

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85413; File No. SR-FINRA-2019-006)

March 26, 2019

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Capital Acquisition Broker (“CAB”) Rules Governing Qualification, Registration and Continuing Education of Associated Persons of CABs

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 March 12, 2019, 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,³ 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 the Capital Acquisition Broker (“CAB”) Rules governing qualification, registration and continuing education of associated persons of CABs (CAB Rules 119-125) to reflect new consolidated FINRA qualification and registration rules and changes to its continuing education requirements which took effect on October 1, 2018 (collectively, the “Consolidated Rules”). Specifically, the proposed rule change would amend CAB Rules 119 (Foreign Members and Associates), 121 (Registration Requirements), 123 (Categories of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

Registration), 124 (Persons Exempt from Registration) and 125 (Continuing Education Requirements) to cross-reference the new FINRA rules governing these areas, and would delete CAB Rule 122 (Qualification Examinations) since this area is covered by other Consolidated Rules.

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

A. Background

FINRA Capital Acquisition Broker Rules

On August 18, 2016, the SEC approved⁴ a separate set of FINRA rules for firms that meet the definition of a "capital acquisition broker" and that elect to be governed under this rule set. CABs are member firms that engage in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring, and acting as

⁴ See Securities Exchange Act Release No. 78617 (August 18, 2016), 81 FR 57948 (August 24, 2016) (Order Approving File No. SR-FINRA-2015-054).

placement agents for sales of unregistered securities to institutional investors under limited conditions. Member firms that elect to be governed under the CAB rule set are not permitted, among other things, to carry or maintain customer accounts, handle customers' funds or securities, accept customers' trading orders, or engage in proprietary trading or market-making.

The CAB Rules became effective on April 14, 2017⁵. In order to provide new CAB applicants with lead time to apply for FINRA membership and obtain the necessary qualifications and registrations, CAB Rules 101-125 became effective on January 3, 2017.⁶

FINRA Qualification, Registration and Continuing Education Rules

In July 2017 the SEC approved a proposed rule change to: (1) adopt consolidated FINRA registration rules; (2) restructure the representative-level qualification examinations by creating an examination called the Securities Industry Essentials (SIE) to test knowledge regarding fundamental securities-related topics and transforming the representative-level examinations into specialized knowledge examinations; and (3) amend the Continuing Education (CE) requirements.⁷

⁵ See Regulatory Notice 16-37 (October 2016).

⁶ On September 29, 2017 the SEC approved CAB Rule 203 (Engaging in Distribution and Solicitation Activities with Government Entities) and CAB Rule 458 (Books and Records Requirements for Government Distribution and Solicitation Activities), which applied established "pay-to-play" and related recordkeeping rules to the activities of CABs. See Securities Exchange Act Release No. 81781 (September 29, 2017), 82 FR 46559 (October 5, 2017) (Order Approving File No. SR-FINRA-2017-027). CAB Rules 203 and 458 became effective on December 6, 2017. On September 20, 2018 FINRA filed for immediate effectiveness changes to CAB Rule 331 (Anti-Money Laundering Compliance Program) to reflect the Financial Crimes Enforcement Network's adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions. See Securities Exchange Act Release No. 84363 (October 4, 2018), 83 FR 51532 (October 11, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-035).

⁷ See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR-FINRA-2017-007) ("Consolidated Rule Filing").

The proposed rule change consolidated the NASD and Incorporated NYSE registration rules as FINRA Rules, which streamlined and brought consistency and uniformity to FINRA's qualification and registration requirements. The Consolidated Rules, among other things, allow a member to permissively register, or maintain the registration(s) as a representative or principal of, any associated person of the firm, establish a waiver program for individuals working for a financial services industry affiliate of a member, and require firms to designate a Principal Financial Officer and a Principal Operations Officer. The rule change also establishes new registration categories. These new requirements are discussed in more detail below.

