timestamp granularity for a period of five years.

Accordingly, *it is hereby ordered,* pursuant to Section 36(a)(1) of the Exchange Act,[16] and Rule 608(e) of the Exchange Act [17] and with respect to the proposed approaches specifically described above, that the Participants are granted a five-year exemption from the timestamp granularity requirement set forth in Section 6.8(b) and Section 3 of Appendix D of the CAT NMS Plan of the CAT NMS Plan, subject to the conditions described above.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–07789 Filed 4–13–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88600; File No. SR–FINRA–2020–011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Address Brokers With a Significant History of Misconduct

April 8, 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 April 3, 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, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to (1) amend the FINRA Rule 9200 Series (Disciplinary Proceedings) and the 9300 Series (Review of Disciplinary Proceeding by National Adjudicatory Council and FINRA Board; Application for SEC Review) to allow a Hearing Officer to impose conditions or restrictions on the activities of a respondent member firm or respondent broker, and require a respondent broker's member firm to adopt heightened supervisory procedures for such broker, when a disciplinary matter is appealed to the National Adjudicatory Council (''NAC'') or called for NAC review; (2) amend the FINRA Rule 9520 Series (Eligibility Proceedings) to require member firms to adopt heightened supervisory procedures for statutorily disqualified brokers during the period a statutory disqualification eligibility request is under review by FINRA; (3) amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to allow the disclosure through FINRA BrokerCheck of the status of a member firm as a ''taping firm'' under FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms); and (4) amend the FINRA Rule 1000 Series (Member Application and Associated Person Registration) to require a member firm to submit a written request to FINRA's Department of Member Regulation (''Member Regulation''), through the Membership Application Group (''MAP Group''), seeking a materiality consultation and approval of a continuing membership application, if required, when a natural person that has, in the prior five years, one or more ''final criminal matters'' or two or more ''specified risk events'' [3] seeks to become an owner, control person, principal or registered person of the member firm.

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

Overview

FINRA uses a combination of tools to reduce the risk of harm to investors from member firms and the brokers they hire that have a history of misconduct. These tools include assessments of applications filed by member firms to retain or employ an individual subject to a statutory disqualification, reviews of membership and continuing membership applications (''CMAs''), disclosure of brokers' regulatory backgrounds, supervision requirements, focused examinations, risk monitoring and disciplinary actions. These tools, among others, have been useful in identifying and addressing a range of misconduct and serve to further the Exchange Act goals, reflected in FINRA's mission, of investor protection and market integrity.

In addition, FINRA Rule 3110 (Supervision) requires member firms to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and FINRA rules. The rule also requires member firms to establish, maintain and enforce written procedures to supervise the types of business in which they engage and the activities of their associated persons that are reasonably designed to achieve compliance with applicable securities laws and FINRA rules.[4]

Despite these requirements and FINRA's ongoing efforts to strengthen protections for investors and the markets through its oversight of member firms and the brokers they employ, persistent compliance issues continue to arise in some member firms. Recent studies, for example, find that some firms persistently employ brokers who engage in misconduct, which results in higher levels of misconduct by these firms. These studies also provide evidence that past disciplinary and other regulatory events associated with a member firm or individual can be predictive of similar future events, such as repeated disciplinary actions, arbitrations and complaints.[5] This risk

[16] 15 U.S.C. 78mm(a)(1).

[17] 17 CFR 242.608(e).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As explained more below, the proposed definitions of ''final criminal matter'' and ''specified risk event'' generally include final, adjudicated disclosure events disclosed on a person's or firm's Uniform Registration Forms. For purposes of the proposed rule change, Uniform Registration Forms for firms and brokers refer to, and would be defined as, the Uniform Application for Broker-Dealer Registration (Form BD), the Uniform Application for Securities Industry Registration or Transfer (Form U4), the Uniform Termination Notice for Securities Industry Registration (Form U5) and the Uniform Disciplinary Action Reporting Form (Form U6), as such may be amended or any successor(s) thereto.

[4] *See* Rule 3110(a) and (b).

[5] For example, in 2015 FINRA's Office of the Chief Economist (OCE) published a study that examined the predictability of disciplinary and other disclosure events associated with investor harm based on past similar events. The OCE study showed that past disclosure events, including regulatory actions, customer arbitrations and

Continued

cannot always be adequately addressed by FINRA's existing rules and programs.

Brokers and member firms with a history of misconduct can pose a particular challenge for FINRA's existing examination and enforcement programs. For example, FINRA examinations of member firms can identify compliance failures—or imminent failures—and prescribe remedies to be taken, but examiners are not empowered to require a firm to change or limit its business operations in a particular manner. While these constraints on the examination process protect firms from potentially arbitrary or overly onerous examination findings, a firm or individual with a history of misconduct can take advantage of these limits to continue ongoing activities that harm or pose risk of harm to investors until they result in an enforcement action.

FINRA disciplinary actions, in turn, can be brought only after a violation—and any resulting customer harm—may have already occurred. In addition, disciplinary proceedings can take significant time to develop, prosecute and conclude, during which time the respondent in a disciplinary proceeding is able to continue misconduct, perpetuating significant risks of additional harm to customers and investors. Litigated enforcement actions brought by FINRA involve a hearing and often multiple rounds of appeals, thereby effectively forestalling the imposition of disciplinary sanctions—and their potential deterrent effect—for an extended period. For example, a FINRA enforcement proceeding could involve a hearing before a Hearing Panel, numerous motions, an appeal to the NAC, and further appeals to the SEC and federal courts of appeals. Moreover, even when a FINRA Hearing Panel or Hearing Officer imposes a significant sanction, the sanction is stayed during appeal to the NAC, many sanctions are automatically stayed on appeal to the SEC, and they potentially can be stayed during appeal to the courts. When all appeals are exhausted, the respondent's FINRA registration may have terminated, limiting FINRA's jurisdiction and eliminating the leverage that FINRA has to incent the respondent to comply with the sanction, including making restitution to customers.

Similarly, FINRA's eligibility proceedings are sometimes not available or sufficient to address the risks posed by brokers with a significant history of past misconduct. Federal law and regulations define the types of misconduct that presumptively disqualify a broker from associating with a member firm and also govern the standards and procedures FINRA must follow when a firm seeks to associate or continue associating with a broker subject to a statutory disqualification. These laws and regulations limit who FINRA may subject to an eligibility proceeding and affect how FINRA may exercise its authority in those proceedings.

FINRA's membership proceedings also do not always protect against the risks posed when a firm hires brokers with a significant history of misconduct. For firms eligible for the safe harbor for business expansions in IM–1011–1 (Safe Harbor for Business Expansions), there are a defined set of expansions (including, among other things, increases in the number of associated persons involved in sales) that are presumed not to be a material change in business operations and therefore do not require the firm to file a CMA.

Thus, notwithstanding the existing protections afforded by the federal securities laws and FINRA rules, the risk of potential customer harm may persist where a firm or broker has a significant history of past misconduct.

FINRA is taking steps to strengthen its tools to respond to brokers with a significant history of misconduct and the firms that employ them, several of which are described below. In addition, the proposed rule change, as explained further below, would create several additional protections to address this risk.

Additional Steps Undertaken by FINRA

As part of this initiative, FINRA has undertaken the following:

➢ Published *Regulatory Notice* 18–15 (Heightened Supervision), which reiterates the existing obligation of member firms to implement for such individuals tailored heightened supervisory procedures under Rule 3110;

➢ Published *Regulatory Notice* 18–17 (FINRA Revises the Sanction Guidelines), which announced revisions to the FINRA Sanction Guidelines;

➢ Raised fees for statutory disqualification applications;[6] and

➢ Revised the qualification examination waiver guidelines to permit FINRA to more broadly consider past misconduct when considering examination waiver requests.

In addition, to further address issues created by member firms that have a significant history of misconduct, FINRA has issued a *Regulatory Notice* seeking comment on proposed new Rule 4111 (Restricted Firm Obligations).[7]

Proposed Amendments to the FINRA Rule 9200 Series and FINRA Rule 9300 Series To Enhance Investor Protection During the Pendency of an Appeal or Call-for-Review Proceeding

FINRA is proposing amendments to the Rule 9200 Series (Disciplinary Proceedings) and Rule 9300 Series (Review of Disciplinary Proceeding by National Adjudicatory Council and FINRA Board; Application for SEC Review) to bolster investor protection during the pendency of an appeal from, or a NAC review of, a Hearing Panel or Hearing Officer disciplinary decision, by empowering Hearing Officers to impose conditions or restrictions on disciplined respondents and requiring firms to adopt heightened supervision plans concerning disciplined individual respondents. The proposed rule also would establish a process for an expedited review by the Review Subcommittee of the NAC of any conditions or restrictions imposed.

