SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88482; File No. SR-FINRA-2019-030)

March 26, 2020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Membership Application Program ("MAP") Rules to Address the Issue of Pending Arbitration Claims

## I. Introduction

On December 13, 2019, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend FINRA's Membership Application Program ("MAP") rules to help further address the issue of pending arbitration claims, as well as arbitration awards and settlement agreements related to arbitrations that have not been paid in full in accordance with their terms.

The proposed rule change was published for comment in the Federal Register on December 30, 2019.[3] The public comment period closed on January 21, 2020. The Commission received two comment letters in response to the Notice, both generally supporting the proposed rule change.[4] On January 31, 2020, FINRA responded to the comment letters received in response to the Notice.[5] On February 6, 2020, FINRA filed an amendment to the proposal

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

2 17 CFR 240.19b-4.

3 See Exchange Act Release No. 87810 (Dec. 20, 2019), 84 FR 72088 (Dec. 30, 2019) (File No. SR-FINRA-2019-030) ("Notice").

4 See Letter from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated January 7, 2020 ("Caruso Letter"); and letter from Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, St. John's University School of Law, dated January 21, 2020 ("SJU Letter"). Comment letters are available on the Commission's website at https://www.sec.gov.

5 See Letter from Victoria Crane, Vice President and Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, dated

("Amendment No. 1").[6] On February 10, 2020, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 27, 2020. This order approves the proposed rule change, as modified by Amendment No. 1.

## II. Description of the Proposed Rule Change[7]

### Background

The MAP Rules govern the way in which FINRA reviews a new membership application ("NMA") and a continuing membership application ("CMA").[8] They are currently found under the FINRA Rule 1000 Series as FINRA Rules 1011 through 1019. These rules require an applicant to demonstrate its ability to comply with applicable securities laws and FINRA rules, including observing high standards of commercial honor and just and equitable principles of trade. The MAP rules require FINRA to evaluate an applicant's financial, operational, and supervisory and compliance systems to ensure that the applicant meets the standards set forth in the rules.

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January 31, 2020 ("FINRA Letter"). The FINRA Letter is available on FINRA's website at http://www.finra.org, at the principal office of FINRA, on the Commission's website at https://www.sec.gov/comments/sr-finra-2019-030/srfinra2019030-6730822-207419.pdf, and at the Commission's Public Reference Room.

6 Amendment No. 1 is available at https://www.finra.org/sites/default/files/2020-02/SR-FINRA-2019-030_Amendment1.pdf. With Amendment No. 1, FINRA made a technical change to the text of the proposal reflecting a cross-reference to FINRA Rule 1017(a)(5). Specifically, FINRA's initial proposal did not amend Rule 1017(a)(5), which currently cross-references Rule 1011(k) defining "material change in business operations." Amendment No. 1 changes that cross-reference to "Rule 1011(l)" to reflect the renumbered paragraphs as proposed in amended Rule 1011.

7 The subsequent description of the proposed rule change is substantially excerpted from FINRA's description in the Notice. See Notice, 83 FR at 72088-72093.

8 Unless otherwise specified, the term "application" refers to either an NMA (or Form NMA) or CMA (or Form CMA), depending on context.

FINRA's proposed rule changes would: (1) amend Rule 1014 (Department Decision) to: (a) create a rebuttable presumption that an application for new membership would be denied if the applicant or its associated persons are subject to a pending arbitration claim, and (b) permit an applicant to overcome a presumption of denial by demonstrating its ability to satisfy an unpaid arbitration award, other adjudicated customer award, unpaid arbitration settlement, or pending arbitration claim; (2) create a new requirement for a member, that is not otherwise required to submit an application for continuing membership for a specified change in ownership, control or business operations, including a business expansion, to seek a materiality consultation if the member or its associated persons have a defined "covered pending arbitration claim," unpaid arbitration award, or an unpaid arbitration settlement; (3) amend Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) to require a member to demonstrate its ability to satisfy an unpaid arbitration award or unpaid settlement related to an arbitration before effecting the proposed change thereunder; and (4) amend Rule 1013 (New Member Application and Interview) and Rule 1017 to require an applicant to provide prompt written notification of any pending arbitration claim that is filed, awarded, settled, or becomes unpaid before a decision on an application constituting final action on FINRA is served on the applicant.[9] Additionally, FINRA is proposing non-substantive changes in specified MAP rules.[10]

