

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95454; File No. SR-FINRA-2022-022)

August 9, 2022

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 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on, 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 Exchange 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 make technical and other non-substantive changes within FINRA rules.

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.

³ 17 CFR 240.19b-4(f)(6).

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 May 18, 2022, the SEC announced the immediate effectiveness of amendments to the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to permit persons with sexual assault claims and sexual harassment claims to elect not to enforce predispute arbitration agreements in cases that relate to those disputes.⁴ The rule change, File No. SR-FINRA-2022-012, aligned FINRA rules with the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (“Act”).⁵

In File No. SR-FINRA-2022-012, FINRA amended FINRA Rule 13201 to provide, among other things, that sexual assault claims and sexual harassment claims would be administered in the forum under FINRA Rule 13802.⁶ FINRA amended FINRA Rule 13802 to

⁴ See Securities Exchange Act Release No. 94942 (May 18, 2022), 87 FR 31592 (May 24, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-012).

⁵ Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, Pub. L. No. 117-90, 136 Stat. 26 (2022).

⁶ FINRA Rule 13802 sets forth requirements as to the number of arbitrators on the panel, the composition of the panel, the filing fee, the relief available, and the availability of attorneys’ fees for such claims.

add the terms “sexual assault claim” and “sexual harassment claim” to the title and throughout the rule to clarify that it applies to these types of claims. However, File No. SR-FINRA-2022-012 did not include these terms in paragraph (d) of FINRA Rule 13802. The proposed rule change would add references to “sexual assault” and “sexual harassment” to conform paragraph (d) with the rest of the provisions in FINRA Rule 13802.⁷

In addition, the proposed rule change would make technical, non-substantive changes to the Industry Code and the Code of Arbitration Procedure for Customer Disputes (“Customer Code”). The proposed rule change would update FINRA Rules 12100(aa) and 13100(x) by correcting a typographical error in the name of the Commodities Future Trading Commission, from “Commodities” to “Commodity.” The proposed rule change also would update FINRA Rules 12301(b) and 13301(b) by deleting a duplicate word, the second “the” in the first sentence of these rules. In addition, the proposed rule change would update FINRA Rule 13303(b) to insert a phrase that was inadvertently omitted. Under FINRA Rule 13303(b), when a third party is added to a claim, the respondent must serve the party with the answer and all documents previously served by any party or sent to the parties by the Director of FINRA Dispute Resolution Services. The current rule inadvertently omits “parties by the” in the second sentence. Thus, the proposed rule change would insert this phrase for clarity and consistency with other FINRA rules.

Finally, FINRA would update the citation in FINRA Rule 5122(c)(12) for the definition of “commodity pool operator” under the Commodity Exchange Act from Section 1a(5) to

⁷ The proposed rule change would apply to all members, including members that are funding portals or have elected to be treated as capital acquisition brokers (“CABs”), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

Section 1a(11) to reflect the reorganization of the defined terms in the Commodity Exchange Act.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, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange 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 of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide greater clarity to members and the public regarding FINRA rules by conforming paragraph (d) of FINRA Rule 13802 with the rest of the provisions in current FINRA Rule 13802 and by making technical updates to FINRA Rule 5122 and provisions of the Industry and Customer Codes.

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

⁸ 7 U.S.C. 1a

⁹ 15 U.S.C. 78q-3(b)(6).

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 as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

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 Exchange 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 Exchange 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2022-022 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-2022-022. 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. 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-2022-022 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.¹²

J. Matthew DeLesDernier,
Deputy Secretary.

¹² 17 CFR 200.30-3(a)(12).