



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85589; File No. SR-FINRA-2019-009]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Remaining Legacy NASD and Incorporated NYSE Rules as FINRA rules

April 10, 2019

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 8, 2019, 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 and II 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,<sup>3</sup> which renders the proposal effective upon receipt of the 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 adopt the following NASD Rules as FINRA Rules in the consolidated FINRA rulebook without any substantive changes: (1) the NASD Rule 1010 Series (Membership Proceedings) into the FINRA Rule 1000 Series; (2) NASD Rule 1090 (Foreign Members) as FINRA Rule 1021; (3) NASD Rule 2340 (Customer Account Statements) as FINRA Rule 2231; (4) NASD Rule 2510 (Discretionary Accounts) as FINRA Rule 3260; (5) NASD Rule 3140 (Approval of Change in Exempt Status Under SEA Rule 15c3-3) as FINRA Rule 1020; (6) NASD Rule 3150 (Reporting Requirements for Clearing Firms) as FINRA Rule

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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> 17 CFR 240.19b-4(f)(6).

4540; and (7) NASD Rule IM-3150 (Exemptive Relief) as Supplementary Material to FINRA Rule 4540. In addition, the proposed rule change would adopt the remaining Incorporated NYSE Rules and Interpretations in the consolidated FINRA rulebook without any substantive changes as a separate Temporary Dual FINRA-NYSE Member Rule Series. FINRA also proposes to delete four Incorporated NYSE Rule definitions (Incorporated NYSE Rules - Rule 4 (“Stock”), Rule 5 (“Bond”), Rule 9 (“Branch Office Manager”), and Rule 12 (“Business Day”)) that are not used in the FINRA rule set as well as Incorporated NYSE Rule 375 and related Interpretation. Finally, the proposed rule change would update cross-references and make other non-substantive changes within FINRA rules, due in part to the adoption of new consolidated FINRA rules.

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

As part of the process of completing a consolidated rulebook (“Consolidated FINRA Rulebook”),<sup>4</sup> FINRA is proposing to adopt the following NASD Rules as FINRA Rules in the Consolidated FINRA Rulebook without any substantive changes: (1) the NASD Rule 1010 Series (Membership Proceedings) into the FINRA Rule 1000 Series;<sup>5</sup> (2) NASD Rule 1090 (Foreign Members) as FINRA Rule 1021; (3) NASD Rule 2340 (Customer Account Statements) as FINRA Rule 2231; (4) NASD Rule 2510 (Discretionary Accounts) as FINRA Rule 3260; (5) NASD Rule 3140 (Approval of Change in Exempt Status Under SEA Rule 15c3-3) as FINRA Rule 1020; (6) NASD Rule 3150 (Reporting Requirements for Clearing Firms) as FINRA Rule 4540; and (7) NASD Rule IM-3150 (Exemptive Relief) as Supplementary Material to FINRA Rule 4540. In addition, FINRA proposes to adopt the remaining Incorporated NYSE Rules and Interpretations in the Consolidated FINRA Rulebook without any substantive changes as a separate Temporary Dual FINRA-NYSE Member Rule Series. The Temporary Dual FINRA-NYSE Member Rule Series in the Consolidated FINRA Rulebook as the name suggests would apply solely to Dual Members.<sup>6</sup> Finally, FINRA proposes to update cross-references and make other non-substantive changes within FINRA rules.

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<sup>4</sup> The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from New York Stock Exchange LLC (“NYSE”) (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

<sup>5</sup> The FINRA Rule 1000 Series exists in the FINRA rulebook and consists of FINRA Rule 1010. The proposed rule change amends FINRA Rule 1010 to update the rule cross reference by deleting the reference to NASD and updating the cross references to reflect the adoption of the consolidated FINRA registration rules. See also infra note 30.

<sup>6</sup> See supra note 4.

FINRA is proposing to transfer these remaining NASD Rules and Incorporated NYSE rules and Interpretations into the FINRA Consolidated Rulebook without any substantive changes at this time to eliminate the Transitional Rulebook and provide greater clarity and regulatory efficiency to FINRA members.<sup>7</sup> FINRA will continue to review the substance of the rules addressed in this proposed rule change and expects to propose substantive changes to some or all of the rules as part of future rulemakings.

