

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95990; File No. SR-FINRA-2022-028)

October 6, 2022

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities)

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 September 29, 2022, 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,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 amend paragraph (c) of FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities) to clarify the application of specified FINRA rules to transactions in, and business activities relating to, exempted securities, including government securities (other than municipal securities).⁴ The proposed rule change would also

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ For purposes of the proposed rule change, the terms “exempted securities,” “government securities” and “municipal securities” shall have the meanings as specified in Exchange

amend Capital Acquisition Broker (“CAB”) Rule 015 (Application of Rules to Municipal Securities) to more closely track the text of FINRA Rule 0150, and for consistency with the revisions to FINRA Rule 0150 made pursuant to this rule filing.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.⁵

FINRA Rules

* * * * *

0100. GENERAL STANDARDS

* * * * *

0150. Application of Rules to Exempted Securities Except Municipal Securities

(a) through (b) No Change.

(c) Unless otherwise indicated within a particular Rule, the following rules are applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons: Rules 0110, 0120, 0130, 0140, 0160, 0170, 0190, 1010, 1011, IM-1011-1, IM-1011-2, IM-1011-3, 1012, 1013, IM-1013-1, IM-1013-

Act Sections 3(a)(12), 3(a)(42) and 3(a)(29), respectively. 15 U.S.C. 78c(a)(12), (a)(42) and (a)(29).

⁵ FINRA notes that some of the rules listed in FINRA Rule 0150(c) include provisions that are not applicable to government securities in whole or in part. For instance, notwithstanding the presence of FINRA Rule 2232 in FINRA Rule 0150(c), FINRA Rule 2232(b) is inapplicable by its terms to government securities that are not also equity securities. In addition, FINRA Rules 2232(c) through (f) are not applicable to U.S. Treasury securities. See Securities Exchange Act Release No. 79346 (November 17, 2016), 81 FR 84659, 84661 (November 23, 2016) (Order Approving File No. SR-FINRA-2016-032). FINRA also notes that some of the rules listed in FINRA Rule 0150(c) are applicable to exempted securities other than government securities. For example, FINRA Rule 2320(g) (Member Compensation) is applicable to group variable contracts that are exempted securities.

2, 1014, 1015, 1016, 1017, 1019, 1020, 1021, 1122, 1200 Series (other than Rules 1220(a)(5), (a)(6), (a)(7), (b)(4), (b)(5) and (b)(6)), 2010, 2020, 2030, 2040, 2060, 2070, 2080, 2081, 2090, 2111, 2122, 2130, 2140, 2150, 2165, 2210, 2211, 2212, 2213, 2214, 2216, 2220, 2231, 2232, 2261, 2263, 2264, 2266, 2267, 2268, 2269, 2270, 2272, 2273, 2320(g), 2360, [3110] 3100 Series, 3200 Series, [3210, 3220, 3260, 3270, 3280,] 3300 Series, 4100 Series, [4120, 4130,] 4210, 4220, 4230, 4310 Series, [4311,] 4330, 4340, 4360, 4370, 4380, 4510 Series, 4520 Series, 4530, 4540, 4570, 4580, 4590, 5160, 5210, 5220, 5230, 5310, 5340, 6700 Series, 7730, 8100 Series, [8110, 8120,] 8210, 8211, 8300 Series, [8310, 8311, 8312, 8320, 8330] 9000 Series [and 9552], 12000 Series, 13000 Series, and 14000 Series.

* * * * *

Capital Acquisition Broker Rules

010. GENERAL STANDARDS

* * * * *

015. Application of Rules to Exempted Securities Except Municipal Securities

[FINRA Rule 0150 shall apply to the Capital Acquisition Broker Rules.]

(a) For purposes of this Rule, the terms “exempted securities” and “municipal securities” shall have the meanings specified in Sections 3(a)(12) and 3(a)(29) of the Exchange Act, respectively.

(b) The Capital Acquisition Broker Rules are not intended to be, and shall not be construed as, rules concerning transactions in municipal securities.

(c) Unless otherwise indicated within a particular Rule, all Capital Acquisition Broker Rules are applicable to transactions in, and business activities related to, exempted securities.

except municipal securities, conducted by capital acquisition brokers and their associated persons, other than Capital Acquisition Broker Rules 512 and 515.

(d) Nothing in this Rule shall be deemed to expand or otherwise alter the scope of activities permitted for capital acquisition brokers under Capital Acquisition Broker Rule 016(c).

* * * * *

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

Background

Prior to 1986, broker-dealers engaged solely in a government securities business were not required to register with the SEC and become members of a registered securities exchange or a registered securities association, such as FINRA (then NASD).⁶ Moreover, the Exchange Act expressly prohibited FINRA from adopting and enforcing compliance with its rules in

⁶ On July 30, 2007, NASD and NYSE consolidated their member regulation, enforcement and dispute resolution operations into a combined organization, FINRA. See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (Order Approving File No. SR-NASD-2007-023). For consistency purposes, when discussing FINRA or the predecessor NASD, this filing will refer solely to FINRA.

connection with transactions by its members in exempted securities, including government securities.⁷

The Government Securities Act of 1986 (“GSA”),⁸ however, amended the Exchange Act to require broker-dealers that engaged exclusively in transactions in government securities to register with the SEC and become members of a registered securities exchange or a registered securities association if they effected transactions in, or induced or attempted to induce the purchase or sale of, any government securities.⁹ The GSA also amended the Exchange Act to authorize a registered securities association, such as FINRA, to adopt and implement rules for specified limited purposes to govern transactions by its members in exempted securities (other than municipal securities).¹⁰ The GSA did not authorize FINRA to apply its rules, including its sales practice rules (which were then part of the Rules of Fair Practice), that were outside of

⁷ Specifically, Section 15A(f) of the Exchange Act provided that “[n]othing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security.” See 15 U.S.C. 78o-3 (historical notes).

⁸ Pub. L. No. 99-571, 100 Stat. 3208 (1986).

⁹ See supra note 8. (amending the Exchange Act to add Section 15C(a)(1)(A) to require the registration of a government securities broker or dealer).

