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## SECURITIES AND EXCHANGE COMMISSION

[Release No 34-83181; File No. SR-FINRA-2018-018]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Statutory Disqualification Application Fees**

May 7, 2018

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 April 30, 2018, 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Section 12 to Schedule A of the FINRA By-Laws, regarding statutory disqualification application fees.

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

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

FINRA is proposing to increase the fee to file an application for an eligibility proceeding under the Rule 9520 Series (Eligibility Proceedings) for the first time since 1994.<sup>5</sup> Pursuant to Article III, Section 3 of the FINRA By-Laws, a member is ineligible for continuance in membership where the member associates with a person who is subject to a "statutory

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<sup>5</sup> See Securities Exchange Act Release No. 34897 (October 26, 1994), 59 FR 54648 (November 1, 1994) (Order Approving File No. SR-NASD-94-57) (increasing the SD Application Fee from \$1,000 to \$1,500).

disqualification” (“SD”)<sup>6</sup> or the member itself is subject to an SD. The Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of an SD, and for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and rules. A member or person associated with a member may request relief from the eligibility requirements by filing an application with FINRA (“SD Application”).<sup>7</sup>

Currently, Section 12 to Schedule A of the By-Laws (Application and Annual Fee for Member Firms with Statutorily Disqualified Individuals) provides that a member must pay to FINRA a fee of \$1,500 to file an SD Application (“SD Application Fee”) when it seeks to employ or continue to employ as an associated person any individual who is subject to an SD (Form MC-400). In contrast, FINRA currently does not require a member to pay a fee to file an SD Application where the member itself is subject to an SD (Form MC-400A). Since 1994, FINRA has not made any adjustments to the SD Application Fee.

SD Applications take significant staff time and resources to research and review, as each application is assessed on a case-by-case basis. While the number of SD Applications has remained relatively constant and the SD Application Fee has remained unchanged, the complexity of the applications and the time needed to investigate them through, for example, public records searches, discussions with federal and state regulators, and contacts with state and federal courts, has increased. Moreover, even in 1994, the SD Application Fee of \$1,500 was

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<sup>6</sup> Article III, Section 4 of the FINRA By-Laws incorporates the definition of “statutory disqualification” under Section 3(a)(39) of the Act.

<sup>7</sup> Rule 9520 Series sets forth eligibility proceedings under which FINRA may allow a member, person associated with a member, potential member, or potential associated person subject to an SD to enter or remain in the securities industry.

insufficient to cover the average costs associated with the processing and review of SD Applications.<sup>8</sup>

In order to offset more of the costs associated with FINRA staff's thorough assessment of SD Applications, the proposed rule change would amend Section 12 to Schedule A of the FINRA By-Laws by increasing from \$1,500 to \$5,000 the SD Application Fee for filing a Form MC-400. In addition, the proposed rule change would impose, for the first time, an SD Application Fee of \$5,000 on SD Applications for filing a Form MC-400A where the member itself is the subject of the SD. Specifically, Section 12 to Schedule A of the FINRA By-Laws would be revised to require any member firm, or applicant for membership under NASD Rule 1013 that is subject to a disqualification as set forth in Article III, Section 4 of the By-Laws of the Corporation that seeks to enter, or be continued in, membership to pay FINRA a fee of \$5,000.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be May 30, 2018.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>9</sup> 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 more equitably allocates among member firms the costs incurred for time and resources needed to thoroughly review and assess SD Applications.

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<sup>8</sup> See supra note 5, 59 FR at 54649 (noting that the average costs associated with the processing and review of SD Applications was more than \$1,500 in 1994).

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

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. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking and its potential economic impacts, including anticipated costs and benefits.