### Membership Rules

The proposed rule change would adopt the NASD Rule 1010 Series (Membership Proceedings) (collectively, the “MAP rules”) into the FINRA Rule 1000 Series without any substantive changes.<sup>8</sup> The NASD Rule 1010 Series (Membership Proceedings) governs FINRA’s membership application process. Exchange Act Section 15A(b)(8) requires that FINRA establish rules providing a fair procedure for the denial of membership.<sup>9</sup> FINRA’s MAP rules provide a means for FINRA, through its Membership Application Program (“MAP”), to assess the proposed business activities of its potential and current member firms. FINRA

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<sup>7</sup> Exhibit 4 presents the text of the proposed rule change with the changes marked against the existing NASD and Incorporated NYSE Rules and Interpretations to show the updated cross-references, deletions of references to NASD and similar changes. Exhibit 5 shows the text of the proposed rule change marked against the current rule text with the NASD rules show as deleted and the FINRA rules shown as new text.

<sup>8</sup> FINRA previously solicited comment on a proposal to adopt the consolidated FINRA Rule 1000 Series that would have transferred the NASD Rule 1010 Series and Incorporated NYSE Rules 311, 312, 313, 321, 416 and related supplementary material and rule interpretations, and Incorporated NYSE Rule 401/03 Interpretations to FINRA rules with significant changes. See Regulatory Notices 10-01 (January 2010), 13-29 (September 2013) and 18-23 (July 2018).C:\Users\adeolam\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\RMPEEONQ\FINRA [sic] FINRA is separately developing changes to the MAP rules in connection with the retrospective review of this rule set. See Regulatory Notice 18-23 (July 26, 2018) (requesting comment on a proposal regarding the MAP rules).

In addition, the proposed rule change corrects rule cross-references in the MAP rules.

<sup>9</sup> 15 U.S.C. 78o-3(b)(8).

evaluates an applicant's financial, operational, supervisory and compliance systems to ensure that each applicant meets the standards set forth in NASD Rule 1014.

NASD Rule 1011 (Definitions), proposed to be adopted as FINRA Rule 1011, sets forth the defined terms applicable to the membership application process. NASD Rule 1012 (General Provisions), proposed to be adopted as FINRA Rule 1012, sets forth the requirements for submitting membership applications and supporting documentation. The MAP rules require the filing of two distinct types of applications. One category is a new member application ("NMA") filed by an applicant seeking membership in FINRA, which is filed pursuant to NASD Rule 1013 (New Member Application and Interview), proposed to be adopted as FINRA Rule 1013. The other category is a continuing membership application ("CMA"), which is filed pursuant to NASD Rule 1017 (Application for Approval of Change in Ownership, Control or Business Operations), proposed to be adopted as FINRA Rule 1017. NASD IM-1011-1 (Safe Harbor for Business Expansions), proposed to be adopted as FINRA IM-1011-1, specifies the parameters for increases a member may make in the number of its associated persons involved in sales, offices or markets made that is measured on a rolling 12-month period. The incremental changes a member may make in these three categories are presumed not to be a "material change in business operations" (as defined in Rule 1011) and thus do not require the filing of a CMA.

NASD IM-1013-1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations) and NASD IM-1013-2 (Membership Waive-In Process for Certain NYSE Alternext US LLC Member Organizations) – proposed to be adopted as FINRA IM-1013-1 and FINRA IM-1013-2, respectively – set forth a streamlined application and review process for FINRA membership that applied to certain NYSE and NYSE American (formerly known as NYSE Alternext US) ("waived-in firms").

