

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 31	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2018 - * 035	Amendment No. (req. for Amendments *)	
Filing by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)		
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). Proposed Rule Change to Amend CAB Rule 331 (Anti-Money Laundering Compliance Program) to Conform to FinCENs Final Rule on Customer Due Diligence Requirements for Financial Institutions					
Contact Information Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. First Name * Joseph Last Name * Savage Title * Vice President, OGC Regulatory Analysis E-mail * Joe.Savage@finra.org Telephone * (240) 386-4534 Fax (301) 216-3720					
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. (Title *) Date 09/20/2018 Senior Vice President and Deputy General Counsel By Patrice Gliniecki (Name *) Patrice Gliniecki, NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.					

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Capital Acquisition Broker (“CAB”) Rule 331 (Anti-Money Laundering Compliance Program) to reflect the Financial Crimes Enforcement Network’s (“FinCEN”) adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (“CDD Rule”). Specifically, the proposed amendments would conform CAB Rule 331 to the CDD Rule’s amendments to the minimum regulatory requirements for CABs’ anti-money laundering (“AML”) compliance programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence. This ongoing customer due diligence element for AML programs includes: (1) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

¹ 15 U.S.C. 78s(b)(1).

2. Procedures of the Self-Regulatory Organization

The Chief Legal Officer of FINRA authorized the filing of the proposed rule change with the SEC pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed changes will be no later than 30 days following publication of the Regulatory Notice announcing the proposed rule change.

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

(a) Purpose

1. Background

FINRA Capital Acquisition Broker Rules

On August 18, 2016, the SEC approved² a separate set of FINRA rules for firms that meet the definition of a “capital acquisition broker” and that elect to be governed under this rule set. CABs are member firms that engage in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring, and acting as placement agents for sales of unregistered securities to institutional investors under limited conditions. Member firms that elect to be governed under the CAB rule set are not permitted, among other things, to carry or maintain customer accounts, handle customers’ funds or securities, accept customers’ trading orders, or engage in proprietary trading or market making.

² See Securities Exchange Act Release No. 78617 (August 18, 2016), 81 FR 57948 (August 24, 2016) (SR-FINRA-2015-054) (Order Approving Rule Change as Modified by Amendment Nos. 1 and 2 To Adopt FINRA Capital Acquisition Broker Rules).

The CAB Rules became effective on April 14, 2017. In order to provide new CAB applicants with lead time to apply for FINRA membership and obtain the necessary qualifications and registrations, CAB Rules 101-125 became effective on January 3, 2017.³

FinCEN Customer Due Diligence Rule

The Bank Secrecy Act⁴ (“BSA”), among other things, requires financial institutions,⁵ including broker-dealers that have elected CAB status, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated “four pillars.”⁶ These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- the establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;

³ On September 29, 2017, the SEC approved CAB Rule 203 (Engaging in Distribution and Solicitation Activities with Government Entities) and CAB Rule 458 (Books and Records Requirements for Government Distribution and Solicitation Activities), which applied established “pay-to-play” and related recordkeeping rules to the activities of CABs. See Securities Exchange Act Release No. 81781 (September 29, 2017), 82 FR 46559 (October 5, 2017) (Order Approving File No. SR-FINRA-2017-027). CAB Rules 203 and 458 became effective on December 6, 2017.

⁴ 31 U.S.C. 5311 et seq.

⁵ See 31 U.S.C. 5312(a)(2) (defining “financial institution”).

⁶ 31 U.S.C. 5318(h)(1).

- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.⁷

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule⁸ to clarify and strengthen customer due diligence for covered financial institutions,⁹ including broker-dealers that have elected CAB status. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.¹⁰ As the first component is already required to be part of a CAB's AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the

⁷ 31 CFR 1023.210(b).

⁸ FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. See 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (August 4, 2014) (Notice of Proposed Rulemaking).

⁹ See 31 CFR 1010.230(f) (defining “covered financial institution”).

¹⁰ See CDD Rule Release at 29398.

identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.¹¹ The CDD Rule also addresses the third and fourth components, which FinCEN states “are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,” by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new “fifth pillar.” As a result of the CDD Rule, CABs should ensure that their AML programs are updated, as necessary, to comply with the CDD Rule.

Amendments to FINRA Rule 3310

On November 21, 2017, FINRA published Regulatory Notice 17-40 to provide guidance to non-CAB member firms regarding their obligations under FINRA Rule 3310 (Anti-Money Laundering Compliance Program) in light of the adoption of FinCEN’s CDD Rule. In addition, the Notice summarized the CDD Rule’s impact on non-CAB member firms, including the addition of the new fifth pillar required for such firms’ AML programs.