**Proposed Rule Change for Presumption to Deny an Application**

FINRA is proposing an amendment to the standard for admission and the corresponding factors therein relating to the presumption to deny an application for new or continuing

9 See Notice at 72088.

10 See id.

membership.[11] Currently, FINRA Rule 1014 sets forth standards for admission FINRA must consider in determining whether to approve an application. Under Rule 1014(a)(3), FINRA is required to determine whether an applicant for new or continuing membership and its associated persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and FINRA Rules. Rule 1014(a)(3) sets forth six factors that FINRA must consider in making that determination. Additionally, FINRA notes that under Rule 1014(b)(1), where an applicant or its associated persons are subject to certain regulatory events enumerated in Rule 1014(a)(3), a presumption exists that the application should be denied.[12] However, FINRA notes that "the existence of a record of a pending arbitration, as set forth in Rule 1014(a)(3)(B), is currently not among the enumerated factors that trigger the presumption to deny an application."[13]

The proposed amendment to Rule 1014 would create the rebuttable presumption to deny an application in cases where the prospective applicant or its associated persons are the subject of pending arbitration claims.[14] This presumption of denial for a pending arbitration claim would not apply to an existing member firm filing a CMA.[15] Instead, consistent with today's practice, FINRA would continue to consider whether an applicant or its associated persons are the subject of a pending arbitration claim in determining whether the applicant for continuing membership is capable of complying with applicable federal securities laws and FINRA rules.[16]

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11 See id.

12 Notice at 72089.

13 Id.

14 Id.

15 Id.

16 Id.

**Proposed Rule Change to Demonstrate Ability to Satisfy Unpaid Arbitration Awards, Other Adjudicated Customer Awards, Unpaid Arbitration Settlements, or for New Member Applications, Pending Arbitration Claims**

FINRA is also proposing to clarify the various ways in which an applicant for new or continuing membership may demonstrate its ability to satisfy an unpaid arbitration award, other adjudicated customer award, unpaid arbitration settlement, or a pending arbitration claim during the application review process, and to preclude an applicant from effecting any contemplated change in ownership, control, or business operations until such demonstration is made and FINRA approves the application.[17] For example, proposed IM-1014-1 would allow applicants to demonstrate the ability to satisfy an unpaid arbitration award, other adjudicated customer award, unpaid arbitration settlement, or a pending arbitration claim, through an escrow agreement, insurance coverage, a clearing deposit, a guarantee, a reserve fund, or the retention of proceeds from an asset transfer or such other forms of documentation that FINRA may determine to be acceptable.[18] Proposed IM-1014-1 would also allow an applicant to overcome the presumption to deny the application by guaranteeing that any funds used to evidence the applicant's ability to satisfy any awards, settlements, or claims will be used for that purpose.[19]

Any demonstration by an applicant of its ability to satisfy these outstanding obligations would be subject to a reasonableness assessment by FINRA.[20]

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17 See Notice at 72088.

18 Id. at 72089. Proposed IM-1014-1 would also allow an applicant to provide a written opinion of an independent, reputable U.S. licensed counsel knowledgeable in the area as to the value of the arbitration claims.

19 Notice at 72090.

20 Id.

**Proposed Rule Change to Mandate Materiality Consultations**

To further incentivize members to pay arbitration awards and settlements, FINRA is proposing to mandate that a member seek a materiality consultation in two situations in which specified pending arbitration claims, unpaid arbitration awards, or unpaid arbitration settlements are involved.[21] Currently, the materiality consultation process is voluntary, and exists to provide a member with the option of seeking guidance, or a materiality consultation, from FINRA on whether certain proposed events (e.g., acquisition or transfer of the member's assets, or a business expansion) would be material and thus require the member to file a CMA when it plans to undergo an event specified under Rule 1017.[22] According to FINRA, "[t]he characterization of a contemplated change as material depends on an assessment of all the relevant facts and circumstances, including, among others, the nature of the contemplated change, the effect the contemplated change may have on the firm's capital, the qualifications and experience of the firm's personnel, and the degree to which the firm's existing financial, operational, supervisory, and compliance systems can accommodate the contemplated change."[23] Where FINRA determines that a contemplated change is material, FINRA instructs the member to file a CMA if it intends to proceed with the change.[24]

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21 See id. at 72089.