To maintain the status quo for the waived-in firms, the proposed rule change would clarify that such firms would be subject to FINRA rules, other than FINRA Rules 1011 through 1016, 1019 through 1021, 2231, 3260 and 4540. With the exception of proposed FINRA Rule 1017, the proposed rule change would not require the waived-in firms to comply with the FINRA Rule 1000 Series, or FINRA Rules 2231, 3260 and 4540, because these FINRA rules will continue to have a corresponding Temporary Dual FINRA-NYSE Member rule to which the waived-in firms will be subject (namely Incorporated NYSE Rules 311, 312, 313, 408, 409, 416 and 416A and related interpretations). As the Temporary Dual FINRA-NYSE Member Rules are eliminated, these waived-in firms will become subject to the corresponding FINRA rule. In addition, as is the case today, if at any time a waived-in firm seeks to expand its business beyond the permitted floor activities, the firm must apply for and receive approval to engage in any such activity under proposed FINRA Rule 1017. Once approved, the firm must immediately comply with all FINRA rules.

All applications are evaluated to determine whether the applicant meets the 14 standards or criteria (e.g., completeness and accuracy of the application and supporting documentation, the acquisition of all requisite licenses and registrations, a sufficient level of net capital, the establishment of necessary contractual agreements and business relationships, an adequate supervisory system) set forth in NASD Rule 1014 (Department Decision), proposed to be adopted as FINRA Rule 1014.

FINRA may grant in whole, in part (subject to restrictions), or deny an NMA or CMA. NASD Rule 1015 (Review by National Adjudicatory Council), proposed to be adopted as FINRA Rule 1015, permits an applicant to submit a request for a review by the National Adjudicatory Council of an adverse decision rendered on an NMA or CMA. NASD Rule 1016

(Discretionary Review by FINRA Board), proposed to be adopted as FINRA Rule 1016, also permits a Governor of the FINRA Board to call for a discretionary review of a membership proceeding. Finally, a person aggrieved by a final action of FINRA under the NASD Rule 1010 Series may apply for review by the SEC pursuant to NASD Rule 1019 (Application to Commission for Review), proposed to be adopted as FINRA Rule 1019.

#### Foreign Members

FINRA proposes to adopt NASD Rule 1090 (Foreign Members) as FINRA Rule 1021 without any substantive changes. NASD Rule 1090 provides that a member that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the SEC and FINRA must agree to a set of requirements that are necessary to effectively regulate foreign members' compliance with applicable securities laws and regulations, and with applicable FINRA rules. Such requirements include, among others, preparing all reports and maintaining a general ledger chart of account in English and U.S. dollars and having an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of FINRA during examinations.

#### Customer Account Statements

FINRA proposes to adopt NASD Rule 2340 (Customer Account Statements) as FINRA Rule 2231 without any substantive changes.<sup>10</sup> NASD Rule 2340 generally requires each general securities member to send account statements to customers at least once each calendar quarter

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<sup>10</sup> FINRA previously filed a proposal with the SEC to adopt consolidated FINRA Rule 2231 that would have transferred NASD Rule 2340 and Incorporated NYSE Rule 409 (and its related interpretations) with significant changes, but such filing was subsequently withdrawn. See Securities Exchange Act Release No. 67588 (August 2, 2012), 77 FR 47470 (August 8, 2012) (Notice of Withdrawal of File No. SR-FINRA-2009-028). FINRA solicited comment on a revised proposal. See Regulatory Notice 14-35 (September 2014).

containing a description of any securities positions, money balances or account activity in the accounts since the prior account statements were sent, except if carried on a Delivery versus Payment/Receive versus Payment basis. The rule also sets forth requirements for disclosure of values for unlisted or illiquid direct participation programs and real estate investment trusts.

#### Discretionary Accounts

FINRA proposes to adopt NASD Rule 2510 (Discretionary Accounts) as FINRA Rule 3260 without any substantive changes.<sup>11</sup> NASD Rule 2510 addresses the obligations of members and associated persons that have discretionary power over a customer's account.<sup>12</sup> The rule prohibits a firm and its agents or employees that have discretionary power over a customer's account from effecting any excessive transactions in view of the financial resources and character of the account. The rule also provides that a member or registered representative may not exercise any discretionary power in such account unless the customer has given prior written authorization to a stated individual or individuals, and the account has been accepted in writing by the member or a designated partner, officer or manager of the member. In addition, a member or a designated partner, officer or manager must approve promptly in writing each discretionary order entered and review all discretionary accounts at frequent intervals to detect and prevent excessive transactions. The rule provides certain exceptions from its requirements.

