

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92139; File No. SR-FINRA-2021-014)

June 9, 2021

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Members' Filing Requirements under FINRA Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2-11)

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 May 28, 2021, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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 members' filing requirements under FINRA Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2-11).

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.

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

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

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

FINRA is proposing amendments to FINRA Rule 6432 in light of the SEC’s amendments to Exchange Act Rule 15c2-11 (“Rule 15c2-11”). Rule 15c2-11 sets forth the information review and maintenance requirements for broker-dealers that publish quotations<sup>3</sup> in a quotation medium<sup>4</sup> for securities in the over the counter (“OTC”)

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<sup>3</sup> Rule 15c2-11 defines “quotation” as any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that wishes to advertise its general interest in buying or selling a particular security. See 17 CFR 240.15c2-11(e)(7).

<sup>4</sup> “Quotation medium” means any “interdealer quotation system” or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell. See 17 CFR 240.15c2-11(e)(8). “Interdealer quotation system” means any system of general circulation to brokers or dealers that regularly disseminates the quotations of identified brokers or dealers. See 17 CFR 240.15c2-11(e)(3).

market.<sup>5</sup> Specifically, Rule 15c2-11 prohibits a broker-dealer from publishing (or submitting for publication) a quotation for a security unless it has obtained and reviewed specified current information about the issuer whose security is the subject of the quotation and has a reasonable basis under the circumstances for believing the information is accurate in all material respects and obtained from a reliable source, unless otherwise permitted under the rule.<sup>6</sup>

Rule 15c2-11 prescribes information review requirements that are specific to the type of issuer whose security is sought to be quoted, with different information requirements applicable to prospectus issuers, Regulation A issuers, reporting companies, exempt foreign private issuers, and all other issuers that do not fit into any of these categories. Rule 15c2-11 also includes several exceptions from these information review requirements, including, for example, an exception from ongoing information review where the security is the subject of continuous quoting and meets other specified conditions (known as the “piggyback” exception).

The amendments to Rule 15c2-11 make substantial changes to the prior framework.<sup>7</sup> Among others, one significant change that is relevant to the instant filing is that broker-dealers are now permitted to rely on the publicly available determinations of certain alternative trading systems that meet the definition of a “qualified interdealer quotation system” (“Qualified IDQS”)<sup>8</sup> with respect to the required information review,

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<sup>5</sup> See generally 17 CFR 240.15c2-11.

<sup>6</sup> 17 CFR 240.15c2-11(a)(1)(i).

<sup>7</sup> See e.g., Adopting Release, infra note 21, at 68124-26.

<sup>8</sup> Amended Rule 15c2-11 defines a “qualified interdealer quotation system” as any “interdealer quotation system” that meets the definition of an “alternative trading

the availability of specified exceptions to Rule 15c2-11, and the public availability of current issuer information. Specifically, where a Qualified IDQS undertakes the initial review and makes a publicly available determination concerning its review, as set forth in Rule 15c2-11(a)(2), broker-dealers may, under Rule 15c2-11(a)(1)(ii), initiate quotations in the subject security within three business days of the Qualified IDQS's publicly available determination.<sup>9</sup> In addition, amended Rule 15c2-11 permits broker-dealers to rely on the publicly available determinations of a Qualified IDQS in connection with the availability of the following exceptions to Rule 15c2-11: paragraph (f)(1)'s exception for exchange-traded securities; paragraph (f)(3)'s exception for piggyback eligibility; paragraph (f)(4)'s exception for municipal securities; and paragraph (f)(5)'s average daily trading volume and asset test exception.<sup>10</sup> Broker-dealers also may rely on the publicly available determinations of a Qualified IDQS in connection with the public availability of current issuer information, as described in amended Rule 15c2-11's unsolicited quotation exception and its piggyback exception,<sup>11</sup> and their publicly available determinations regarding the availability of the piggyback exception's grace period.<sup>12</sup>

FINRA believes that the SEC's amendments to Rule 15c2-11 necessitate changes to FINRA Rule 6432, which sets forth the standards applicable to member firms quoting

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system" under Rule 300(a) of Regulation ATS and operates pursuant to the exemption from the definition of an "exchange" under Regulation ATS. See 17 CFR 240.15c2-11(e)(6).