In conjunction with these changes, FINRA also restructured the representative-level qualification examination program into a more efficient format whereby all representative-level applicants take the SIE examination, and a tailored, specialized knowledge examination (a revised representative-level qualification examination) for their particular registered role. Individuals who are not associated persons of firms, such as members of the general public, are also eligible to take the SIE examination. The restructured program, among other things, eliminated duplicative testing of fundamental securities knowledge on representative-level examinations and eliminated several representative-level registration categories that had become outdated or had limited utility. In addition, FINRA made corresponding and clarifying changes to the CE requirements.

In October 2017 FINRA published Regulatory Notice 17-30, which announced SEC approval of the consolidated FINRA registration rules, restructured representative-level qualification examinations, and changes to the continuing education requirements.⁸

B. CAB Qualification, Registration and Continuing Education Rules

⁸ See Regulatory Notice 17-30 (October 2017).

CAB Rules 119(b) and 121-125 govern the qualification, registration and continuing education of associated persons of CABs. Each of these rule provisions subjects CABs to a corresponding NASD or FINRA rule governing that area. For example, CABs are subject to NASD IM-1000-2 with respect to their associated persons who are serving in the United States Armed Forces. Similarly, CABs are subject to NASD Rules 1021 and 1031 with respect to the registration requirements for CABs' principals and representatives. Additionally, associated persons of CABs are subject to the continuing education requirements of FINRA Rule 1250.

The purpose of these rules is to ensure that associated persons of CABs are subject to the same rules governing qualification, registration and continuing education as associated persons of member firms that have not elected CAB status. Thus, CAB principals and representatives must pass the same qualification examinations and are subject to the same registration requirements as principals and representatives that engage in the same activities through a non-CAB firm.

Maintaining consistent qualification, registration and continuing education requirements for associated persons of both CAB and non-CAB firms is also important since some non-CAB firms elect CAB status after the date their associated persons' registrations becomes effective. Additionally, it is possible that associated persons of non-CAB firms may leave their firms and become associated with CABs, and that associated persons of CABs also may leave their firms and become associated with non-CAB firms. Thus FINRA believes, as a matter of investor protection and regulatory consistency, that its rules should impose substantially similar qualification, registration and continuing education requirements on associated persons of both CABs and non-CAB member firms.

The current CAB qualification, registration and continuing education rules now cross-reference FINRA and NASD Rules that either have been eliminated, or have been moved and renumbered. Thus, to further the goals of maintaining regulatory consistency, as well as having rules that function as intended, FINRA must update its CAB qualification, registration and continuing education rules to correctly cite the appropriate Consolidated Rules.

C. Updating of Cross-References to FINRA Rules

In order to maintain consistent qualification, registration and continuing education rules for both CAB and non-CAB firms, FINRA is proposing to update the cross-references to FINRA Rules in CAB Rules 119-125. This section also discusses particular aspects of the Consolidated Rules that may impact CABs and their associated persons.

CAB Rule 119

Currently CAB Rule 119 (Foreign Members and Associates) subjects CABs to NASD Rule 1090 (Foreign Members) and NASD Rule 1100 (Foreign Associates). The Consolidated Rule Filing deleted NASD Rule 1100 and eliminated the Foreign Associate registration category as of October 1, 2018. Accordingly, FINRA is proposing to amend CAB 119 to delete the provisions subjecting CABs to NASD Rule 1100.⁹

CAB Rule 121

CAB Rule 121 (Registration Requirements) subjects CABs to NASD IM-1000-2 (Status of Persons Serving in the Armed Forces of the United States), NASD IM-1000-3 (Failure to Register Personnel), NASD Rule 1021 (Registration Requirements – Principals), and NASD Rule 1031 (Registration Requirements – Representatives). The Consolidated Rule Filing deleted

⁹ Because the Consolidated Rule Filing did not delete NASD Rule 1090 (Foreign Members), CAB Rule 119 will continue to subject CABs to that rule. However, the title of CAB Rule 119 will be shortened to “Foreign Members.”

each of these NASD rules as of October 1, 2018. Accordingly, FINRA proposes to amend CAB Rule 121 by eliminating the references to NASD IMs 1000-2 and 1000-3 and NASD Rules 1021 and 1031, and providing that all CABs are subject to FINRA Rule 1210 (Registration Requirements).