#### Approval of Change in Exempt Status Under SEA Rule 15c3-3

FINRA proposes to adopt NASD Rule 3140 (Approval of Change in Exempt Status Under SEC Rule 15c3-3) as FINRA Rule 1020 without any substantive changes. NASD Rule

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<sup>11</sup> FINRA previously solicited comment to adopt consolidated FINRA Rule 3260 that would have transferred NASD Rule 2510 and Incorporated NYSE Rule 408 and Interpretation 408/01 and /02 with significant changes. See Regulatory Notices 09-63 (November 2009) and 15-22 (June 2015).

<sup>12</sup> See also SEA Rule 15c1-7 (Discretionary Accounts).

3140 provides that a member (as defined in paragraph (a)) operating pursuant to any exemptive provision in SEA Rule 15c3-3(k) shall not change its method of doing business in a manner which will change its exemptive status to a fully computing firm that is subject to all provisions of SEA Rule 15c3-3; or commence operations that will disqualify it for continued exemption under SEA Rule 15c3-3 without first having obtained the prior written approval of FINRA. The rule sets forth standards that FINRA staff considers in approving or denying such an application under the rule.

#### Reporting Requirement for Clearing Firms

FINRA proposes to adopt NASD Rule 3150 (Reporting Requirements for Clearing Firms) as FINRA Rule 4540 without any substantive changes. NASD Rule 3150 states that all clearing firms must report prescribed data to FINRA about the member and any member broker-dealers for which it clears. The member may report through a third-party but such member remains responsible for the compliance with the rule. In addition, the proposed rule change would incorporate without substantive change the provisions regarding the requirement to distinguish between data pertaining to all proprietary and customer accounts of an introducing member and of any member for which the introducing member is acting as an intermediary.

FINRA proposes to adopt NASD IM-3150 (Exemptive Relief) as Supplementary Material to proposed FINRA Rule 4540 without any substantive changes. NASD IM-3150 sets forth the circumstances under which FINRA would generally grant an exemption to the clearing firm reporting requirement in NASD Rule 3150 (proposed to be adopted as FINRA Rule 4540). The provision further requires that a member report to FINRA any change in the operation or nature of its business such that it no longer qualifies for an exemption previously granted under the rule.

### Incorporated NYSE Rules and Interpretations

FINRA incorporated a set of NYSE rules and interpretations as Incorporated NYSE Rules and Interpretations when NASD and the NYSE consolidated their member regulation operations to form FINRA.<sup>13</sup> Since that time, FINRA has been amending NASD Rules and Incorporated NYSE Rules and Interpretations to establish a single set of rules. Given that FINRA would like to proceed with the rulebook consolidation process expeditiously to eliminate the Transitional Rulebook and provide greater clarity and regulatory efficiency to FINRA members, FINRA is proposing to adopt the remaining Incorporated NYSE Rules and Interpretations, as listed below, as FINRA Rules, without any substantive changes. The proposed rule change would retain the current numbering convention and add a “T” after the number to denote its placement in the Temporary Dual FINRA-NYSE Member Rule Series of the Consolidated FINRA Rulebook. FINRA also proposes to delete four Incorporated NYSE Rule definitions that are not used in the FINRA rule set as well as Incorporated NYSE Rule 375 and related Interpretation as discussed below. The Temporary Dual FINRA-NYSE Member Rule Series in the Consolidated FINRA Rulebook as the name suggests would apply solely to Dual Members. The proposed rule change would not impose any new requirements on any member firms.