<sup>9</sup> See 17 CFR 240.15c2-11(a)(2) and (a)(1)(ii).

<sup>10</sup> See 17 CFR 240.15c2-11(f)(7).

<sup>11</sup> See 17 CFR 240.15c2-11(f)(2)(iii)(B) and (f)(3)(ii)(A)(I).

<sup>12</sup> See 17 CFR 240.15c2-11(f)(3)(ii)(A)(I)-(2).

equity securities for demonstrating compliance with Rule 15c2-11 (unless a Rule 15c2-11 exception or exemption is available). Under FINRA Rule 6432, no member may quote a non-exchange-listed security<sup>13</sup> in a quotation medium unless the member has demonstrated compliance with FINRA Rule 6432 and the applicable requirements for information maintenance under Rule 15c2-11 by making a filing with, and in the form required by, FINRA (i.e., the Form 211). The Form 211 is designed to gather pertinent information regarding the subject issuer and security, the member's knowledge of and relationship with the issuer, and the member's intended quotation activities with respect to the security. FINRA uses the Form 211 in connection with its oversight of member compliance with Rule 15c2-11.

In response to the SEC's amendments to Rule 15c2-11, FINRA is proposing amendments to FINRA Rule 6432—primarily to account for the new role of a Qualified IDQS.<sup>14</sup> Specifically, the instant filing includes three areas of proposed amendments to FINRA Rule 6432: (i) the addition of a requirement that a Qualified IDQS submit a modified Form 211 filing to FINRA in connection with each initial information review that it conducts; (ii) the addition of a requirement that a Qualified IDQS that makes a

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<sup>13</sup> The term “non-exchange-listed security” is defined in FINRA Rule 6432(e) to mean any equity security, other than a Restricted Equity Security, that is not traded on any national securities exchange. A “Restricted Equity Security” means any equity security that meets the definition of “restricted security” as contained in Securities Act Rule 144(a)(3). See 17 CFR 230.144.

<sup>14</sup> While a Qualified IDQS is not obligated to perform reviews and make publicly available determinations under Rule 15c2-11, if it chooses to do so, it must comply with the requirements of Rule 15c2-11. In the Adopting Release, among other things, the SEC stated that it expects FINRA to continue to monitor the operation of the OTC market, including through oversight of Qualified IDQSs. See Adopting Release, infra note 21, at 68132.

publicly available determination under Rule 15c2-11 submit a daily security file to FINRA containing summary information for all securities quoted on its system; and (iii) other changes to FINRA Rule 6432 and the Form 211 to further clarify the operation of the rule and conform to amended Rule 15c2-11.<sup>15</sup> Each of these aspects of the proposed rule change is discussed in greater detail below.<sup>16</sup>

#### Qualified IDQS Modified Form 211 Submission Requirement

FINRA is proposing to adopt new paragraph (b) under FINRA Rule 6432 to establish an after-the-fact filing requirement for a Qualified IDQS that performs an initial review under Rule 15c2-11(a)(2). Under the proposed provision, a Qualified IDQS must demonstrate compliance with Rule 15c2-11 by making a filing with, and in the form required by, FINRA no later than 6:30:00 p.m. Eastern Time on the business day following the Qualified IDQS's publicly available determination under Rule 15c2-11(a)(2) (i.e., a "modified Form 211" filing). Like the standard Form 211, the modified Form 211 would contain requests for the items of information specified in Rule 15c2-11 for the type of issuer involved.<sup>17</sup>

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<sup>15</sup> While the SEC's amendments also update the items of information that must be reviewed for the different categories of issuers described in paragraph (b) of Rule 15c2-11, the baseline requirements largely remain unchanged. Likewise, the paragraph (b) items of information required to be submitted under FINRA Rule 6432 and the Form 211 will not change significantly but will be updated to be consistent with amended Rule 15c2-11. Therefore, for example, FINRA will make minor updates to Form 211, including, for (b)(5) submissions, to require historic information on the name of the issuer and any predecessors (past five years) and the address of the issuer's principal place of business (in addition to its principal executive offices).

