SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85282; File No. SR-FINRA-2018-040)

March 11, 2019

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to FINRA Rule 4512 (Customer Account Information)

I. Introduction

On November 28, 2018, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to revise FINRA Rule 4512 (Customer Account Information) to permit the use of electronic signatures and to also clarify the scope of the rule.

The proposed rule change was published for comment in the Federal Register on December 17, 2018.[3] The Commission received two comment letters regarding the proposed rule change, both supporting the proposed rule change.[4] On January 30, 2019 the Commission extended the time to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the

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1 15 U.S. C. 78s(b)(1).

2 17 U.S.C. 240.19b-4.

3 See Securities Exchange Act Release No. 84788 (Dec. 11, 2018), 83 FR 64609 (Dec. 17, 2018) (File No. SR-FINRA-2018-040) ("Notice").

4 See Letters from Paul J. Tolley, Senior Vice President, Chief Compliance Officer, Commonwealth Financial Network, dated December 31, 2018 ("Commonwealth Letter"); and Kevin Zambrowicz, Associate General Counsel & Managing Director, SIFMA, dated January 7, 2019 ("SIFMA Letter).

proposed rule change to March 17, 2019.[5] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change[6]

FINRA proposed to amend paragraph (a)(3) of FINRA Rule 4512 (Customer Account Information) to permit the use of electronic signatures and to clarify the scope of the rule.

With respect to a discretionary customer account maintained by a member, FINRA Rule 4512(a)(3) currently requires a member to obtain a manual dated signature of each named, natural person authorized to exercise discretion in the account. FINRA stated that because the rule only applies to discretionary accounts maintained by a member, the named natural person would inevitably be an associated person of the firm.[7] Consequently, to comply with the rule, members must obtain the associated person's "wet" signature or a copy of his or her wet signature, such as a scanned or faxed copy of

5 See Securities Exchange Act Release No. 85003 (Jan. 30, 2019), 84 FR 1809 (Feb. 5, 2019) (File No. SR-FINRA-2018-040) ("Extension").

6 The subsequent description of the proposed rule change is substantially excerpted from FINRA's description in the Notice. See Notice, 83 FR 64609-10.

7 There is a corresponding requirement under NASD Rule 2510 (Discretionary Accounts) prohibiting members and their registered representatives from exercising any discretionary power in a customer's account unless the customer has given prior written authorization to a stated individual or individuals, and the account has been accepted by the firm as evidenced in writing by the firm or a designated partner, officer or manager of the firm. These signatures need not be manual. In addition, SEA Rule 17a-3(a)(17)(ii) requires that, for discretionary accounts with a natural person, broker-dealers maintain a record containing the dated signature of each natural person to whom discretionary authority was granted. This signature also need not be manual.

the wet signature.[8] Additionally, the rule also requires members to maintain and preserve a record of the signature for at least six years after the date the account is closed.[9]

According to FINRA, the purpose of the signature is to validate that the authorized associated person is who he or she purports to be. FINRA stated that, in light of the industry's shift towards automated and electronic processes, member firms have requested that FINRA reevaluate the need for wet signatures under the rule. FINRA noted that its members have stated that the requirement to obtain wet signatures raises operational and cost concerns without providing meaningful investor protection benefits. In addition, according to FINRA, some members have noted that the requirement puts them at a competitive disadvantage over investment advisers because investment advisers are allowed to obtain electronic signatures. Finally, FINRA noted that members that have adopted automated and electronic processes have stated that the current requirement results in significant administrative inefficiencies, particularly because all other account documentation, including the customer authorization form, and related recordkeeping may be completed electronically through a streamlined process.[10]

In light of technological advances relating to electronic signatures, including with respect to authentication and security, FINRA stated that it believes that the requirement

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8 The terms "manual" and "wet" are used interchangeably in this proposed rule change.

9 For retention purposes, members may choose to maintain and preserve the signature record on any of the acceptable media specified in SEA Rule 17a-4, including electronic storage media consistent with SEA Rule 17a-4(f).