- Incorporated NYSE Rule 1 (“The Exchange”) that defines the term “the Exchange” generally to mean the “New York Stock Exchange LLC” would be adopted as FINRA Rule 1T;
- Incorporated NYSE Rule 2 (“Member,” “Membership,” “Member Firm,” etc.) that defines these terms to mean a person who has been approved by the Exchange and,

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<sup>13</sup> See Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Order Approving File No. SR-NASD-2007-054).

among others, includes a definition for “control” to mean a person who can direct or cause the direction of the management or policies of a person and sets thresholds for a presumption of control, would be adopted as FINRA Rule 2T;

- Incorporated NYSE Rule 3 (“Security”) that defines the term “security” the same as used in the Exchange Act would be adopted as FINRA Rule 3T;
- Incorporated Rule 6 (“Floor”) that defines the term “Floor” to mean the trading floor at the applicable addresses listed therein would be adopted as FINRA Rule 6T;
- Incorporated NYSE Rule 8 (“Delivery”) that defines the term “Delivery” to mean the delivery of securities on Exchange contracts would be adopted as FINRA Rule 8T;
- Incorporated NYSE Rule 11 (Effect of Definitions) that provides that the terms defined in Exchange Rules shall have the meaning specified therein would be adopted as FINRA Rule 11T;
- Incorporated NYSE Rule 311 (Formation and Approval of Membership Organization) that details the requirements to be approved as a member organization would be adopted as FINRA Rule 311T.<sup>14</sup>
- Incorporated NYSE Rule 312 (Changes Within Member Organizations) that requires member organizations to give notice to the Exchange in certain circumstances, including, without limitation, when there is a change of stockholdings of the member or a change in directors or officers would be adopted as FINRA Rule 312T.<sup>15</sup>

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<sup>14</sup> See supra note 8.

<sup>15</sup> See supra note 8.

- Incorporated NYSE Rule 313 (Submission of Partnership Articles – Submission of Corporate Documents) that requires the submission of certain corporate and partnership documents to the Exchange would be adopted as FINRA Rule 313T.<sup>16</sup>
- Incorporated NYSE Rule 321 (Formation or Acquisition of Subsidiaries) that requires approval for a member to form a subsidiary would be adopted as FINRA Rule 321T.<sup>17</sup>
- Incorporated NYSE Rule 408 (Discretionary Power in Customers’ Accounts) that addresses the obligations of members that have discretionary power over customers’ accounts would be adopted as FINRA Rule 408T;<sup>18</sup>
- Incorporated NYSE Rule 409 (Statements of Accounts to Customers) that requires a member to send customers statements of account would be adopted as FINRA Rule 409T;<sup>19</sup>
- Incorporated NYSE Rule 416 (Questionnaires and Reports) that requires members to submit reports as requested by the Exchange would be adopted as FINRA Rule 416T;
- Incorporated NYSE Rule 416A (Members and Member Organizations Profile Information Updates and Quarterly Certifications Via The Electronic Filing Platform) that requires that members supply to the Exchange’s electronic filing platform certain profile information and certify to the Exchange quarterly, would be adopted as FINRA Rule 416AT;
- Incorporated NYSE Rule 435 (Miscellaneous Provisions) that provides that no member shall circulate rumors of a sensational character which might reasonably be

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<sup>16</sup> See supra note 8.

<sup>17</sup> See supra note 8.

<sup>18</sup> See supra note 11.

<sup>19</sup> See supra note 8.

expected to affect market conditions on the Exchange would be adopted as FINRA Rule 435T.<sup>20</sup>

- Incorporated NYSE Rule Interpretation 311(b), (f) and (g) that provides guidance on whether officers may be part time, criteria for the principal place of business of the member, and use of titles and division identification would be adopted as FINRA Rule 311T(b), (f) and (g).<sup>21</sup>

- Incorporated NYSE Rule Interpretation 401/01 through /04 that requires members notify the Exchange prior to certain events, including among others, changes in business activities, liquidity problems or capital problems would be adopted as FINRA Rule 401T/01 through /04.<sup>22</sup>

- Incorporated NYSE Rule Interpretation 408/01 and /02 that requires identification of discretionary orders and provides guidance for establishing automatic money market fund redemptions would be adopted as FINRA Rule 408T/01 and /02.<sup>23</sup>

- Incorporated NYSE Rule Interpretation 409/(a) and /(b) that dictates the disclosures that must be made in a customer account statement, including for externally held assets, and requirements for use of third party agents, logos, summary statements and holding foreign customer mail would be adopted as FINRA Rule 409T/(a) and /(b).<sup>24</sup>

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<sup>20</sup> FINRA previously solicited comment on a proposal to adopt consolidated FINRA Rule 2030 that would have transferred Incorporated NYSE Rule 435 and Rule Interpretation 435(5)/01 with significant changes. See Regulatory Notices 08-68 (November 2008) and 09-29 (June 2009).