<sup>16</sup> FINRA will publish a Regulatory Notice with technical details on the revised standard Form 211, modified Form 211, and daily file submission process.

<sup>17</sup> Both the modified and standard Form 211s will conform with the SEC's amendments to Rule 15c2-11, as applicable. See supra note 15. In addition, like

FINRA believes that requiring a Qualified IDQS to submit a modified Form 211 is appropriate because it would provide FINRA with information with which to perform oversight of a Qualified IDQS's compliance with the initial information review requirements of Rule 15c2-11 without involving any additional delay for FINRA to review and process the form prior to members being permitted to initiate quotations in reliance on the Qualified IDQS's publicly available determination. FINRA would use the modified Form 211 filings submitted by a Qualified IDQS to assess periodically the adequacy of the Qualified IDQS's reviews.<sup>18</sup> This new requirement would supplement FINRA's existing standard Form 211 review process for quoting broker-dealer members, which would continue to be applicable where a broker-dealer is not relying on a Qualified IDQS's publicly available determination with respect to an initial review.<sup>19</sup>

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the standard Form 211, the modified Form 211 must be reviewed and signed by a principal of the Qualified IDQS and the principal must certify, among other things, that neither the firm nor its associated persons have accepted or will accept any payment or other consideration for filing the Form 211. See Regulatory Notice 14-26 (June 2014); see also FINRA Rule 5250 (Payments for Market Making).

<sup>18</sup> In the Adopting Release, the SEC stated that a Qualified IDQS, like a broker-dealer, must have a reasonable basis under the circumstances to believe that the paragraph (b) information is accurate in all material respects and obtained from a reliable source and, consistent with Rule 15c2-11(a)(2)(iii)(A) and (B), the Qualified IDQS should be alert to any red flags (i.e., information under the circumstances that reasonably indicates that one or more of the required items of information may be materially inaccurate or from an unreliable source). See Adopting Release, infra note 21, at 68170.

<sup>19</sup> FINRA notes that a quoting member relying on a Qualified IDQS would not be required to separately submit any sort of Form 211 in connection with its initiation of quotations pursuant to Rule 15c2-11(a)(1)(ii). However, members who are not relying on the initial review of a Qualified IDQS would continue to be required to submit the Form 211 to FINRA and receive notification that the form has been processed prior to initiating quotes in the subject security (and, as described below, FINRA is proposing to amend FINRA Rule 6432 to clarify that

## Qualified IDQS Daily Security File Submission Requirement

Under proposed Supplementary Material .02 to FINRA Rule 6432, a Qualified IDQS that makes publicly available determinations under amended Rule 15c2-11, including regarding the availability of a Rule 15c2-11 exception, would be required to submit a daily security file to FINRA. Specifically, where a Qualified IDQS has made one or more publicly available determinations described in Rule 15c2-11(a)(2), (f)(2)(iii)(B), (f)(3)(ii)(A), or (f)(7), the Qualified IDQS would be required to submit to FINRA a daily security file containing the following information for all non-exchange-listed equity securities quoted on its system:

- Security symbol;
- Issuer name;
- If the non-exchange-listed equity security is being quoted pursuant to a processed Form 211 under FINRA Rule 6432(a);
- If applicable, the type of publicly available determination made by the Qualified IDQS (e.g., an initial review pursuant to Rule 15c2-11(a)(2), that the required information is current and publicly available under Rule 15c2-11 (f)(2)(iii)(B) or (f)(3)(ii)(A), or an exception under Rule 15c2-11(f)(7)) and the date on which such publicly available determination was made by the Qualified IDQS;
- With respect to a non-exchange-listed equity security for which the Qualified IDQS has made a publicly available determination under Rule 15c2-11(f)(7) relating to the availability of the piggyback exception under Rule 15c2-11(f)(3),

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a quoting member must receive notification from FINRA that a standard Form 211 has been processed before initiating or resuming quotations).

whether the issuer is a shell company and, if a shell company, the number of days remaining in the applicable 18-month period under Rule 15c-2-11(f)(3)(i)(B)(2);

- If applicable, that the security is being quoted pursuant to an exception that does not rely on the Qualified IDQS's publicly available determination and, if so, identify the exception relied upon by the subscriber; and
- Such other information as specified by FINRA in a Regulatory Notice (or similar communication).