Currently, the Rule 9200 and Rule 9300 Series permit FINRA to bring disciplinary actions against member firms, associated persons of member firms or persons within FINRA's jurisdiction for alleged violations of FINRA rules, SEC regulations or federal securities laws. Following the filing of a complaint, FINRA's Chief Hearing Officer will assign a Hearing Officer to preside over the disciplinary proceeding and appoint a Hearing Panel, or an Extended Hearing Panel if applicable,[8] to conduct a hearing and issue a written decision. For each case, the Hearing Panel or, in the case of default

litigations of brokers, have significant power to predict future investor harm. *See* Hammad Qureshi & Jonathan Sokobin, *Do Investors Have Valuable Information About Brokers?* (FINRA Office of the Chief Economist Working Paper, Aug. 2015). A subsequent academic research paper presented evidence that suggests a higher rate of new disciplinary and other disclosure events is highly correlated with past disciplinary and other disclosure events, as far back as nine years prior. *See* Mark Egan, Gregor Matvos, & Amit Seru, *The Market for Financial Adviser Misconduct,* J. Pol. Econ. 127, no. 1 (Feb. 2019): 233–295.

[6] *See* Securities Exchange Act Release No. 83181 (May 7, 2018), 83 FR 22107 (May 11, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2018–018).

[7] *See Regulatory Notice* 19–17 (May 2019).

[8] References to ''Hearing Panel'' will refer to both a Hearing Panel and an Extended Hearing Panel collectively, unless otherwise noted. A Hearing Panel consists of a FINRA Hearing Officer and two panelists, drawn primarily from a pool of current and former securities industry members of FINRA's District and Regional Committees, as well as its Market Regulation Committee, former members of FINRA's NAC and former FINRA Directors or Governors.

decisions, the Hearing Officer will issue a written decision that makes findings and, if violations occurred, imposes sanctions. Sanctions can include, among other things, fines, suspensions, bars and orders to pay restitution.

Under FINRA's disciplinary procedures, any party can appeal a Hearing Panel or Hearing Officer decision to the NAC. In addition, any member of the NAC or the NAC's Review Subcommittee, or the General Counsel in the case of default decisions, may on their own initiate a review of a decision. On appeal or review, the NAC will determine if a Hearing Panel's or a Hearing Officer's findings were factually supported and legally correct. The NAC also reviews any sanctions imposed and considers the FINRA *Sanction Guidelines* when doing so. The NAC prepares a proposed written decision. If the FINRA Board of Governors does not call the case for review, the NAC's decision becomes final and constitutes the final disciplinary action of FINRA, unless the NAC remands the proceeding to the Hearing Officer or Hearing Panel. If the FINRA Board of Governors calls the case for review, the FINRA Board of Governors' decision constitutes the final disciplinary action of FINRA, unless the Board of Governors remands the proceeding to the NAC. A respondent in a FINRA disciplinary proceeding may appeal a final FINRA disciplinary action to the SEC, and further to a United States federal court of appeals.

When a Hearing Panel or Hearing Officer decision is on appeal or review before the NAC, any sanctions imposed by the Hearing Panel or Hearing Officer decision, including bars and expulsions, are automatically stayed and not enforced against the respondent during the pendency of the appeal or review proceeding.[9] In turn, the filing of an application for SEC review stays the effectiveness of any sanction, other than a bar or an expulsion, imposed in a decision constituting a final FINRA disciplinary action.[10]

Proposed FINRA Rule 9285 (Interim Orders and Mandatory Heightened Supervision While on Appeal or Discretionary Review) would establish additional investor protections when a Hearing Panel or Hearing Officer decision that makes findings that a respondent violated a statute or rule provision is appealed to the NAC or called for NAC review.

Proposed Rule 9285(a) would provide that the Hearing Officer that participated in the underlying disciplinary proceeding may impose any conditions or restrictions on the activities of a respondent during the appeal as the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm. In light of comments received in response to *Regulatory Notice* 18–16, FINRA has modified the proposal to make the imposition of possible conditions and restrictions a separate, second step after a finding of a violation by a Hearing Panel or Hearing Officer, and to provide greater clarity on how the process would operate.

Unless otherwise ordered by a Hearing Officer, proposed Rule 9285(a)(1) would allow FINRA's Department of Enforcement (''Enforcement''), within ten days after service of a notice of appeal from, or the notice of a call for NAC review of, a disciplinary decision of a Hearing Officer or Hearing Panel, to file a motion for the imposition of conditions or restrictions on the activities of a respondent that are reasonably necessary for the purpose of preventing customer harm.[11] Proposed Rule 9285(a)(1) also would provide expressly that the Hearing Officer that participated in the underlying disciplinary proceeding would have jurisdiction to rule on a motion seeking conditions or restrictions, notwithstanding the appeal or call for NAC review. FINRA believes that the Hearing Officer's knowledge about the factual background and the violations, gained through presiding over the disciplinary proceeding, would make the Hearing Officer well qualified to evaluate the potential for customer harm and craft, in the first instance and in an expeditious manner, tailored conditions and restrictions to minimize that potential harm. In a change from the proposal in *Regulatory Notice* 18–16, the proposed rule would give the Hearing Officer who participated in the underlying proceeding (instead of the Hearing Panel) the authority to impose conditions or restrictions that are reasonably necessary for the purpose of preventing customer harm, a change that FINRA believes will enable orders imposing conditions or restrictions to be imposed more expeditiously.

Proposed Rule 9285(a)(2) through (a)(5), along with proposed Rule 9285(c), would establish the briefing, timing and other procedural requirements relating to the imposition of conditions or restrictions. The proposed rule would permit Enforcement to file a motion seeking the imposition of conditions or restrictions that are reasonably necessary for the purpose of preventing customer harm, and the motion must specify the conditions and restrictions that are sought to be imposed and explain why they are necessary. A respondent would have the right to file an opposition or other response to the motion within ten days after service of the motion, unless otherwise ordered by the Hearing Officer, and must explain why no conditions or restrictions should be imposed or specify alternative conditions and restrictions that are sought to be imposed and explain why they are reasonably necessary for the purpose of preventing customer harm. Enforcement would have no automatic right to file a reply. The Hearing Officer would decide the motion on the papers and without oral argument, unless an oral argument is specifically ordered. In addition, the Hearing Officer would be required to issue a written order ruling upon the motion in an expeditious manner and no later than 20 days after any opposition or permitted reply is filed. In an enhancement from the proposal in *Regulatory Notice* 18–16, proposed Rule 9285(a)(5) also would require that the Office of Hearing Officers provide a copy of the order to each FINRA member with which the respondent is associated.

If the Hearing Officer grants a motion for conditions or restrictions, its order should describe the activities that the respondent shall refrain from taking and any conditions imposed. The Hearing Officer would be guided by the limiting principle—set forth in proposed Rule 9285(a)(5)—that the Hearing Officer shall have the authority to impose any conditions or restrictions that the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm. As FINRA explained in *Regulatory Notice* 18–16, the conditions and restrictions imposed should target the misconduct demonstrated in the disciplinary proceeding and be tailored to the specific risks posed by the member firm or broker. Conditions or restrictions could include, for example, prohibiting a member firm or broker from offering private placements in cases of misrepresentations and omissions made to customers, or

[9] *See* FINRA Rules 9311(b), 9312(b). In contrast, an appeal to the NAC or a call for NAC review does not stay a decision, or that part of a decision, that imposes a permanent cease and desist order. *See* FINRA Rules 9311(b), 9312(b).

[10] *See* FINRA Rule 9370(a).

[11] *See* Rule 9311(a) (generally allowing a party to file a notice of appeal within 25 days after service of a decision issued pursuant to Rule 9268 or Rule 9269) and Rule 9312 (generally allowing a call for review within 45 days after the date of service of a decision issued pursuant to Rule 9268 and within 25 days after the date of service of a default decision issued pursuant to Rule 9269).

prohibiting penny stock liquidations in cases involving violations of the penny stock rules. A condition could also include posting a bond to cover harm to customers before the sanction imposed becomes final or precluding a broker from acting in a specified capacity. FINRA believes authorizing Hearing Officers to impose conditions or restrictions during the period an appeal or review proceeding is pending would allow FINRA to target the demonstrated bad conduct of a respondent during the pendency of the appeal or review and add an interim layer of investor protection while the disciplinary proceeding remains pending.[12]

Proposed Rule 9285(b), along with proposed Rule 9285(c), would establish an expedited process for the review of a Hearing Officer's order imposing conditions or restrictions. Specifically, proposed Rule 9285(b)(1) would permit a respondent that is subject to a Hearing Officer order imposing conditions or restrictions to file, within ten days after service of that order, a motion with the Review Subcommittee to modify or remove any or all of the conditions or restrictions. Proposed Rule 9285(b)(2) would provide, among other things, that the respondent has the burden to show that the conditions or restrictions are not reasonably necessary for the purpose of preventing customer harm.[13]

Proposed Rule 9285(b)(3) would give Enforcement five days from service of the respondent's motion to file an opposition or other response, unless otherwise ordered by the Review Subcommittee. Proposed Rule 9285(b)(4) would provide that the respondent may not file a reply. Proposed Rule 9285(b)(5) would provide that the NAC's Review Subcommittee would decide the motion based on the papers and without oral argument, unless an oral argument is specifically ordered by the Review Subcommittee, and make that decision in an expeditious manner and no later than 30 days after the filing of the opposition. The rule would provide that the Review Subcommittee could approve, modify or remove any and all of the conditions or restrictions. It also would require that FINRA's Office of General Counsel provide a copy of the Review Subcommittee's order to each FINRA member with which the respondent is associated. Proposed Rule 9285(b)(6) would provide that the filing of a motion pursuant to Rule 9285(b) would stay the effectiveness of the conditions and restrictions ordered by the Hearing Officer until the Review Subcommittee rules on the motion.