¹⁰ The GSA, among other things, amended Section 15A(f) to add paragraph (2), which provided that a registered securities association could adopt and implement rules with respect to exempted securities to (A) enforce compliance with applicable provisions of the Exchange Act; (B) provide for appropriate discipline of members for violations of applicable provisions of the Exchange Act; (C) provide for reasonable inspection and examination of members’ books and records; (D) deny or condition the membership of a broker-dealer that does not meet standards for financial responsibility or conduct under the Exchange Act; (E) bar any person from being associated with a member if such person has engaged in prohibited conduct or refused to provide requested information; and (F) prohibit fraudulent, misleading, deceptive and false advertising. See 100 Stat. 3208, 3218.

those specified areas to transactions in exempted securities.¹¹ In 1988, FINRA amended its existing rules and adopted new rules to carry out its responsibilities under the GSA.¹²

In 1993, Congress enacted the Government Securities Act Amendments of 1993 (“GSAA”), which removed all previous limitations on the ability of FINRA to apply its rules, including its sales practice rules, to transactions by members in exempted securities, other than municipal securities.¹³ Subsequently, in 1996, with oversight by the SEC and the SEC’s consultation with the Department of the Treasury, FINRA specified provisions of its Rules of

¹¹ In contrast, the GSA did not prevent registered securities exchanges, such as the NYSE, from applying their rules to government securities transactions. See United States Government Accountability Office, U.S. Government Securities: More Transaction Information and Investor Protection Measures Are Needed, September 1990 at 47 (noting that although the GSA did not authorize FINRA to apply its sales practice rules to government securities transactions, the GSA did not prevent registered securities exchanges, such as the NYSE, from applying their rules to government securities transactions), available at <https://www.gao.gov/assets/ggd-90-114.pdf>.

¹² Specifically, FINRA amended its By-Laws to address government securities transactions by members and the eligibility of sole government securities broker-dealers to become members. FINRA also amended Schedule C to the NASD By-Laws, which contained rules relating to membership and registration, to provide for the registration of government securities principals and government securities representatives. In addition, FINRA adopted a subset of rules designated as “Government Securities Rules,” which addressed books and records, supervisory procedures and the regulation of members experiencing financial or operational difficulties or changing their exemptive status under SEA Rule 15c3-3. The Government Securities Rules also included provisions regarding communications with the public and FINRA’s ability to bring disciplinary actions for violations involving government securities transactions. See Securities Exchange Act Release No. 26240 (November 2, 1988), 53 FR 45412 (November 9, 1988) (Order Approving File No. SR-NASD-88-12). The terms “sole government securities broker-dealers,” “government securities broker-dealers,” “registered government securities brokers and dealers” and “government securities broker or dealer” as used in this proposed rule change refer to brokers and dealers that engage exclusively in transactions in government securities and that are registered under Section 15C of the Exchange Act.

¹³ Government Securities Act Amendments of 1993, Pub. L. No. 103-202, § 1(a), 107 Stat. 2344 (1993).

Fair Practice that would be applicable to exempted securities, other than municipal securities.¹⁴

In 2001, for ease of reference, FINRA adopted NASD Rule 0116 (now FINRA Rule 0150), which was intended to codify, with some additions,¹⁵ the rules that were approved by the Commission as applicable to transactions in, and business activities relating to, government securities, and more broadly exempted securities (other than municipal securities), and that were expressly listed in the 1996 Approval Order.¹⁶ FINRA has amended Rule 0150 since its original adoption, but it has not updated the rule routinely.¹⁷

More recently, on August 19, 2016, the SEC's Division of Trading and Markets requested that FINRA undertake a comprehensive review of its rulebook to identify existing

¹⁴ See Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (Order Approving File No. SR-NASD-95-39) ("1996 Approval Order"). While not expressly listed as rules applicable to exempted securities in the 1996 Approval Order, the 1996 Approval Order noted that the general provisions of Articles I and II of the Rules of Fair Practice relating to the adoption, application and definitions of rules, which were formerly in the Government Securities Rules, also applied to government securities. In addition, the 1996 Approval Order stated that Schedule C to the By-Laws would apply to the personnel of sole government securities broker-dealers, including persons selling options on government securities.

¹⁵ NASD Rule 0116 codified a FINRA staff interpretation that the non-cash compensation provisions of NASD Rule 2820(g) (now FINRA Rule 2320(g)) apply to group variable contracts that are exempted securities.

¹⁶ See Securities Exchange Act Release No. 44631 (July 31, 2001), 66 FR 41283 (August 7, 2001) (Order Approving File No. SR-NASD-00-38).

¹⁷ For example, in 2015, FINRA amended Rule 0150 to expressly apply FINRA Rule 2121 (Fair Prices and Commissions) to transactions in exempted securities that are government securities. See Securities Exchange Act Release No. 76639 (December 14, 2015), 80 FR 79112 (December 18, 2015) (Order Approving File No. SR-FINRA-2015-033). In addition, FINRA has replaced references to NASD rules when those rules were transferred into the FINRA rulebook as consolidated FINRA rules. See, e.g., Securities Exchange Act Release No. 78851 (September 15, 2016), 81 FR 64969 (September 21, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-036) (replacing NASD IM-2210-2 with FINRA Rule 2211).

FINRA rules that exclude or may otherwise not apply to U.S. Treasury securities (or government securities more generally), or for which the applicability of the rule to U.S. Treasury securities requires clarification, and to assess the continuing validity for such exclusions.¹⁸ In response, FINRA undertook a review of its rulebook for this purpose.¹⁹ FINRA also reviewed its rulebook to identify the rules that are applicable to government securities, and those rules whose applicability to government securities requires clarification. On October 17, 2016, FINRA submitted a letter in response to the Commission's request.²⁰

Rules to be Added to FINRA Rule 0150

As an initial step in responding to the SEC staff's request, the proposed rule change would amend FINRA Rule 0150(c) to add to its list of rules those that are currently applicable to exempted securities, including government securities, but which are not currently listed in that rule. The rules that FINRA is proposing to add are rules that have general application to the

¹⁸ See Letter from Stephen Luparello, Director, Division of Trading and Markets, SEC, to Robert W. Cook, President and Chief Executive Officer, FINRA, dated August 19, 2016, available at <https://www.sec.gov/divisions/marketreg/letter-to-finra-regulation-of-us-treasury-securities.pdf>.

¹⁹ The current FINRA rulebook consists of (1) FINRA rules; and (2) the Temporary Dual FINRA-NYSE Member Rule Series (formerly Incorporated NYSE Rules and Incorporated NYSE Rule Interpretations). While the FINRA rules generally apply to all FINRA members, the Temporary Dual FINRA-NYSE Member Rule Series apply solely to those members of FINRA that are also members of NYSE on or after July 30, 2007. As previously mentioned, the Temporary Dual FINRA-NYSE Member Rule Series historically were not subject to the same limitations with respect to their applicability to government securities as FINRA rules. See *supra* note 11. Accordingly, FINRA believes that the Temporary Dual FINRA-NYSE Member Rule Series currently apply to exempted securities, including government securities, unless otherwise indicated by a particular rule.