22 See Notice at 72090. A request for a materiality consultation, for which there is no fee, is a written request from a member firm for FINRA's determination on whether a contemplated change in business operations or activities is material and would therefore require a CMA or whether the contemplated change can fit within the framework of the firm's current activities and structure without the need to file a CMA. Id.

23 Notice at 72090 (citing Notice to Members 00–73 (October 2000) (FINRA Requests Comment on a Proposal Regarding the Rules Governing the New and Continuing Membership Application Process)).

24 See id. As FINRA explains in the Notice, the member is responsible for compliance with Rule 1017. If FINRA determines during the materiality consultation that the

Mandatory Materiality Consultation for Business Expansion to Add One or More Associated Persons Involved in Sales (Proposed IM-1011-2 and Proposed Rules 1011(c)(1) and 1017(a)(6)(B))

Current Rule 1017 specifies the changes in a member's ownership, control, or business operations that require a CMA and FINRA's approval.[25] However, current IM-1011-1 creates a safe harbor for incremental increases in certain business expansions that are presumed not to be material changes in business operations.[26] Under this safe harbor, a member, subject to specified conditions and thresholds, may undergo such business expansions without filing a CMA.[27]

Proposed IM-1011-2 (Business Expansions and Covered Pending Arbitration Claims) would provide that if a member is contemplating to add one or more associated persons involved in sales and one or more of those associated persons: (1) has a "covered pending arbitration claim"[28] (as that term is defined in proposed Rule 1011(c)(1) described below), an unpaid arbitration award or an unpaid settlement related to an arbitration, and (2) the member is not otherwise required to file a CMA, the member may not effect the contemplated business

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contemplated business change is material, then the member potentially could be subject to disciplinary action for failure to file a CMA under Rule 1017. Id.

25 See id.

26 See Notice at 72090.

27 See id.

28 Proposed Rule 1011(c)(1) would define a "covered pending arbitration claim" as an investment-related, consumer-initiated claim filed against the associated person in any arbitration forum that is unresolved; and whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the hiring member's excess net capital. See id. at 72091.

For purposes of this definition, FINRA explains that the claim would only include claimed compensatory loss amounts, not requests for pain and suffering, punitive damages, or attorney's fees, and shall be the maximum amount for which the associated person is potentially liable regardless of whether the claim was brought against additional persons or the associated person reasonably expects to be indemnified, share liability, or otherwise lawfully avoid being held responsible for all or part of such maximum amount.

expansion unless the member complies with the proposed new requirements in Rule 1017(a)(6)(B).[29] Proposed Rule1017(a)(6)(B) would require a member firm to file a CMA for approval of the business expansion described in proposed IM-1011-2 unless the member first submits a written request to FINRA seeking a materiality consultation for the contemplated business expansion. As part of the materiality consultation, FINRA would determine whether: (1) the member is not required to file a CMA in accordance with Rule 1017 and may effect the contemplated business expansion; or (2) the member is required to file a CMA in accordance with Rule 1017 and the member may not effect the contemplated business expansion unless FINRA approves the CMA.[30]

Mandatory Materiality Consultation for Any Acquisition or Transfer of Member's Assets (Proposed Rule 1011(c)(2) and Proposed Rule 1017(a)(6)(A))

Currently, Rule 1017(a) requires a member to file a CMA for direct or indirect acquisitions or transfers of 25 percent or more in the aggregate of the member's assets or any asset, business, or line of operation that generates revenues composing 25 percent or more in the aggregate of the member's earnings measured on a rolling 36-month basis, unless both the seller and acquirer are NYSE members.[31]

FINRA is proposing to add a new subparagraph (6)(A) to Rule 1017(a) to provide that if a member is contemplating any direct or indirect acquisition or transfer of a member's assets or any asset, business, or line of operations where the transferring member or an associated person of the transferring member: (1) has a "covered pending arbitration claim,"[32] an unpaid arbitration

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29 See id. at 72091.