Proposed Rule 9285(d) would provide that conditions or restrictions imposed by a Hearing Officer that are not subject to a stay or imposed by the Review Subcommittee shall remain in effect until FINRA's final decision takes effect. Thus, the conditions or restrictions would remain in effect until there is a final FINRA disciplinary action and all appeals are exhausted.

The remainder of proposed Rule 9285 sets requirements for member firms, during an appeal or NAC review proceeding, to establish mandatory heightened supervision plans for disciplined respondents. Specifically, when a Hearing Panel or Hearing Officer disciplinary decision finding that a respondent violated a statute or rule provision is appealed or called for NAC review, proposed Rule 9285(e) would require any member with which the respondent is associated to adopt a written plan of heightened supervision of the respondent. The plan of heightened supervision would be required to comply with FINRA Rule 3110,[14] be reasonably designed and tailored to include specific supervisory policies and procedures that address the violations found by the Hearing Panel or Hearing Officer, and be reasonably designed to prevent or detect a reoccurrence of those violations. The plan of heightened supervision would be required to, at a minimum, designate an appropriately registered principal responsible for carrying out the plan of heightened supervision. Proposed Rule 9285(d) also would require that the plan of heightened supervision be signed by the designated principal and include an acknowledgement that the principal is responsible for implementing and maintaining the plan. The plan of heightened supervision would be required to remain in place until FINRA's final decision takes effect. Thus, the plan of heightened supervision would be required to remain in place until there is a final FINRA disciplinary action and all appeals are exhausted.[15]

Proposed Rule 9285(d) would require the member to file the written plan of heightened supervision with FINRA's Office of General Counsel and serve a copy on Enforcement and the respondent, within ten days of any party filing an appeal from the Hearing Panel's or Hearing Officer's decision or of the case being called for NAC review. Similarly, if the respondent becomes associated with another member firm while the Hearing Panel's or Hearing Officer's decision is on appeal to, or review before, the NAC, that firm would be required, within ten days of the respondent becoming associated with it, to file a copy of a plan of heightened supervision with FINRA's Office of General Counsel and serve a copy on Enforcement and the respondent.

In a change from *Regulatory Notice* 18–16, FINRA has modified the heightened supervision plan requirements to account for the possibility that a firm could be required pursuant to proposed Rule 9285(e) to adopt a mandatory heightened supervision plan before any conditions or restrictions imposed pursuant to proposed Rule 9285 take effect. Proposed Rule 9285(e)(1) would require that a member that has adopted a written plan of heightened supervision for a respondent would be required to file and serve an amended plan that takes into account any conditions or restrictions imposed pursuant to proposed Rule 9285, within ten days of the conditions or restrictions becoming effective.

Proposed Rule 9285 would apply to disciplinary proceedings initiated on or

[12] The examples of conditions and restrictions set forth above are intended to provide guidance concerning the kinds of conditions and restrictions that could be imposed. FINRA expects that requiring Enforcement to file a motion specifying the conditions or restrictions sought also will help focus adjudicators on options that are available, and allow for the flexibility needed to address the risk posed by different factual scenarios. If helpful to adjudicators and parties, FINRA also would publish additional guidance on the kinds of restrictions or conditions that could be imposed.

[13] In *Regulatory Notice* 18–16, FINRA originally proposed that the respondent would also be required to demonstrate that Hearing Officer ''committed an error by ordering the conditions or restrictions imposed.'' FINRA believes that it is more appropriate for the burden in proposed Rule 9285(b)(2) to mirror what Enforcement must show when seeking conditions or restrictions and the Hearing Officer's authority to impose conditions and restrictions.

Notwithstanding that FINRA no longer proposes including the ''committed an error'' standard in the proposed rule, FINRA intends that the Review Subcommittee would essentially conduct a de novo review when considering a respondent's motion to modify or remove conditions or restrictions. An exception would be for a Hearing Officer's credibility determinations, which are entitled to considerable weight and deference, and can be overturned only where the record contains substantial evidence for doing so.

[14] Rule 3110 requires member firms to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and FINRA rules. *See also Regulatory Notice* 18–15 (Guidance on Implementing Effective Heightened Supervisory Procedures for Associated Persons with a History of Misconduct), at p.2 & n.2 (April 2018).

[15] Although proposed Rule 9285(d) would not require heightened supervision plans after FINRA's final decision takes effect, the supervisory obligations of member firms regarding associated persons with a history of past misconduct would continue to apply. *See Regulatory Notice* 18–15 (April 2018).

after the effective date of the proposed rule.

Along with proposed Rule 9285, FINRA is proposing corresponding amendments to five existing rules: FINRA Rules 9235 (Hearing Officer Authority), 9311 (Appeal by Any Party; Cross-Appeal), 9312 (Review Proceeding Initiated by Adjudicatory Council), 9321 (Transmission of Record), and 9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders).

The proposed amendments to Rule 9235 would provide that the Hearing Officer has the authority to rule on a motion pursuant to Rule 9285 for conditions or restrictions.

The proposed amendments to Rules 9311 and 9312 would ensure that the stay provisions in those rules do not affect a motion for conditions or restrictions.[16] Currently, Rule 9311(b) provides, in pertinent part, that an appeal to the NAC from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the NAC issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the FINRA Board, until a decision is issued pursuant to Rule 9351. Rule 9312(b) contains similar stay provisions for decisions that are called for review. Rules 9311(b) and 9312(b) would be amended to expressly state that, notwithstanding the stay of sanctions under Rules 9311 and 9312, the Hearing Officer may impose such conditions and restrictions on the activities of a respondent as the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm, in accordance in proposed Rule 9285(a), and that the Review Subcommittee shall consider any motion filed pursuant to Rule 9285(b) to modify or remove any or all of the conditions or restrictions.

Other proposed amendments to Rule 9311 and 9312 would ensure that a member firm is notified of events that would require it to adopt a written plan of heightened supervision pursuant to proposed Rule 9285.[17] Proposed Rule 9311(g) would require the Office of Hearing Officers, when an appeal is filed from a decision finding that a Respondent violated a statute or rule provision, to promptly notify each FINRA member with which the Respondent is associated that an appeal has been filed. Similarly, proposed Rule 9312(c)(3) would require the Office of General Counsel, when a decision finding that a Respondent violated a statute or rule provision is called for review, to promptly notify each FINRA member with which the Respondent is associated of the call for review.

The proposed amendments to Rule 9321 would govern the record related to a motion for conditions or restrictions.[18] Rule 9321 currently governs the process for the Office of Hearing Officers to transmit the record of a disciplinary proceeding to the NAC. The proposed amendments to Rule 9321 would set forth provisions for how the Office of Hearing Officers would transmit to the NAC the supplemental record of a proceeding concerning a motion to impose conditions or restrictions.

Rule 9556 currently governs expedited proceedings for failures to comply with temporary and permanent cease and desist orders. The proposed amendments to Rule 9556 would grant FINRA staff the authority to bring an expedited proceeding against a respondent that fails to comply with conditions and restrictions imposed pursuant to proposed Rule 9285 and create the process for the expedited proceeding. Specifically, proposed Rule 9556(a)(2) would permit FINRA staff to issue a notice to a respondent stating that the failure to comply with the conditions or restrictions imposed under Rule 9285 within seven days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member. Proposed Rule 9556(c)(2) would govern the contents of the notice. It would require that the notice explicitly identify the conditions or restrictions that are alleged to have been violated and contain a statement of facts specifying the alleged violation. It also would require that the notice state or explain—just as the rule currently requires for a notice of a failure to comply with temporary and permanent cease and desist orders—when the FINRA action will take effect, what the respondent must do to avoid such action, that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559, the deadline for requesting a hearing and the Hearing Officer's or Hearing Panel's authority.

