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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89703; File No. SR-FINRA-2020-025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Security Futures Risk Disclosure Statement

August 28, 2020.

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 August 14, 2020, 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,³ 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: (1) Section 8.2 (Position Limits and Large Trader Reporting) of the Security Futures Risk Disclosure Statement (“2018 Statement” or “Statement”) to reflect the higher position limits for security futures contracts and changes to the large trader

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

reporting timeframe adopted by the Commodity Futures Trading Commission (“CFTC”);⁴ (2) Section 2.7 (Trading Halts) of the 2018 Statement to reflect the updated market-wide circuit breaker benchmark and thresholds approved by the SEC;⁵ and (3) the introductory section of the 2018 Statement to reflect that exchanges may now list security futures on certain debt instruments. FINRA is not proposing any textual changes to FINRA rules. The National Futures Association (“NFA”) has proposed parallel amendments to the Statement for its members.⁶

The proposed updated Statement (the “2020 Statement”), reflecting all cumulative updates, is attached as Exhibit 3a. The proposed supplement pertaining to changes to the specified paragraphs under Sections 8.2 and 2.7, and the Introduction, as described herein (the “2020 Supplement”) is attached as Exhibit 3b.

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

⁴ See Position Limits and Position Accountability for Security Futures Products, 84 FR 51005 (September 27, 2019) (amending CFTC Regulation 41.25); see also Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 78 FR 69178 (November 18, 2013) (amending CFTC Rule 17.02, among others).

⁵ See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (Order Approving File No. SR-FINRA-2011-054).

⁶ See Letter from Carol A. Wooding, NFA’s Senior Vice President and General Counsel, to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC, dated May 29, 2020.

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

Subparagraph (A) under Rule 2370(b)(11) (Delivery of Security Futures Risk Disclosure Statement) requires a member to deliver the current security futures risk disclosure statement to each customer at or prior to the time such customer’s account is approved for trading security futures.⁷ Thereafter, the member must distribute each new or revised security futures risk disclosure statement to each customer having an account approved for such trading or, in the alternative, not later than the time a confirmation of a transaction is delivered to each customer that enters into a security futures transaction. The Rule requires FINRA to advise members when a new or revised security futures risk disclosure statement is available.

The Statement is a uniform statement that was jointly developed by several self-regulatory organizations (“SROs”), including FINRA and the NFA, and approved by the SEC in

⁷ In general, the Security Futures Risk Disclosure Statement provides customers with disclosures regarding the characteristics and potential risks of investing in standardized security futures contracts traded on regulated U.S. exchanges.

2002.⁸ Since then, specified sections of the Statement have undergone updates,⁹ the most recent of which occurred in 2018, which incorporated all cumulative updates made since 2002.¹⁰ The 2018 Statement is currently posted on FINRA.org.¹¹

Proposed Updates to the Statement

A. Section 8.2 (Position Limits and Large Trader Reporting)

In general, security futures contracts that trade on U.S.-regulated exchanges are subject to position limits or position accountability rules, and reporting requirements for large open positions. Section 8.2 of the Statement describes, in general terms, these requirements by specifying the position limit thresholds, and reporting requirements for large open positions,¹² which accord with CFTC Regulation 41.25 (Additional conditions for trading for security futures

⁸ See Securities Exchange Act Release No. 46862 (November 20, 2002), 67 FR 70993 (November 27, 2002) (Order Approving File No. SR-NASD-2002-129); see also Securities Exchange Act Release No. 46613 (October 7, 2002), 67 FR 64176 (October 17, 2002) (Notice of Filing and Effectiveness of File No. SR-NFA-2002-05).

⁹ See Securities Exchange Act Release No. 62787 (August 27, 2010), 75 FR 53998 (September 2, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2010-045) (revising Section 8.1 of the Statement to indicate that price adjustments for ordinary dividends may be made for a specified class of security future contracts based on the rules of the exchange and the clearing organization); see also Securities Exchange Act Release No. 71981 (April 21, 2014), 79 FR 23034 (April 25, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-019) (revising Section 5.2 of the Statement to list a product with a physical delivery settlement cycle shorter than three business day, and to indicate the then normal clearance and settlement cycle for securities transactions).