On April 20, 2018, FINRA filed for immediate effectiveness amendments to FINRA Rule 3310 to reflect FinCEN’s adoption of the CDD Rule.¹² On May 3, 2018,

¹¹ See 31 CFR 1010.230(d) (defining “beneficial owner”) and 31 CFR 1010.230(e) (defining “legal entity customer”).

¹² See Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (SR-FINRA-2018-016) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FINRA Rule 3310 to Conform FINRA Rule 3310 to FinCEN’s Final Rule on Customer Due Diligence Requirements for Financial Institutions).

FINRA published Regulatory Notice 18-19, which announced its amendments to FINRA Rule 3310.¹³

For the same reasons that FINRA amended FINRA Rule 3310 to reflect FinCEN's adoption of the CDD Rule, FINRA is filing for immediate effectiveness similar amendments to CAB Rule 331.

2. CAB Rule 331 and Amendment to Minimum Requirements for CABs' AML Programs

Section 352 of the USA PATRIOT Act of 2001¹⁴ amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, CAB Rule 331 requires each CAB to develop and implement a written AML program reasonably designed to achieve and monitor the CAB's compliance with the BSA and implementing regulations. Among other requirements, CAB Rule 331 requires that each CAB, at a minimum: (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide for independent testing for compliance, no less frequently than every two years, to be conducted by CAB personnel or a qualified outside party; (4) designate and identify to FINRA an individual or individuals (i.e., AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day

¹³ See Regulatory Notice 18-19 (May 3, 2018).

¹⁴ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

operations and internal controls of the AML program and provide prompt notification to FINRA of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of CAB Rule 331 and CABs must continue to comply with its requirements.¹⁵ However, FinCEN's CDD Rule amends the minimum regulatory requirements for CABs' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.¹⁶ Accordingly, FINRA is proposing to amend CAB Rule 331 to incorporate into the Rule this ongoing customer due diligence element, or "fifth pillar" required for AML programs. Thus, proposed CAB Rule 331(f) would provide that the AML programs required by this Rule shall, at a minimum, include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (1) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for broker-dealers, including CABs, to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their

¹⁵ In fact, FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and CAB Rule 331. See CDD Rule Release at 29421, n. 85.

¹⁶ See CDD Rule Release at 29420; 31 CFR §1023.210.

customers.¹⁷ The proposed rule change simply incorporates into CAB Rule 331 the ongoing customer due diligence element, or “fifth pillar,” required for AML programs by the CDD Rule to aid CABs in complying with the CDD Rule’s requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in CABs’ AML programs, the CDD Rule requires CABs to update their AML programs to explicitly incorporate them.

3. Summary of Fifth Pillar’s Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.¹⁸ To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.¹⁹ Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer’s income, net worth, domicile, or principal occupation or business, as well as, in the case of

¹⁷ See CDD Rule Release at 29419.

¹⁸ See id. at 29421.

¹⁹ See id. at 29422.

existing customers, the customer's history of activity.²⁰ The CDD Rule also does not prescribe a particular form of the customer risk profile.²¹ Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.²²

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).²³ Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.²⁴

Conducting Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report

²⁰ See id.

²¹ See id.

²² See id.

²³ See id.

²⁴ See id.

suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.²⁵ If, in the course of its normal monitoring for suspicious activity, the CAB detects information that is relevant to assessing the customer's risk profile, the CAB must update the customer information, including the information regarding the beneficial owners of legal entity customers.²⁶ However, there is no expectation that the CAB update customer information, including beneficial ownership information, on an ongoing or continuous basis.²⁷

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed changes will be no later than 30 days following publication of the Regulatory Notice announcing the proposed rule change.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁸ 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 the proposed rule change will aid CABs in complying with the

²⁵ See id. at 29402.

²⁶ See id. at 29420-21.

²⁷ See id.

²⁸ 15 U.S.C. 78o-3(b)(6).

CDD Rule's requirement that CABs' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into CAB Rule 331.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply incorporates into CAB Rule 331 the ongoing customer due diligence element, or "fifth pillar," required for AML programs by the CDD Rule. The CDD Rule required broker-dealers, including CABs, to update their AML programs to explicitly incorporate them by May 11, 2018. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Accordingly, FINRA is not imposing any additional direct or indirect burdens on CABs or their clients through this proposal.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act²⁹ and paragraph (f)(6) of Rule 19b-4 thereunder,³⁰ in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing or such shorter time as the Commission may designate.

In accordance with Rule 19b-4(f)(6),³¹ FINRA submitted 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, or such shorter time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Act.³²

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

²⁹ 15 U.S.C. 78s(b)(3).

³⁰ 17 CFR 240.19b-4(f)(6).