Proposed Amendments to the FINRA Rule 9520 Series To Require Interim Plans of Heightened Supervision of a Disqualified Person During the Period When FINRA is Reviewing an Eligibility Application

FINRA is proposing to amend FINRA Rule 9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) in the FINRA Rule 9520 Series (Eligibility Proceedings) to require a member firm that files an application to continue associating with a disqualified person under Rule 9522(a)(3) or 9522(b)(1)(B) to also include an interim plan of heightened supervision that would be in effect throughout the entirety of the application review process.[19] The proposed amendments would delineate the circumstances under which a statutorily disqualified individual may remain associated with a FINRA member while FINRA is reviewing the application.

As background, brokers who have engaged in the types of misconduct specified in the Exchange Act's statutory disqualification provisions must undergo special review by FINRA before they are permitted to re-enter or continue working in the securities industry. In conducting its review, FINRA seeks to exclude brokers who pose a risk of recidivism from re-entering or continuing in the securities business, subject to the limits developed in SEC case law.

As a general framework, the Exchange Act sets out the types of misconduct that presumptively exclude brokers from engaging in the securities business, identified as statutory disqualifications.[20] These statutory disqualifications are the result of actions against a broker taken by a regulator or court based on a finding of serious misconduct that calls into question the integrity of the broker, and include, among other things, any felony and certain misdemeanors for a period of ten years from the date of conviction; expulsions or bars (and current suspensions) from membership or participation in a self-regulatory organization; bars (and current suspensions) ordered by the SEC, Commodity Futures Trading Commission or other appropriate regulatory agency or authority; willful violations of the federal securities and

[16] The proposed amendments to Rule 9312 discussed in this paragraph reflect an enhancement to the proposal in *Regulatory Notice* 18–16 (April 2018).

[17] The proposed amendments to Rules 9311 and 9312 discussed in this paragraph are an enhancement from the proposal in *Regulatory Notice* 18–16 (April 2018).

[18] The proposed amendments to Rule 9321 reflect an enhancement to the proposal in *Regulatory Notice* 18–16 (April 2018).

[19] In *Regulatory Notice* 18–16 (April 2018), FINRA originally proposed the amendments discussed in this section as amendments to FINRA Rule 9523.

[20] Section 3(a)(39) of the Exchange Act defines the circumstances when a person is subject to a ''statutory disqualification.''

commodities laws or MSRB rules; permanent or temporary injunctions from acting in certain capacities; and certain final orders of a state securities commission.

The Exchange Act and SEC rules thereunder establish a framework within which FINRA evaluates whether to allow an individual who is subject to a statutory disqualification to associate with a member firm.[21] A member firm that seeks to employ or continue the employment of a disqualified individual must file an application seeking approval from FINRA (''SD Application'').[22] The Rule 9520 Series sets forth rules governing eligibility proceedings, in which FINRA evaluates whether to allow a member, person associated with a member, potential member or potential associated person subject to a statutory disqualification to enter or remain in the securities industry. A member firm's SD Application to associate with, or continue associating with, a disqualified person is subject to careful scrutiny by FINRA to review whether the individual's association with the member firm is in the public interest and does not create an unreasonable risk or harm to the market or investors. To determine whether the SD Application will be approved or denied, FINRA takes into account factors that include the nature and gravity of the disqualifying event; the length of time that has elapsed since the disqualifying event and any intervening misconduct occurring since; the regulatory history of the disqualified individual, the firm and individuals who will act as supervisors; the potential for future regulatory problems; the precise nature of the securities-related activities proposed in the SD Application; and any proposed plan of heightened supervision.[23]

If FINRA recommends approval of the SD Application, the recommendation is submitted either directly to the SEC for its review or to the NAC and ultimately to the SEC for their reviews and approvals, as applicable. If FINRA recommends denial of the SD Application, the member firm has the right to a hearing before a panel of the Statutory Disqualification Committee and the opportunity to demonstrate why the SD Application should be approved.[24] If the NAC denies the SD Application, the member firm can appeal the decision to the SEC and, thereafter, a federal court of appeals.[25]

Currently, as part of an SD Application, a member firm will propose a written plan of heightened supervision of the statutorily disqualified person that would become effective upon approval by FINRA of the SD Application to associate with the statutorily disqualified person.[26] A heightened supervisory plan must be acceptable to FINRA, and FINRA will reject any plan that is not specifically tailored to address the individual's prior misconduct and mitigate the risk of future misconduct. In this regard, FINRA's primary consideration is a heightened supervisory plan carefully constructed to best ensure investor protection.

Despite the fact that FINRA will generally not approve an SD Application that lacks an acceptable plan of heightened supervision, there is currently no requirement under FINRA rules that firms place statutorily disqualified individuals whom they employ on interim heightened supervision while an SD Application is pending. However, the proposed amendments to Rule 9522 would establish this requirement, consistent with existing FINRA guidance.[27]

Specifically, proposed Rule 9522(f) would require that an application to continue associating with a statutorily disqualified person must include an interim plan of heightened supervision and a written representation from the member firm that the statutorily disqualified person is currently subject to that plan. The proposed rule would require that the interim plan of heightened supervision comply with Rule 3110 and be reasonably designed and tailored to include specific supervisory policies and procedures that address any regulatory concerns related to the nature of the disqualification, the nature of the firm's business, and the disqualified person's current and proposed activities during the review process. The proposed rule also would require that the SD Application identify an appropriately registered principal responsible for carrying out the interim plan of heightened supervision, and that the responsible principal sign the plan and acknowledge his or her responsibility for implementing and maintaining it. The interim plan of heightened supervision would be in effect throughout the entirety of the SD Application review process, which would conclude only upon the final resolution of the eligibility proceeding.

Proposed Rule 9522(g) would authorize Member Regulation to reject an SD Application filed pursuant to

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[21] *See* 15 U.S.C. 78*o*-3(g)(2) (''A registered securities association may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification.''); *see also* 17 CFR 240.19h–1.

[22] *See* General Information on FINRA's Eligibility Requirements, *http://www.finra.org/industry/general-information-finras-eligibility-requirements.*

[23] FINRA's review of many SD Applications also is governed by the standards set forth in *Paul Edward Van Dusen,* 47 S.E.C. 668 (1981), and *Arthur H. Ross,* 50 S.E.C. 1082 (1992). These standards provide that in situations where an individual's misconduct has already been addressed by the SEC or FINRA, and certain sanctions have been imposed for such misconduct, FINRA should not consider the individual's underlying misconduct when it evaluates an SD Application. In *Van Dusen,* the SEC stated that when the period of time specified in the sanction has passed, in the absence of ''new information reflecting adversely on [the applicant's] ability to function in his proposed employment in a manner consonant with the public interest,'' it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. 47 S.E.C. at 671. The SEC also noted in *Van Dusen,* however, that an applicant's re-entry is not ''to be granted automatically'' after the expiration of a given time period. *Id.* Instead, the SEC instructed FINRA to consider other factors, such as: (1) ''other misconduct in which the applicant may have engaged''; (2) ''the nature and disciplinary history of a prospective employer''; and (3) ''the supervision to be accorded the applicant.'' *Id.* Further, in *Ross,* the SEC established a narrow exception to the rule that FINRA confine its analysis to ''new information.'' 50 S.E.C. at 1085. The S.E.C. stated that FINRA could consider the conduct underlying a disqualifying order if an applicant's later misconduct was so similar that it formed a ''significant pattern.'' *Id.* at 1085 n.10.

[24] The hearing panel considers evidence and other matters in the record and makes a written recommendation on the SD Application to the Statutory Disqualification Committee. *See* Rule 9524(a)(10). The Statutory Disqualification Committee, in turn, recommends a decision to the NAC, which issues a written decision to the member firm that filed the SD Application. *See* Rules 9524(a)(10), 9524(b).

[25] Approximately 73.5 percent of the SD Applications filed during 2013–2018 were either denied by FINRA, withdrawn because the applicant expected FINRA would recommend denial of its application, or closed because the SD Application was not required by operation of law. Approximately 12.5 percent were approved. FINRA approval sometimes resulted from legal principles, including those embodied in the Exchange Act and in case law, as noted above, which limits FINRA's discretion to deny an application. The remaining 14 percent of the SD Applications are pending.

[26] *See* General Information on FINRA's Eligibility Requirements, *http://www.finra.org/industry/general-information-finras-eligibility-requirements* (explaining that ''in virtually every application that the NAC approves, it will do so subject to the applicant member's agreement to implement a special supervisory plan'').

[27] FINRA has reminded member firms of their obligation to tailor the firm's supervisory systems to account for brokers with a history of industry or regulatory-related incidents, including disciplinary actions. And specifically as to disqualified persons, FINRA has stated that a firm's continuing to associate with a person who becomes disqualified while associated with the firm raises significant investor protection concerns, and that such a firm should evaluate the facts and circumstances to make a determination of whether adopting and implementing an interim plan of heightened supervision during the pendency of an SD Application would be appropriate. *See Regulatory Notice* 18–15 (April 2018).