<sup>21</sup> See supra note 8.

<sup>22</sup> See supra note 8.

<sup>23</sup> See supra note 11.

<sup>24</sup> See supra note 10.

- Incorporated NYSE Interpretation 435(5)/01 that states that the responsibility to prohibit the circulation of rumors extends to all member personnel would be adopted as FINRA Rule 435(5)T/01.<sup>25</sup>

FINRA proposes to delete the following Incorporated NYSE Rules - Rule 4 (“Stock”), Rule 5 (“Bond”), Rule 9 (“Branch Office Manager”), and Rule 12 (“Business Day”) as such definitions are not used in the Consolidated FINRA Rulebook or the remaining proposed Temporary Dual FINRA-NYSE Member Rule Series.

FINRA also proposes to delete Incorporated NYSE Rule 375 (Missing the Market) and Interpretation 375/01. Incorporated NYSE Rule 375 provides that a member or member organization that has accepted an order for execution and that, because of neglect to execute the order or otherwise, takes or supplies the securities that are the subject of the order for its own account, is not acting as a broker and shall not charge a commission, without the knowledge and consent of the customer. The purpose of this rule is to ensure that when a member misses the market and fails to execute a customer’s order timely or as agent, the customer is notified and does not pay a commission unless the customer affirmatively consents.

Incorporated NYSE Rule Interpretation 375/01 provides that, when a member or member organization has “missed the market” on a customer order, the customer should be contacted, informed of the circumstances, and given the choice of either having the order filled at the price that prevailed “as of” the time the market was missed, or executed at the present market price. If the customer elects to have the order filled at the “as of” price, the member may effect the transaction for the customer’s account on the floor of the NYSE<sup>26</sup> and make a cash price

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<sup>25</sup> See supra note 20.

<sup>26</sup> See NYSE Rule 6 for the definition of the NYSE floor.

adjustment, or fill the customer's order from the firm's error account.<sup>27</sup> In both instances, the customer's confirmation shall carry the "as of" legend. In contrast to Incorporated NYSE Rule 375, which is focused on commissions, Rule Interpretation 375/01 is focused on the execution price of orders where a member has missed the market.

FINRA proposes to eliminate Incorporated NYSE Rule 375 and Incorporated NYSE Rule Interpretation 375/01 because they address a narrow range of conduct, which occurs in the context of an exchange and specify the remedial steps that must be taken to fill customer orders under such circumstances. In general, this NYSE Rule and Interpretation were primarily aimed at addressing the limited context of a specialist taking orders for transactions on the exchange on an agency basis. FINRA believes, this rule and interpretation are not necessary in light of the existing FINRA rules discussed below that cover a broader range of activities even though the FINRA rules do not specify remedial steps. FINRA believes FINRA's rules that establish a fairness standard both with respect to commission and execution prices provide adequate remedies.

Specifically, FINRA Rule 2121 (Fair Prices and Commissions) requires that members assess customers prices, service charges and commissions that are fair, whether acting as principal or agent. FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) also prohibits a member from trading for its own proprietary account ahead of its customer order unless it immediately executes the customer order at the same or better price at which it traded for its own account [sic]. Additionally, Rule 5310 (Best Execution and Interpositioning) requires that a member exercise reasonable diligence to buy or sell so that the resultant price to the

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<sup>27</sup> When the transaction is effected through a firm error account, the firm no longer acts as agent, as it is trading from a firm account as principal.

customer is as favorable as possible under prevailing market conditions.<sup>28</sup> Further, Supplementary Material .01 of Rule 5310 states that members must make every effort to execute a marketable customer order that it receives [sic] fully and promptly. As such, FINRA believes that the conduct encompassed by Incorporated NYSE Rule 375 and its accompanying interpretation is and will continue to be fully addressed by other FINRA rules, and the deletion of the Rule and its accompanying rule interpretation will increase regulatory efficiency by removing unnecessary provisions from the rules.<sup>29</sup>

#### Cross-Reference and Technical Updates

The proposed rule change would update cross-references and make other non-substantive changes within FINRA rules, due in part to the adoption of new consolidated FINRA rules.

