

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66508; File No. SR-FINRA-2012-018)

March 2, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) to Adopt New Standardized Electronic Form CMA

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 February 28, 2012, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) 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. 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 NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) to adopt new standardized electronic Form CMA.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

NASD Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) provides parameters for certain changes in a member’s ownership, control, or business operations that would require a continuing membership application. Among other things, those changes include a merger of a member with another member, a direct or indirect acquisition by a member of another member, a change in equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital, or a material change in business operations as defined in NASD Rule 1011(k) (“material change in business operations”).<sup>3</sup> Currently, NASD Rule 1017 does not require an applicant seeking approval of a change of ownership, control, or business operations (“continuing membership applicant” or “applicant”) to submit a standardized form as part of its continuing membership application and provides little detail regarding an application’s required contents. Instead, each applicant is responsible for determining the contents of its continuing membership application. This often results in

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<sup>3</sup> NASD Rule 1011(k) defines a “material change in business operations” as including, but not limited to: (1) removing or modifying a membership agreement restriction; (2) market making, underwriting, or acting as a dealer for the first time; and (3) adding business activities that require a higher minimum net capital under SEA Rule 15c3-1.

information deficiencies, which in turn, creates unnecessary delays in efficiently processing the applications. NASD Rule 1017 also generally requires a continuing membership application to be filed in the district office in which an applicant's principal place of business is located. Additionally, NASD Rule 1012 (General Provisions) provides that, unless otherwise prescribed by FINRA, applicants may submit continuing membership applications via first-class mail, overnight courier, or hand-delivery (or facsimile upon agreement by FINRA and the applicant).

This manner of submitting a continuing membership application reduces the overall efficiency of the process and also creates unnecessary delays in properly forwarding information within FINRA, such as in conveying information to and from the centralized Membership Application Program Group formed in January 2011. To address these deficiencies, the proposed rule change amends NASD Rule 1012 to require continuing membership applicants to file an application in the manner prescribed in Rule 1017. In addition, the proposed rule change amends NASD Rule 1017(b) to require continuing membership applicants to file an application in the manner prescribed by FINRA with the Department of Member Regulation ("the Department") and to include the completed Form CMA as part of the contents of a continuing membership application.

New Form CMA will provide continuing membership applicants with the benefits of a streamlined application process that new member applicants currently experience via the standardized online Form NMA and is intended to significantly reducing administrative delays that exists in today's manual application processes.

New Form CMA is structured similarly to revisions proposed for Form NMA with adjustments in the content of new Form CMA based on the differing nature of the application

types.<sup>4</sup> As with revised Form NMA, new Form CMA will seek to elicit information from applicants in a manner consistent with the standards of admission, contained in NASD Rule 1014, against which NASD Rule 1017 requires each application to be evaluated. Additionally, the structure and guidance provided by new Form CMA is designed to obtain the basic information needed for all applicants with embedded flexibility to allow for variations based on the particular application type being submitted.

Also, new Form CMA, as with the revised Form NMA, will pre-populate certain fields with information provided to FINRA in other submissions (e.g., Central Registration Depository (CRD®) entitlement forms and Form BD) or otherwise available to FINRA from CRD records (e.g. continuing education status), thereby minimizing the time necessary for applicants to complete the new form.<sup>5</sup> In addition, new Form CMA will include a number of optional information request fields that can be used by applicants to provide additional information if and when it is applicable to the applicant's proposed change. The optional field approach is intended to provide flexibility for the significant level of variation seen in members' structures, business lines, and proposed changes.

Below is a synopsis of the content of new Form CMA, by standard:

- *Standard 1 (Overview of the Applicant):*

This standard seeks certain applicant overview information (e.g., details of the proposed business change, verification of current business activities, new business lines added, supervisors

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<sup>4</sup> See SR-FINRA-2012-017 (proposed rule change to restructure the content of existing Form NMA to, among other things, make the requested information and documentation more consistent with the standards in NASD Rule 1014 (Department Decision)).

<sup>5</sup> See id.

for new business lines, identification of other persons associated with the proposed business change).