30 See Notice at 72091.

31 See id.

32 Proposed Rule 1011(c)(2) would define a "covered pending arbitration claim" as an investment-related, consumer-initiated claim filed against the transferring member or its

award or an unpaid settlement related to an arbitration, and (2) the member is not otherwise required to file a CMA, the member may not effect the contemplated transaction unless the member first submits a written request to FINRA seeking a materiality consultation for the contemplated acquisition or transfer.[33] As part of the materiality consultation, FINRA would determine whether: (1) the member is not required to file a CMA in accordance with Rule 1017 and may effect the contemplated acquisition of transfer; or (2) the member is required to file a CMA in accordance with Rule 1017 and the member may not effect the contemplated acquisition or transfer unless FINRA approves the CMA.[34]

**Proposed Rule Change Requiring Notification of Unpaid Arbitration Awards**

The proposal would require an applicant for new or continuing membership to notify FINRA of any pending arbitration claims that are filed, awarded, settled, or become unpaid before FINRA renders a decision on the application.[35] Current Rule 1013(a) lists items that must be submitted with an NMA and Rule 1017(b) sets forth the documents and other information required to accompany a CMA, depending on the nature of the CMA.[36] FINRA is proposing to add Rules 1013(c) and 1017(h) to require an applicant to provide prompt notification, in writing,

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associated persons in any arbitration forum that is unresolved; and whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the transferring member's excess net capital. See id. at 72092.

For purposes of this definition, FINRA explains that the claim would only include claimed compensatory loss amounts, not requests for pain and suffering, punitive damages or attorney's fees, and shall be the maximum amount for which the associated person is potentially liable regardless of whether the claim was brought against additional persons or the associated person reasonably expects to be indemnified, share liability or otherwise lawfully avoid being held responsible for all or part of such maximum amount.

33 See Notice at 72091.

34 See id.

35 See id. at 72089.

36 See id. at 72092.

of any pending arbitration claim involving the applicant or its associated persons that is filed, awarded, settled, or becomes unpaid before a decision on the application constituting final action of FINRA is served on the applicant.[37] FINRA indicated that any such unpaid arbitration award, other adjudicated customer award, unpaid arbitration settlement, or pending arbitration claim (for a new member applicant only) that comes to light in this manner during the application review process would result in FINRA being able to presumptively deny the application under the applicable factors set forth in Rule 1014(a)(3), and the ability of the applicant to overcome such presumption by demonstrating its ability to satisfy the obligation.[38]

Current Rule 1017(c) describes the timing and conditions for effecting a change under Rule 1017.[39] Rule 1017(c)(1) requires a member to file a CMA for approval of a change in ownership or control at least 30 days before the change is expected to occur.[40] A member may effect the change prior to the conclusion of FINRA's review of the CMA, however, FINRA may place interim restrictions on the member based upon the standards in Rule 1014 pending a final determination. Under Rule 1017(c)(2), a member may file a CMA to remove or modify a membership agreement restriction at any time, but any such existing restriction shall remain in effect during the pendency of the proceeding.[41] Finally, Rule 1017(c)(3) permits a member to file a CMA for approval of a material change in business operations at any time, but the member may not effect such change until the conclusion of the proceeding, unless FINRA and the

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37 See id.

38 See id. at 72092.

39 See id.

40 See id.

41 See id.

member otherwise agree.[42] FINRA is proposing to add subparagraph (4) to Rule 1017(c), providing that, notwithstanding the existing timing and conditions for effecting a change as described under Rule 1017(c)(1) through (3), where a member or an associated person has an unpaid arbitration award or unpaid settlement related to an arbitration at the time of filing a CMA, the member may not effect such change until demonstrating that it has the ability to satisfy such obligations in accordance with Rule 1014 and proposed IM-1014-1, as discussed above, and obtaining FINRA's approval of the CMA.[43]

**Additional Proposed Changes**

The proposal would also make non-substantive changes in the MAP rules by renumbering paragraphs in Rules 1011, 1014, and 1017, as well as updating cross-references.[44]

III. Comment Summary

As noted above, the Commission received two comment letters on the proposed rule change supporting the proposal.[45] While both commenters were generally supportive of the proposal, they believed that further action was necessary to address the issue of unpaid financial obligations that broker-dealers and their associated persons owe to their customers.[46]

**Supportive Comments**

In one commenter's view, the proposed rule changes represented a "fair, equitable and reasonable approach that would expedite and facilitate the efficiency of the arbitration process"

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42 See id.