²⁰ See Letter from Robert W. Cook, President and Chief Executive Officer, FINRA, to Stephen Luparello, Director, Division of Trading and Markets, SEC, dated October 17, 2016, available at <https://www.sec.gov/divisions/marketreg/letter-from-finra-regulation-of-us-treasury-securities.pdf>.

activities of all FINRA members, irrespective of business model or client base. In addition, the proposed rule change would modernize and make current the list of rules in Rule 0150. It is not intended to substantively change the current application or requirements of FINRA rules to exempted securities. As stated in Rule 0150, the application of any listed rules, or specific provisions of those rules, to exempted securities, including government securities, is governed by the language of the rule itself.²¹

General Standards Rules

The proposed rule change would amend FINRA Rule 0150(c) to expressly add FINRA Rules 0110 (Adoption of Rules), 0120 (Effective Date), 0130 (Interpretation), 0140 (Applicability), 0160 (Definitions), 0170 (Delegation, Authority and Access) and 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation) (collectively, the “General Standards Rules”), which will clarify the applicability of these rules to exempted securities, including government securities.²² The General Standards Rules govern the adoption, application and interpretation of FINRA rules and set forth specified definitions not

²¹ For example, FINRA Rule 7730(b), by its terms, currently excludes transactions in U.S. Treasury Securities, as defined under FINRA rules, from the TRACE transaction reporting fees. See Securities Exchange Act Release No. 79116, (October 18, 2016), 81 FR 73167, 73169 (October 24, 2016) (Order Approving File No. SR-FINRA-2016-027). While the proposed rule change would amend Rule 0150 to include Rule 7730, Rule 7730(b) would continue by its terms to exclude transactions in U.S. Treasury Securities, as defined under FINRA rules. Further, in updating FINRA Rule 0150, FINRA is not suggesting that every type of exempted security is subject to each rule listed in paragraph (c). It could be the case that a listed rule applies, by its terms, to a subcategory of exempted securities based on the characteristics of that security. For example, FINRA understands that U.S. Treasury securities do not have callable features. However, government-sponsored enterprises (“GSEs”), whose securities are considered by statute to be exempted securities, may issue callable securities.

²² See supra note 14 (noting the application of the general provisions of the Rules of Fair Practice to government securities).

contained in the FINRA By-Laws. In addition, these rules address FINRA's delegation of responsibilities to its subsidiary, and its authority and access with respect to its subsidiary. The General Standards Rules apply to all FINRA members, irrespective of business model or client base.

Membership Rules

The proposed rule change would amend FINRA Rule 0150(c) to include FINRA Rule 1011 (Definitions), IM-1011-1 (Safe Harbor for Business Expansions), IM-1011-2 (Business Expansions and Covered Pending Arbitration Claims), IM-1011-3 (Business Expansions and Persons with Specified Risk Events), Rule 1012 (General Provisions), Rule 1013 (New Member Application and Interview), IM-1013-1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations), IM-1013-2 (Membership Waive-In Process for Certain NYSE American LLC Member Organizations), Rule 1014 (Department Decision), Rule 1015 (Review by National Adjudicatory Council), Rule 1016 (Discretionary Review by FINRA Board), Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations), Rule 1019 (Application to the SEC for Review), Rule 1021 (Foreign Members) and Rule 1122 (Filing of Misleading Information as to Membership or Registration) (together, the "Membership Rules"). The Membership Rules provide a means for FINRA, through its Membership Application Program ("MAP"), to assess the proposed business activities of potential and current members with the ultimate goal of ensuring that each applicant is capable of conducting its business in compliance with applicable rules and regulations, and that its business practices are consistent with just and equitable principles of trade. The Membership Rules provide, for example, the standards of review for new member applications ("NMAs") and continuing membership applications ("CMAs"). In addition, among other requirements, the

Membership Rules require consideration of whether persons associated with an applicant have disciplinary actions taken against them by other industry authorities, customer complaints, adverse arbitrations, pending or unadjudicated matters, civil actions, remedial actions imposed or other industry-related matters that could pose a threat to public investors. The Membership Rules apply to all applicants for membership and all existing members. FINRA does not have a separate membership process for persons engaged in activities relating to exempted securities, including government securities.

The following is a summary of the Membership Rules:

- FINRA Rule 1011 (defines relevant terms for purposes of the Membership Rules);
- FINRA IM-1011-1 (creates a safe harbor for certain types of expansions that are presumed not to be a “material change in business operations” and, therefore, do not require a member to file a CMA pursuant to FINRA Rule 1017);
- FINRA IM-1011-2 (provides that the safe harbor for business expansions in FINRA IM-1011-1 is not available to any member that is seeking to add one or more associated persons involved in sales and one or more of those associated persons has a “covered pending arbitration claim,” an unpaid arbitration award or unpaid settlement related to an arbitration);
- FINRA IM-1011-3 (provides that the safe harbor for business expansions in FINRA IM-1011-1 is not available to any member that is seeking to add a natural person who has, in the prior five years, one or more “final criminal matters” or two or more “specified risk events” and seeks to become an owner, control person, principal, or registered person of the member);

- FINRA Rule 1012 (provides information regarding, among others, the methods for submitting the applications required by the other Membership Rules, provisions governing when a membership application is considered to have lapsed as well as rules on ex parte communications in the event that a member requests review of a FINRA membership decision by the National Adjudicatory Council (“NAC”), pursuant to FINRA Rule 1015);
- FINRA Rule 1013 (sets forth the requirements for an NMA, including how to file, the documents that applicants must submit, the ability of FINRA to request additional documentation and to reject an application that is “not substantially complete,” and the process for conducting membership interviews);
- FINRA IM-1013-1 and IM-1013-2 (establish a waive-in process to expedite the approval of membership applications of NYSE-only member organizations and NYSE American member organizations that were required to become FINRA members following the consolidation of NASD and NYSE’s member regulation operations);²³
- FINRA Rule 1014 (sets forth the standards for admission, the process and timing for granting or denying an application, the timing and content requirements for FINRA’s decision and submission of a membership agreement and the effectiveness of restrictions in the membership agreement);
- FINRA Rule 1015 (permits an applicant to submit a request for review by the NAC of an adverse decision rendered on an NMA or a CMA);

²³ See supra note 6.

- FINRA Rule 1016 (permits a governor of the FINRA Board to call for a discretionary review of a membership proceeding);
- FINRA Rule 1017 (provides that specified changes in a member's ownership, control or business operations require the firm to file a CMA, which is subject to FINRA approval);
- FINRA Rule 1019 (provides that a person aggrieved by final action of FINRA under the Membership Rules may apply for review by the SEC);
- FINRA Rule 1021 (sets forth specific obligations for foreign members, which are members that do not maintain an office in the United States that is responsible for preparing and maintaining financial and other reports required to be filed with the SEC and FINRA); and
- FINRA Rule 1122 (prohibits members and associated persons from filing with FINRA incomplete or misleading membership or registration information).