¹⁰ See Securities Exchange Act Release No. 83407 (June 11, 2018), 83 FR 28045 (June 15, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-024) (updating Sections 5.2 and 6.1 of the Statement, respectively, to reflect that the normal clearance and settlement cycle for securities transactions is now two business days, and update the address for the Securities Investor Protection Corporation (“SIPC”)); see also Securities Exchange Act Release No. 83825 (August 10, 2018), 83 FR 40819 (August 16, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-028) (updating Section 6.1 of the Statement to change the reference to SIPC’s cash limit protection from \$100,000 to \$250,000).

products.), governing position limits and position accountability for security futures products, and Rule 17.02 (Form, manner and time of filing reports.), pertaining to CFTC Form 102 (Identification of “Special Accounts”).¹³ The CFTC has amended these requirements and for that reason, FINRA is proposing to update Section 8.2 to reflect the current terms of CFTC Regulation 41.25 and Rule 17.02(b)(2) that increase the default position limits, modify the criteria for setting a higher position limit and position accountability level, and adjust the time during which position limits must be in effect and the time by which firms must submit Form 102 to the CFTC and the exchange on which the reportable position exists.¹⁴

FINRA is proposing to update the second, third, and fourth paragraphs under Section 8.2 of the Statement to read as follows (proposed updates are marked):

¹¹ See FINRA’s Security Futures Topic Page, <https://www.finra.org/rules-guidance/key-topics/security-futures>.

¹² Section 8.2 provides in part: “Position limits are required for security futures contracts that overlie a security that has an average daily trading volume of 20 million shares or fewer. In the case of a security futures contract overlying a security index, position limits are required if any one of the securities in the index has an average daily trading volume of 20 million shares or fewer. Position limits also apply only to an expiring security futures contract during its last five trading days. A regulated exchange must establish position limits on security futures that are no greater than 13,500 (100 share) contracts, unless the underlying security meets certain volume and shares outstanding thresholds, in which case the limit may be increased to 22,500 (100 share) contracts. For security futures contracts overlying a security or securities with an average trading volume of more than 20 million shares, regulated exchanges may adopt position accountability rules. Under position accountability rules, a trader holding a position in a security futures contract that exceeds 22,500 contracts (or such lower limit established by an exchange) must agree to provide information regarding the position and consent to halt increasing that position if requested by the exchange.” With respect to reporting large open positions, Section 8.2 also indicates that “brokerage firms must submit identifying information on the account holding the reportable position on a form referred to as either an “Identification of Special Accounts Form” or a “Form 102”) to the CFTC and to the exchange on which the reportable position exists within three business days of which a reportable position is first established.”

¹³ 17 CFR 17.02(b)(2).

¹⁴ See supra note 4.

Position limits are required for security futures contracts [that overlie] on a security [that has an average daily trading volume of 20 million shares or fewer. In the case of a security futures contract overlying a security index, position limits are required if any one of the securities in the index has an average daily trading volume of 20 million shares or fewer.] Position limits also apply only to an expiring security futures contract during its last [five] three trading days. A regulated exchange must establish a default position limits on a security futures contract that [are] is no greater than [13,000] 25,000 [(100-share)] contracts (or the equivalent if the contract size is different than 100 shares), either net or on the same side of the market, unless the underlying security [meets certain volume and shares outstanding thresholds] exceeds 20 million shares of estimated deliverable supply, in which case the limit may be [increased to 22,500 (100 share) contracts] set at a level no greater than 12.5 percent of the estimated deliverable supply of the underlying security, either net or on the same side of the market.

For a security futures contract[s overlying] on a security [or securities] with [an average] a six-month total trading volume of more than [20 million] 2.5 billion shares and there are more than 40 million shares of estimated deliverable supply, a regulated exchange[s] may adopt a position accountability rule[s] in lieu of a

position limit, either net or on the same side of the market. Under position accountability rules, a trader holding a position in a security futures contract that exceeds [22,500] 25,000 100-share contracts (or [such lower limit established by an exchange] the equivalent if the contract size is different than 100 shares) or such lower level specified under the rules of the exchange, must agree to provide information regarding the position and consent to halt increasing that position if requested by the exchange.

