

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-93897; File No. SR-FINRA-2021-024)

January 4, 2022

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change to Amend FINRA Rule 2231 (Customer Account Statements)

I. Introduction

On September 29, 2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FINRA-2021-024 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to amend FINRA Rule 2231 (Customer Account Statements) to add new supplementary materials, incorporate specified provisions from dual FINRA-NYSE temporary rules, and delete those temporary rules.<sup>3</sup> The proposed rule change was published for public comment in the Federal Register on September 30, 2021.<sup>4</sup> On November 9, 2021, FINRA consented to an extension of 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Exchange Act Release No. 93215 (September 30, 2021), 86 FR 55641 (October 6, 2021) (File No. SR-FINRA-2021-024) (“Notice”).

<sup>4</sup> See supra note 3.

January 4, 2022.<sup>5</sup> On January 4, 2022, FINRA responded to the comment letters received in response to the Notice and filed an amendment to modify the proposed rule change (“Amendment No. 1”).<sup>6</sup>

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act<sup>7</sup> to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

FINRA is proposing to amend Rule 2231 (Customer Account Statements) to add new supplementary materials, incorporate specified provisions from dual FINRA-NYSE temporary rules, and delete those temporary rules. The proposed rule change would amend Rule 2231 to add new supplementary materials pertaining to compliance with FINRA Rule 4311 (Carrying Agreements), the transmission of customer account statements to other persons or entities, the use of electronic media to satisfy delivery obligations, and compliance with FINRA Rule 3150 (Holding of Customer Mail).

Specifically, proposed new Supplementary Material .01 to Rule 2231 would remind firms of their obligations under Rule 4311, including specifically the rights and obligations of carrying firms under Rule 4311(c)(2) that generally require each carrying agreement in which accounts

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<sup>5</sup> See letter from Sarah Kwak, Associate General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Branch Chief, Office of Chief Counsel, Division of Trading and Markets, Commission, dated November 9, 2021.

<sup>6</sup> See letter from Sarah Kwak, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated January 4, 2022 (“FINRA Response”).

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

are to be carried on a fully disclosed basis to expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of Exchange Act Rule 15c3-3 and for preparing and transmitting statements of account to customers.

Proposed new Supplementary Material .02 to Rule 2231 would prohibit member firms from sending customer account statements to third parties unless: (1) the customer provided written instructions to the member to send statements to such third parties; and (2) the member sends duplicate account statements directly to the customer either in paper format or electronically. The proposed Supplementary Material .02 would add that a member firm may cease sending duplicate account statements to a customer where a court of competent jurisdiction has appointed a guardian, conservator, trustee, personal representative or other person with legal authority to act on a customer's behalf, and such court-appointed fiduciary provides written instructions to the member and furnishes to the member an official copy of the court appointment that establishes authority over the customer's accounts.

Proposed new Supplementary Material .03 to Rule 2231 would allow member firms to satisfy their delivery obligations under the rule by using electronic media, subject to compliance with standards established by the Commission on the use of electronic media for delivery purposes.

Proposed new Supplementary Material .04 to Rule 2231 would permit member firms to hold customer mail, including customer account statements or other communications relating to a customer's account, subject to the requirements of Rule 3150.

Proposed new Supplementary Material .05 to Rule 2231 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/02 by requiring the following information to be clearly and prominently disclosed on the front of a customer account

statement: (1) the identity of the introducing and clearing firm, if different, and their respective contact information for customer service (although the proposed rule change would permit the identity of the clearing firm and its contact information to appear on the back of the statement provided such information is in “bold” or “highlighted” letters); (2) that the clearing firm is a member of SIPC; and (3) the opening and closing balances for the account.

Proposed new Supplementary Material .06 to Rule 2231 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/04 which provides that where a customer account statement includes assets the member firm does not carry on behalf of a customer and are not included on the member’s books and records, such assets must be clearly and distinguishably separated on the account statement. The proposed rule change would also require the account statement to: (1) clearly indicate that such externally held assets are included on the statement solely as a courtesy to the customer; (2) disclose that information (including valuation) for such externally held assets included on the statement is derived from the customer or other external source for which the member is not responsible; and (3) identify that such externally held assets may not be covered by SIPC.

Proposed new Supplementary Material .07 to Rule 2231 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/05, which provides that where the logo, trademark or other identification of a person (other than the introducing firm or clearing firm) appears on a customer account statement, then the identity of such person and the relationship to the introducing, clearing, or other firm included on the statement must be provided and may not be used in a manner that is misleading or causes customer confusion.

Proposed new Supplementary Material .08 to Rule 2231 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/06 by establishing a member firm’s

obligations where the member holding a customer's account and another person who separately offers financial related products or services to the same customer jointly provide their respective customer account statements together with a statement summarizing or combining assets held in different accounts.

Finally, FINRA is proposing to delete NYSE Rule 409T and NYSE Rule Interpretation 409T in their entirety on the basis that the underlying concepts in these provisions will have been included in Rule 2231, are duplicative of other rules, or are outdated.

Amendment No. 1 would modify the proposed rule change by changing the term "clearing firm" to "carrying firm" in the following places: (1) proposed Rule 2231(a); (2) proposed Rule 2231.05(a) and (b); (3) proposed Rule 2231.07; and (4) proposed Rule 2231.08(d). FINRA stated that changing the term "clearing firm" to "carrying firm" would maintain consistency given the proposed supplementary materials are derived largely from their corresponding NYSE provisions, which use the term "carrying organization."<sup>8</sup>

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2021-024 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved.<sup>9</sup> Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of

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<sup>8</sup> See FINRA Response.

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,<sup>10</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

#### IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>11</sup>

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<sup>10</sup> Id.

<sup>11</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

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](mailto:rule-comments@sec.gov). Please include File No. SR-FINRA-2021-024 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 No. SR-FINRA-2021-024. 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 10:00 a.m. and 3:00 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 No. SR-FINRA-2021-024 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. If comments are received, any rebuttal comments should be submitted on or before [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).