As of October 1, 2018 FINRA Rule 1210.10 governs the status of persons serving in the U.S. Armed Forces. Rule 1210.10 is substantially similar to NASD IM-1000-2, except that it requires a member to notify FINRA promptly of such a person's return to employment with the member.

FINRA did not adopt a new FINRA Rule to replace NASD IM-1000-3, which provided that the failure of any member to register an employee, who should be so registered, as a Registered Representative may be deemed to be conduct inconsistent with just and equitable principles of trade. FINRA noted that NASD IM-1000-3 was superfluous, since the failure to register a representative was in fact a violation of other FINRA Rules.¹⁰ Accordingly, FINRA likewise does not propose to adopt a new CAB Rule to replace NASD IM-1000-3.

FINRA Rule 1210 (Registration Requirements) consolidated and streamlined NASD Rules 1021(a) and 1031(a) with regard to the registration requirements for principals and representatives, subject to a number of changes.

FINRA Rule 1210 provides that each person engaged in the investment banking or securities business must register with FINRA as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in FINRA Rule 1220 (Registration Categories), unless exempt from registration pursuant to FINRA Rule 1230 (Associated Persons Exempt from Registration). Rule 1230 also provides that such a person is

¹⁰ See Securities Exchange Act Release No. 80371 (April 4, 2017), 82 FR 17336, 17337 (April 10, 2017) (Notice of Filing of File No. SR-FINRA-2017-007).

not qualified to function in any registered capacity other than that for which the person is registered. This latter provision consolidated similar provisions in the registration categories under the NASD rules.¹¹

FINRA Rule 1210 also includes multiple Supplementary Materials that address many of the topics previously addressed in NASD qualification and registration rules, subject to changes intended to modernize and streamline these rules. These topics include:

- Minimum Number of Registered Persons;¹²
- Permissive Registrations;¹³
- Qualification Examinations and Waivers of Examinations;¹⁴
- Requirements for Registered Persons Functioning as Principals for a Limited Period;¹⁵
- Rules of Conduct for Taking Examinations and Confidentiality of Examinations;¹⁶
- Waiting Periods for Retaking a Failed Examination;¹⁷
- Satisfaction of the Regulatory Element of Continuing Education;¹⁸

¹¹ See NASD Rules 1022(a)(6), (b)(3), (c)(4), (d)(2), (e)(3) and (f)(4), and NASD Rules 1032 (b)(2), (c)(2), (d)(3), (e)(2), (f)(3), (g)(2), (h)(3) and (i)(4).

¹² See FINRA Rule 1210.01.

¹³ See FINRA Rule 1210.02.

¹⁴ See FINRA Rule 1210.03.

¹⁵ See FINRA Rule 1210.04.

¹⁶ See FINRA Rule 1210.05.

¹⁷ See FINRA Rule 1210.06.

¹⁸ See FINRA Rule 1210.07.

- Lapse of Registration and Expiration of the Securities Industry Essentials Qualification Examination;¹⁹
- Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member;²⁰
- Status of Persons Serving in the Armed Forces of the United States;²¹ and
- Impermissible Registrations.²²

A more detailed discussion of these provisions can be found in Regulatory Notice 17-30 (October 2017).²³

CAB Rules 122 and 123

CAB Rule 122 (Qualification Examinations) currently subjects CABs to NASD Rule 1070 (Qualification Examinations and Waiver of Requirements) and NASD Rule 1080 (Confidentiality of Examinations). CAB Rule 123 (Categories of Registration) subjects CABs to NASD Rule 1022 (Categories of Principal Registration), NASD Rule 1032 (Categories of Representative Registration), and paragraph (b)(6) (Operations Professional) of FINRA Rule 1230 (Registration Categories). The Consolidated Rule Filing deleted NASD Rules 1022 and 1032 and paragraph (b)(6) of FINRA Rule 1230 as of October 1, 2018.

As of October 1, 2018 FINRA Rule 1220 (Registration Categories) largely governs the substance of these rules, subject to a number of changes. Accordingly, FINRA proposes to

¹⁹ See FINRA Rule 1210.08.

²⁰ See FINRA Rule 1210.09.

