

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88870; File No. SR-FINRA-2020-013)

May 14, 2020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Add FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule) to FINRA's Minor Rule Violation Plan ("MRVP")

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 April 29, 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 and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to add industry member compliance rules relating to the Consolidated Audit Trail ("CAT") to FINRA's Minor Rule Violation Plan ("MRVP").

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

FINRA Rule 9216(b) provides procedures for disposition of certain rule violations designated as minor rule violations pursuant to a plan declared effective by the Commission in accordance with Section 19(d)(1) of the Act and Rule 19d-1(c)(2) thereunder. FINRA's MRVP allows FINRA to impose a fine of up to \$2,500 on any member or person associated with a member for a minor violation of an eligible rule. FINRA Rule 9217 sets forth the rules eligible for disposition pursuant to FINRA's MRVP. FINRA is proposing to amend Rule 9217 to make minor violations of the CAT industry member compliance rules in the Rule 6800 Series eligible for disposition under FINRA's MRVP.

The purpose of the MRVP is to provide reasonable but meaningful sanctions for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in FINRA's MRVP does not minimize the importance of compliance with the rule, nor does it preclude FINRA from choosing to pursue violations of eligible rules through an Acceptance, Waiver and Consent ("AWC") or Complaint if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the option to impose an MRVP sanction gives FINRA additional flexibility to administer

its enforcement program in the most effective and efficient manner, while still fully meeting FINRA's remedial objectives in addressing violative conduct. For example, MRVP dispositions provide a useful tool for implementing the concept of progressive discipline to remediate misconduct.³

With this proposed rule change, FINRA would add its CAT industry member compliance rules to its MRVP. FINRA adopted its CAT industry member compliance rules in the Rule 6800 Series to implement the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan"). The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,⁴ and each Plan Participant accordingly has adopted the same compliance rules that FINRA has in its Rule 6800 Series. The common compliance rules adopted by each Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurate customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

FINRA notes that the CAT industry member compliance rules are highly similar to rules already covered in FINRA's MRVP. Specifically, the CAT industry member compliance rules in the Rule 6800 Series include rules relating to clock synchronization (Rule 6820), the recording and reporting of order and trade data (Rules 6830, 6840, 6850, 6860, 6870, 6880, and 6893), and recordkeeping (Rule 6890). FINRA's current MRVP includes the same kinds of audit trail-related rules relating to clock synchronization (Rule 4590), the recording and reporting of order audit trail data (Rules 7440, 7450), and recordkeeping (Rule 4510 Series and SEA Rule 17a-3(a)

³ See Notice to Members 04-19 (March 2004) (providing guidance on FINRA's approach to progressive discipline under its MRVP).

⁴ 17 CFR 242.613.

and 17a-4).

If approved, FINRA plans to employ the MRVP for CAT compliance rules the same way FINRA has for its similar existing audit trail-related rules.⁵ FINRA is also coordinating with other Participants to promote harmonized and consistent enforcement of all the Participants' CAT compliance rules. The Commission recently approved a Rule 17d-2 Plan under which the regulation of CAT compliance rules will be allocated among Participants to reduce regulatory duplication for industry members that are members of more than one Participant ("common members").⁶ Under the Rule 17d-2 Plan, the regulation of CAT compliance rules with respect to common members that are members of FINRA is allocated to FINRA, and this proposed rule change would allow FINRA to consider MRVP dispositions in those cases. Similarly, under the Rule 17d-2 Plan, responsibility for common members of multiple other Participants and not a member of FINRA will be allocated among those other Participants, and FINRA understands the other Participants will submit proposed rule changes to adopt the same MRVP terms contemplated in this filing for their CAT compliance rules. As a result, there will be a coordinated, harmonized approach to CAT compliance rule enforcement across Participants, and it will be consistent with the approach FINRA has long taken for similar audit trail-related rules.

If the Commission approves the proposed rule change, the effective date of the proposed rule change will be the date of approval. FINRA has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Act⁷ for approving the proposed rule change prior to

⁵ See Notice to Members 04-19 (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).

⁶ See Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020).

