

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84376; File No. SR-FINRA-2018-036)

October 5, 2018

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Change Relating to Provision of Test Result Information to Candidates Who Pass a FINRA Qualification Examination

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 27, 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 stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule” under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ 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 revisions relating to test results information on the content outlines of certain FINRA representative- and principal-level qualification examinations. FINRA is not proposing any textual changes to the By-Laws, Schedules to the By-Laws or Rules of FINRA.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

The text of the proposed rule change [sic] 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

Each FINRA representative- and principal-level qualification examination has a minimum score threshold that is necessary for passing the examination (also referred to as a "passing score"). For instance, the passing score for the current General Securities Representative (Series 7) examination is 72. FINRA determines the passing score for each examination based on a process known as standard setting, which assesses a number of factors, including industry trends, historical examination performance and evaluations of content difficulty by a committee of industry professionals who have passed the related examination. The passing score for an examination reflects the minimum level of knowledge necessary to perform the functions for which a candidate is registering.

A candidate's numerical score on an examination is necessary to determine whether the candidate has satisfied the minimum score threshold for passing the examination. In addition, if

a candidate fails to meet the minimum score threshold for passing an examination, the candidate's numerical score is relevant in evaluating the extent to which the candidate needs additional study time and training and whether the candidate should retake the examination.⁵

Currently, candidates who take a FINRA qualification examination receive a test results report of their performance at the end of their test session. The test results report will indicate a pass or fail status. Further, the report will indicate a total score and a score profile for each major section of the content outline. Several FINRA representative- and principal-level examination content outlines currently include information relating to the test results.⁶ This information appears in different places in the content outlines. For instance, in the Series 99

⁵ A candidate who fails an examination is eligible to retake that examination after 30 calendar days. However, if a candidate fails an examination three or more times in succession within a two-year period, the candidate is prohibited from retaking that examination until 180 calendar days from the date of the candidate's last attempt to pass it.

⁶ These representative-level examinations are the current Investment Company and Variable Contracts Products Representative (Series 6), General Securities Representative (Series 7), Order Processing Assistant Representative (Series 11), United Kingdom Securities Representative (Series 17), Direct Participation Programs Representative (Series 22), Canadian Securities Representative (Series 37 and Series 38), Options Representative (Series 42), Securities Trader (Series 57), Corporate Securities Representative (Series 62), Government Securities Representative (Series 72), Investment Banking Representative (Series 79), Private Securities Offerings Representative (Series 82) and Operations Professional (Series 99) examinations. These examinations are available to candidates who open an examination window in the Central Registration Depository ("CRD[®]") system prior to October 1, 2018. The revised Series 6, 7, 22, 57, 79, 82 and 99 examinations, which will be available to candidates who open an examination window on or after October 1, 2018, do not include information relating to examination results. In addition, the current Series 11, 17, 37, 38, 42, 62 and 72 will not be available to candidates who open an examination window on or after October 1, 2018.

The principal-level examinations are the Registered Options Principal (Series 4), General Securities Sales Supervisor (Series 9 and Series 10), Supervisory Analyst (Series 16), General Securities Principal Sales Supervisor Module (Series 23), General Securities Principal (Series 24), Investment Company and Variable Contracts Products Principal (Series 26), Financial and Operations Principal (Series 27), Introducing Broker-Dealer Financial and Operations Principal (Series 28) and Direct Participation Programs Principal (Series 39) examinations.

examination outline, the information appears under the “Candidates’ Test Results” heading; whereas, in the Series 22 examination outline, the information is under the “Introduction” heading.

Effective October 1, 2018, FINRA is restructuring its representative-level qualification examination program.⁷ In conjunction with the restructuring, starting on October 1, 2018, FINRA will no longer provide a total score and a score profile for each major section of the content outline to candidates who pass a qualification examination. FINRA believes that providing such information is unnecessary once a candidate has met the minimum score threshold for passing an examination.⁸ However, FINRA will continue to provide a total score and a score profile for each major section of the content outline to a candidate who fails an examination. As noted above, such information is relevant in evaluating whether the candidate needs additional study time and training and whether the candidate should retake the examination.

Consistent with this administrative change, FINRA is reformatting the content outlines for the current Series 6, 7, 11, 17, 22, 37, 38, 42, 57, 62, 72, 79, 82 and 99 examinations as well as for the Series 4, 9, 10, 16, 23, 24, 26, 27, 28 and 39 examinations to remove references to information relating to test results. Instead, such information will be available on a dedicated location on FINRA’s website.