²¹ See FINRA Rule 1210.10.

²² See FINRA Rule 1210.11.

²³ See also Securities Exchange Act Release No. 80371 (April 4, 2017), 82 FR 17336 (April 10, 2017) (Notice of Filing of File No. SR-FINRA-2017-007), and Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR-FINRA-2017-007).

eliminate the references to these NASD Rules and FINRA Rule 1230(b)(6) in CAB Rules 122 and 123, and to combine current CAB Rules 122 and 123 into a single CAB Rule 122 (Registration Categories), which will provide that all CABs are subject to FINRA Rule 1220.

FINRA Rule 1220 integrates the various registration categories under the NASD rules into a single rule, subject to a number of changes. Rule 1220 sets forth the definitions of “principal” and “representative,” as well as the qualification and registration requirements for principals and representatives. The rule also addresses:

- Foreign Registrations;²⁴
- Additional Qualification Requirements for Persons Engaged in Securities Futures Activities;²⁵
- Members with One Registered Options Principal;²⁶
- Scope of General Securities Sales Supervisor Registration Category;²⁷
- Scope of Operations Professional Requirement;²⁸ and
- Eliminated Registration Categories.²⁹

A more detailed discussion of these provisions can be found in Regulatory Notice 17-30.³⁰

FINRA Rule 1220 includes grandfathering provisions that provide that, subject to the lapse of registration provisions in FINRA Rule 1210.08, individuals who are registered with FINRA in specified registration categories on October 1, 2018 and individuals who had been

²⁴ See FINRA Rule 1220.01.

²⁵ See FINRA Rule 1220.02.

²⁶ See FINRA Rule 1220.03.

²⁷ See FINRA Rule 1220.04.

²⁸ See Supplementary Material 1220.05.

²⁹ See Supplementary Material 1220.06.

³⁰ See also Securities Exchange Act Releases No. 80371 and 81098, supra note 23.

registered in such categories in the past two years prior to October 1, 2018 are qualified to register in the corresponding registration categories without having to take any additional examinations.³¹ These registration categories include many categories that associated persons of CABs may hold as of October 1, 2018 such as General Securities Principal (Series 24), General Securities Representative (Series 7), Operations Professional (Series 99), Investment Banking Representative (Series 79), Direct Participations Programs Representative (Series 22), and Private Securities Offerings Representative (Series 82).

FINRA Rule 1220 eliminated a number of registration categories, including the Corporate Securities Representative category (Series 62), which some CAB associated persons may possess. However, under FINRA Rule 1220.06, any person registered in one of these eliminated categories on October 1, 2018 and any person who was registered with FINRA in such categories within two years prior to October 1, 2018 is eligible to maintain such registrations with FINRA. If such a person subsequently terminates his or her registration with FINRA and the registration remains terminated for two or more years, he or she will not be eligible to re-register in such categories.

Principal Financial Officer and Principal Operations Officer Categories

Among other changes, as of October 1, 2018 all firms are required to designate: (1) a Principal Financial Officer (“PFO”) with primary responsibility for financial filings and the related books and records; and (2) a Principal Operations Officer (“POO”) with primary responsibility for the day-to-day operations of the business.³² This requirement, among other things, replaced the requirement that FINRA members designate a Chief Financial Officer. The

³¹ See FINRA Rules 1220 (a)(2), (a)(3), (a)(5), (a)(6), (a)(8), (a)(9), (a)(13), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), and (b)(9).

³² See FINRA Rule 1220(a)(4)(B).

requirement to designate such individuals applies to all firms. Firms, such as CABs, that neither self-clear nor provide clearing services may designate the same person as the PFO, POO, FinOp or Introducing FinOp.

New Registration Categories

FINRA Rule 1220 establishes three new principal registration categories: Compliance Officer, Investment Banking Principal and Private Securities Offering Principal. Of particular importance to CABs are the latter two principal registration categories, since they apply in part to the permissible activities of CABs.