Registration Rules

The proposed rule change would amend FINRA Rule 0150(c) to add to the list of rules that are applicable to exempted securities, including government securities, the rules relating to the qualification and registration of associated persons (collectively, the "Registration Rules"). In general, the Registration Rules: (1) require that persons engaged in a member's investment banking or securities business who are to function as representatives or principals register with FINRA in each category of registration appropriate to their functions by passing one or more qualification examinations; (2) exempt specified associated persons from the registration requirements; and (3) provide for permissive registration of specified persons. FINRA believes

that the identified Registration Rules are applicable to government securities because they are applicable to the activities of all members, irrespective of business model or client base.²⁴

Specifically, the proposed rule change would add the following Registration Rules to FINRA Rule 0150(c):

- FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms) (sets forth the filing and signature requirements for the Uniform Forms (e.g., Form U4 (Uniform Application for Securities Industry Registration or Transfer)); and
- FINRA Rule 1200 Series (Registration and Qualification):
 - FINRA Rule 1210 (Registration Requirements) (requires that each person engaged in the investment banking or securities business of a member register with FINRA as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in FINRA Rule 1220, unless exempt from registration pursuant to FINRA Rule 1230. FINRA Rule 1210 also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules);²⁵

²⁴ FINRA anticipates specifically addressing the application of some of the Registration Rules, including FINRA Rules 1220(a)(5) (Investment Banking Principal), 1220(a)(6) (Research Principal), 1220(a)(7) (Securities Trader Principal), 1220(b)(4) (Securities Trader), 1220(b)(5) (Investment Banking Representative) and 1220(b)(6) (Research Analyst), to government securities activities as part of a separate proposal.

²⁵ Further, FINRA Rule 1210 addresses the following: (1) requirement to have a minimum number of registered principals; (2) ability to maintain permissive registrations for associated persons; (3) requirement to pass an appropriate qualification examination(s); (4) process for obtaining a waiver of a qualification examination(s); (5) requirements applicable to registered persons functioning as principals prior to passing an appropriate principal qualification examination; (6) rules of conduct for taking examinations and confidentiality of examinations; (7) waiting periods for retaking a failed examination; (8)

- FINRA Rule 1220 (Registration Categories) (sets forth the definitions of “principal” and “representative” as well as the qualification and registration requirements for, among others, General Securities Principals, Financial and Operations Principals, Registered Options Principals, Government Securities Principals, General Securities Sales Supervisors, General Securities Representatives and Operations Professionals);²⁶
- FINRA Rule 1230 (Associated Persons Exempt from Registration) (identifies associated persons who are not required to be registered with FINRA, including, among others, associated persons whose functions are solely and exclusively clerical or ministerial);²⁷ and
- FINRA Rule 1240 (Continuing Education Requirements) (sets forth the continuing education requirements, which consist of a Regulatory Element and a Firm Element, and the Maintaining Qualifications Program through which eligible individuals may maintain their qualification in a

requirement that registered persons satisfy continuing education; (9) lapse of registration and expiration of the Securities Industry Essentials examination; (10) waiver of examinations for individuals working for a financial services industry affiliate; (11) status of persons serving in the Armed Forces of the United States; and (12) impermissible registrations.

²⁶ The rule also addresses the following: (1) status of certain foreign registrations; (2) additional requirements for registered persons engaged in security futures activities; (3) requirements applicable to members operating with only one Registered Options Principal; (4) scope of the General Securities Sales Supervisor category; (5) scope of the Operations Professional category; and (6) status of eliminated registration categories.

²⁷ In addition, the rule clarifies that the function of accepting customer orders is not considered a clerical or ministerial function.

representative or principal registration category following the termination of that registration category).

Rules Relating to Members' Financial Condition and Margin-Related Rules

The proposed rule change would amend FINRA Rule 0150(c) to add rules that have general applicability to members and relate to members' financial condition and margin practices.²⁸ These rules play an important role in supporting the SEC's minimum net capital and other financial responsibility requirements and support FINRA's authority to execute effectively its financial and operational surveillance and examination programs. In general, these rules: (1) establish criteria promoting the permanency of members' capital; (2) require the review and approval of specific material financial transactions; and (3) establish criteria intended to identify members approaching financial difficulty and to monitor their financial and operational condition.

Several of the rules relating to members' financial condition and margin requirements, including, for example, FINRA Rules 4120 (Regulatory Notification and Business Curtailment), 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties) and 4210 (Margin Requirements) are currently listed in FINRA Rule 0150 as applicable to transactions in exempted securities, including government securities. For conformity, FINRA is proposing to amend FINRA Rule 0150(c) to include other financial condition- and margin-related rules of general applicability. As a result, the proposed rule

²⁸ FINRA notes that rules relating to members' financial condition historically have been applicable to all members, including sole government securities broker-dealers. For example, Section 6 of the Government Securities Rules, which applied to sole government securities broker-dealers before the Government Securities Rules merged into the Rules of Fair Practice in 1996, governed the regulation of activities of members experiencing financial or operational difficulties.

change would amend FINRA Rule 0150(c) to add the following rules to the list of rules that are applicable to exempted securities, including government securities:

- FINRA Rule 2264 (Margin Disclosure Statement) (requires members that open margin accounts for or on behalf of non-institutional customers to deliver to such customers, prior to or at the time of opening the account, a specified margin disclosure statement highlighting the risks involved in trading securities in a margin account);
- FINRA Rule 2266 (SIPC Information) (sets forth specified requirements for providing Securities Investor Protection Corporation (SIPC) information to customers);²⁹
- FINRA Rule 4100 Series (Financial Condition)
 - FINRA Rule 4110 (Capital Compliance) (sets forth requirements relating to a member’s financial responsibility, including, among others: authorizing FINRA to prescribe greater net capital requirements for carrying and clearing members when deemed necessary for the protection of investors or in the public interest; requiring members to suspend all business operations during any period in which a member is not in compliance with the applicable net capital requirements of SEA Rule 15c3-1; governing the limitations on the withdrawal of a firm’s equity capital; providing for sale-and-leasebacks, factoring, financing loans and

²⁹ FINRA notes that the Securities Investor Protection Act of 1970 (“SIPA”) excludes a government securities broker or dealer from the definition of “persons registered as brokers or dealers” for purposes of SIPA. See 15 U.S.C. 78lll(12). Therefore, FINRA Rule 2266 does not apply to such members.

similar arrangements; addressing subordinated loans, notes collateralized by securities and capital borrowing; addressing compliance with other applicable laws for purposes of the approval of a subordinated loan agreement; and providing that the requirements of the rule also apply to members that clear customer transactions or hold customer funds in a bank account pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i);

- FINRA Rule 4111 (Restricted Firm Obligations) (allows FINRA to impose obligations on members with significantly higher levels of risk-related disclosures than other similarly sized peers, based on numeric, threshold-based criteria);
- FINRA Rule 4140 (Audit) (provides FINRA the authority to request an audit or an agreed-upon procedures review under circumstances specified in the rule);
- FINRA Rule 4150 (Guarantees by, or Flow Through Benefits for, Members) (sets forth the notice requirement when a member guarantees, endorses or assumes, directly or indirectly, the obligations or liabilities of another person (including an entity), and the approval requirements when a member receives flow-through capital benefits in accordance with Appendix C of SEA Rule 15c3-1); and
- FINRA Rule 4160 (Verification of Assets) (provides that a member, when notified by FINRA, may not continue to custody or retain record ownership of assets at a non-member financial institution, which, upon