Availability of Content Outlines

The revised content outlines will be available on FINRA’s website on the date of this

⁷ See Regulatory Notice 17-30 (October 2017).

⁸ Unlike FINRA qualification examinations, some examinations, such as the SAT, do not have a minimum score threshold for passing the examination (*i.e.*, they do not have a passing score). For such an examination, an individual’s total score and breakdown of the score is necessary in evaluating the individual’s performance compared to other individuals who took the examination.

filing.

FINRA is filing the proposed rule change for immediate effectiveness. The implementation date will be October 1, 2018, to coincide with the implementation of the restructured representative-level examination program.

2. Statutory Basis

FINRA believes that the proposed changes to the examination content outlines are consistent with the provisions of Section 15A(b)(6) of the Act,⁹ 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, and Section 15A(g)(3) of the Act,¹⁰ which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. FINRA is proposing an administrative change relating to test results information on the content outlines, without compromising the qualification standards. In addition, the proposed rule change streamlines the content outlines by moving test results information, which currently appears in different places on the outlines, to a dedicated location on the FINRA website.

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.

Economic Impact Assessment

Economic Baseline

Currently, candidates who take a FINRA qualification examination receive a total score and score break down regardless of whether they pass or fail their examination. These

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78o-3(g)(3).

examinations are designed to demonstrate basic proficiency around a subject matter.

Anecdotally, FINRA is aware that candidates approach the test with different objectives; specifically, some candidates seek to achieve the highest possible score while others seek only to ensure that they achieve a score sufficient to pass the examination.

Economic Impact

Beginning on October 1, 2018, FINRA will no longer provide score information to candidates who pass a qualification examination. A candidate will receive score information only if the candidate did not pass the examination. In conjunction with this change, the proposed rule change revises the impacted content outlines to remove references to information relating to score information.

Impact on Individuals

The absence of score information for candidates who pass a qualification examination neither imposes additional costs on, nor provides additional benefits to, non-passing candidates. The continued availability of the failing scores and score profiles will continue to benefit candidates who want to use this information to decide whether to retake the examination and if so, what areas they should focus on when studying for future examinations.

For passing candidates, the lack of score information affects the information set available to them, and thus may impact them in different ways. For example, candidates may use the information provided today in a variety of contexts related to their employment, including negotiating compensation, seeking future employment or demonstrating areas of particular strength. However, FINRA knows of no established evidence that these scores reliably predict

future outcomes related to employment success.¹¹ Further, FINRA qualification examinations are not designed to provide information beyond demonstration of basic proficiency. For these reasons, comparisons of test scores across candidates may not be appropriate.¹²

Nevertheless, to the extent that test scores are used by individuals and others today, restricting the information may impose certain costs. For individuals, these costs can vary from time and effort to differentiate themselves, to direct monetary costs if a test score would have improved their compensation or position. Regardless of its predictive ability, where parties today rely on the details of passing scores to make decisions and would make a different judgment in the absence of such information, the change may result in an economic transfer away from high-scoring individuals towards others.

Impact on Other Users of the Information

The economic impact to others is fundamentally related to the extent to which candidates share passing score information with current or prospective employers and the reliability of such scores as a signal in the contexts for which they are being used.

In situations where passing scores are misleading and cause users to make inefficient or ineffective decisions, the elimination of this information may lead to benefits through better decision making. In situations where passing scores are not misleading but are uninformative, they add noise to the decision-making process. However, noisy information should not cause

¹¹ In Do Investors Have Valuable Information About Brokers?, Qureshi and Sokobin demonstrate that examination scores are not informative for predicting future customer harm when used in conjunction with other relevant public data (available at: <http://www.finra.org/industry/chief-economist>).

¹² The Standard for Educational and Psychological Testing published by the American Education Research Association, American Psychological Association, and National Council on Measurement in Education have established that “[i]f validity for some common or likely interpretation for a given use has not been evaluated, or if such an interpretation is inconsistent with available evidence, that fact should be made clear and potential users should be strongly cautioned about making unsupported interpretations.”

consistent bias in the aggregate. Finally, in situations where passing scores are viewed as providing valuable information in decision making, the elimination of this information may result in the need for an alternative process and, in turn, result in additional costs.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and paragraph (f)(1) of Rule 19b-4 thereunder.¹⁴ 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

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. Please include File Number SR-FINRA-2018-036 on the subject line.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(1).

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-2018-036. 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 a.m. and 3 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-2018-036 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.¹⁵

Eduardo A. Aleman
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).