The proposed rule change would update rule cross-references to reflect the adoption of the consolidated FINRA registration rules. The SEC approved the new rules on July 7, 2017. As part of that rule filing, FINRA adopted with amendments the NASD and Incorporated NYSE rules relating to qualification and registration requirements as FINRA rules in the Consolidated FINRA Rulebook. FINRA also deleted in their entirety the NASD Rule 1000 Series relating to registration of Principals and Representatives, Incorporated NYSE Rules 10, 344, 345, 472, and

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<sup>28</sup> FINRA also believes that Incorporated NYSE Rule 375 and Incorporated NYSE Rule Interpretation 375/01 are functionally obsolete, because, to FINRA's knowledge, neither NYSE nor FINRA has ever charged a violation of either the rule or its interpretation.

<sup>29</sup> FINRA previously solicited comment on a proposal to adopt consolidated FINRA Rule 2121 that would have transferred NASD Rule 2440, NASD IM 2440-1, NASD IM-2440-2, Incorporated NYSE Rule 375 and related Interpretation to the FINRA rulebook with significant changes. See Regulatory Notices 11-08 (February 2011) and 13-07 (January 2013). FINRA transferred NASD Rule 2440 and its Interpretative Materials into the Consolidated FINRA Rulebook as FINRA Rule 2121 without material change. See Securities Exchange Act Release No. 72208 (May 21, 2014), 79 FR 30675 (May 28, 2014) (Notice of filing and Immediate Effectiveness of File No. SR-FINRA-2014-023).

Incorporated NYSE Rule Interpretations 10, 344 and 345.<sup>30</sup> The consolidated FINRA registration rules were implemented on October 1, 2018.<sup>31</sup> As such, the proposed rule change would update references to the new rule numbers in Section 4 (Fees) and Section 12 (Application and Annual Fees for Statutorily Disqualified Member Firms, Statutorily Disqualified Applicants for Membership and Member Firms Seeking to Associate with Statutorily Disqualified Individuals) of Schedule A to the By-Laws of the Corporation; and FINRA Rules 1010 (Electronic Filing Requirements for Uniform Forms), 2210 (Communications with the Public), 2241 (Research Analysts and Research Reports), 2370 (Securities Futures), 3170 (Tape Recording of Registered Persons by Certain Firms), 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)), 9610 (Application), 9620 (Decision), and 9630 (Appeal).

In addition, the proposed rule change would replace all references to NASD Rule 2340 in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities), 2310 (Direct Participation Programs), and 9610 (Application) with references to proposed FINRA Rule 2231. The proposed rule change would also replace the references to NASD Rule 3150 in FINRA Rule 9610 with a reference to proposed FINRA Rule 4540. The proposed rule change would replace the references to NASD Rule 2510 in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities), 2360 (Options), 2370 (Securities Futures), 4512 (Customer Account Information), 4515 (Approval and Documentation of Changes in Account Name or Designation) and 5121 (Public Offerings of Securities With Conflicts of Interest) with references to proposed FINRA Rule 3260. The proposed rule change

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<sup>30</sup> See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR-FINRA-2017-007).

<sup>31</sup> See Regulatory Notice 17-30 (October 2017).

would replace all references to NASD Rule 3140 in FINRA Rule 0150 and FINRA Rule 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities) to a reference to proposed FINRA Rule 1020. The proposed rule change would replace all references to the NASD Rule 1010 Series in Rules 7410 (Definitions), 8313 (Release of Disciplinary Complaints, Decisions and Other Information), 9521 (Purpose and Definitions), 9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration), and the Capital Acquisition Broker Rule 100 Series (Member Application and Associated Person Registration) to references to the proposed FINRA Rule 1000 Series. The proposed rule change would replace a reference to NASD Rule 1090 in Capital Acquisition Broker Rule 119 to a reference to proposed FINRA Rule 1021. The proposed rule change would also update the references to the Incorporated NYSE Rules in FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19b-1(c)(2)) with the proposed FINRA Temporary Dual FINRA-NYSE Member Rule Series numbers. The proposed rule change would update the cross-references in FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) to reflect the renumbering of Rule 7440(b)(19) as 7440(b)(20).<sup>32</sup>