FINRA staff's request, fails promptly to provide FINRA with written verification of assets maintained by the member at such financial institution);

- FINRA Rule 4200 Series (Margin):
 - FINRA Rule 4220 (Daily Record of Required Margin) (sets forth the requirements for daily recordkeeping of initial and maintenance margin calls that are issued pursuant to the Federal Reserve Board's Regulation T and the FINRA margin rules);³⁰ and
 - FINRA Rule 4230 (Required Submissions for Requests for Extensions of Time Under Regulation T and SEA Rule 15c3-3) (governs members' requests for extensions of time, as permitted in accordance with the Federal Reserve Board's Regulation T and SEA Rule 15c3-3(n));³¹

³⁰ The initial margin requirement on exempted securities held in a margin account is the margin required by the broker in good faith or applicable SRO margin requirement, whichever is greater. Accordingly, the initial margin requirements on exempted securities positions set by FINRA Rule 4210 act as a floor on the requirement under Regulation T. Rule 4220 requires members to make a daily record of initial or additional margin that must be obtained in a customer's account as set forth in Rule 4210.

³¹ Section 220.4(c)(3)(i) of Regulation T requires any margin call to be satisfied within one payment period (four business days) after the margin deficiency is created, but Section 220.4(c)(3)(ii) of Regulation T allows a broker-dealer to obtain an extension of that payment period from its examining authority. This time limit applies to all transactions effected in margin accounts, including transactions in exempted securities. Accordingly, firms may make Regulation T extension requests involving exempted securities that are governed by FINRA Rule 4230.

In addition, under SEA Rule 15c3-3(m), as modified by Treasury Rules 403.1 and 403.4(m), if an exempted security sold long by a customer has not been delivered within 30 business days (60 business days if it is a mortgage-backed security) after the settlement date, the broker-dealer generally must buy-in the customer. If a national securities association is satisfied that a broker-dealer is acting in good faith and exceptional circumstances warrant the action, the national securities association may, on application from the broker-dealer, grant an extension of the time before the broker-

- FINRA Rule 4310 Series (Member Agreements and Contracts):
 - FINRA Rule 4314 (Securities Loans and Borrowings) (sets forth the obligations of a firm that engages in lending and borrowing securities and establishes consistent disclosure and recordkeeping requirements relating to a firm's securities lending activities);
- FINRA Rule 4340 (Callable Securities) (provides clarity to customers about the procedures used by a member when a security is called or redeemed prior to maturity);
- FINRA Rule 4520 Series (Financial Records and Reporting Requirements):
 - FINRA Rule 4521 (Notifications, Questionnaires and Reports) (addresses FINRA's authority to request financial and operational information from members to carry out its surveillance and examination responsibilities and sets forth the reporting requirements for members carrying margin accounts for customers);
 - FINRA Rule 4522 (Periodic Security Counts, Verifications and Comparisons) (requires each member that is subject to the requirements of SEA Rule 17a-13 to make the counts, examinations, verifications, comparisons and entries set forth in SEA Rule 17a-13 and further requires each carrying or clearing member subject to SEA Rule 17a-13 to make

dealer must buy-in the customer. Therefore, FINRA Rule 4230, which governs these requests for extensions of time is applicable to transactions in exempted securities.

more frequent counts, examinations, verifications, comparisons and entries where prudent business practice would require);

- FINRA Rule 4523 (Assignment of Responsibility for General Ledger Accounts and Identification of Suspense Accounts) (sets forth requirements intended to ensure the accuracy of a member’s financial books and records, including the requirement that each member designate an associated person to be responsible for each general ledger bookkeeping account and account of like function used by the member); and
- FINRA Rule 4524 (Supplemental FOCUS Information) (requires each member, as FINRA designates, to file as a supplement to the FOCUS Report, additional financial or operational schedules or reports as FINRA deems necessary or appropriate for the protection of investors or in the public interest);³² and
- FINRA Rule 4540 (Reporting Requirements for Clearing Firms) (requires each member clearing firm or self-clearing firm to report to FINRA in such format as

³² The Supplemental Statement of Income (“SSOI”), the Supplemental Inventory Schedule (“SIS”) and the Derivatives and Other Off-Balance Sheet Items Schedule (“OBS”), all of which were adopted pursuant to FINRA Rule 4524 as supplements to the FOCUS Report, require the reporting of various figures that are based on all securities, including government securities. While firms that are government securities broker-dealers do not file a FOCUS Report and instead are required to file reports concerning their financial and operational status using the Finances and Operations of Government Securities Brokers and Dealers Report (“FOGS Report”), such firms are subject to FINRA Rule 4524 and the financial or operational schedules or reports, as designated by FINRA, adopted pursuant to that rule. See e.g., Securities Exchange Act Release No. 73192 (September 23, 2014), 79 FR 58390 (September 29, 2014) (Order Approving File No. SR-FINRA-2014-025) (approving the adoption of the SIS, including with respect to filers of FOGS Reports).

FINRA may require, prescribed data pertaining to the member and any member broker-dealer for which it clears; the rule also provides that a member may submit a written request for exemptive relief, pursuant to the FINRA Rule 9600 Series (Procedures for Exemptions), from the reporting requirements of Rule 4540, and specifies the circumstances under which FINRA will grant such exemptive requests).

FINRA acknowledges that some of the rules listed above do not apply to members that are sole government securities broker-dealers because such members are subject to separate laws, rules and regulations or are otherwise excluded from the FINRA requirements. For example, as noted above, a government securities broker or dealer is excluded from the definition of “persons registered as brokers or dealers” for purposes of SIPA.³³ Therefore, FINRA Rule 2266 does not apply to such members. In addition, members that are registered government securities brokers and dealers are subject to separate capital compliance provisions from those set forth in FINRA Rule 4110.³⁴ By listing these rules under FINRA Rule 0150(c), FINRA is not changing the underlying requirements otherwise applicable to such members.

Rules Relating to Members’ Books and Records and General Supervisory Obligations

FINRA Rule 3110 (Supervision) and the FINRA Rule 4510 Series (Books and Records Requirements) apply to transactions in exempted securities, including government securities, and are currently listed in FINRA Rule 0150(c). FINRA Rule 3110 requires a firm to establish and maintain a system to supervise the activities of its associated persons that is reasonably designed

³³ See 15 U.S.C. 78lll(12) and supra note 29.

³⁴ See 17 CFR 402.2 (setting forth the capital requirements for registered government securities brokers and dealers).

to achieve compliance with the applicable securities laws and regulations and FINRA rules. The rule details requirements for a firm to have reasonably designed written supervisory procedures (“WSPs”) to supervise the activities of its associated persons and the types of businesses in which it engages. Among other things, a firm’s WSPs must address supervision of supervisory personnel and provide for the review of a firm’s investment banking and securities business, correspondence and internal communications, and customer complaints. The rules governing books and records, including the FINRA Rule 4510 Series, in general, require members to make and preserve specific books and records to show compliance with applicable securities laws, rules and regulations, and to enable FINRA and SEC staffs to conduct effective examinations.