Rule 9522(a)(3) or Rule 9522(b)(1)(B) that seeks the continued association of a disqualified person if it determines that the application is substantially incomplete—either because it does not include a reasonably designed interim plan of heightened supervision or because it does not include a written representation that the disqualified person is currently subject to that plan. The sponsoring firm would have ten days after service of the notice of delinquency, or such other time as prescribed by Member Regulation, to remedy the SD Application.

Under proposed Rule 9522(h), if an applicant firm fails to remedy an SD Application that is substantially incomplete, Member Regulation would provide written notice of its determination to reject the SD Application and its reasons for so doing, and FINRA would refund the application fee, less $1,000, which FINRA would retain as a processing fee. Upon such rejection of the SD Application, the applicant firm would be required to promptly terminate association with the disqualified person.[28]

The proposed amendments to Rule 9522 would apply to SD Applications that are filed on or after the effective date of the proposed rule amendments.

Proposed Amendments to FINRA Rule 8312

Rule 8312 (FINRA BrokerCheck Disclosure) governs the information FINRA releases to the public through its BrokerCheck system.[29] BrokerCheck helps investors make informed choices about the brokers and member firms with which they conduct business by providing extensive registration and disciplinary history to investors at no charge. FINRA requires member firms to inform their customers of the availability of BrokerCheck.[30]

Rule 8312(b) currently requires that FINRA release information about, among other things, whether a particular member firm is subject to the provisions of FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms) (the ''Taping Rule''), but only in response to telephonic inquiries via the BrokerCheck toll-free telephone listing. The Taping Rule is designed to ensure that a member firm with a significant number of registered persons that previously were employed by ''disciplined firms'' [31] has specific supervisory procedures in place to prevent fraudulent and improper sales practices or other customer harm.[32] Under the Taping Rule, a member with a specified percentage of registered persons who have been associated with disciplined firms in a registered capacity in the last three years is designated as a ''taping firm.'' [33]

A member firm that either is notified by FINRA or otherwise has actual knowledge that it is a taping firm must establish, maintain and enforce special written procedures for supervising the telemarketing activities of all its registered persons. Those procedures must include procedures for recording all telephone conversations between the taping firm's registered persons and both existing and potential customers, and for reviewing the recordings to ensure compliance with applicable securities laws and regulations and applicable FINRA rules. The Taping Rule also requires taping firms to retain all the recordings for a period of not less than three years and file quarterly reports with FINRA.[34]

To provide enhanced disclosure to the public of information as to whether a member firm is subject to the Taping Rule, FINRA is proposing to delete the requirement in Rule 8312(b) that FINRA provide that information only in response to telephonic inquiries via the BrokerCheck toll-free telephone listing. As a result, proposed Rule 8312(b) would permit FINRA to release through BrokerCheck information as to whether a particular member firm is subject to the Taping Rule.[35] FINRA believes that broadening the disclosure through BrokerCheck of the status of a member firm as a taping firm will help inform more investors of the heightened procedures required of the firm, which may incent the investors to research more carefully the background of a broker associated with the taping firm.

Proposed Amendments to the FINRA Rule 1000 Series to Impose Additional Obligations on Member Firms That Associate With Persons With a Significant History of Past Misconduct [36]

Current MAP Process

FINRA is proposing amendments to the FINRA Rule 1000 Series (Member Application and Associated Person Registration)—specifically the rules that govern membership proceedings (''MAP Rules'')—to impose additional obligations on member firms when a natural person that has, in the prior five years, either one or more ''final criminal matters'' or two or more ''specified risk events'' seeks to become an owner,

[28] As part of its examination program, FINRA would generally examine for compliance with interim plans of heightened supervision established pursuant to proposed Rule 9522(f).

[29] The BrokerCheck website address is *brokercheck.finra.org.*

[30] *See* FINRA Rule 2210(d)(8) (requiring that each of a member's websites include a readily apparent reference and hyperlink to BrokerCheck on the initial web page that the member intends to be viewed by retail investors and any other web page that includes a professional profile of one or more registered persons who conduct business with retail investors); FINRA Rule 2267 (requiring members to provide to customers the FINRA BrokerCheck Hotline Number and a statement as to the availability to the customer of an investor brochure that includes information describing BrokerCheck).

[31] Rule 3170(a)(2) defines a ''disciplined firm'' to mean:

(A) A member that, in connection with sales practices involving the offer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the SEC revoking its registration as a broker-dealer;

(B) a futures commission merchant or introducing broker that has been formally charged by either the Commodity Futures Trading Commission or a registered futures association with deceptive telemarketing practices or promotional material relating to security futures, those charges have been resolved, and the futures commission merchant or introducing broker has been closed down and permanently barred from the futures industry as a result of those charges; or

(C) a futures commission merchant or introducing broker that, in connection with sales practices involving the offer, purchase, or sale of security futures is subject to an order of the SEC revoking its registration as a broker or dealer.

[32] To assist member firms in complying with Rule 3170, FINRA publishes on its website a list of Disciplined Firms Under FINRA Taping Rule, which identifies firms that meet the definition of ''disciplined firm'' and that were disciplined within the last three years. As of March 31, 2020, that list identified seven firms as ''disciplined firms.'' *See https://www.finra.org/rules-guidance/oversight-enforcement/disciplinary-actions/disciplined-firms-under-taping-rule.*

[33] Rule 3170(a)(5)(A) defines a ''taping firm'' to mean:

(i) A member with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years;

(ii) A member with at least ten but fewer than twenty registered persons, where four or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years;

(iii) A member with at least twenty registered persons where 20% or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years.

As of March 31, 2020, there is one firm that is designated as a taping firm.

[34] Rule 3170 provides member firms that trigger application of the taping requirement a one-time opportunity to adjust their staffing levels to fall below the prescribed threshold levels and thus avoid application of the Taping Rule. *See* Rule 3170(c).

[35] *See* Rule 8312(a) (requiring that ''[i]n response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephonic listing,'' FINRA shall release through BrokerCheck information regarding, in pertinent part, a current or former FINRA member).

[36] The text of FINRA Rules 1011, 1017 and CAB Rule 111 incorporates the changes approved by the SEC in Securities Exchange Act Release No. 88482 (March 26, 2020), 85 FR 18299 (April 1, 2020) (Order Approving File No. SR–FINRA–2019–030) (''MAP Rules Amendment Release'').

control person, principal or registered person of the member.

Reviewing CMAs is one of the ways FINRA seeks to address the risks posed by brokers with a significant history of misconduct. Rule 1017 specifies the changes in a member's ownership, control or business operations that require a CMA and FINRA's approval.[37] Among the events that require a CMA are a ''material change in business operations,'' which is defined to include: (1) Removing or modifying a membership agreement restriction; (2) market making, underwriting or acting as a dealer for the first time; and (3) adding business activities that require a higher minimum net capital under SEA Rule 15c3–1.[38] In addition, a CMA is required for business expansions to increase the number of ''associated persons involved in sales,'' offices, or markets made that are a material change in business operations.[39] However, IM–1011–1 (Safe Harbor for Business Expansions) creates a safe harbor for incremental increases in these three categories of business expansions. Under this safe harbor provision, a member, subject to specified conditions and thresholds, may undergo such business expansions without filing a CMA.[40] One such expansion is an increase, within the parameters set forth in IM–1011–1, in the number of ''associated persons involved in sales.'' [41]

In determining whether to approve a CMA, Member Regulation, through the MAP Group (collectively, ''the Department''), evaluates whether the applicant and its associated persons meet each of the standards for admission in FINRA Rule 1014(a) and whether the applicant would continue to meet those standards upon approval of the CMA.[42] The Department evaluates an applicant's financial, operational, supervisory and compliance systems to ensure that each applicant meets these standards for admission.

One of the standards, Rule 1014(a)(3), requires an applicant to demonstrate that it and its associated persons are capable of complying with the federal securities laws and FINRA rules, including observing high standards of commercial honor and just and equitable principles of trade. When the Department evaluates the Rule 1014(a)(3) standard, it takes into consideration, among other things, whether persons associated with an applicant are the subject of disciplinary actions taken against them by industry authorities, criminal actions, civil actions, arbitrations, customer complaints, remedial actions or other industry-related matters that could pose a threat to public investors.[43] Some of these matters are considered whether they are adjudicated, settled or pending.[44] Some of these events are so material that, when they exist, a presumption exists that the CMA should be denied.[45]

Although firms with a ''disciplinary history'' as defined by IM–1011–1 are not eligible to use the safe harbor, none of the safe harbor's parameters relates to the history of a member firm's associated persons. Given the recent studies that provide evidence of the predictability of future regulatory-related events for brokers with a history of past regulatory-related events, FINRA is concerned about instances where a member on-boards associated persons with a significant history of misconduct and does so within the safe-harbor parameters, thus avoiding prior consultation or review by FINRA. FINRA believes there are instances in which a member firm's hiring of an associated person with a significant history of misconduct—and other associations with such persons—would reflect a material change in business operations.