⁷ 15 U.S.C. 78s(b)(2).

the 30th day after its publication in the Federal Register, to allow the change to take effect in line with the commencement of the first phase of industry member reporting to CAT.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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 further believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) and (b)(7) of the Act,⁹ which requires that FINRA enforce and provide appropriate discipline for violation of FINRA rules and applicable federal securities laws, rules and regulations. FINRA believes that adopting the proposed rule change will strengthen FINRA's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are not warranted in view of the minor nature of the particular violation.

In addition, FINRA's MRVP, as amended by this proposal, provides a fair procedure for disciplining members and persons associated with members, consistent with Sections 15A(b)(8) and 15A(h)(1) of the Act.¹⁰ The MRVP does not preclude a member or associated person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

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

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78o-3(b)(2) and 78o-3(b)(7).

¹⁰ 15 U.S.C. 78o-3(b)(8) and 78o-3(h)(1).

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Regulatory Need

FINRA is proposing to amend Rule 9217 to make minor violations of the CAT industry member compliance rules in the Rule 6800 Series eligible for disposition under FINRA's MRVP, which allows FINRA to impose a fine of up to \$2,500 on any member or person associated with a member for a minor violation of an eligible rule. The purpose of the MRVP is to provide reasonable but meaningful sanctions for minor or technical violation of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. This proposal is intended to allow MRVP dispositions when appropriate in the enforcement of CAT industry member reporting requirements.

Economic Baseline

FINRA adopted its CAT industry member compliance rules in the Rule 6800 Series to implement the National Market System Plan Governing the CAT NMS Plan. The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,¹¹ and each Plan Participant accordingly has adopted the same compliance rules that FINRA has in its Rule 6800 Series. As the CAT industry member compliance rules take

¹¹ 17 CFR 242.613.

effect, members must comply with them and FINRA must enforce compliance with them. As discussed above, the CAT industry member compliance rules are highly similar to existing audit trail-related rules already eligible for disposition under FINRA's MRVP.

Economic Impact

The proposed rule will allow FINRA to treat violations of CAT compliance rules the same way FINRA treats violations of its current audit trail-related rules, including OATS. As such, most industry members would be subject to the same regime that exists today for enforcing FINRA's current audit trail-related rules and would not be expected to experience any additional costs or benefits under the proposed rule. The proposed rule may provide benefits, including to FINRA and reporting firms, if MRVP dispositions are eligible to be used when FINRA deems appropriate, as the MRVP gives FINRA additional flexibility to administer its enforcement program in the most effective and efficient manner.

Furthermore, the efforts of all CAT NMS Plan participants to adopt a coordinated, harmonized approach to MRVP treatment for CAT compliance rules will promote consistent treatment for all industry members that trade NMS Securities and OTC Equity Securities.

Alternatives Considered

No alternatives are under consideration.

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. 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-2020-013 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-2020-013. 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-2020-013 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹² In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,¹³ which requires that FINRA rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 15A(b)(2) and 15A(b)(7) of the Exchange Act,¹⁴ which require that FINRA rules enforce compliance with, and provide appropriate discipline for, violations of Commission and FINRA rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹⁵ which governs minor rule violation plans.

As stated above, FINRA proposes to add industry member compliance rules relating to CAT to FINRA's MRVP. According to FINRA, FINRA's current MRVP includes similar audit trail-related rules, and FINRA plans to employ the MRVP for CAT compliance rules the same way it has for its existing audit trail-related rules.¹⁶ The Commission believes that the proposed rule provides a reasonable means of addressing violations that do not rise to the level of requiring

¹² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78o-3(b)(6).

¹⁴ 15 U.S.C. 78o-3(b)(2) and 15 U.S.C. 78o-3(b)(7).

¹⁵ 17 CFR 240.19d-1(c)(2).

¹⁶ See supra note 5 and accompanying text.

formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that FINRA will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁷ for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. The proposal merely adds FINRA's newly adopted CAT industry member compliance rules to its MRVP, which already includes similar audit trail-related rules. Accordingly, the Commission believes the proposal raises no novel or significant issues. Further, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁸ and

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 15 U.S.C. 78s(b)(2).

Rule 19d-1(c)(2) thereunder,¹⁹ that the proposed rule change (SR-FINRA-2020-013) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 240.19d-1(c)(2).

²⁰ 17 CFR 200.30-3(a)(12).