FINRA is proposing a conforming change to FINRA Rule 0150(c) to expressly include those rules of general applicability that are based on, or related to, the obligations imposed by FINRA Rule 3110 and the FINRA Rule 4510 Series. In particular, the proposed rule change would add the following rules to the list of rules in FINRA Rule 0150(c):

- FINRA Rule 3100 Series (Supervisory Responsibilities):
 - FINRA Rule 3120 (Supervisory Control System) (establishes the requirements on members to test and verify supervisory procedures);
 - FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes) (requires each member to designate one or more principals to serve as a chief compliance officer(s) and further requires that the chief executive officer(s) certify annually that the member has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations);

- FINRA Rule 3150 (Holding of Customer Mail) (allows a firm to hold a customer's mail for a specific time period in accordance with the customer's written instructions if the firm meets several conditions);
- FINRA Rule 3160 (Networking Arrangements Between Members and Financial Institutions) (provides the conditions for a member that is a party to a networking arrangement with a financial institution under which the member offers broker-dealer services, regardless of whether the member is conducting broker-dealer services on or off the premises of a financial institution); and
- FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms) (requires a firm to establish, enforce and maintain special written procedures supervising the telemarketing activities of all of its registered persons, including the tape recording of conversations, if the firm has hired more than a specified percentage of registered persons from firms that meet the rule's definition of "disciplined firm");
- FINRA Rule 3200 Series (Responsibilities Relating to Associated Persons):
 - FINRA Rule 3230 (Telemarketing) (requires members to maintain do-not-call lists, to limit the hours of telephone solicitations and prohibits members from using deceptive and abusive acts and practices in connection with telemarketing);
 - FINRA Rule 3240 (Borrowing From or Lending to Customers) (provides members the opportunity to evaluate the appropriateness of particular lending arrangements between their registered persons and customers, to

- the extent permitted by the member, and the potential for conflicts of interests between both the registered person and his or her customer and the registered person and the member with which he or she is associated);
- FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer) (limits a registered person from being named a beneficiary, executor or trustee, or to have a power of attorney or similar position of trust for or on behalf of a customer); and
 - FINRA Rule 3250 (Designation of Accounts) (establishes a general requirement that a member must hold each customer account in the customer's name, except that a member may identify a customer's account with a number or symbol, as long as the member maintains documentation identifying the customer);
- FINRA Rule 3300 Series (Anti-Money Laundering):
 - FINRA Rule 3310 (Anti-Money Laundering Compliance Program) (requires each member to develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the Bank Secrecy Act and its implementing regulations);
 - FINRA Rule 4570 (Custodian of Books and Records) (requires a member to designate as the custodian of its required books and records, pursuant to SEA Rule 17a-4, on Form BDW (Uniform Request for Broker-Dealer Withdrawal) a person who is associated with the firm at the time Form BDW is filed); and

- FINRA Rule 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities) (establishes the recordkeeping requirements in connection with FINRA Rule 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) and requires covered members that engage in distribution or solicitation activities with a government entity on behalf of any investment adviser that provides or is seeking to provide investment advisory services to such government entity to maintain books and records that will allow FINRA to examine for compliance with FINRA Rule 2030).³⁵

Procedural Rules

FINRA is proposing to amend FINRA Rule 0150(c) to add a number of procedural rules – including the FINRA Code of Procedure, Code of Arbitration Procedure for Customer Disputes, Code of Arbitration Procedure for Industry Disputes, Code of Mediation Procedure and other procedural rules – to clarify their application to transactions in, or business activities relating to, exempted securities, including government securities. These rules of general applicability provide the procedural framework for FINRA to ensure that members and associated persons comply with FINRA rules, MSRB rules and the federal securities laws and provide for the effective and efficient resolution of customer and industry disputes.

Code of Procedure

FINRA believes that the FINRA Rule 9000 Series (Code of Procedure) is applicable to transactions in exempted securities. The Code of Procedure governs proceedings for disciplining members and associated persons (including review of disciplinary proceedings by the NAC and FINRA Board and application for SEC review), proceedings for regulating the activities of

³⁵ See infra note 41.

members experiencing financial or operational difficulties, and proceedings for suspensions, cancellations and bars. These are foundational rules applicable to all FINRA members, irrespective of business model or client base, and they provide the procedural framework for enforcing many of the rules listed in FINRA Rule 0150.³⁶ In this regard, several of the rules that are currently applicable to exempted securities would be rendered operationally meaningless without the application of the Code of Procedure. For example, the sanctions under FINRA Rule 8310 (Sanctions for Violation of the Rules) are contingent on compliance with the Code of Procedure.

FINRA Arbitration and Mediation Codes

The FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes or “Customer Code”) and FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes or “Industry Code”) (collectively, the “Codes”) contain the rules that govern arbitration between investors and industry parties and between or among industry-only parties. The Codes provide, among other things, the procedural rules for arbitration, initiating and responding to claims, the appointment of arbitrators, arbitration discovery, hearing and fees and awards. These rules are essential to the arbitration forum and have general applicability to all FINRA members, irrespective of business model or client base. As such, FINRA is proposing to amend FINRA Rule 0150 to explicitly add the Codes as applicable to transactions in exempted securities, including government securities. FINRA notes that, following the GSAA, FINRA amended the Code of Arbitration Procedure to explicitly allow claims relating to transactions in exempted

³⁶ The Rule 9000 Series also includes FINRA’s revolving door rules, which are applicable to all firm types.

securities, including government securities, to be submitted to the Office of Dispute Resolution for arbitration under the Code of Arbitration Procedure without limitation.³⁷

The proposed rule change would amend FINRA Rule 0150(c) to add the FINRA Rule 14000 Series (Code of Mediation Procedure) to the list of rules that are expressly applicable to transactions in, and business activities relating to, exempted securities, including government securities. FINRA's mediation forum serves an important public interest and furthers investor protection by providing a valuable alternative to arbitration. The Code of Mediation Procedure provides the procedural framework for parties wishing to mediate disputes through FINRA's mediation program. The Code of Mediation Procedure contains, for example, provisions governing the effect of mediation on arbitration proceedings, mediator selection, mediation ground rules and fees for mediation. Similar to the Codes, the Code of Mediation Procedure has general applicability to all FINRA members.

Other Procedural and Related Rules

In addition to the procedural rules discussed above, FINRA proposes to amend FINRA Rule 0150(c) to add FINRA Rules 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System), 2081 (Prohibited Conditions Relating to Expungement of Customer Dispute), 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) and 8313 (Release of Disciplinary Complaints, Decisions and Other Information) to the list of rules that are applicable to transactions in, and business activities relating to, exempted securities, including government securities.

