

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92403; File No. SR-FINRA-2021-018)

July 14, 2021

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Make Technical and other Non-Substantive Changes within FINRA rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 6, 2021, the 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, II, and III 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,<sup>3</sup> 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 make technical and other non-substantive changes within FINRA rules.

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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> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

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.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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#### SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

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IM-Section 4(b)(1) and (e) Exemption from Certain Registration and Membership Application Fees for Certain NYSE and NYSE [Alternext US]American LLC Member Organizations

NYSE and NYSE [Alternext US]American LLC member organizations that become members of FINRA pursuant to IM-1013-1 and IM-1013-2, respectively, shall not be assessed the fee set forth in Section 4(b)(1) to Schedule A of the FINRA By-Laws for the initial Form U4 filed by firms for the registration of any representative or principal associated with the member organization at the time a firm submits its application for FINRA membership. Such firms also shall not be assessed the membership application fee set forth in Section 4(e) to Schedule A of the FINRA By-Laws. However, those firms will otherwise remain subject to FINRA's By-Laws and Schedules to By-Laws, including Schedule A.

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#### FINRA Rules

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#### 1000. MEMBER APPLICATION AND ASSOCIATED PERSON REGISTRATION

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## IM-1011-1. Safe Harbor for Business Expansions

This interpretive material concerns the types of business expansions that will not require a member to submit a Rule 1017 application to obtain FINRA's approval of the expansion. This safe harbor applies to: (1) firms that do not have a membership agreement, and (2) firms that have a membership agreement that does not contain a restriction on the factors listed below.

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The safe harbor is not available to any member that has disciplinary history. For purposes of this Interpretation, "disciplinary history" means a finding of a violation by the member or a principal of the member in the past five years by the SEC, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following provisions (or a comparable foreign provision) or rules or regulations thereunder: violations of the types enumerated in Section 15(b)(4)(E) and Section 15(c) of the Exchange Act; Section 17(a) of the Securities Act; SEA Rules 10b-5 and 15g-1 through 15g-9; FINRA Rules 2010 (only if the finding of a violation is for unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, frontrunning, trading ahead of research reports or excessive markups), 2020, 2111, 2121, 2150, 4330, 3110 (failure to supervise only), 5210, and 5230; and MSRB Rules G-19, G-30, and G-37(b) and (c), and all predecessor NASD rules to such FINRA rules.

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## 1017. Application for Approval of Change in Ownership, Control, or Business Operations

(a) through (k) No Change.

(l) Removal or Modification of Restriction on Department's Initiative

The Department shall modify or remove a restriction on its own initiative if the Department determines such action is appropriate in light of the considerations set forth in paragraph ([h]i)(1). The Department shall notify the member in writing of the Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph (a).

(m) No Change.

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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

On March 26, 2020, the Commission approved amendments to Rule 1017, among other rules, as part of FINRA's efforts to help further address the issue of customer recovery of unpaid arbitration awards.<sup>4</sup> Before the amendments to Rule 1017, paragraph (h)(1) related to FINRA's decision on an application for continuing FINRA membership, and specified some factors that

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<sup>4</sup> See Securities Exchange Act Release No. 88482 (March 26, 2020), 85 FR 18299 (April 1, 2020) (Order Approving File No. SR-FINRA-2019-030, as Modified by Amendment No. 1). FINRA announced September 14, 2020 as the effective date of the rule change in Regulatory Notice 20-15 (May 2020).

create a presumption to deny an application. File No. SR-FINRA-2019-030 renumbered that paragraph to paragraph (i)(1). Currently, Rule 1017(l) cross-references to paragraph (h)(1), which, as a result of SR-FINRA-2019-030, requires an applicant for continuing FINRA membership to promptly provide FINRA written notification of any arbitration claim involving the applicant or its associated persons that is filed, awarded or becomes unpaid before a decision constituting final action of FINRA is served on the applicant. In File No. SR-FINRA-2019-030, FINRA did not propose a change to Rule 1017(l) to reflect the rule cross-reference change from paragraph (h)(1) to paragraph (i)(1). With this proposed rule change, FINRA is proposing to make this corrective non-substantive, technical change to Rule 1017(l).<sup>5</sup>

On April 10, 2019, the Commission announced the immediate effectiveness of the adoption of the remaining legacy NASD rules as FINRA rules in the consolidated FINRA rulebook and the remaining Incorporated NYSE Rules and Incorporated NYSE Rule Interpretations in the consolidated FINRA rulebook as a separate Temporary Dual FINRA-NYSE Member Rules Series.<sup>6</sup> Among these legacy NASD rules was then NASD Interpretative Material (“IM”)-1011-1 (Safe Harbor for Business Expansions). In general, this rule created a safe harbor for specified categories of business expansions, subject to certain thresholds and conditions, that a member may undergo without filing an application for continuing membership with FINRA, but this safe harbor was unavailable to a member with a defined “disciplinary

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<sup>5</sup> FINRA notes that the proposed rule change would impact all members, including members that have elected to be treated as capital acquisition brokers (“CABs”) and are subject to CAB rules. CAB Rule 116 (Application for Approval of Change in Ownership, Control, or Business Operations) incorporates by reference Rule 1017.

<sup>6</sup> See Securities Exchange Act Release No. 85589 (April 10, 2019), 84 FR 15646 (April 16, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-009).

history.” Under NASD IM-1011-1, the term “disciplinary history” meant a finding of a violation by the member or a principal of the member in the past five years by the SEC, a self-regulatory organization, or a foreign financial regulatory authority of one or more specified provisions that included NASD Rule 2440 (Fair Prices and Commissions), the predecessor rule to FINRA Rule 2121 (Fair Prices and Commissions).<sup>7</sup> Through File No. SR-FINRA-2019-009, FINRA adopted NASD IM-1011-1 as FINRA IM-1011-1 with the intention of replacing therein all references to an NASD rule with its corresponding FINRA rule. The reference to NASD Rule 2440, or “2440” as written in NASD IM-1011-1, was inadvertently omitted from the rule text presented in Exhibit 4 and Exhibit 5 to File No. SR-FINRA-2019-009 and as a result, the list of rules for “disciplinary history” as they currently appear in FINRA IM-1011-1 omits the reference to FINRA Rule 2121. With this proposed rule change, FINRA is proposing to correct this technical error by including a reference to “2121” to the sequence of FINRA rules defining “disciplinary history” under FINRA IM-1011-1.

Finally, the proposed rule change would change the references to “NYSE Alternext US” in IM-Section 4(b)(1) and (e) of Schedule A to the FINRA By-Laws to “NYSE American.”<sup>8</sup>

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 so FINRA can implement the proposed rule change immediately.

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<sup>7</sup> In 2014, FINRA adopted NASD Rule 2440 and its IMs, without material change, as FINRA Rule 2121. See Securities Exchange Act Release No. 72208 (May 21, 2014), 79 FR 30675 (May 28, 2014) (Notice of filing and Immediate Effectiveness of File No. SR-FINRA-2014-023).

<sup>8</sup> NYSE Alternext US LLC is a predecessor entity to NYSE American LLC. See Securities Exchange Act Release No. 80283 (March 21, 2017), 82 FR 15244 (March 27, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEMKT-2017-14).

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> 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 proposed rule change will make corrective non-substantive, technical updates that FINRA believes will provide greater clarity to FINRA 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 competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

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<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2021-018 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-2021-018. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).



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 Number SR-FINRA-2021-018 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.<sup>12</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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