➢Proposed Rule 1017(a)(7) To Require Materiality Consultations

The proposed amendments to the MAP Rules would seek to address this concern. Proposed Rule 1017(a)(7) would require that a member firm, notwithstanding Rule 1017(a)(3),[46] (a)(4),[47] (a)(5)[48] and (a)(6)[49] and IM–1011–1,[50] file a CMA when a natural person seeking to become an owner, control person, principal or registered person of a member has, in the prior five years, one or more ''final criminal matters'' or two or more ''specified risk events''—as further explained below—unless the member has submitted a

[37] *See* Rule 1017(a). The events that require a member to file a CMA for approval before effecting the proposed event are:

(1) A merger of the member with another member, unless both members are members of the New York Stock Exchange, Inc. (''NYSE'') or the surviving entity will continue to be a member of the NYSE;

(2) a direct or indirect acquisition by the member of another member, unless the acquiring member is a member of the NYSE;

(3) direct or indirect acquisitions or transfers of 25 percent or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues composing 25 percent or more in the aggregate of the member's earnings measured on a rolling 36-month basis, unless both the seller and acquirer are members of the NYSE;

(4) a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or

(5) a material change in business operations as defined in Rule 1011.

In addition, Rule 1017(a)(6) mandates a member firm to seek a materiality consultation in two situations in which specified pending arbitration claims, unpaid arbitration awards, or unpaid arbitration settlements are involved. *See* MAP Rules Amendment Release.

[38] *See* Rules 1011(l), 1017(a)(5). Rule 1011(l) sets forth a non-exhaustive list of events that are material changes in business operations. FINRA also has provided guidance on additional criteria member firms should take into consideration when assessing the materiality of a proposed change. *See Notice to Members* 00–73 (October 2000). A member may file an application for approval of a material change in business operations at any time, but the member may not effect such change until the conclusion of the proceeding, unless Member Regulation and the member otherwise agree. *See* Rule 1017(c)(3).

[39] *See* Rule 1017(b)(2)(C) (''If the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.'').

[40] The safe harbor is unavailable to a member that has a membership agreement that contains a specific restriction as to one or more of the three areas of expansion or to a member that has a ''disciplinary history'' as defined in IM–1011–1. The safe harbor also is not available to any member that is seeking to add one or more ''associated persons involved in sales'' and one or more of those associated persons has a ''covered pending arbitration claim,'' an unpaid arbitration award or unpaid settlement related to an arbitration. *See* MAP Rules Amendment Release.

[41] For eligible firms, IM–1011–1 permits a firm that has one to ten ''associated persons involved in sales'' to increase that number by ten persons within a one-year period, and a firm that has 11 or more ''associated persons involved in sales'' to increase that number by ten persons or 30 percent, whichever is greater, within a one-year period. *See* IM–1011–1.

[42] *See* Rule 1017(h)(1) and (h)(1)(A).

[43] *See* Rule 1014(a)(3).

[44] *See* Rule 1014(a)(3).

[45] *See* Rule 1017(h) (''Where the Department determines that the Applicant or its Associated Person are the subject of any of the events set forth in Rule 1014(a)(3)(A) and (C) through (E), a presumption exists that the application should be denied.'').

[46] Rule 1017(a)(3) requires a member to file a CMA for approval of direct or indirect acquisitions or transfers of 25 percent or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues composing 25 percent or more in the aggregate of the member's earnings measured on a rolling 36-month basis, unless both the seller and acquirer are members of the New York Stock Exchange, Inc. The reference to Rule 1017(a)(3) in proposed Rule 1017(a)(7) reflects a change from the proposal in *Regulatory Notice* 18–16.

[47] Rule 1017(a)(4) requires a member to file a CMA for approval of a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital.

[48] Rule 1017(a)(5) requires a member to file a CMA for approval of a ''material change in business operations.''

[49] *See* MAP Rules Amendment Release.

[50] The reference to IM–1011–1 in proposed Rule 1017(a)(7) reflects a change from the proposal in *Regulatory Notice* 18–16.

written request to the Department seeking a materiality consultation for the contemplated activity. Rule 1017(a)(7) would further provide, however, that Rule 1017(a)(7) would not apply when the member is required to file an SD Application or written request for relief pursuant to Rule 9522 for approval of the same contemplated association.[51] Proposed Rule 1017(a)(7) also would contain requirements for the request seeking a materiality consultation and the Department's review and determination, including a description of the possible outcomes of FINRA's determination on a materiality consultation.

Proposed Rule 1017(a)(7) also would establish that the safe harbor for business expansions in IM–1011–1 would not be available to the member firm when a materiality consultation is required under proposed Rule 1017(a)(7). In a corresponding change, proposed IM–1011–3 (Business Expansions and Persons with Specified Risk Events) would provide that the safe harbor for business expansions in IM–1011–1 would not be available to any member that is seeking to add a natural person who has, in the prior five years, one or more ''final criminal matters'' or two or more ''specified risk events'' and seeks to become an owner, control person, principal or registered person of the member. Proposed IM–1011–3 would further provide, in those circumstances, that if the member is not otherwise required to file a CMA, the member must comply with the requirements of proposed Rule 1017(a)(7).[52] Proposed Rule 1017(a)(7) and proposed IM–1011–3 would not apply when a person is already a principal at a member firm and seeks to add an additional principal registration at that same firm. In that instance, the proposed rule amendments would not require a materiality consultation.

Currently, FINRA has a voluntary materiality consultation process.[53] As explained above, a member is required to file a CMA when it plans to undergo an event specified under Rule 1017 (*e.g.,* acquisition or transfer of the member's assets, a business expansion). Before taking this step, a member has the option of seeking guidance, or a materiality consultation, from FINRA on whether or not such proposed event would require a CMA.[54] The materiality consultation process is voluntary, and FINRA has published guidelines about this process on *FINRA.org.*[55] A request for a materiality consultation, for which there is no fee, is a written request from a member for FINRA's determination on whether a contemplated change in business operations or activities is material and would therefore require a CMA. The characterization of a proposed change as material depends on an assessment of all the relevant facts and circumstances. Through this consultation, FINRA may communicate with the member to obtain further documents and information regarding the contemplated change and its anticipated impact on the member. Where FINRA determines that a contemplated change is material, FINRA will instruct the member to file a CMA if it intends to proceed with such change. Ultimately, the member is responsible for compliance with Rule 1017. If FINRA determines during the materiality consultation that the contemplated business change is material, then the member potentially could be subject to disciplinary action for failure to file a CMA under Rule 1017.[56]

The proposed rule change would establish an additional category of mandatory materiality consultations.[57] The materiality consultations required by proposed Rule 1017(a)(7) would focus on, and the submitting member firm would need to provide information relating to, the conduct underlying the individual's ''final criminal matters'' and ''specified risk events,'' as well as other matters relating to the subject person, such as disciplinary actions taken by FINRA or other industry authorities, adverse examination findings, customer complaints, pending or unadjudicated matters, terminations for cause or other incidents that could indicate a threat to public investors. The Department's assessment in the materiality consultation would consider, among other things, whether the events are customer-related; whether the events represent discrete actions or are based on the same underlying conduct; the anticipated activities of the person; the disciplinary history, experience and background of the proposed supervisor, if applicable; the disciplinary history, supervisory practices, standards, systems and internal controls of the member firm and whether they are reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules; whether the member firm employs or intends to employ in any capacity multiple persons with one or more ''final criminal matters'' or two or more ''specified risk events'' in the prior five years; and any other investor protection concern raised by seeking to make the person an owner, control person, principal or registered person of the member firm.

➢Proposed Definitions of ''Final Criminal Matter'' and ''Specified Risk Event''

The terms ''final criminal matter'' and ''specified risk event'' would be defined in proposed amendments to Rule 1011 (Definitions). Proposed Rule 1011(h) would define the term ''final criminal matter'' to mean a final criminal matter that resulted in a conviction of, or guilty plea or nolo contendere (no contest) by, a person that is disclosed, or was required to be disclosed, on the applicable Uniform Registration

[51] In that event, the member firm would be required to obtain FINRA's approval to associate or continue associating with the disqualified person pursuant to the FINRA Rule 9520 Series, but it would not also be required to request a materiality consultation or file a CMA pursuant to proposed Rule 1017(a)(7). The Member Regulation staff that considers the SD Application may consult with the MAP Group, as appropriate.