Brokerage firms must also report large open positions held by one person (or by several persons acting together) to the CFTC as well as to the exchange on which the positions are held. The CFTC's reporting requirements are 1,000 contracts for security futures positions on individual equity securities and 200 contracts for positions on a narrow-based index. However, individual exchanges may require the reporting of large open positions at levels less than the levels required by the CFTC. In addition, brokerage firms must submit identifying information on the account holding the reportable position (on a form referred to as either an "Identification of Special Accounts Form" or a "Form 102") to the CFTC and to the exchange on which the reportable position exists [within three business days of] no later than the following business day when a reportable position is first established.

B. Section 2.7 (Trading Halts)

Section 2.7 of the Statement addresses the impact of a trading halt on the value of security futures contracts and states that in certain circumstances, exchanges are required by law to halt trading in security futures contracts. Currently, Section 2.7 states, in part, that “regulated exchanges are required to halt trading in all security futures contracts for a specified period of time when the Dow Jones Industrial Average (“DJIA”) experiences one-day declines of 10-, 20- and 30-percent.” The SEC has approved proposals by SROs, including FINRA, to shift the benchmark against which to assess serious market decline from the DJIA to the S&P 500, and reduce the market decline thresholds to seven-, 13- and 20-percent.¹⁵ FINRA is therefore proposing to update Section 2.7 of the Statement to reflect these changes by updating the fifth sentence of the first paragraph under Section 2.7 to read as follows (proposed updates are marked):

In addition, regulated exchanges are required to halt trading in all security futures contracts for a specified period of time when the [Dow Jones Industrial Average (“DJIA”)] S&P 500 Index experiences one-day declines of 10 seven-, 20 13- and 30 20- percent.

C. Introductory Section to the Statement

The Statement begins with a brief introductory section (“Introduction”), stating that the Statement discusses the characteristics and risks of standardized security futures contracts traded on regulated U.S. exchanges. The Introduction also describes the types of securities on which security futures can be based, providing, in part, that “[a]t present, regulated exchanges are

¹⁵ See supra note 5.

authorized to list futures contracts on individual equity securities registered under the Securities Exchange Act of 1934 (including common stock and certain exchange-traded funds and American Depositary Receipts), as well as narrow-based security indices. Futures on other types of securities and options on security futures contracts may be authorized in the future.” The SEC and CFTC adopted SEC Rule 6h-2¹⁶ and an amendment to CFTC Regulation 41.21,¹⁷ respectively, to permit security futures to be based on individual debt securities or narrow-based indexes composed of such securities.¹⁸ In recognition of this change, FINRA is proposing to update the second sentence of the first paragraph of the Introduction to include a reference to debt instruments so that it reads (proposed updates are marked):

At present, regulated exchanges are authorized to list futures contracts on individual equity securities registered under the Securities Exchange Act of 1934 (including common stock and certain exchange-traded funds and American Depositary Receipts), futures on certain debt instruments as well as narrow-based security indices.

D. Availability of Updated Statement on FINRA.org

Currently, the 2018 Statement and its corresponding 2018 Supplement are posted on FINRA’s website.¹⁹ The preceding updates to the Statement made in 2010 and 2014 are also

¹⁶ 17 CFR 240.6h-2.

¹⁷ 17 CFR 41.21.

¹⁸ See Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006).

¹⁹ See supra note 11.

posted on the website.²⁰ In accordance with existing guidance, a member could satisfy Rule 2370(b)(11)(A) by redistributing the entire Statement to its security futures customers or separately distributing each new supplement to those customers who have already received the Statement.²¹ FINRA reminds members that they may electronically transmit documents that they are required to furnish to customers under FINRA rules, including the 2020 Statement or 2020 Supplement, provided that members adhere to the standards contained in the SEC's May 1996 and October 1995 released on electronic delivery,²² and as discussed in Notice to Members 98-3. Members may also transmit the 2020 Statement or 2020 Supplement, as appropriate, to customers through the use of a hyperlink, provided that customers have consented to electronic delivery.²³

As noted above, the Statement is a uniform statement that was jointly developed by FINRA, the NFA, and several other securities and futures exchanges. FINRA is proposing to incorporate the updates proposed herein into the main body of the 2020 Statement and to publish it on the FINRA website.

