

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88023; File No. SR-FINRA-2020-001)

January 23, 2020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps)

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 January 10, 2020, 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,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 extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to September 1, 2021. FINRA Rule 0180 temporarily limits, with certain exceptions, the application of FINRA rules with respect to security-based swaps.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

On July 1, 2011, the SEC issued an Order granting temporary exemptive relief (the "Temporary Exemptions") from compliance with certain provisions of the Exchange Act in connection with the revision, pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"),⁴ of the Exchange Act

⁴ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

definition of “security” to encompass security-based swaps.⁵ Consistent with the Commission’s action, on July 8, 2011, FINRA filed for immediate effectiveness FINRA Rule 0180,⁶ which, with certain exceptions, is intended to temporarily limit the application of FINRA rules⁷ with respect to security-based swaps, thereby helping to

⁵ See Securities Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Pending Revision of the Definition of “Security” To Encompass Security-Based Swaps, and Request for Comment) (the “Exemptive Release”). The term “security-based swap” is defined in Section 761 of the Dodd-Frank Act. See also Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48207 (August 13, 2012) (Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping).

⁶ See Securities Exchange Act Release No. 64884 (July 14, 2011), 76 FR 42755 (July 19, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2011-033) (“FINRA Rule 0180 Notice of Filing”). See also Securities Exchange Act Release No. 85062 (February 6, 2019), 84 FR 3524 (February 12, 2019) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2019-001) (extending the expiration date of FINRA Rule 0180 to February 12, 2020).

⁷ Prior to FINRA’s rule change pursuant to File No. SR-FINRA-2019-009, the FINRA rulebook consisted of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (“Incorporated NYSE Rules”) and their corresponding Incorporated NYSE Rule Interpretations. Pursuant to File No. SR-FINRA-2019-009, as part of the process of completing the consolidated FINRA rulebook, FINRA adopted, without substantive changes, the remaining NASD Rules as FINRA Rules in the consolidated FINRA rulebook and the remaining Incorporated NYSE Rules and Incorporated NYSE Rule Interpretations in the consolidated FINRA rulebook as a separate Temporary Dual FINRA-NYSE Member Rules Series. See Securities Exchange Act Release No. 85589 (April 10, 2019), 84 FR 15646 (April 16, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Remaining Legacy NASD and Incorporated NYSE Rules as FINRA Rules; File No. SR-FINRA-2019-009). For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

avoid undue market disruptions resulting from the change to the definition of “security” under the Act.⁸

The Commission, noting the need to avoid a potential unnecessary disruption to the security-based swap market in the absence of an extension of the Temporary Exemptions, and the need for additional time to consider the potential impact of the revision of the Exchange Act definition of “security” in light of ongoing Commission rulemaking efforts under Title VII of the Dodd-Frank Act, issued an Order which extended and refined the applicable expiration dates for the previously granted Temporary Exemptions.⁹ The Commission previously noted that extending the

⁸ In its Exemptive Release, the Commission noted that the relief is targeted and does not include, for instance, relief from the Act’s antifraud and anti-manipulation provisions. FINRA has noted that FINRA Rule 0180 is similarly targeted. For instance, paragraph (a) of FINRA Rule 0180 provides that FINRA rules shall not apply to members’ activities and positions with respect to security-based swaps, except for FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), 3310 (Anti-Money Laundering Compliance Program) and 4240 (Margin Requirements for Credit Default Swaps). See also paragraphs (b) and (c) of FINRA Rule 0180 (addressing the applicability of additional rules) and FINRA Rule 0180 Notice of Filing.

⁹ See Securities Exchange Act Release No. 71485 (February 5, 2014), 79 FR 7731 (February 10, 2014) (Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of “Security” to Encompass Security-Based Swaps, and Request for Comment) (“2014 Extension Release”) stating that, for those expiring Temporary Exemptions “that are not directly linked to pending security-based swap rulemakings, the Commission is extending the expiration date until the earlier of such time as the Commission issues an order or rule determining whether any continuing exemptive relief is appropriate for security-based swap activities with respect to any of these Exchange Act provisions or until three years following the effective date of this Order.” The 2014 Extension Release further stated that for each expiring Temporary Exemption “that is related to pending security-based swap rulemakings, the Commission is extending the expiration date until the compliance date for the related security-based swap-specific rulemaking.” In early 2019, the Commission extended certain Temporary Exemptions that are not directly linked to a security-based swap rulemaking to

Temporary Exemptions would facilitate a coordinated consideration of these issues with the relief provided pursuant to FINRA Rule 0180.¹⁰ In establishing Rule 0180, and in extending the rule’s expiration date, FINRA noted that the relief provided by Rule 0180 is appropriate pending the implementation of the Commission’s rules and guidance with respect to security-based swaps activity and the termination of relevant provisions of the Temporary Exemptions.¹¹

The Commission has finalized a majority of its rulemakings pursuant to Title VII of the Dodd-Frank Act (the “Title VII rulemakings”).¹² Further, the Commission has

February 5, 2020. See Securities Exchange Act Release No. 84991 (January 25, 2019), 84 FR 863 (January 31, 2019) (Order Granting a Limited Exemption From the Exchange Act Definition of “Penny Stock” for Security-Based Swap Transactions Between Eligible Contract Participants; Granting a Limited Exemption from the Exchange Act Definition of “Municipal Securities” for Security-Based Swaps; and Extending Certain Temporary Exemptions Under the Exchange Act in Connection With the Revision of the Definition of “Security” To Encompass Security-Based Swaps) (“2019 Extension Release”). See also note 13 infra.