Compliance Officer Requirement

Beginning on October 1, 2018 and subject to an exception discussed below, each person designated as a Chief Compliance Officer (“CCO”) on Schedule A of Form BD is required to register with FINRA as a Compliance Officer. Individuals can qualify as Compliance Officers in several ways. An individual who is designated as CCO on Schedule A of Form BD of a member and who was registered with FINRA as a General Securities Representative (Series 7) and a General Securities Principal (Series 24) prior to October 1, 2018 and who continued to maintain the CCO designation and Series 7 and Series 24 registrations on October 1, 2018 was automatically granted a Compliance Officer registration on October 1, 2018.

Further, other individuals who were registered with FINRA as a General Securities Representative and a General Securities Principal prior to October 1, 2018 and who continued to maintain those registrations on October 1, 2018 are qualified to register as Compliance Officers without having to take any additional examinations. Similarly, an individual who was registered as a Compliance Official (Series 14) in the CRD system prior to October 1, 2018 and who

continued to maintain that registration on or after October 1, 2018 is qualified to register as a Compliance Officer without having to take any additional examinations.

In addition, individuals whose registrations as a General Securities Representative and a General Securities Principal were terminated between October 1, 2016 and September 30, 2018 are qualified to register as Compliance Officers without having to take any additional examinations, provided they register as Compliance Officers within two years from the date of terminating those registrations. An individual designated as a CCO on Schedule A of Form BD of a member that is engaged in limited investment banking or securities business may be registered in a principal category under FINRA Rule 1220 that corresponds to the limited scope of the member's business, rather than registering as a Compliance Officer. All other individuals registering as Compliance Officers on or after October 1, 2018 are required to: (1) satisfy the General Securities Representative prerequisite registration, including passing the SIE, and passing the General Securities Principal qualification examination; or (2) pass the Compliance Official qualification examination.

Investment Banking Principal

Effective October 1, 2018 principals responsible for supervising specified investment banking activities are required to register as Investment Banking Principals.³³ These activities include:

- (i) advising on or facilitating debt or equity securities offerings through a private placement or a public offering, including but not limited to origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offerings; or

³³ See FINRA Rule 1220(a)(5).

- (ii) advising on or facilitating mergers and acquisitions, tender offers, financial restructurings, asset sales, divestitures or other corporate reorganizations or business combination transactions, including but not limited to rendering a fairness, solvency or similar opinion.³⁴

Because CABs may engage in many of these activities (subject to the conditions described in CAB Rule 016(c)), if approved, CAB Rule 122 will require CABs that engage in these activities to have an Investment Banking Principal. Individuals who were registered with FINRA as an Investment Banking Representative (Series 79) and a General Securities Principal (Series 24) prior to October 1, 2018 and who continued to maintain those registrations on October 1, 2018 were automatically granted an Investment Banking Principal registration on October 1, 2018.

Further, an individual whose registrations as an Investment Banking Representative and a General Securities Principal were terminated between October 1, 2016 and September 30, 2018 is qualified to register as an Investment Banking Principal without having to take any additional examinations, provided he or she registers as an Investment Banking Principal within two years from the date of terminating those registrations. All other individuals registering as Investment Banking Principals on or after October 1, 2018 are required to satisfy the Investment Banking Representative prerequisite registration, including passing the SIE, and passing the General Securities Principal qualification examination.

Private Securities Offering Principal

Also effective October 1, 2018 principals solely responsible for supervising specified activities related to private securities offerings may register as Private Securities Offerings

³⁴ See FINRA Rule 1220(b)(5)(A).

Principals, instead of registering as a General Securities Principal.³⁵ These activities are limited to effecting sales as part of a primary offering of securities not involving a public offering, pursuant to Sections 3(b), (4)(2) or 4(6) of the Securities Act of 1933 and the Securities Act rules and regulations, provided that such person shall not effect sales of municipal or government securities, or equity interests in or the debt of direct participation programs.³⁶

Individuals can qualify for registration as a Private Securities Offerings Principal in several ways. An individual who was registered as a Private Securities Offerings Representative (Series 82) and a General Securities Principal prior to October 1, 2018 and who continued to maintain those registrations on October 1, 2018 was automatically granted a Private Securities Offerings Principal registration on October 1, 2018.