10 To comply with FINRA Rule 4512(a)(3), most of these firms currently print a paper copy of the account record and require that the authorized associated person physically sign it. They then convert the paper record to an electronic record for retention on electronic storage media. These firms have stated that this two-step process creates unnecessary inefficiencies and administrative burdens.

under Rule 4512(a)(3) that members obtain an associated person's wet signature has become obsolete. As a result, FINRA proposed to amend the rule to permit the use of electronic signatures. While FINRA Rule 4512(a)(3) would continue to require members to obtain the signature of an associated person, it would provide firms the option of obtaining either a manual or an electronic signature.

For purposes of compliance with FINRA Rule 4512(a)(3), a valid electronic signature would be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), the guidance issued by the Commission relating to the E-Sign Act,[11] and the guidance provided by FINRA staff through interpretive letters.[12]

In addition to the proposed changes described above, FINRA is proposing to amend Rule 4512(a)(3) to clarify that the rule is limited to discretionary customer accounts maintained by a member for which associated persons of the member are authorized to exercise discretion. Specifically, FINRA is proposing to amend the rule to state that for a discretionary customer account maintained by a member, the member must obtain the dated signature of each named, associated person of the member authorized to exercise discretion in the account.

FINRA has stated that it will announce the effective date of the rule change in a Regulatory Notice to be published no later than 60 days following a Commission

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11 See Securities Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001) (Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f)).

12 See, e.g., Letter from Nancy Libin, NASD, to Jeffrey W. Kilduff, O'Melveny & Myers, LLP, dated July 5, 2001, http://www.finra.org/industry/interpretive-letters/july-5-2001-1200am.

approval, and the effective date will be no later than 30 days following publication of that Regulatory Notice.[13]

III. Comment Summary

As noted above, the Commission received two comment letters on the proposed rule change,[14] both supporting the proposal. Both commenters noted that the requirement to obtain a manual or "wet" signature is outdated or generally inconsistent with the move toward an increase in the use of technology, including the use of electronic signatures.[15] One commenter indicated that it already executes essentially all client account and transactional paperwork with the use of electronic signatures, and that the requirement to obtain a manual signature slows down its processes for opening discretionary accounts.[16]

Both commenters noted that the administrative and operational inefficiencies and burdens resulting from the requirement to obtain manual signatures place member firms at a competitive disadvantage against investment advisers that are not subject to such a requirement without providing additional investor protections.[17] The commenters support the proposed rule change, and one commenter urged the Commission and FINRA to consider other opportunities to eliminate manual signature requirements in favor of electronic methods.[18]

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13 See Notice, 83 FR at 64610.

14 See supra note 6.

15 See Commonwealth Letter at 1-2; see also SIFMA Letter at 1.

16 See Commonwealth Letter at 2.

17 See Commonwealth Letter at 1; see also SIFMA Letter at 2.

18 See Commonwealth Letter at 2; see also SIFMA Letter at 3.

IV. Discussion and Commission Findings

After careful consideration of the proposed rule change and the comment letters, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.[19] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[20] which requires, among other things, that FINRA rules 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. The Commission believes that the proposal will simplify the process by which member firms validate the identity of an authorized associated person, and thereby lower costs to member firms by reducing operational inefficiencies. Moreover, the Commission believes the proposed rule change is reasonably designed to prevent fraudulent practices in connection with the use of electronic signatures because it provides that a valid electronic signature would be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the E-Sign Act. The proposed rule change is also consistent with Commission guidance relating to the E-Sign Act, and prior FINRA staff guidance regarding electronic signatures.[21]

For these reasons, the Commission believes the proposed rule change is consistent with the Act.

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

20 15 U.S.C. 78o-3(b)(6).

21 See supra notes 11-12 and accompanying text.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR-FINRA-2018-040) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman
Deputy Secretary

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22 15 U.S. C. 78s(b)(2).

23 17 CFR 200.30-3(a)(12).