43 See Notice at 72092.

44 See id. at 72088. FINRA will also make conforming changes to Forms NMA and CMA.

45 See supra note 4.

46 Id.

and recommended that they should be "approved by the SEC on an expedited basis."[47] The second commenter noted the proposed rules changes would provide FINRA with "another tool with which it may scrutinize the business of its members and new member applicants to ensure they can comply with the relevant rules and regulations, and that investors are protected."[48]

**Proposal is Insufficient**

As stated above, both commenters believed that FINRA needed to take further action to address unpaid financial obligations that broker-dealers and their associated persons owe to their customers.[49] One commenter stated "it is clear that these rule amendments . . . will not completely solve the large number of customer awards that remain unpaid each year."[50] The second commenter suggested that either in this rulemaking or a subsequent rulemaking, FINRA should consider addressing all investor settlements that have not been fully paid, such as a settled mediation claim or a settlement resulting from a written or oral complaint.[51] The commenter believes that the proposal should cover these settlements because these types of settlements also may never be fully satisfied by a firm.[52]

In response, FINRA recognizes that the issue of unpaid financial obligations that broker-dealers and their associated persons owe to their customers is not unique to the FINRA arbitration forum or the broker-dealer industry and that investors may have claims that arise outside of FINRA arbitration.[53] But FINRA also believes this particular rule filing is only one of

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47 Caruso Letter.

48 SJU Letter.

49 See Caruso Letter and SJU Letter.

50 Caruso Letter.

51 See SJU Letter.

52 See id.

53 See FINRA Letter.

the ways it is proceeding to implement additional steps to strengthen its rules on this topic.[54] In addition, FINRA noted that it has "encouraged a continuing dialogue about addressing the challenges of customer recovery across the financial services industry while directly informing the further enhancement of recovery in FINRA's forum[.]"[55] For example, FINRA cited to its 2018 White Paper and "additional data regarding the circumstances under which awards may be unpaid, along with a discussion of potential regulatory and legislative responses."[56] For these reasons, FINRA declined to amend this proposal in response to commenters.[57]

IV. Discussion and Commission Findings

After careful review of the proposed rule change and the comment letters, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[58] Specifically, the Commission finds that the proposed rule change is consistent with Section

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54 Id. See e.g., Exchange Act Release No. 88254 (Feb. 20, 2020), 85 FR 11157 (Feb 26, 2020) (File No. SR-FINRA-2019-027) (amending FINRA rules to expand customers' options in arbitration with respect to claims brought against inactive member firms and associated persons).

55 FINRA Letter.

56 Id. In FINRA Perspectives on Customer Recovery, available at https://www.finra.org/sites/default/files/finra_perspectives_on_customer_recovery.pdf. FINRA also makes available additional data on unpaid arbitration awards arising in the forum for the past five years, available at https://www.finra.org/arbitration-mediation/statistics-unpaid-customer-awardsfinra-arbitration ("White Paper"). In addition, FINRA has published a list of firms and associated persons responsible for unpaid arbitration awards, available at https://www.finra.org/arbitration-mediation/member-firms-and-associated-personsunpaid-customer-arbitration-awards. See FINRA Letter at note 3.

57 See FINRA Letter.

58 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).

15A(b)(6) of the Exchange Act,[59] 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.

**Presumption to Deny an Application**

The Commission agrees with FINRA that this proposal to add a presumption to deny an NMA helps to address concerns related to prospective applicants for new membership planning to hire principals and registered persons with pending arbitration claims without being able to adequately demonstrate: (1) how those claims would be paid if they go to award or result in a settlement; and (2) how the new member applicant would be able to effectively supervise such individuals who may have a history of noncompliance. In particular, the Commission agrees with FINRA that creating a presumption of denial in connection with a pending arbitration claim for an NMA would appropriately shift the burden to the new member applicant to demonstrate how its pending arbitration claim would be paid should it go to award or result in a settlement. As FINRA notes, this proposed amendment promotes investor protection by requiring more thorough scrutiny of certain prospective member firms to help protect the potential customers of those firms.[60]

**Demonstration of Ability to Pay**

The Commission agrees with FINRA that it would improve the efficiency of the MAP process to institute the proposal requiring evidence of an applicant's ability to satisfy unpaid

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59 15 U.S.C. 78o-3(b)(6).