FINRA would use the above information as part of its oversight program to perform surveillance and periodic reviews of Qualified IDQS and quoting member compliance with amended Rule 15c2-11.

#### Other Amendments

In addition to the two new proposed requirements applicable to Qualified IDQSs described above, the proposed rule change also includes other amendments to FINRA Rule 6432 to further clarify the operation of the rule and conform to amended Rule 15c2-11. First, FINRA is amending language in existing paragraphs (a) and (c) (paragraph (c) is proposed to be renumbered as paragraph (d)) to clarify that a member must receive notification from FINRA that a standard Form 211 has been processed before initiating or resuming quotations in a quotation medium (in the case of paragraph (a)) or before entering a priced quotation for the security (in the case of proposed paragraph (d)).

FINRA is making these amendments to clarify existing member obligations with respect to a standard Form 211 under FINRA Rule 6432.

Second, FINRA Rule 6432(b)(1) (proposed to be renumbered as paragraph (c)(1)) will expand the treatment currently allowed for documents available through the SEC's

Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system to information available through the website of a Qualified IDQS or its affiliate broker-dealer.

Currently, members are required to file a copy of the required issuer information with FINRA except that, with respect to information that is available through EDGAR, the member instead is permitted to provide identifying information for each issuer report or statement that was relied upon in satisfying its obligations under FINRA Rule 6432 and SEA Rule 15c2-11. This allowance is intended to ease burdens on broker-dealers when filing a Form 211. In light of the new role for Qualified IDQs under amended Rule 15c2-11, FINRA believes it is appropriate to similarly permit members to point FINRA to required information where it is publicly available on the website of a Qualified IDQS by including in the filing the permanent website address of the relevant document on the Qualified IDQS’s (or its affiliate broker-dealer’s) website.

Third, FINRA is proposing to define “qualified inter-dealer quotation system” in new paragraph (g) of FINRA Rule 6432, consistent with the term’s definition in SEA Rule 15c2-11(e)(6). Fourth, to assist with oversight of member compliance with Rule 15c2-11, FINRA is proposing to require that members include in the standard and modified Form 211 the names of all officers and directors of the subject issuer. Finally, the proposed rule change includes several technical and non-substantive changes to update cross-references to the renumbered provisions of amended Rule 15c2-11<sup>20</sup> and to correct the numbering of Supplementary Material .01 to FINRA Rule 6432, which would

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<sup>20</sup> FINRA also will make corresponding language and citation changes to the Form 211.

not otherwise substantively be modified (FINRA Rule 6432.01 would be corrected to read “.01” rather than “01.”, per FINRA rulebook style).

If the Commission approves the proposed rule changes, the effective date of the proposed rule changes will be the same as the compliance date of the SEC’s amendments to Rule 15c2-11 (except for paragraph (b)(5)(i)(M)), including any extensions to such compliance date.<sup>21</sup>

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>22</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. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act,<sup>23</sup> which requires, among other things, that FINRA’s rules be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

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<sup>21</sup> See Securities Exchange Act Release No. 89891 (September 16, 2020), 85 FR 68124 (October 27, 2020) (“Adopting Release”). The SEC specified a compliance date for amended Rule 15c2-11 (except for paragraph (b)(5)(i)(M)) of nine months after the amended rule’s December 28, 2020 effective date, which is September 28, 2021. See *id.* at 68172. The compliance date for paragraph (b)(5)(i)(M) will be two years after the December 28, 2020 effective date, which is December 28, 2022. See *id.* at 68172 n.535.

<sup>22</sup> 15 U.S.C. 78o-3(b)(6).

<sup>23</sup> 15 U.S.C. 78o-3(b)(11).

