

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81801; File No. SR-FINRA-2017-030)

October 3, 2017

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Review Charges for Communications Filed with or Submitted to FINRA

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 26, 2017, 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 “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 Section 13 of Schedule A to the FINRA By-Laws (“Section 13”) governing the review charges for communications filed with or submitted to FINRA’s Advertising Regulation Department (the “Department”) to account for upcoming technological changes that will allow websites to be filed in native format.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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

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SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

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Section 13 – Review Charge for Communications Filed or Submitted

There shall be a review charge for each and every communication, whether in printed, video or other form, filed with or submitted to FINRA, except for items that are filed or submitted in response to a written request from FINRA’s Advertising Regulation Department (“the Department”) issued pursuant to the spot check procedures set forth in FINRA rules, as follows: (1) for printed or website material reviewed, \$125.00, plus \$10.00 for each printed page or webpage reviewed in excess of 10 pages; and (2) for video or audio media, \$125.00, plus \$10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Department there shall be a review charge of \$600.00 per item plus \$50.00 for each printed page or webpage reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Department, unless a shorter or longer period is agreed to by the Department. The Department may, in its sole discretion, refuse requests for expedited review.

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Background

In April 2014, FINRA launched a retrospective review of its communications with the public rules to assess their effectiveness and efficiency. In December 2014, FINRA published a report on the assessment phase of the review.⁵ The report concluded that, while the rules have largely been effective in meeting their intended investor protection objectives, the rules and FINRA's administration of them could benefit from some updating to better align the investor protection benefits and the economic impacts.

To this end, the report recommended a combination of rule proposals, guidance and administrative measures, including systems upgrades, to enhance the effectiveness and efficiency of the rules with no reduction in investor protection. Pursuant to these recommendations, efforts have been underway to upgrade FINRA's Advertising Regulation Electronic Files ("AREF") System, a web-based application accessed through the FINRA Firm Gateway that enables member firms to electronically submit communications with the public for review by FINRA's Advertising Regulation Department ("Department").⁶ Currently, the AREF System accepts such submissions in a variety of file formats for print (e.g., .doc, .rtf, .txt), video (e.g., .mov, .mp4,

⁵ See Retrospective Rule Review Report, Communications with the Public (December 2014), <http://www.finra.org/sites/default/files/p602011.pdf>.

⁶ FINRA Firm Gateway is an online compliance tool that provides consolidated access to FINRA applications and allows members to submit required filings electronically to meet their compliance and regulatory obligations.

.wmv), audio (e.g., .aif, .mp3, .wav) or other form (e.g., .pdf), but not for website or webpage communications in their native format (e.g., .html). Consequently, firms submitting website or webpage communications through the AREF System must convert them from native format to a format such as Portable Document Format (.pdf). This conversion process can be burdensome, sometimes resulting in voluminous .pdf pages. The impending upgrades to the AREF System will make the submission of website or webpage communications more efficient by including the capability to accept such communications in their native format.⁷ Each web address, a Uniform Resource Locator or URL, would be packaged within a compressed file format and submitted through the AREF System, then reviewed by the Department in an offline state. FINRA anticipates this upgraded AREF System capability to be operational by the fourth quarter of 2017.

Proposed Rule Change

FINRA Rule 2210 (Communications with the Public) requires members to file with the Department specified retail communications either 10 business days prior to use or within 10 business days of first use, as applicable. For example, new members, for a period of one year beginning on the date their FINRA membership becomes effective, generally must file with the Department at least 10 business days prior to first use, any retail communication that is published or used in any electronic or other public media, including any generally accessible website.⁸ As another example, all members generally must file within 10 business days of first use any retail communication, including a website communication that promotes or recommends a specific

⁷ The upgrades to the AREF System would not impact the way in which mobile applications are currently submitted in video format.

⁸ See FINRA Rule 2210(c)(1).

registered investment company or family of registered investment companies.⁹ The Department evaluates these and other communications subject to filing requirements or filed voluntarily by firms for compliance with applicable rules of FINRA, the SEC, the Municipal Securities Rulemaking Board and the Securities Investors Protection Corporation. Pursuant to the content standards of Rule 2210, the Department helps to ensure that all member firms' communications are based on principles of fair dealing and good faith, are fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service. Among other things, FINRA rules prohibit member communications from including false, exaggerated, unwarranted, or misleading statements or claims.

Currently, Section 13 imposes a review charge for each communication filed with or submitted to FINRA (except for items that are filed or submitted in response to a written request from the Department issued pursuant to the spot check procedures set forth in Rules 2210(c)(6) and 2220(c)(3)). The rates charged are based on the number of pages for printed material or the length of video or audio media. In addition, there are surcharges for expedited review. The proposed rule change would establish charges for submission of websites and webpages in native format, in anticipation of the upgraded AREF System capabilities. It would establish rates of \$125, plus \$10 for each webpage reviewed in excess of 10 pages. The charges for expedited reviews would be \$600 per item plus \$50 for each webpage reviewed in excess of 10 pages. For the purposes of the charging schedule, each distinct URL would be treated as a webpage. The proposed rates mirror the current rates for printed material, which would remain unchanged. Thus, the proposed rule change maintains parity in charging, irrespective of the form of filing or submission. FINRA notes that firms will not be obligated to file or submit website

⁹ See FINRA Rule 2210(c)(3).

communications in native format. They may continue to convert those communications to a printed format and submit them at the unchanged printed page rate if they find that method more efficient or economical.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁰ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act in that it will establish a reasonable fee in conjunction with a technology upgrade that will permit more efficient filing and submission of electronic communications. Submission of communications in native format will be voluntary, and the proposed fee is consistent with current charges for communications submitted in other formats. Moreover, the proposed fee is equitably allocated among all members that file or submit communications to the Department for review.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would not impose any additional reporting requirements or costs on firms. Members will not be obligated to submit communications in native format and therefore may

¹⁰ 15 U.S.C. 78o-3(b)(5).

choose to continue to file or submit communications as they do today, with the same attendant charges.

To the extent that the conversion of website or webpage communications from native format to another format were viewed as burdensome among market participants, those participants will have the option to submit such communications in native format, which would permit members to mitigate any direct or indirect costs associated with such conversion.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f)(2) of Rule 19b-4 thereunder.¹² At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

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-2017-030 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-2017-030. 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 the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-FINRA-2017-030, 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.¹³

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).