Further, an individual whose registrations as a Private Securities Offerings Representative and a General Securities Principal were terminated between October 1, 2016 and September 30, 2018 is qualified to register as a Private Securities Offerings Principal without having to take any additional examinations, provided he or she registers as a Private Securities Offerings Principal within two years from the date of terminating those registrations. All other individuals registering as Private Securities Offerings Principals on or after October 1, 2018 are required to satisfy the Private Securities Offerings Representative prerequisite registration, including passing the SIE, and passing the General Securities Principal qualification examination.

Because CABs may engage in these activities (subject to the conditions described in CAB Rule 016(c)), if approved, CAB Rule 122 may require CABs that engage in these activities to have a Private Securities Offerings Principal as described above.

³⁵ See FINRA Rule 1220(a)(13) (Private Securities Offerings Principal).

³⁶ See FINRA Rule 1220(b)(9)(A).

CAB Rule 124

CAB Rule 124 provides that all CABs are subject to NASD Rule 1060 (Persons Exempt from Registration). As of October 1, 2018 the Consolidated Rule Filing deleted NASD Rule 1060, and adopted in its place FINRA Rule 1230 (Associated Persons Exempt from Registration). New FINRA Rule 1230 modified the provisions of NASD 1060 in certain respects. For example, NASD Rule 1060(a) exempted from registration those associated persons who are not actively engaged in the investment banking and securities business, and persons whose activities are related solely and exclusively to a member's need for corporate officers or for capital participation. FINRA believes that the determination of whether an associated person is required to register must be based on an analysis of the person's activities and functions in the context of the various registration categories. The exemptions for persons who are not "actively engaged" in the securities business or whose functions are related solely to the need for corporate officers, are not consistent with this analytical framework. Therefore, FINRA has deleted these exemptions.

Accordingly, FINRA proposes to eliminate the reference to NASD Rule 1060 and to provide that all CABs are subject to FINRA Rule 1230. In addition, because FINRA proposes to combine current CAB Rules 122 and 123 as new CAB Rule 122, and because the rule subjects CABs to FINRA Rule 1230, FINRA proposes to renumber CAB Rule 124 as CAB Rule 123. FINRA also proposes to name CAB Rule 123 "Associated Persons Exempt from Registration."

CAB Rule 125

CAB Rule 125 provides that all CABs are subject to FINRA Rule 1250 (Continuing Education Requirements). The Consolidated Rule Filing made amendments to FINRA Rule 1250 and renumbered the revised rule as FINRA Rule 1240. Accordingly, FINRA proposes to

amend CAB Rule 125 to provide that all CABs are subject to FINRA Rule 1240. Because the rule subjects CABs to FINRA Rule 1240, FINRA proposes to renumber CAB Rule 125 as CAB Rule 124.

D. Rulemaking Process

FINRA undertook an extensive and comprehensive rulemaking process in eliminating the NASD Rules governing qualification and registration requirements and adopting new revised FINRA Rules governing these areas. As part of the process of developing the Consolidated Rules, FINRA published Regulatory Notice 09-70 (December 2009), seeking comment on a set of proposed consolidated registration rules. Commenters on this Notice were concerned with the complexity and operational and cost burden of the proposal, and FINRA staff engaged in discussions with SEC staff regarding the impact of the proposal.

As a result, FINRA substantially revised the proposal as published in Regulatory Notice 09-70. In addition, in May 2015 FINRA published Regulatory Notice 15-20, seeking comment on a proposal to restructure the representative-level qualification examinations. FINRA filed a revised version of the proposal (SR-FINRA-2017-007) with the SEC in March 2017 which included the restructuring proposal. The SEC published the revised proposal for comment in April 2017³⁷ and received 18 comment letters in response to the proposal. FINRA revised the proposal further in response to these comment letters, and the SEC approved the proposal in July 2017.³⁸ Further, the Consolidated Rules apply to associated persons of all FINRA members and ensure that such individuals attain and maintain specified levels of competence and knowledge pertinent to their function. FINRA did not exclude any specific category of FINRA members, such as CABs, from the proposal.

³⁷ See Securities Exchange Act Release No. 80371, supra note 10.