60 See Notice at 72093. FINRA noted that the majority of new member applicants are unlikely to be effected by the proposed amendments. FINRA reviewed the 317 NMAs that it received from January 2015 through December 2017 and found that of those 317 NMAs only 13 NMAs included a new member applicant or its associated persons that had a pending arbitration claim at the time of FINRA's receipt of the NMA. Under the proposed amendments, FINRA could have presumptively denied those NMAs. See id. at 72093, 72094.

arbitration awards, other adjudicated customer awards, unpaid arbitration settlements, or, in the case of NMAs, pending arbitration claims. Specifically, the Commission agrees with FINRA that this rule will increase the ability of applicants to anticipate the information necessary to demonstrate their ability to satisfy outstanding obligations or potential obligations, and reduce the need for applicants to submit additional information after the initial filing. The Commission also believes the proposal could help reduce the number of unpaid arbitration awards by permitting an applicant to overcome the presumption to deny an application by guaranteeing that any funds used to evidence the applicant's ability to satisfy any awards, settlements, or claims will be used specifically for that purpose.

**Materiality Consultation**

FINRA has expressed concern that, under current Rule 1017 and the existing safe harbor for business expansions to increase the number of associated persons involved in sales,[61] a member could hire principals and registered representatives with substantial pending arbitration claims without considering how the firm would supervise such individuals or the potential financial impact on the firm if the individual, while employed at the hiring firm, engages in potential misconduct that results in a customer arbitration.[62] The Commission agrees with FINRA that requiring a materiality consultation for this type of business expansion would allow FINRA to, among other things, assess the nature of the anticipated activities of the principals and registered representatives with pending arbitration claims, unpaid arbitration awards, or arbitration settlements; the impact on the firm's supervisory and compliance systems, personnel, and finances; and any other impact on investor protection raised by adding such individuals.

61 See FINRA IM-1011-1 (Safe Harbor for Business Expansions).

62 See Notice at 72090.

Additionally, the Commission agrees that FINRA is better able to assess, among other things, the adequacy of any plan a member firm has in place to satisfy pending arbitration claims, unpaid arbitration awards, or unpaid arbitration settlements, by requiring a materiality consultation when a member firm is contemplating any direct or indirect acquisition or transfer of assets involving a "covered pending arbitration claim." The Commission further agrees that this proposal helps reduce the risk that a firm with pending arbitration claims that ultimately produce awards or settlements could avoid satisfying those awards or settlements by transferring assets without encumbrance and then closing down. The Commission agrees with FINRA that a decrease in the ability of firms to avoid satisfying their arbitration awards or settlements in this manner may result in a higher likelihood that they are paid in full in accordance with their terms.

**Notification of Unpaid Arbitration Awards**

The Commission agrees with FINRA that requiring applicants to provide prompt notification to FINRA of a pending arbitration claim that is filed, awarded, settled, or becomes unpaid before a decision on the application is served will improve FINRA's ability to oversee and review the pending arbitrations of applicants to help ensure that arbitration awards and settlements are paid in full in accordance with their terms.

In sum, the Commission agrees with FINRA and the commenters who supported the proposed rule change that it would help address the issue of unpaid arbitration awards. Specifically, the proposal would link a firm's or associated person's unpaid arbitration awards, unpaid arbitration settlement, or specified pending arbitration claims (collectively, "unpaid and potential financial obligations related to arbitration") to FINRA's membership application review process, in certain instances, to provide FINRA greater oversight.[63] These changes will enable

63 See Notice at 72089.

FINRA to more directly address concerns over unpaid and potential financial obligations related to arbitration, as well as the adequacy of the supervision of individuals with unpaid and potential financial obligations related to arbitration in situations where, for example: (1) a FINRA member firm hires individuals with pending arbitration claims, where there are concerns about: (a) the payment of those claims should they go to award or result in settlement, and (b) the supervision of those individuals; and (2) a member firm with pending arbitration claims seeks to avoid payment of the claims should they go to award or result in a settlement by shifting its assets, or its managers and owners, to another firm and closing down. Additionally, the Commission agrees with FINRA that amendments adopted here will enable FINRA to place greater emphasis on the adequacy of the supervision of individuals with pending arbitration claims given their history of noncompliance. While the Commission acknowledges the concerns of commenters regarding the potential for further action to address unpaid claims that arise outside of FINRA arbitration, as FINRA noted, this proposal represents one step in the ongoing process of addressing these issues and FINRA continues to evaluate further action.[64]

64 See FINRA Letter.

V. Conclusion

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Exchange Act[65] that the proposal (SR-FINRA-2019-030), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

J. Matthew DeLesDernier
Assistant Secretary

65 15 U.S.C. 78s(b)(2).

66 17 CFR 200.30-3(a)(12).