³¹ 17 CFR 240.19b-4(f)(6).

³² 17 CFR 240.19b-4(f)(6)(iii).

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2018-035)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend CAB Rule 331 (Anti-Money Laundering Compliance Program) to Conform to FinCEN’s Final Rule on Customer Due Diligence Requirements for Financial Institutions

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 , 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 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 Capital Acquisition Broker (“CAB”) Rule 331 (Anti-Money Laundering Compliance Program) to reflect the Financial Crimes Enforcement Network’s (“FinCEN”) adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (“CDD Rule”). Specifically, the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

amendments would conform CAB Rule 331 to the CDD Rule's amendments to the minimum regulatory requirements for CABs' anti-money laundering ("AML") compliance programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence. This ongoing customer due diligence element for AML programs includes: (1) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

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

(a). Background

FINRA Capital Acquisition Broker Rules

On August 18, 2016, the SEC approved⁴ a separate set of FINRA rules for firms that meet the definition of a “capital acquisition broker” and that elect to be governed under this rule set. CABs are member firms that engage in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring, and acting as placement agents for sales of unregistered securities to institutional investors under limited conditions. Member firms that elect to be governed under the CAB rule set are not permitted, among other things, to carry or maintain customer accounts, handle customers’ funds or securities, accept customers’ trading orders, or engage in proprietary trading or market making.

The CAB Rules became effective on April 14, 2017. In order to provide new CAB applicants with lead time to apply for FINRA membership and obtain the necessary qualifications and registrations, CAB Rules 101-125 became effective on January 3, 2017.⁵

⁴ See Securities Exchange Act Release No. 78617 (August 18, 2016), 81 FR 57948 (August 24, 2016) (SR-FINRA-2015-054) (Order Approving Rule Change as Modified by Amendment Nos. 1 and 2 To Adopt FINRA Capital Acquisition Broker Rules).

⁵ On September 29, 2017, the SEC approved CAB Rule 203 (Engaging in Distribution and Solicitation Activities with Government Entities) and CAB Rule 458 (Books and Records Requirements for Government Distribution and Solicitation Activities), which applied established “pay-to-play” and related recordkeeping rules to the activities of CABs. See Securities Exchange Act

FinCEN Customer Due Diligence Rule

The Bank Secrecy Act⁶ (“BSA”), among other things, requires financial institutions,⁷ including broker-dealers that have elected CAB status, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated “four pillars.”⁸ These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- the establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.⁹

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD

Release No. 81781 (September 29, 2017), 82 FR 46559 (October 5, 2017) (Order Approving File No. SR-FINRA-2017-027). CAB Rules 203 and 458 became effective on December 6, 2017.

⁶ 31 U.S.C. 5311 et seq.

⁷ See 31 U.S.C. 5312(a)(2) (defining “financial institution”).

⁸ 31 U.S.C. 5318(h)(1).

⁹ 31 CFR 1023.210(b).

Rule¹⁰ to clarify and strengthen customer due diligence for covered financial institutions,¹¹ including broker-dealers that have elected CAB status. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.¹² As the first component is already required to be part of a CAB's AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.¹³ The CDD Rule also addresses the third and fourth components, which FinCEN states “are already implicitly required for covered financial institutions to comply with their suspicious activity reporting

¹⁰ FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. See 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (August 4, 2014) (Notice of Proposed Rulemaking).

¹¹ See 31 CFR 1010.230(f) (defining “covered financial institution”).

¹² See CDD Rule Release at 29398.

¹³ See 31 CFR 1010.230(d) (defining “beneficial owner”) and 31 CFR 1010.230(e) (defining “legal entity customer”).

requirements,” by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new “fifth pillar.” As a result of the CDD Rule, CABs should ensure that their AML programs are updated, as necessary, to comply with the CDD Rule.

Amendments to FINRA Rule 3310

On November 21, 2017, FINRA published Regulatory Notice 17-40 to provide guidance to non-CAB member firms regarding their obligations under FINRA Rule 3310 (Anti-Money Laundering Compliance Program) in light of the adoption of FinCEN’s CDD Rule. In addition, the Notice summarized the CDD Rule’s impact on non-CAB member firms, including the addition of the new fifth pillar required for such firms’ AML programs.

On April 20, 2018, FINRA filed for immediate effectiveness amendments to FINRA Rule 3310 to reflect FinCEN’s adoption of the CDD Rule.¹⁴ On May 3, 2018, FINRA published Regulatory Notice 18-19, which announced its amendments to FINRA Rule 3310.¹⁵

For the same reasons that FINRA amended FINRA Rule 3310 to reflect FinCEN’s adoption of the CDD Rule, FINRA is filing for immediate effectiveness similar amendments to CAB Rule 331.