To facilitate a member's compliance with Rule 2370(b)(11)(A) as articulated in guidance, FINRA is also proposing to encapsulate the proposed updates to the Statement into the 2020

²⁰ See supra note 11.

²¹ See Information Notice, September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement); see also Regulatory Notice 14-24 (May 2014) (stating, a member may separately distribute new supplements to such customers and that a member is not required to redistribute the entire Statement or earlier supplements).

²² See Securities Act Release No. 7288 (May 9, 1996), 61 FR 24644 (May 15, 1996) and Securities Act Release No. 7233 (October 6, 1995), 60 FR 53458 (October 13, 1995). See also Securities Act Release No. 7856 (April 28, 2000), 65 FR 25843 (May 4, 2000) (affirming the framework for electronic delivery established in the 1995 and 1996 releases).

²³ See supra note 22.

Supplement that would show the proposed updates to Sections 8.2 and 2.7, and the Introduction, as described above. The 2020 Supplement would appear on FINRA’s website as a separate document to continue to afford members with the flexibility to comply with the requirements of Rule 2370(b)(11)(A) by separately distributing the Supplement to customers who have already received the 2018 Statement.²⁴

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change in coordination with the parallel changes that the NFA has proposed to the Statement for its members.²⁵ FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 30 days following Commission notice of the filing of the proposed rule change for immediate effectiveness.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁶ 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

²⁴ FINRA’s Security Futures Topic Page includes an “Archive” in which the 2002 Security Futures Risk Disclosure Statement (with the August 2010 and April 2014 supplements appended), and the separate August 2010 Supplement and April 2014 Supplement currently sit. In an effort to streamline this topic page, FINRA is proposing to remove these older materials from the Archive on the basis that those updates are incorporated into the main body of the Statement. In their stead, FINRA is proposing to move the 2018 Statement and the 2018 Supplement to the “Archive” section of the Security Futures Topic Page.

²⁵ See supra note 6.

²⁶ 15 U.S.C. 78o-3(b)(6).

that updating the Statement to incorporate into the main body all updates discussed within the supplement will help to accurately inform customers of the characteristics and risks of security futures. The proposed updated Statement would also reflect the circumstances under which regulated exchanges are required to halt trading in all security futures contracts and set forth the position limit and accountability rules that currently apply to transactions in security futures.

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. While FINRA recognizes that there may be a burden associated with the distribution of the proposed updated Statement or supplement, FINRA believes that any such burden would be outweighed by the benefit to customers of accurately disclosing the characteristics and risks of security futures. FINRA also believes that any burden will be minimal because firms currently have an existing obligation to deliver each new or updated Statement or supplement to customers. Firms may electronically transmit documents that they are required to furnish to customers under FINRA rules, including the proposed updated Statement or supplement, provided firms adhere to the standards described above. Firms also may transmit the proposed updated Statement or supplement to customers through the use of a hyperlink, provided that customers have consented to electronic delivery.²⁷ Moreover, Rule 2370(b)(11) provides flexibility on when each updated Statement or supplement must be delivered after a customer's account is approved for trading security futures. Instead of having to automatically and immediately distribute an updated Statement or supplement to every customer having an account approved for trading security

²⁷ See Information Notice, September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement).

futures, a firm may distribute an updated Statement or supplement no later than the time a confirmation of a transaction is delivered to each customer who enters into a security futures transaction. Accordingly, firms would not be required to distribute the proposed updated Statement or supplement to customers who have accounts approved for trading security futures but do not engage in any new security futures transactions.

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

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 Act²⁸ and Rule 19b-4(f)(6) thereunder.²⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act³⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)³¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

³⁰ 17 CFR 240.19b-4(f)(6).

³¹ 17 CFR 240.19b-4(f)(6)(iii).

the 30-day operative delay so that FINRA may immediately implement the proposed change in coordination with the parallel changes that the NFA has proposed to the Statement for its members. Because the proposal merely updates the Statement with changes already approved by the CFTC, with respect to position limits on futures contracts, and the Commission, with respect to trading halts, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change as operative upon filing.³²

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 change 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. Please include File Number SR-FINRA-2020-025 on the subject line.

³² For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2020-025. 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. 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-2020-025 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.³³

³³ 17 CFR 200.30-3(a)(12).

Jill M. Peterson,

Assistant Secretary.

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