FINRA believes that, by amending FINRA Rule 6432 and the Form 211 in response to the SEC's amendments to Rule 15c2-11, the proposed rule change will facilitate FINRA's oversight of member Qualified IDQs, enhance investor protection, and reduce burdens on broker-dealers. The proposed rule change would require a Qualified IDQ to submit an after-the-fact, modified Form 211 to FINRA in connection with its publicly available determinations regarding initial reviews. The proposed amendments also would require a Qualified IDQ that makes publicly available determinations to submit a daily security file containing specified information for all non-exchange-listed equity securities quoted on its system. FINRA believes that the submission of this information will allow FINRA to effectively oversee the activities of its members in the OTC market, including of a Qualified IDQ's compliance with Rule 15c2-11's obligations. In addition, FINRA believes that the modified Form 211 requirement for Qualified IDQs is appropriate, including because, together with the daily file, it will provide FINRA with the information relied upon by each Qualified IDQ as well as consolidated daily Rule 15c2-11 compliance information, making a focused, after-the-fact review more manageable and able to be accomplished in a shorter period of time. FINRA believes that such oversight will serve to complement the amended Rule 15c2-11 framework adopted by the SEC, and, therefore, is in the public interest. Moreover, permitting quoting members to rely on a Qualified IDQ's publicly available determination to initiate quotations in a security is consistent with the SEC's goals to reduce burdens on broker-dealers while maintaining investor protection.

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.

Regulatory Need

This economic impact assessment is intended to evaluate the economic impact of the proposed changes to FINRA Rule 6432. Amendments to FINRA Rule 6432 are necessary to facilitate FINRA oversight of member compliance with amended SEA Rule 15c2-11. One key aspect of the proposed rule change, resulting from the SEC's changes to Rule 15c2-11, is the addition of a modified Form 211 requirement that would be applicable to a Qualified IDQS that engages in the initial information review of a security. The Qualified IDQS would be required to submit the modified Form 211 to FINRA by the end of the next business day after the Qualified IDQS's publicly available determination was made.

Economic Baseline

The economic baseline considers investor protection and members' regulatory burden in the absence of the proposed rule change in light of the SEC's amended rule. Among other things, amended Rule 15c2-11 permits a broker-dealer to rely on a Qualified IDQS to perform the initial information review required by the rule. Where a broker-dealer subscriber is not relying on the initial review of a Qualified IDQS, it must submit a standard Form 211 to FINRA and await notification that the form has been processed prior to initiating quotations in the security. SEA Rule 15c2-11 and FINRA

Rule 6432 generally govern the quotation conduct of broker-dealers initiating quotes in equity securities in the OTC market.<sup>24</sup>

### Economic Impacts

The proposed rule change would likely improve FINRA's oversight of the OTC market given the amendments to Rule 15c2-11. Specifically, by requiring the Qualified IDQS to submit (i) an after-the-fact, modified Form 211 filing in connection with publicly available determinations related to an initial information review, and (ii) a daily security file containing summary Rule 15c2-11-related information for each security quoted on its system, FINRA would have data necessary to monitor for Rule 15c2-11 compliance by the Qualified IDQSs and other members. The daily security file also would enhance FINRA's surveillance capabilities, which furthers investor protection.

FINRA acknowledges that a Qualified IDQS could incur some operational costs in submitting the modified Form 211 filing and daily security file to FINRA. Where the Qualified IDQS decides to undertake an initial review, the costs of filing a Form 211 would be shifted from broker-dealer subscribers to the Qualified IDQS.

### Alternatives Considered

FINRA considered not implementing a filing requirement for a Qualified IDQS. FINRA determined that the after-the-fact submission requirement strikes an appropriate balance by providing FINRA with important information with which to oversee Qualified IDQS compliance without involving the delay of a FINRA processing time prior to the

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<sup>24</sup> There were 3,435 FINRA member firms as of the end of 2020. Over the 2018 to 2020 period, an average 11,018 OTC equity securities were quoted with a price per year.

initiation of quoting, consistent with the SEC's goals to reduce burdens on broker-dealers while maintaining investor protection.

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

(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-2021-014 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2021-014. 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-2021-014 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>25</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).