1. Economic Impact Assessment

a. Regulatory Need

As discussed above, SD Applications take significant FINRA staff time and resources to research and review; due to the unique facts and circumstances of each SD matter, each application is assessed on a case-by-case basis. The current SD Application Fee for Form MC-400 applications is insufficient to cover the costs associated with the review of these applications. Further, FINRA currently does not require a member firm to pay a fee for the review of Form MC-400A applications, but FINRA still must commit resources to review these applications. As a result, the current SD Application Fee is even less sufficient to cover the current costs associated with the staff's assessment of all SD Applications, requiring a significant portion of costs to conduct these assessments to be borne indirectly by non-SD applicant member firms. The proposed rule change serves as an economic transfer of some of the costs associated with the review from unrelated parties to the immediate parties seeking the relief.

b. Economic Baseline

The economic baseline used to evaluate the impact of the proposed amendments is the current regulatory framework. This baseline serves as the primary point of comparison for assessing the economic impacts, including the incremental benefits and costs of the proposed

rule change. FINRA reviewed the SD Applications that were filed during 2013-2016 (“review period”). Based on this review, FINRA estimates that there were 167 SD Applications filed by 135 member firms during the review period. Of the 167 SD Applications, FINRA identified 122 Form MC-400 applications and 45 Form MC-400A applications.<sup>10</sup> FINRA further estimates that approximately 50% of these applications were filed by small firms, 17% by mid-sized firms and 33% by large firms.<sup>11</sup>

c. Economic Impacts

FINRA examined the time required of its staff to review all SD Applications filed during the review period and the reviewing staff’s compensation associated with the review of these SD Applications. Based on that analysis, FINRA determined that the current SD Application Fee of \$1,500 for Form MC-400 applications is insufficient to cover the costs associated with FINRA’s review of such applications and even less sufficient to cover the costs associated with FINRA’s review of all SD Applications.

The impact of this proposal would be to help shift more of the costs associated with reviewing SD Applications to the member firms that file Form MC-400 or Form MC-400A

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<sup>10</sup> Approximately 84% of the filing member firms submitted one SD Application, whereas the remaining 16% of the filing member firms submitted two or more SD Applications during the review period. Further, the total number of SD Applications for the review period excludes 52 MC-400A applications filed in 2015 and 12 in 2016 in connection with the SEC’s Municipalities Continuing Disclosure Cooperation (MCDC) Initiative. Applications filed in connection with the MCDC Initiative are excluded from the calculation for the review period because they were the result of an industry-wide settlement and, as such, would disproportionately impact the review numbers outside the normal course. See <https://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml>.

<sup>11</sup> Based on FINRA By-Laws, Article I (Definitions), member firms with 150 or fewer registered persons are classified as small, member firms with 151-499 registered persons are classified as mid-size, and member firms with 500 or more registered persons are classified as large.

applications. As noted above, FINRA identified 122 Form MC-400 and 45 Form MC-400A applications during the review period. Based on the proposed increase in the SD Application Fee for both Form MC-400 and Form MC-400A applications to \$5,000, FINRA estimates that the total cost to all SD applicants would increase by \$163,000 on average each year, if applications remain at their historical levels. For the set of member firms that submitted SD Applications during the review period, the proposed fee increase would have led to an annual increased cost of \$3,500-\$13,500 per firm, with a median increased cost of \$3,500 per member firm.<sup>12</sup>

Shifting more of the burden of the costs associated with the review of SD Applications to the SD applicants also may affect their behavior. For instance, increasing the SD Application Fee may dissuade some member firms from seeking to employ or continuing to employ statutorily disqualified individuals. The increased fees also may cause some member firms to be more selective in instances where they might decide to employ such individuals. In general, some member firms that today may submit an SD Application at little or no cost, may determine that it is no longer in their best interest to do so.

These impacts would likely be higher for smaller firms, cash constrained firms, and firms that anticipate that the likelihood of the application being accepted is low ex ante. Any reduction in the number of SD Applications would lead to less FINRA staff time and resources spent on the review of SD Applications, decreasing the costs associated with the review of such applications and further reducing the aggregate economic transfer to SD applicants.

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<sup>12</sup> The incremental costs are calculated on an annual, per firm basis. For each member firm submitting a Form MC-400 or Form MC-400A application, FINRA assigned an incremental cost of \$3,500 for each Form MC-400 application filed and \$5,000 for each Form MC-400A application filed in that year. The range represents the total aggregate incremental cost per submitting firm, per year. Thus, \$3,500 represents the cost of a member firm that submitted only one Form MC-400 in a given year and \$13,500 reflects the cost of a member firm that submitted two Form MC-400A applications and one Form MC-400 application in that year.

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 Act<sup>13</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>14</sup> 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:

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-2018-018 on the subject line.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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-2018-018. 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. 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-2018-018 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>15</sup>

**Eduardo Aleman,**

*Assistant Secretary.*

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

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