- *Standard 2 (Licenses and Registrations):*

This standard consists of information requests regarding the continuing membership applicant's licenses and registrations that will be affected by the proposed business change (e.g., changes to required licenses and registrations, new or continuing registration or examination waivers, new or continuing two-principal requirement waiver, new or continuing Securities Information Center exemption, other self-regulatory organization ("SRO") registrations and/or withdrawals from other SRO registrations, new non-registered officers, directors, or control persons).

- *Standard 3 (Compliance with Securities Laws, Just and Equitable Principles of Trade):*

This standard consists of specific requests for information (e.g., disciplinary history) and documentation (e.g., state or federal orders or decrees, statements of claims, cancelled checks for payment of arbitration awards, proofs of settlement, settlement agreements) that FINRA considers necessary for the applicant to demonstrate compliance with the requirements of this standard.

- *Standard 4 (Contractual and Business Relationships):*

This standard includes the information requests regarding a continuing membership applicant's contractual and business relationships (e.g., description of contractual arrangements, expense sharing agreements, financing arrangements, fidelity bonds or fidelity bond applications, support and service agreements).

- *Standard 5 (Facilities):*

This standard consists of information requests regarding a continuing membership applicant's facilities (e.g., material changes to facilities or locations, departmental information barriers, space sharing arrangements, lease and/or sub-lease agreements).

- *Standard 6 (Communications and Operational Systems):*

This standard includes information requests regarding a continuing membership applicant's communications and operational systems (e.g., communications and operational systems changes, supervision arrangements of multiple locations, business continuity plan documents, information relating to the applicant's use of social media sites).

- *Standard 7 (Maintaining Adequate Net Capital):*

This standard includes information regarding an applicant's net capital requirements (e.g., information on the nature and source of capital, additional funding plans, minimum net capital requirements, future funding sources).

- *Standard 8 (Financial Controls):*

This standard seeks information regarding a continuing membership applicant's financial controls (e.g., information regarding changes to the applicant's registered financial and operations principal ("FINOP"), impact of proposed business change on financial controls).

- *Standard 9 (Written Procedures):*

This standard seeks information regarding a continuing membership applicant's written procedures (e.g., impact of proposed change on written supervisory procedures ("WSP"), WSP checklist, sample reports to support supervision and financial controls).

- *Standard 10 (Supervisory Structure):*

This standard seeks information regarding a continuing membership applicant's supervisory structure (e.g., changes to supervisory or management personnel, information

regarding supervisors' experience and duties, chief compliance officer experience, non-FINOP outside business activities notifications).

- *Standard 11 (Books and Records):*

This standard seeks information regarding a continuing membership applicant's books and records (e.g., impact of potential business change on applicant's recordkeeping systems and recordkeeping service providers, sample books and records relating to new business activities).

- *Standard 12 (Continuing Education):*

This standard seeks information regarding a continuing membership applicant's continuing education ("CE") obligations (e.g., changes to the applicant's CE program, revised CE training needs assessment and written training plan).

FINRA worked closely with an industry task force, comprised of seven representatives from small and large firms, several of whom also act as consultants, during the development of the new Form CMA. Among other things, the task force's input assisted FINRA to make changes intended to reduce applicants' administrative burden when completing Form CMA. Overall, FINRA believes that the new Form CMA will facilitate more effective and efficient application processing for the applicants.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 180 days following publication of the Regulatory Notice announcing Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section

15A(b)(6) of the Act,<sup>6</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 amends NASD Rules 1012 and 1017 to adopt a new standardized electronic form, Form CMA, to be used by all continuing membership applicants as part of their continuing membership applications. Form CMA elicits information from applicants in a manner consistent with the standards of admission contained in NASD Rule 1014, against which continuing membership applications are evaluated. FINRA believes that new Form CMA will reduce applicants' administrative burden and ensure a more streamlined and efficient continuing membership application process for both FINRA and applicants.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

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

(B) institute proceedings to determine whether the proposed rule change should be 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-2012-018 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-FINRA-2012-018. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-FINRA-2012-018 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>7</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).