³⁸ See Securities Exchange Act Release No. 81098, supra note 7.

Accordingly, FINRA believes that all members, including CABs, have had opportunities to comment on the Consolidated Rules. Additionally, as discussed above, FINRA believes that associated persons of CABs should be subject to the same qualification and registration requirements as associated persons of non-CAB members.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³⁹ 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,⁴⁰ which authorizes FINRA to prescribe standards of training, experience and competence for persons associated with FINRA members.

As discussed above, the Consolidated Rule Filing either deleted, or revised and renumbered, the former FINRA qualification, registration, and continuing education rules. Thus, the current CAB qualification, registration and continuing education rules largely cross-reference former FINRA rules that no longer exist. In order to implement the current CAB rules' purpose, the references to former FINRA rules suggest that they are intended to now refer to the relevant Consolidated Rules, since any other interpretation would defeat the rules' purposes. FINRA believes that the proposal will confirm that the qualification, registration and continuing

³⁹ 15 U.S.C. 78o-3(b)(6).

⁴⁰ 15 U.S.C. 78o-3(g)(3).

education rules that apply to CABs are the same as the rules that apply to firms that have not elected CAB status.

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 will align the qualification, registration and continuing education rules that apply to CABs with the rules that apply industry-wide and to firms that have not elected CAB status. FINRA notes that CABs have unique features that could render certain provisions of the new registration rules more relevant to them than other provisions.⁴¹ For example, the Investment Banking Principal and Private Securities Offering Principal registration categories are relevant to the activities of CABs, and, as a result, economic impacts associated with these registration categories would be directly applicable to CABs.

When conducting the Economic Impact Assessment (EIA) for the Consolidated Rules,⁴² FINRA evaluated and discussed the economic impact to all firms, including CABs. Thus, FINRA believes that interested parties can look to the EIA as presented in the Consolidated Rule Filing as representing fairly the economic impact that CABs would experience under the

⁴¹ FINRA examined the registration history of individuals associated with both CABs and non-CAB firms during the period January – November 2018. Based on this analysis, FINRA determined that there were 839 registration series held by persons associated with CAB firms, versus 1,000,220 registration series held by persons associated with non-CAB firms. Thus, the number of series held by persons associated with CAB firms reflects less than 0.1% of those held by persons associated with non-CAB firms. However, compared to the non-CAB associated persons' registration series, there was an over representation of Series 79 registrations (10 times more for the CAB population), and an under representation of Series 6 registrations (20 times less) held by CABs' associated persons. Moreover, CABs' associated persons, held no Series 11, 17, 37, 38, 42, 57, and 72 registrations.

⁴² See Securities Exchange Act Release No. 81098, supra note 7. Although the Consolidated Rule Filing did not specifically reference CABs in its Economic Impact Assessment, the data used in the analysis encompassed both CABs and non-CAB firms.

proposed rule. While CABs have unique features and are subject to a separate rule set, CABs have been and will continue to be subject to registration, qualification and continuing education requirements that mirror those that apply to members that have not elected CAB status.

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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁴³ and Rule 19b-4(f)(6) thereunder.⁴⁴

A proposed rule change filed under Rule 19b-4(f)(6)⁹ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. FINRA states that such waiver will help align the qualification, registration, and continuing education rules that apply

⁴³ 15 U.S.C. 78s(b)(3)(A).

⁴⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires FINRA to give the Commission written notice of FINRA's 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 satisfied this requirement.

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

to CABs, with the rules that apply industry-wide, and to firms that have not elected CAB status. Additionally, by cross referencing rules that are currently in effect, rather than rules that have been eliminated, moved, or renumbered, FINRA states the proposed rule change will further the goal of maintaining regulatory consistency and having rules that function as intended. Because the proposed rule change corrects cross-references that became inaccurate, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, the Commission designates the proposed rule change to be operative upon filing.⁴⁵

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

⁴⁵ 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).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2019-006 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-2019-006. 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-2019-006 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.⁴⁶

Eduardo A. Aleman
Deputy Secretary

⁴⁶ 17 CFR 200.30-3(a)(12).