[52] FINRA has modified the language in proposed Rule 1017(a)(7) and IM–1011–3 from the versions that were proposed in *Regulatory Notice* 18–16. FINRA has done so for clarity and to align the structure of these proposed rules to the changes to the MAP Rules approved in the MAP Rules Amendment Release.

[53] *See* The Materiality Consultation Process for Continuing Membership Applications, *https://www.finra.org/rules-guidance/guidance/materiality-consultation-process; see also Regulatory Notice* 18–23 (July 2018).

[54] *See* IM–1011–1 (stating, ''[f]or any expansion beyond these [safe harbor] limits, a member should contact its district office prior to implementing the change to determine whether the proposed expansion requires an application under Rule 1017''); *see also Notice to Members* 00–73 (October 2000) (stating that ''[a] member may, but is not required to, contact the District Office to obtain guidance on'' whether a change and expansion that falls outside of the safe harbor provisions is material).

[55] *See* The Materiality Consultation Process for Continuing Membership Applications, *https://www.finra.org/rules-guidance/guidance/materiality-consultation-process.*

[56] *See Notice to Members* 00–73 (October 2000).

[57] FINRA Rule 1017(a)(6) will mandate materiality consultations if a member is contemplating: (i) To add one or more ''associated persons involved in sales'' and one or more of those associated persons has a ''covered pending arbitration claim,'' an unpaid arbitration award or an unpaid settlement related to an arbitration; or (ii) any direct or indirect acquisition or transfer of a member's assets or any asset, business or line of operation where the transferring member or an associated person of the transferring member has a covered pending arbitration claim, an unpaid arbitration award or an unpaid settlement related to an arbitration, and the member is not otherwise required to file a CMA. *See* MAP Rules Amendment Release. In a separate proposal, FINRA is proposing to mandate materiality consultations under other circumstances. *See Regulatory Notice* 18–23 (July 2018) (seeking comment on a proposal to the MAP rules that would, among other things, codify the materiality consultation process and mandate a consultation under specified circumstances such as where an applicant seeks to engage in, for the first time, retail foreign currency exchange activities, variable life settlement sales to retail customers, options activities or municipal securities activities).

Forms.[58] Proposed Rule 1011(p) would define ''specified risk event'' to mean any one of the following events that are disclosed, or are or were required to be disclosed, on the applicable Uniform Registration Forms: (1) A final investment-related,[59] consumer-initiated customer arbitration award or civil judgment against the person for a dollar amount at or above $15,000 in which the person was a named party; (2) a final investment-related, consumer-initiated customer arbitration settlement or civil litigation settlement for a dollar amount at or above $15,000 in which the person was a named party; (3) a final investment-related civil action where (A) the total monetary sanctions (including civil and administrative penalties or fines, disgorgement, monetary penalties other than fines, or restitution) were ordered for a dollar amount at or above $15,000, or (B) the sanction against the person was a bar, expulsion, revocation, or suspension; and (4) a final regulatory action where (A) the total monetary sanctions (including civil and administrative penalties or fines, disgorgement, monetary penalties other than fines, or restitution) were ordered for a dollar amount at or above $15,000, or (B) the sanction against the person was a bar (permanently or temporarily), expulsion, rescission, revocation or suspension from associating with a member.

The proposed definitions and criteria would provide transparency regarding how the proposed rules would be applied, as they are based on disclosure events required to be reported on the Uniform Registration Forms. Firms, in general, would be able to identify the specific set of disclosure events that would count towards the proposed criteria and, using available data, determine independently whether a proposed association with an individual would require a materiality consultation.[60]

In addition, as explained more below in the Economic Impact Assessment, FINRA developed the proposed criteria and definitions with significant attention to the economic trade-off between including individuals who are less likely to subsequently pose risk of harm to customers, and not including individuals who are more likely to subsequently pose risk of harm to customers.

FINRA believes the proposed amendments to the Rule 1000 Series would further promote investor protection by applying stronger standards for continuing membership with FINRA and for changes to a current member firm's ownership, control or business operations.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.[61]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[62] 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. The proposed rule change is designed to protect investors and the public interest by strengthening the tools available to FINRA to address the risks posed by brokers with a significant history of misconduct and the firms that employ them. Allowing Hearing Officers to impose tailored conditions and restrictions on respondents after the finding of a violation, and requiring firms to place disciplined respondent brokers with whom they associate under mandatory heightened supervision during the pendency of an appeal or a review proceeding, would create strong measures of deterrence while an appeal or review proceeding is pending and while the sanctions imposed have not yet taken effect. Likewise, requiring firms to place disqualified persons on interim plan of heightened supervision while an SD Application is pending would require that a fundamental investor protection measure—almost always required at firms that FINRA, as part of the eligibility proceedings process, permits to associate with disqualified persons—be established at an earlier point in time and thereby limit the potential for harm to the public. Broadening the disclosure through BrokerCheck of the status of a member firm as a taping firm, beyond only telephonic BrokerCheck inquiries, will inform more investors of the heightened procedures required of the taping firm, and thereby incent investors to research carefully the background of a broker associated with the taping firm. Finally, requiring member firms to seek materiality consultations when a person seeking to become an owner, control person, principal or registered person has a significant history of misconduct will give FINRA an opportunity to assess whether the proposed association is material and warrants closer regulatory scrutiny and, further, may create incentives for changes in behavior by both brokers and the firms that employ them. In situations where the proposed association of a person with a significant history of misconduct would require a CMA, FINRA would then be able to assess, if the firm still seeks to proceed, whether the member firm would continue to meet all the Rule 1014 membership standards if the proposed association were approved and prevent the proposed association if it would not continue to meet those standards.[63]

As such, the proposed rule change will help address concerns regarding brokers with a significant history of misconduct in situations where risks for potential further harm to investors may exist, particularly when such individuals concentrate at a firm or are able to move readily from firm to firm. The proposed additional obligations on such brokers and the increased scrutiny by the firms that employ them, should create incentives for brokers and firms to change activities and behaviors to mitigate FINRA's concerns.

[58] Proposed Rule 1011(r) would define ''Uniform Registration Forms'' to mean the Uniform Application for Broker-Dealer Registration (Form BD), the Uniform Application for Securities Industry Registration or Transfer (Form U4), the Uniform Termination Notice for Securities Industry Registration (Form U5) and the Uniform Disciplinary Action Reporting Form (Form U6), as such may be amended or any successor(s) thereto.

[59] The Form U4 *Explanation of Terms* defines the term ''investment-related'' as pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).

[60] The exceptions are that the Uniform Registration Forms do not provide information about customer awards or judgments against, or customer settlements with, control affiliates who have not filed a Form U4. For those events, firms would have to gather that information directly from the person.

[61] FINRA notes that the proposed rule change would impact all members, including members that are funding portals or have elected to be treated as capital acquisition brokers (''CABs''), given that the funding portal rule set incorporates the Rule 9200 Series and Rule 9300 Series and Rule 9556 by reference, and the CAB rule set incorporates Rules 1011, 1017 and 8312 and the Rule 9200 Series, Rule 9300 Series and Rule 9500 Series by reference. In addition, FINRA is proposing corresponding amendments to CAB Rule 111, to reflect that a CAB would be subject to IM–1011–3, and amendments to Funding Portal Rule 900(b) to require heightened supervision during the time an eligibility request is pending.

[62] 15 U.S.C. 78*o*–3(b)(6).

[63] *See* Rule 1014(a) (Standards for Admission).

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.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking, its potential economic impacts, including anticipated benefits and costs, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

(a) Regulatory Need

FINRA uses a number of measures to deter and discipline misconduct by brokers and the firms that employ them. These measures span across several FINRA programs, including statutory disqualification processes, review of membership applications, disclosure of brokers' regulatory backgrounds, supervision requirements, focused examinations, risk monitoring and disciplinary actions.

Nonetheless, some brokers, while relatively small in number, may continue to present heightened risk of harm to investors and act in ways that could harm their customers—sometimes substantially. Any misconduct by these brokers may also undermine confidence in the securities markets as a whole. For example, recent studies provide evidence on predictability of future regulatory-related events for brokers with a history of past regulatory-related events such as repeated disciplinary actions, arbitrations and customer complaints.[64]

Brokers with a history of misconduct can pose a particular challenge to FINRA's existing programs, such as FINRA examination and enforcement programs. For example, while the FINRA examination program can identify compliance failures and prescribe remedies to be taken, examiners are not empowered to require individuals to make changes to or limit their activities in a particular manner. While these constraints on the examination process protect against potentially arbitrary or overly onerous examination findings, an individual with a history of misconduct can take advantage of these limitations to continue ongoing activities that harm or pose risk of harm to investors until they result in an enforcement action. Likewise, enforcement actions can take significant time to develop, prosecute and conclude, during which time the individual is able to continue misconduct.