The proposed rule change would correct a typographical error in FINRA Rule 7620A (FINRA/Nasdaq Trade Reporting Facility Reporting Fees). When Rule 7620A was amended pursuant to SR-FINRA-2018-042, Example 1 under Section II.4.B. inadvertently stated “As to Tape B, the Retail Participant would pay the uncapped discounted monthly charges applicable to

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<sup>32</sup> See Securities Exchange Act Release No. 77523 (April 5, 2016), 81 FR 21427 (April 11, 2016) (Order Approving File No. SR-FINRA-2016-006).

Tier 1 its activity...” (emphasis added).<sup>33</sup> The proposed rule change would delete “its” before the word “activity.”

The proposed rule change also would make technical changes to FINRA Rule 7640A (Data Products Offered By NASDAQ). Pursuant to SR-NASDAQ-2018-098, Nasdaq relocated its Rule 7000 Series (Equities Pricing) to the Equity 7 Pricing Schedule of the Nasdaq rulebook’s shell structure.<sup>34</sup> As part of that proposed rule change, the Nasdaq rules referred to in paragraph (c) of FINRA Rule 7640A were renumbered. Specifically, Nasdaq Rule 7037 was renumbered as Equity 7 Pricing Schedule, Section 137; Nasdaq Rule 7039 was renumbered as Equity 7 Pricing Schedule, Section 139; and Nasdaq Rule 7047 was renumbered as Equity 7 Pricing Schedule, Section 147. The proposed rule change would make conforming changes to Rule 7640A(c) to update these references. The proposed rule change would also change “NASDAQ” to “Nasdaq” in the Rule’s title to conform to the rest of the Rule.

Finally, the proposed rule change would add a reference to FINRA Rule 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) to FINRA Rule 9610 (Application). FINRA Rule 2030 authorizes FINRA to exempt a covered member from Rule 2030(a) and, therefore, should be included in the list of rules in FINRA Rule 9610.<sup>35</sup>

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<sup>33</sup> See Securities Exchange Act Release No. 84901 (December 20, 2018), 83 FR 67408 (December 28, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-042).

<sup>34</sup> See Securities Exchange Act Release No. 84684 (November 29, 2018), 83 FR 62936 (December 6, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2018-098).

<sup>35</sup> See Securities Exchange Act Release No. 78683 (August 25, 2016), 81 FR 60051 (August 31, 2016) (Order Approving File No. SR-FINRA-2015-056).

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be 30 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,<sup>36</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 believes that the proposed rule change, which does not substantively change the rules, is consistent with the Act because it is being undertaken pursuant to the rulebook consolidation process, which is designed to provide additional clarity and regulatory efficiency to FINRA members by consolidating the applicable NASD Rules, Incorporated NYSE Rules and Interpretations, and FINRA rules into one rule set.

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. As noted above, the proposed rule change will not substantively change either the text or application of the rules. FINRA would like to proceed with the rulebook consolidation process expeditiously, which will provide additional clarity and regulatory efficiency to members.

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<sup>36</sup> 15 U.S.C. 78o-3(b)(6).

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 with respect to the proposed rule change to transfer the above listed NASD Rules, Incorporated NYSE Rules and Interpretations into the Consolidated FINRA Rulebook without any substantive changes.<sup>37</sup>

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 Act<sup>38</sup> and Rule 19b-4(f)(6) thereunder.<sup>39</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.

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

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<sup>37</sup> But see supra notes 8, 10, 11, 20 and 29.

<sup>38</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>39</sup> 17 CFR 240.19b-4(f)(6).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2019-009 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-2019-009. 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-2019-009 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>40</sup>

Eduardo A. Aleman,  
Deputy Secretary.

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<sup>40</sup> 17 CFR 200.30-3(a)(12).

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