³⁷ See Securities Exchange Act Release No. 40103 (June 19, 1998), 63 FR 34951 (June 26, 1998) (Order Approving File No. SR-NASD-98-04).

FINRA recognizes that accurate and complete reporting in the CRD system is an important component of investor protection, and FINRA Rules 2080 and 2081, which have general applicability to all FINRA members, further this purpose.

FINRA Rule 2080 addresses the expungement of customer dispute information from the CRD system and provides that a court of competent jurisdiction must order or confirm all expungement directives before FINRA will expunge customer dispute information from the CRD system. The rule also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award containing an order of expungement, unless the requirement is waived in accordance with the rule.

FINRA Rule 2081 prohibits members and associated persons from conditioning or seeking to condition settlement of a dispute with a customer on, or to otherwise compensate the customer for, the customer's agreement to consent to, or not to oppose, the firm's or associated person's request to expunge such customer dispute information from the CRD system.

FINRA Rule 2263 requires members to provide each associated person, whenever the associated person is asked to sign a new or amended Form U4, with certain written disclosures regarding the nature and process of arbitration proceedings. This rule ensures that associated persons of all members understand that the Form U4 contains a predispute arbitration clause and that by signing the Form U4, the associated persons are agreeing to be bound by the arbitration proceedings. The rule applies generally to all members and associated persons.

FINRA Rule 8313 governs FINRA's release of disciplinary and other information to the public. The rule is applicable to all members, irrespective of business model or client base.

Trade Reporting and Operational Rules

FINRA is also proposing to amend FINRA Rule 0150(c) to add several trade reporting and operational rules that have general application to the conduct of members. Specifically, the proposed rule change would add the following rules to FINRA Rule 0150(c):

- FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information) (requires a member to create, maintain, review at least annually and update upon any material change, a written business continuity plan identifying procedures relating to an emergency or significant business disruption and enumerates the minimum elements that a member's business continuity plan must address, to the extent those elements are applicable and necessary to the firm's business);
- FINRA Rule 4380 (Mandatory Participation in FINRA BC/DR Testing Under Regulation SCI) (authorizes FINRA to designate firms that are subject to mandatory participation in business continuity and disaster recovery (BC/DR) testing under Regulation SCI, which will be conducted once per year);
- FINRA Rule 4590 (Synchronization of Member Business Clocks) (requires that firms synchronize their business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the FINRA By-Laws or other FINRA rules (e.g., the time a trade was executed or the time an order was received or routed), with reference to a time source as designated by FINRA);³⁸

³⁸ Rule 4590 applies to members' business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the FINRA By-Laws or other FINRA rules. As specified in Rule 6730(e)(8), an "Auction Transaction" in a U.S. Treasury Security, as defined under FINRA rules, shall not be reported to FINRA. Accordingly, the application of Rule 4590 to exempted securities does not cover auction transactions in U.S. Treasury securities, and it does not alter members' obligations to

- FINRA Rule 7730 (Trade Reporting and Compliance Engine (TRACE)) (sets forth the TRACE transaction reporting fees and the TRACE data products offered by FINRA and the fees associated with those products);³⁹ and
- FINRA Rule 8211 (Automated Submission of Trading Data Requested by FINRA) (requires members to submit specified trade data in automated format as may be prescribed by FINRA).

Other Rules

Finally, FINRA is proposing to amend FINRA Rule 0150(c) to add other rules that relate to customer protection and have general applicability to the conduct of members and associated persons or that are applicable to exempted securities, including government securities. These other rules are:

- FINRA Rule 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) (regulates members engaging in distribution or solicitation activities with government entities on behalf of investment advisers);⁴⁰

comply with any clock synchronization requirements otherwise applicable to U.S. Treasury securities auctions.

³⁹ FINRA notes, however, that Rule 7730(b), by its terms, currently excludes transactions in U.S. Treasury Securities, as defined under FINRA rules, from the TRACE transaction reporting fees. See Securities Exchange Act Release No. 79116, (October 18, 2016), 81 FR 73167, 73169 (October 24, 2016) (Order Approving File No. SR-FINRA-2016-027). See also supra note 21.

⁴⁰ FINRA Rule 2030 is modeled after Rule 206(4)-5 under the Investment Advisers Act of 1940 (“SEC Pay-to-Play Rule”) that addresses pay-to-play practices by investment advisers. See Securities Exchange Act Release No. 78683 (August 25, 2016), 81 FR 60051 (August 31, 2016) (Order Approving File No. SR-FINRA-2015-056) (“Approval Order”); see also Investment Advisers Act Release No. 4532 (September 20, 2016), 81 FR 66526 (September 28, 2016) (finding that Rule 2030 imposes substantially equivalent or more stringent restrictions on members than the SEC Pay-to-Play Rule imposes on investment advisers and is consistent with the objectives of the SEC Pay-to-Play Rule). Neither the SEC Pay-to-Play Rule nor FINRA’s Rule 2030 exclude specific products, see

- FINRA Rule 2040 (Payments to Unregistered Persons) (governs the payment of transaction-based compensation by members to unregistered persons, including retired representatives and foreign finders);
- FINRA Rule 2070 (Transactions Involving FINRA Employees) (addresses conflicts of interests involving FINRA employees and plays a vital role in helping FINRA monitor whether employees are abiding by trading restrictions imposed by the FINRA Code of Conduct);
- FINRA Rule 2090 (Know Your Customer) (requires members to use reasonable diligence in regard to the opening and maintenance of every account, in order to know and retain the essential facts concerning every customer to effectively service customer accounts, act in accordance with any special handling instructions, understand the authority of each person acting on behalf of customers, and comply with applicable laws, regulations and rules);
- FINRA Rule 2130 (Approval Procedures for Day-Trading Accounts) (requires firms that promote day-trading strategies, directly or indirectly, to deliver the risk disclosure statement set forth in FINRA Rule 2270 (Day-Trading Risk Disclosure Statement), to a non-institutional customer prior to opening the account for the customer, and to (1) approve the customer's account for day-trading in accordance with procedures set forth in the rule or (2) obtain a written agreement

Approval Order, 81 FR 60051, 60058-59. In addition, both the SEC Pay-to-Play Rule and FINRA Rule 2030 define the term "government entity" to mean any state or political subdivision of a state, including their agencies, authorities and instrumentalities, a pool of assets sponsored or established by the state or political subdivision or any agency, authority or instrumentality thereof, or a plan or program of such government entity. See 17 CFR 275.206(4)-5(f)(5); FINRA Rule 2030(g)(6).

from the customer stating that the customer does not intend to use the account for day-trading activities);

- FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) (prohibits members or associated persons from interfering with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim);
- FINRA Rule 2165 (Financial Exploitation of Specified Adults) (permits members to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of such customers);
- FINRA Rule 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings) (imposes conditions and disclosure requirements on a firm that distributes a retail communication that includes a "bond mutual fund volatility rating," including that the rating must be based on objective factors, such as the credit quality of the fund's individual portfolio holdings, the market price volatility of the portfolio, the fund's performance, and specific risks, such as interest rate risk, prepayment risk and currency risk);
- FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools) (provides a limited exception to the general prohibition on members' communications that predict or project performance, as set forth in paragraph

(d)(1)(F) of FINRA Rule 2210 (Communications with the Public), for investment analysis tools, provided that specified conditions are met);

- FINRA Rule 2216 (Communications with the Public About Collateralized Mortgage Obligations (“CMOs”)) (sets forth standards applicable to retail communications concerning CMOs);
- FINRA Rule 2220 (Options Communications) (sets forth a member’s obligations with respect to its options communications with the public);⁴¹
- FINRA Rule 2267 (Investor Education and Protection) (requires members to provide customers at least once every calendar year in writing (which may be electronic) with: (1) FINRA’s website address; (2) the BrokerCheck hotline number; and (3) a statement regarding the availability of an investor brochure that includes information describing BrokerCheck);
- FINRA Rule 2270 (Day-Trading Risk Disclosure Statement) (requires firms that promote day-trading strategies, directly or indirectly, to deliver the risk disclosure statement set forth in the rule to a non-institutional customer prior to opening the account for the customer);

⁴¹ At the time of the 1996 Approval Order, FINRA Rule 2220 required that firms designate a specific individual as a Compliance Registered Options Principal with responsibility for approving certain options communications. The rule has changed since that time, eliminating this operational condition, and currently requires that, among other things, a designated Registered Options Principal(s) review and approve all retail communications, which would allow more than one individual to review and approve such communications. Moreover, all firms that are engaged in, or intend to engage in, transactions in options with the public must have at least one Registered Options Principal pursuant to FINRA Rule 1220(a)(8) (Registered Options Principal). FINRA believes that the requirements relating to options on government securities should be consistent, to the extent applicable, with the requirements for options covered by FINRA Rule 2360 (Options).

- FINRA Rule 2272 (Sales and Offers of Sales of Securities on Military Installations) (governs sales and offers of sales of securities by members on the premises of any military installation to members of the Armed Forces of the United States or their dependents);⁴²
- FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers) (provides that a member that hires or associates with a registered representative must furnish to a former customer of the representative, individually (in paper or electronic form) required educational communication when: (1) the member, directly or through a representative, individually contacts a former customer of that representative to transfer assets; or (2) a former customer of the representative, absent individual contact, transfers assets to an account assigned, or to be assigned, to the representative at the member); and
- FINRA Rule 2360 (Options) (addresses specific risks that pertain to options, and implements provisions of the federal securities laws and SEC rules, including, among other things, provisions requiring specific disclosure documents, additional diligence in approving the opening of accounts, and specific

⁴² Rule 2272 requires, among other things, a member engaging in sales or offers of sales of securities on the premises of a Military Installation to any member of the U.S. Armed Forces or his or her dependents to provide a clear and conspicuous disclosure with the identity of the member offering the securities and stating that the securities are not being offered or provided by the member of behalf of the Federal Government, and that the offer of such securities is not sanctioned, recommended or encouraged by the Federal Government. See Rule 2272(b). The rule applies to all members seeking to engage in sales or offers of sales of securities, irrespective of the type of securities offered. While some exempted securities are issued by the U.S. Federal Government (e.g., U.S. Treasury securities), other exempted securities (e.g., group variable contracts) are not.

requirements for confirmations, account statements, suitability, recordkeeping and reporting).⁴³

Capital Acquisition Broker Rules

The CAB Rules are a separate set of FINRA rules for firms that meet the definition of a “capital acquisition broker” and that elect to be governed under this rule set. CABs are members that engage in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring, and acting as placement agents for sales of unregistered securities to institutional investors under limited conditions. Members that elect to be governed under the CAB rule set are not permitted, among other things, to carry or maintain customer accounts, handle customers’ funds or securities, accept customers’ trading orders, or engage in proprietary trading or market-making.⁴⁴

CAB Rule 015 states that FINRA Rule 0150 shall apply to the CAB Rules. FINRA proposes to amend CAB Rule 015 to more closely track the text of FINRA Rule 0150, and to be consistent with the revisions to FINRA Rule 0150 made pursuant to this rule filing.

Proposed CAB Rule 015(a), which defines the terms “exempted securities” and “municipal securities,” is exactly the same as FINRA Rule 0150(a). Similar to FINRA Rule 0150(b), proposed CAB Rule 015(b) provides that the CAB Rules are not intended to be, and shall not be construed as, rules concerning transactions in municipal securities.

Proposed CAB Rule 015(c) resembles FINRA Rule 0150(c), but refers to the CAB Rules that apply to transactions in, and business activities related to, exempted securities, except

⁴³ See supra note 41.

⁴⁴ See CAB Rule 016(c).

municipal securities, conducted by CABs and their associated persons, rather than to FINRA Rules. In this regard, FINRA proposes to apply all CAB Rules, other than CAB Rules 512 (Private Placements of Securities Issued by Members) and 515 (Fairness Opinions), to such transactions and activities, because either the CAB Rule provides that all CABs are subject to a FINRA Rule included in FINRA Rule 0150(c), or the CAB Rule has provisions that are similar to those in FINRA Rules included in FINRA Rule 0150(c). FINRA does not propose to apply CAB Rules 512 and 515 to such activities and transactions, because those rules provide that CABs are subject to FINRA Rules 5122 and 5150, respectively, which are not included in FINRA Rule 0150(c).

Proposed CAB Rule 015(d) provides that nothing in this Rule shall be deemed to expand or otherwise alter the scope of activities permitted for CABs under CAB Rule 016(c) (the definition of “capital acquisition broker”). The purpose of this provision is to make clear that CAB Rule 015 is not intended to define the scope of activities in which CABs may engage. Instead, CAB Rule 016(c) defines what activities in which a CAB may engage.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be 270 days after the date of the filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴⁵ 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.

B. Self-Regulatory Organization’s Statement on Burden on Competition

⁴⁵ 15 U.S.C. 78o-3(b)(6).

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. As stated above, the proposed rule change does not impact the current status of any of the listed rules, but serves to modernize FINRA Rule 0150 to include rules of general applicability to all FINRA members.

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 Act⁴⁶ and Rule 19b-4(f)(6) thereunder.⁴⁷

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

⁴⁶ 15 U.S.C. 78s(b)(3)(A).

⁴⁷ 17 CFR 240.19b-4(f)(6).

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-2022-028 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-2022-028. 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-2022-028 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.⁴⁸

J. Lynn Taylor
Assistant Secretary

⁴⁸ 17 CFR 200.30-3(a)(12).