¹⁰ See Securities Exchange Act Release No. 68864 (February 7, 2013), 78 FR 10218 (February 13, 2013) (Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of “Security” to Encompass Security-Based Swaps, and Request for Comment).

¹¹ See note 6 supra.

¹² See Securities Exchange Act Release No. 75611 (August 5, 2015), 80 FR 48964 (August 14, 2015) (Final Rule: Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants) (“Registration Process Release”); Securities Exchange Act Release No. 77617 (April 14, 2016), 81 FR 29960 (May 13, 2016) (Final Rule: Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants) (the “Business Conduct Standards Release”); Securities Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39808 (June 17, 2016) (Final Rule: Trade Acknowledgment and Verification of Security-Based Swap Transactions) (“Trade Acknowledgment and Verification Release”); Securities Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872 (August 22, 2019) (Final Rule: Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-

specified an extended compliance period for these new rules and guidance so as to permit sufficient time to prepare for and come into compliance with the new requirements.¹³

Notwithstanding the expiration of the Temporary Exemptions that are not directly linked to a security-based swap rulemaking,¹⁴ FINRA believes it is appropriate and in the public

Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers) (“Capital, Margin, and Segregation Release”); Securities Exchange Act Release No. 87005 (September 19, 2019), 84 FR 68550 (December 16, 2019) (Final Rule: Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers) (“Recordkeeping Release”); Securities Exchange Act Release No. 87780 (December 18, 2019), (Final Rules; Guidance: Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements) (“Cross-Border Release”); Securities Exchange Act Release No. 87782 (December 18, 2019), (Final Rule: Risk Mitigation Techniques for Uncleared Security-Based Swaps) (“Risk Mitigation Release”).

¹³ Except as otherwise specified by the Commission, the Commission has broadly coordinated the compliance date for the Title VII rulemakings with the compliance date for registration (the “Registration Compliance Date”), pursuant to the Registration Process Release, of security-based swap dealers and major security-based swap participants (together, referred to as “SBS Entities”). See Cross-Border Release, at Part X.B. The Commission has stated that the Registration Compliance Date for SBS Entities will be 18 months after the effective date (the “effective date”) of the rules adopted pursuant to the Cross-Border Release. Such effective date will be later of (1) March 1, 2020 or (2) 60 days after publication of the Cross-Border Release in the Federal Register. See Cross-Border Release, at Part X.A; see also Capital, Margin, and Segregation Release, 84 FR at 43954; Recordkeeping Release, 84 FR at 68600; and Risk Mitigation Release, at Part V. The Temporary Exemptions that are directly linked to specific Title VII rulemakings will generally expire on the Registration Compliance Date, or such other dates or pursuant to such conditions as otherwise specified by the Commission. The Temporary Exemptions that are not directly linked to a security-based swap rulemaking will generally expire on February 5, 2020. See, e.g., Cross-Border Release, at Part X.D; 2019 Extension Release, 84 FR 863 through 866.

¹⁴ The Commission notes that, after FINRA filed its proposed rule change, the Commission extended certain of the Temporary Exemptions not directly linked to a security-based swap rulemaking but did not extend the remainder of such Temporary Exemptions. See Securities Exchange Act Release No. 87943 (January 10, 2020) (Order Extending Temporary Exemptions from Exchange Act Section 8 and Exchange Act Rules 8c-1, 10b-16, 15a-1, 15c2-1 and 15c2-5 in

interest to extend FINRA Rule 0180 for a limited period, to September 1, 2021, so as to avoid undue burdens on market participants and undue market disruption, pending the extended compliance period for the Commission's new security-based swap related requirements.¹⁵

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be February 12, 2020.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁶ 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 the proposed rule change would further the purposes of the Act because the proposed rule change will help to avoid undue burdens on market participants and undue market disruption that could result if FINRA Rule 0180 expires before the Registration Compliance Date that the Commission has specified.

B. Self-Regulatory Organization's Statement on Burden on Competition

Connection with the Revision of the Definition of "Security" to Encompass Security-Based Swaps).

¹⁵ The proposed expiration date of September 1, 2021, broadly aligns with the Commission's Registration Compliance Date. See note 13 *supra*. FINRA may amend the expiration date of FINRA Rule 0180 based on any related Commission action.

¹⁶ 15 U.S.C. 78o-3(b)(6).

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. FINRA believes that the proposed rule change would prevent undue burdens on market participants and undue market disruption that would otherwise result if FINRA Rule 0180 expires before the Registration Compliance Date that the Commission has specified. FINRA believes that, by extending the expiration of FINRA Rule 0180, the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

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

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

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-2020-001 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-2020-001. 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-2020-001 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.¹⁹

Jill M. Peterson
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).