

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78237; File No. SR-FINRA-2016-021)

July 7, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Application of FINRA Rule 2210 (“Communications with the Public”) to Debt Research Reports

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 June 24, 2016, 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. 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 clarify the application of FINRA Rule 2210 (“Communications with the Public”) to debt research reports as the result of approval of a new FINRA debt research conflict of interest rule.

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

FINRA is proposing to make several conforming changes to FINRA Rule 2210 to expressly address its application to debt research reports in light of the Commission's approval of a dedicated debt research conflict of interest rule. On July 16, 2015, the SEC approved a proposed rule change to adopt FINRA Rule 2242 to address conflicts of interest relating to the publication and distribution of debt research reports.⁴ Rule 2242 will be implemented on July 16, 2016.⁵ Until that rule becomes effective, FINRA's

⁴ See Securities Exchange Act Release No. 75472 (July 16, 2015), 80 FR 43528 (July 22, 2015) (Order Approving File No. SR-FINRA-2014-048). See also Regulatory Notice 15-31 (August 2015).

⁵ See Securities Exchange Act Release No. 77158 (February 17, 2016), 81 FR 9065 (February 23, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-008), see also Securities Exchange Act Release No. 77726 (April 27, 2016), 81 FR 26593 (May 3, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-013).

research conflict of interest rules apply only to equity research as set forth in FINRA Rule 2241 (“Research Analysts and Research Reports”).

First, Rule 2210(b)(1)(A) requires an appropriately qualified registered principal to approve each “retail communication” before the earlier of its use or filing with FINRA’s Advertising Regulation Department. Both a debt and equity research report constitutes a “retail communication,” unless it is distributed or made available only to “institutional investors” as defined in Rule 2210(a)(4), in which case it would be considered an “institutional communication” not subject to the pre-use approval requirement.

Rule 2210(b)(1)(B) states that the pre-use approval requirement may be satisfied by a Supervisory Analyst approved pursuant to NYSE Rule 344 with respect to: (i) research reports on debt and equity securities; (ii) retail communications as described in Rule 2241(a)(11)(A); and (iii) other research that does not meet the definition of “research report” under Rule 2241(a)(11), provided that the Supervisory Analyst has technical expertise in the particular product areas. For dual FINRA and New York Stock Exchange members, this provision therefore broadly allows a Series 16 qualified Supervisory Analyst to satisfy the pre-use approval requirement with respect to any research-related communication, including those expressly excepted by the definition of “research report” under Rule 2241(a)(11)(A) or not otherwise captured by that definition of “research report” under the equity research rule.

The proposed rule change would clarify and streamline the scope of approval permitted by Supervisory Analysts to specifically reference the definitions of “research report” and “debt research report” in Rules 2241(a)(11) and 2242(a)(3), respectively. It

also would add a specific reference to the exceptions under Rule 2242(a)(3)(A), thereby making express the references to debt research-related retail communications consistent with the references to equity research-related retail communications. The proposal maintains the ability for a Supervisory Analyst to approve other research communications – e.g., research on options – provided that the Supervisory Analyst has technical expertise in the product area and any other required registrations for such product.

Second, Rule 2210(b)(1)(D)(i) excepts from the pre-use approval requirement any retail communication that is excepted from the definition of “research report” under Rule 2241(a)(11)(A), unless the communication makes any financial or investment recommendation. Those communications still must be supervised and reviewed in the same manner as correspondence pursuant to FINRA’s supervision rules.⁶ FINRA adopted this exception due to concerns that the pre-use approval requirements for these types of research communications in some circumstances may have inhibited the flow of information to traders and other investors who base their investment decisions on timely market analysis.⁷ The proposed change would make this exception from the pre-use approval requirements consistent for debt and equity research communications.

Third, Rule 2210(d)(7) requires specific applicable disclosures in retail communications that include a recommendation of securities; however, the requirements do not apply to communications that meet the definition of an equity research report under Rule 2241(a), as long as the research report includes all the required disclosures under that rule. Similarly, Rule 2210(f)(2) requires specific applicable disclosures where

⁶ See FINRA Rules 3110(b) and 3110.06 through .09.

⁷ See Regulatory Notice 09-10 (February 2009).

an associated person recommends a security in a public appearance, but Rule 2210(f)(5) excepts from those disclosure requirements public appearances by an equity “research analyst” as defined in Rule 2241(a)(8), provided the research analyst makes all of the disclosures required under that rule. The basis for these exceptions is that the equity research rule has more extensive required disclosures in both research reports and public appearances than Rule 2210(d)(7) and (f)(2), respectively. New Rule 2242 requires similarly extensive corresponding disclosures in debt research reports and public appearances by debt research analysts. As such, FINRA believes it appropriate to similarly except debt research reports from the disclosure requirements of Rule 2210(d)(7) and except public appearances by debt research analysts from the disclosure requirements of Rule 2210(f)(2) for consistency purposes.

Finally, the proposed rule change would also make technical changes to FINRA Rules 2210(d)(7) and (f)(5) to make the rule language more readable.⁸

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The implementation date for the

⁸ FINRA notes that in 2014 the Commission approved a proposed rule change to exclude from the filing requirements in Rule 2210(c) equity research reports as defined in Rule 2241 that concern only securities that are listed on a national securities exchange, other than research reports required to be filed with the Commission pursuant to Section 24(b) of the Investment Company Act. See Securities Exchange Act Release No. 72480 (June 26, 2014), 79 FR 37796 (July 2, 2014) (Order Approving File No. SR-FINRA-2014-012). In connection with that filing, FINRA indicated that it would consider a similar exclusion for debt research reports if and when a debt research rule was approved. FINRA has not yet made a determination whether to propose such an exclusion.

proposed rule change will be July 16, 2016, to coincide with the effective date of FINRA Rule 2242.⁹

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ 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 the proposed rule change will promote consistent application of the communications with the public rules and provide greater clarity to members and the public regarding FINRA's rules.

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. The proposed rule change brings clarity and consistency to FINRA rules without adding any burden on firms.

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

⁹ See supra notes 4 and 5 for additional detail.

¹⁰ 15 U.S.C. 78o-3(b)(6).

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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) under the Act¹³ normally does not become operative before 30 days from the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change is designed to clarify the application of FINRA Rule 2210 to debt research reports as the result of the Commission's approval of a new FINRA debt research conflict of interest rule (Rule 2242).¹⁵ A waiver of the 30-day operative delay will allow the proposed rule change to become operative on July 16, 2016, the same date on which Rule 2242 will be implemented.¹⁶ Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on July 16, 2016.¹⁷

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See note 4 supra.

¹⁶ See note 5 supra.

¹⁷ For purposes of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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-2016-021 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2016-021. 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; 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-2016-021 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.¹⁸

Brent J. Fields
Secretary

¹⁸ 17 CFR 200.30-3(a)(12).