

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65890; File No. SR-FINRA-2011-070)

December 5, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Amend FINRA Rule 4512 (Customer Account Information)

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 December 2, 2011, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule 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 is approving the proposed rule change on an accelerated basis.

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

FINRA proposes to amend FINRA Rule 4512 (Customer Account Information) to except institutional accounts from the requirements of FINRA Rule 4512(a)(1)(C).

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, as set forth in sections A, B and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 27, 2011, the SEC approved FINRA's proposal to adopt rules governing books and records³ for the consolidated FINRA rulebook.⁴ In April 2011, FINRA issued Regulatory Notice 11-19, which announced SEC approval of the new rules and an implementation date of December 5, 2011. Following SEC approval of the rules and publication of the Regulatory Notice, several firms requested guidance regarding the application of FINRA Rule 4512(a)(1)(C) to institutional accounts.

Servicing Institutional Accounts

FINRA Rule 4512 requires firms to maintain certain information relating to customer accounts, and it is based on existing requirements in NASD Rule 3110(c) (Customer Account Information) with several changes, as described in Regulatory Notice 11-19. Among other changes, FINRA Rule 4512(a)(1)(C) requires firms to maintain the name of the associated

³ See Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Order Approving Proposed Rule Change; File No. SR-FINRA-2010-052).

⁴ The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

person, if any, responsible for the account, rather than requiring firms to maintain the signature of the registered representative introducing the account.⁵ Where a member designates multiple individuals as being responsible for an account, the firm is required to maintain each of their names and a record indicating the scope of their responsibilities with respect to the account.⁶ For purposes of the rule, it is the member's obligation to determine whether a particular individual is responsible for the account based on the scope of the individual's activities with respect to that account.

Following discussions with industry representatives, FINRA has determined that the application of FINRA Rule 4512(a)(1)(C) to institutional accounts⁷ raises significant operational issues in light of the manner in which institutional business is conducted. FINRA understands that numerous sales and trading associated persons often interact with institutional accounts, depending on such factors as the scope of the relationship with the institutional account and the products involved, and that, for purposes of institutional accounts, compliance with the recordkeeping requirements of FINRA Rule 4512(a)(1)(C) would cause significant operational

⁵ See also SEA Rule 17a-3(a)(17).

⁶ This provision was added in response to a comment from the Securities Industry and Financial Markets Association ("SIFMA") during the rulemaking process. See Securities Exchange Act Release No. 63181 (October 26, 2010), 75 FR 67155 (November 1, 2010) (Notice of Filing of Proposed Rule Change; File No. SR-FINRA-2010-052). Specifically, SIFMA had commented that the original proposal in Regulatory Notice 08-25 (May 2008) to maintain the name of a single individual as responsible for an account is not practical in all cases, such as an institutional account, where multiple individuals cover the account.

⁷ As defined in FINRA Rule 4512(c), the term "institutional account" means the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

challenges. Accordingly, FINRA proposes to amend the rule to except institutional accounts from the recordkeeping requirements of FINRA Rule 4512(a)(1)(C). Additionally, FINRA proposes to add Supplementary Material .05 (Supervision of Accounts) to FINRA Rule 4512 to clarify that nothing in paragraph (a)(1)(C) of the rule obviates a member's obligation to supervise an account that it services, including determining the associated persons responsible for the account and ensuring that such persons are appropriately qualified and registered, and to comply with the requirements of Rule 2090 ("Know Your Customer") (which becomes effective on July 9, 2012). Moreover, the Supplementary Material states that, with respect to a member's obligation to supervise an account, it is incumbent upon the member to design appropriate mechanisms to determine the associated persons responsible for the account, ensure that such persons are appropriately qualified and registered, and have the ability to provide such information to FINRA or SEC staff upon request.

FINRA has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Act⁸ for approving the proposed rule change prior to the 30th day after its publication in the Federal Register so that FINRA can implement the proposed rule change on December 5, 2011, which coincides with the implementation date for the amendments to the FINRA books and records rules.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ 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

⁸ 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78q-3(b)(6).

of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further these purposes by providing greater clarity to members regarding the application of FINRA Rule 4512(a)(1)(C), which, in turn, will assist them in their compliance efforts. The clarification regarding FINRA Rule 4512(a)(1)(C) would exempt institutional accounts from the recordkeeping requirements of the provision, while new Supplementary Material .05 (Supervision of Accounts) emphasizes a member's obligation to supervise all accounts that it services, including determining the associated persons responsible for the account and ensuring that such persons are appropriately qualified and registered, and to comply with the requirements of Rule 2090 (which becomes effective on July 9, 2012). The Supplementary Material also states that, with respect to a member's obligation to supervise an account, it is incumbent upon the member to design appropriate mechanisms to determine the associated persons responsible for the account, ensure that such persons are appropriately qualified and registered, and have the ability to provide such information to FINRA or SEC staff upon request.

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.

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 No. SR-FINRA-2011-070 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2011-070. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2011-070 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

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

In its filing, FINRA requested that the Commission approve the proposal on accelerated basis so that the proposed rule change is approved in time to coincide with the implementation date for the amendments to the FINRA books and records rules. After careful consideration, 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.¹⁰

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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. The Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act because it will clarify to members that FINRA Rule 4512(a)(1)(C) does not apply to institutional accounts, which, in turn, will assist them in their compliance efforts. The proposal also includes new .05 of the Supplementary Material to FINRA Rule 4512, which emphasizes a member's obligation to supervise all accounts that it services, including determining the associated persons responsible for the account and ensuring that such persons are appropriately qualified and registered, and that members servicing institutional accounts continue to have the obligation to comply with the requirements of Rule 2090 when that rule becomes effective on July 9, 2012. The new provision within the Supplementary Material also states that, with respect to a member's obligation to supervise an account, it is incumbent upon the member to design appropriate mechanisms to

¹⁰ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78q-3(b)(6).

determine the associated persons responsible for the account, ensure that such persons are appropriately qualified and registered, and have the ability to provide such information to FINRA or SEC staff upon request. The Commission believes that the provisions included in .05 of the Supplementary Material will serve to prevent fraudulent and manipulative acts and practices relating to institutional accounts and protect institutional investors and the public interest by effectively reminding members of their supervisory and Know Your Customer obligations for institutional accounts.

The Commission also finds good cause pursuant to Section 19(b)(2) of the Act¹² for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. FINRA Rule 4512, which provides for member recordkeeping obligations relating to customer account information, becomes effective on December 5, 2011. The instant proposed rule change clarifies the inapplicability of FINRA Rule 4512(a)(1)(C) to institutional accounts while advising firms of other relevant obligations related to the supervision of institutional accounts and the obligations related to complying with FINRA Rule 2090. Accelerating approval of the instant proposed rule change will enable FINRA to have the proposed rule change's effectiveness coincide with the effectiveness of FINRA's revised books and records rules, including FINRA Rule 4512, on December 5, 2011.

¹² 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-FINRA-2011-070) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹³ Id.

¹⁴ 17 CFR 200.30-3(a)(12).