¹⁴ See Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (SR-FINRA-2018-016) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FINRA Rule 3310 to Conform FINRA Rule 3310 to FinCEN’s Final Rule on Customer Due Diligence Requirements for Financial Institutions).

¹⁵ See Regulatory Notice 18-19 (May 3, 2018).

b. CAB Rule 331 and Amendment to Minimum Requirements for CABs' AML Programs

Section 352 of the USA PATRIOT Act of 2001¹⁶ amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, CAB Rule 331 requires each CAB to develop and implement a written AML program reasonably designed to achieve and monitor the CAB's compliance with the BSA and implementing regulations. Among other requirements, CAB Rule 331 requires that each CAB, at a minimum: (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide for independent testing for compliance, no less frequently than every two years, to be conducted by CAB personnel or a qualified outside party; (4) designate and identify to FINRA an individual or individuals (i.e., AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to FINRA of any changes to the designation; and (5) provide ongoing training for appropriate persons.

¹⁶ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

FinCEN's CDD Rule does not change the requirements of CAB Rule 331 and CABs must continue to comply with its requirements.¹⁷ However, FinCEN's CDD Rule amends the minimum regulatory requirements for CABs' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.¹⁸ Accordingly, FINRA is proposing to amend CAB Rule 331 to incorporate into the Rule this ongoing customer due diligence element, or "fifth pillar" required for AML programs. Thus, proposed CAB Rule 331(f) would provide that the AML programs required by this Rule shall, at a minimum, include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (1) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for broker-dealers, including CABs, to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.¹⁹ The proposed rule change simply incorporates into CAB Rule 331 the ongoing customer due diligence element, or "fifth pillar," required for AML programs by

¹⁷ In fact, FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and CAB Rule 331. See CDD Rule Release at 29421, n. 85.

¹⁸ See CDD Rule Release at 29420; 31 CFR §1023.210.

¹⁹ See CDD Rule Release at 29419.

the CDD Rule to aid CABs in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in CABs' AML programs, the CDD Rule requires CABs to update their AML programs to explicitly incorporate them.

c. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.²⁰ To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.²¹ Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.²² The CDD Rule also does not prescribe a particular form of the customer risk profile.²³ Instead, the CDD Rule states

²⁰ See id. at 29421.

²¹ See id. at 29422.

²² See id.

²³ See id.

that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.²⁴

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).²⁵ Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.²⁶

Conducting Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.²⁷ If, in the

²⁴ See id.

²⁵ See id.

²⁶ See id.

²⁷ See id. at 29402.

course of its normal monitoring for suspicious activity, the CAB detects information that is relevant to assessing the customer's risk profile, the CAB must update the customer information, including the information regarding the beneficial owners of legal entity customers.²⁸ However, there is no expectation that the CAB update customer information, including beneficial ownership information, on an ongoing or continuous basis.²⁹

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed changes will be no later than 30 days following publication of the Regulatory Notice announcing the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³⁰ 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 the proposed rule change will aid CABs in complying with the CDD Rule's requirement that CABs' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into CAB Rule 331.

²⁸ See id. at 29420-21.

²⁹ See id.

³⁰ 15 U.S.C. 78o-3(b)(6).

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply incorporates into CAB Rule 331 the ongoing customer due diligence element, or "fifth pillar," required for AML programs by the CDD Rule. The CDD Rule required broker-dealers, including CABs, to update their AML programs to explicitly incorporate them by May 11, 2018. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Accordingly, FINRA is not imposing any additional direct or indirect burdens on CABs or their clients through this proposal.

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 Act³¹ and Rule 19b-4(f)(6) thereunder.³²

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f)(6).

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. Please include File Number SR-FINRA-2018-035 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2018-035. 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-2018-035 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

Robert W. Errett
Deputy Secretary

³³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

CAPITAL ACQUISITION BROKER RULES

* * * * *

300. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

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331. Anti-Money Laundering Compliance Program

Each capital acquisition broker shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor its compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each capital acquisition broker's anti-money laundering program must be approved, in writing, by a member of senior management. The anti-money laundering programs required by this Rule must, at a minimum,

(a) through (c) No change.

(d) Designate and identify to FINRA (by name, title, mailing address, e-mail address, telephone number, and facsimile number) an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program (such individual or individuals must be an associated person of the capital acquisition broker) and provide prompt notification to FINRA regarding any change in such designation(s); [and]

(e) Provide ongoing training for appropriate personnel; [.] and

(f) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

For purposes of paragraph (f)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in 31 CFR 1010.230(e)).

••• Supplementary Material: -----

.01 through .02 No change.

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