us> (last visited June 6, 2018).

<sup>15</sup> For example, FINRA is proposing to make one stylistic change that would spell “broker/dealer” as “broker-dealer” throughout the Statement. FINRA anticipates this conforming change to be made to NFA’s Statement.

<sup>16</sup> Currently, the last sentence in the second paragraph under Section 2.4 directs the reader to refer to Section 9 for further discussion of the impact of corporate events on a security futures contract. Section 8.1 is the appropriate cross-reference as Section 9 contains the Statement’s glossary of terms.

<sup>17</sup> See Security Futures Risk Disclosure Statement (June 2016) brochure, [http://www.finra.org/sites/default/files/Security\\_Futures\\_Risk\\_Disclosure\\_Statement.pdf](http://www.finra.org/sites/default/files/Security_Futures_Risk_Disclosure_Statement.pdf), posted in its current design to the FINRA website on June 23, 2016, <http://www.finra.org> (enter “security futures risk disclosure statement” in the search bar).

<sup>18</sup> See FINRA’s Security Futures Topic Page, <http://www.finra.org/industry/security-futures> (last visited June 6, 2018).

by redistributing the entire Statement to its security futures customers or separately distributing each new supplement to those customers who have already received the Statement.<sup>19</sup>

As noted above, the Statement is a uniform statement that was jointly developed by FINRA, the NFA, and several other securities and futures exchanges. The NFA's Statement currently includes the language from the 2010 and 2014 supplements in the main body, which is posted on NFA's website.<sup>20</sup> Other securities and futures exchanges, such as Cboe and OneChicago, also make publicly available the inclusive Statement on their respective websites.<sup>21</sup> In an effort to modernize the presentation of FINRA's Statement, FINRA is proposing to replace the 2002 Statement currently posted on FINRA's website with the proposed updated Statement that would incorporate all the supplemental paragraphs and the proposed non-substantive and technical changes described above into the main body.<sup>22</sup> This replacement would also align with

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<sup>19</sup> See supra note 7 and accompanying text.

<sup>20</sup> See NFA's Risk Disclosure Statement for Security Futures Contracts, <https://www.nfa.futures.org/investors/investor-resources/files/security-futures-disclosure.pdf>. See also Securities Exchange Act Release No. 62624 (August 2, 2010), 75 FR 47666 (August 6, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR-NFA-2010-02) and Securities Exchange Act Release No. 71980 (April 21, 2014), 79 FR 23027 (April 25, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-NFA-2014-02).

<sup>21</sup> See Cboe's Risk Disclosure Statement for Security Futures, <http://cfe.cboe.com/about-cfe/risk-disclosure-security-futures> (linking to NFA's Statement, <https://www.nfa.futures.org/investors/investor-resources/files/security-futures-disclosure.pdf>) and OneChicago's Risk Disclosure Statement for Security Futures Contracts (RDS), [https://www.onechicago.com/?page\\_id=91](https://www.onechicago.com/?page_id=91). See also the OCC's Risk Disclosure Statement for Security Futures Contracts, <https://www.theocc.com/about/publications/kids.jsp> (Key Information Documents, linking to NFA's Statement, <https://www.nfa.futures.org/investors/investor-resources/files/security-futures-disclosure.pdf>).

<sup>22</sup> The Statement, in its original language approved by the SEC in 2002, would remain accessible on FINRA's website for those members whose customers may still refer to the original version of the Statement. The Statement, however, would bear a notation that an updated version of the Statement, which incorporates the paragraphs specified in the 2018 supplement, is available.



the way in which other self-regulatory organizations present the Statement, inclusive of supplemental paragraphs, to the public.

To facilitate a member's compliance with Rule 2370(b)(11)(A), FINRA is proposing to encapsulate the various changes to the Statement done through the 2010 supplement, the 2014 supplement, and those proposed herein into a single, integrated supplement ("2018 supplement") that would show the proposed updated paragraphs in Sections 2.4, 5.2, 6.1, 8.1, and 8.2. The proposed 2018 supplement would appear on FINRA's website as a separate document to continue to afford members with the flexibility to comply with the requirements of Rule 2370(b)(11)(A) by separately distributing the supplement to customers who have already received the 2002 Statement.<sup>23</sup>

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission notice of the filing of the proposed rule change for immediate effectiveness. The implementation date will be no later than 90 days after the date of the 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>24</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 updating the Statement to incorporate all supplements into the main body will help to

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<sup>23</sup> The 2010 and 2014 supplements would remain accessible on FINRA's website with a notation that these paragraphs, as updated, appear in the 2018 supplement.

<sup>24</sup> 15 U.S.C. 78q-3(b)(6).

accurately inform customers of the characteristics and risks of security futures. The proposed updated Statement would also disclose that the normal clearance and settlement cycle for securities transactions is currently two business days, and the current contact information for the SIPC.

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. While FINRA recognizes that there may be a burden associated with the distribution of the proposed updated Statement or supplement, FINRA believes that any such burden would be outweighed by the benefit to customers of accurately disclosing the characteristics and risks of security futures. FINRA also believes that any burden will be minimal because firms currently have an existing obligation to deliver each new (*i.e.*, updated) Statement or supplement to customers, and may electronically transmit documents that they are required to furnish to customers under FINRA rules, including the proposed updated Statement or supplement, provided firms adhere to the standards contained in the Commission's May 1996 and October 1995 releases on electronic delivery,<sup>25</sup> and as discussed in Notice to Members 98-3.<sup>26</sup> Firms also may transmit the proposed updated Statement or supplement to customers through the use of a hyperlink, provided that customers have consented to electronic delivery.<sup>27</sup> Moreover, Rule 2370(b)(11) provides flexibility on when each updated Statement or supplement must be delivered after a customer's account is approved for trading security futures. Instead of having to automatically and

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<sup>25</sup> See Securities Act Release No. 7288 (May 9, 1996), 61 FR 24644 (May 15, 1996) and Securities Act Release No. 7233 (October 6, 1995), 60 FR 53458 (October 13, 1995).

<sup>26</sup> See Notice to Members 98-3 (January 1998).

<sup>27</sup> See Information Notice, September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement).

immediately distribute an updated Statement or supplement to every customer having an account approved for trading security futures, a firm may distribute an updated Statement or supplement no later than the time a confirmation of a transaction is delivered to each customer who enters into a security futures transaction. Accordingly, firms would not be required to distribute the proposed updated Statement or supplement to customers who have accounts approved for trading security futures but do not engage in any new security futures transactions.

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 foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>28</sup> and Rule 19b-4(f)(6) thereunder.<sup>29</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.

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<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2018-024 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-2018-024. 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 such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons

submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2018-024 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>30</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).