Furthermore, although FINRA has adopted rules that impose supervisory obligations on firms to ensure they are appropriately supervising their brokers' activities, some firms do not effectively carry out these supervisory obligations to ensure compliance. This is consistent with some recent academic studies, which find that some firms persistently employ brokers who engage in misconduct, and that misconduct can be concentrated at these firms, suggesting that some firms may not be acting appropriately as a first line of defense to prevent customer harm.[65]

Therefore, without additional protections, the risk of potential customer harm may continue to exist at firms that employ brokers that have a significant number of regulatory-related events and that fail to effectively carry out their supervisory obligations. The proposals are designed to further promote investor protection by mitigating these concerns while preserving principles of fairness.

(b) Economic Baseline

The following provides the economic baseline for each of the current proposals. These baselines serve as the primary points of comparison for assessing economic impacts, including incremental benefits and costs of the proposed rule amendments. For this proposal, FINRA reviewed and analyzed relevant data over the 2013–2018 period (review period).

1. Proposed Amendments to the FINRA Rule 9200 Series and FINRA Rule 9300 Series

The economic baseline used to evaluate the economic impacts of the proposed rule changes to the Rule 9200 Series and Rule 9300 Series is the current regulatory framework under these rules.[66] FINRA analyzed disciplinary matters that were appealed to the NAC over the review period that reached a final decision by the NAC.[67] During the review period, there were approximately 20 such appeals filed each year, of which approximately 80 percent were filed by brokers, five percent were filed by firms, and the remaining 15 percent were filed jointly by brokers and firms.[68] FINRA determined that, on average, these disciplinary decisions were on appeal to the NAC for approximately 15 months.[69]

2. Proposed Amendments to the FINRA Rule 9520 Series

The economic baseline used to evaluate the economic impacts of the proposed rule changes to the Rule 9520 Series is the current regulatory framework under these rules. FINRA analyzed SD Applications filed during the review period and determined that there were 80 SD Applications filed by 71 firms for 79 individuals, or approximately 13 applications that were filed by 12 firms each year.[70] Approximately 65 percent of these applications were filed by small firms, 12 percent were filed by mid-size firms, and 23 percent were filed by large firms.[71] FINRA also examined the resolution of these applications and determined that approximately 12.5 percent of the SD Applications were approved, 11 percent were denied, 14 percent were pending during the review period, and the remaining applications (62.5 percent) did not require a resolution because the statutorily disqualified individual's registration with the filing firm was terminated or the SD Application was subsequently withdrawn.[72] FINRA determined that, on average, the processing time for an SD Application that reached a final

[64] *See supra* note 5.

[65] For example, *see* Mark Egan, Gregor Matvos, & Amit Seru, *The Market for Financial Adviser Misconduct,* J. Pol. Econ. 127, no. 1 (Feb. 2019): 233–295.

[66] The proposal also includes corresponding amendments to Rule 9556.

[67] This analysis included all NAC appeals (including calls for NAC review) filed during the review period that reached a final decision by May 1, 2019. The analysis includes all NAC decisions, including affirmations, modifications or reversals of the findings in the disciplinary matters. The analysis excludes appeals that were withdrawn prior to the resolution of the appeal process.

[68] FINRA further estimates that approximately 94 percent of the appeals filed by brokers involved one broker, and the remaining six percent involved two brokers. All the appeals filed by firms were associated with one firm.

[69] The median processing time was approximately 14 months, while the 25th and the 75th percentiles were approximately 11 months and 19 months, respectively.

[70] One of these 79 individuals was associated with multiple SD Applications over the review period. Of the 71 firms that filed SD Applications, approximately 90 percent filed one application during the review period, and the remaining 10 percent filed two or more applications.

[71] FINRA defines a small firm as a member with at least one and no more than 150 registered persons, a mid-size firm as a member with at least 151 and no more than 499 registered persons, and a large firm as a member with 500 or more registered persons. *See* FINRA By-Laws, Article I.

[72] In approximately 21 percent of the SD Applications, the application was withdrawn because the decision leading to the disqualifying event was overturned, thus the individual was no longer subject to a statutory disqualification, or because the sanctions were no longer in effect.

resolution (*i.e.,* an approval or a denial) was approximately 15 months.[73]

3. Proposed Amendments to FINRA Rule 8312

The economic baseline used to evaluate the economic impacts of the proposed rule changes to Rule 8312 (FINRA BrokerCheck Disclosure) is the current regulatory framework under Rules 8312 and 3170. During the review period, FINRA determined that 17 firms hired or retained enough registered persons from previously disciplined firms to be designated as a ''taping firm'' under Rule 3170 and were notified about their status during this period. All of these firms were small firms with an average size of approximately 40 registered persons. Of these 17 firms, 12 firms did not become subject to the rule's recording requirements because they either took advantage of the one-time staff-reduction opportunity in Rule 3170(c) or terminated their FINRA membership, and one firm was granted an exemption pursuant to Rule 3170(d). As a result, only four of the firms designated as ''taping firms'' became subject to the recording requirements of Rule 3170.

4. Proposed Amendments to the FINRA Rule 1000 Series

The economic baseline used to evaluate the economic impacts of the proposed rule changes to the MAP Rules is the current regulatory framework under these rules. The proposed rule change would directly impact individuals with one or more final criminal matters or two or more specified risk events within the prior five years, who seek to become owners, control persons, principals or registered persons of a member firm. The criteria used for identifying individuals under this proposal and the number of individuals meeting the proposed criteria are discussed below.

(c) Economic Impacts

The following provides the economic impacts, including the anticipated benefits and costs for each of the current proposals.

1. Proposed Amendments to the FINRA Rule 9200 Series and FINRA Rule 9300 Series

The proposed rule amendments would directly impact firms and brokers whose disciplinary matters are on appeal to, or review by, the NAC. These impacts would vary across appeals and depend on, among other factors, the nature and severity of the conditions or restrictions imposed on the activities of respondents. As discussed above, the scope of these conditions or restrictions would depend on what the Hearing Officer determines to be reasonably necessary for the purpose of preventing customer harm. Further, the conditions and restrictions would be tailored to the specific risks posed by the brokers or firms during the appeal period. Accordingly, the conditions and restrictions are not intended to rise to the level of the underlying sanctions and would likely not be economically equivalent to imposing the sanctions during the appeal. In addition, respondents will be able to seek expedited reviews of orders imposing conditions or restrictions.

Anticipated Benefits

The primary benefit of this proposal accrues from limiting the potential risk of continued harm to customers by respondents during the appeal period by imposing conditions or restrictions on their activities, and requiring them to be subject to heightened supervision plans, while their disciplinary matter is on appeal. In order to evaluate these benefits and assess the potential risk posed by brokers during the appeal period, FINRA examined cases that were appealed to the NAC during 2013–2016 and determined whether the brokers associated with an appeal to the NAC had a new disclosure event—for this analysis, a final criminal matter or a specified risk event, as defined above—at any time from the filing of the appeal through the year-end after the year in which the appeal reached a decision.[74] Based on this analysis, FINRA estimates that 21 of the 75 brokers who appealed to the NAC during the 2013–2016 period were associated with a total of 28 disclosure events that occurred during the interstitial period after the filing of their appeal to the NAC.[75] FINRA anticipates that the proposed heightened supervision requirement and the conditions or restrictions placed on the activities of these brokers would lead to greater oversight of their activities by their firm during the appeal period, thereby reducing the potential risk of future customer harm during this period.[76]

Anticipated Costs

The costs of this proposal would primarily fall upon brokers or firms whose activities during the appeal period would be subject to the specific conditions or restrictions imposed by the Hearing Officer.[77] In addition, firms would incur costs associated with implementing heightened supervision for brokers while their disciplinary matters are under appeal. These costs would likely vary significantly across firms and could increase if the broker acts in a principal capacity. For example, firms employing disciplined respondents who serve as principals, executive managers or owners, or who operate in other senior capacities, would likely assume higher costs in developing and implementing tailored supervisory plans. Such plans may entail re-assignments of responsibilities, restructuring within senior management and leadership, and more complex oversight and governance approaches. These potential costs, in turn, may result in some brokers voluntarily leaving the industry rather than waiting for the resolution of the appeal process.[78]

The costs associated with this proposal would apply to brokers and their employing member firms while the brokers are employed during the pendency of the NAC appeals (the average processing time of which is 15 months) and any subsequent appeals.[79]

[73] The median processing time was approximately 14 months, and the 25th and the 75th percentiles were approximately 10 months and 19 months, respectively.

[74] In making these calculations, FINRA based its analysis on the occurrence of disclosure events as used in proposed IM–1011–3 and Rule 1017(a)(7). The analysis includes events that occurred and reached a resolution between the NAC appeal year and a year after the NAC decision year to allow sufficient time for events that occurred during the pendency of NAC to reach a resolution. Accordingly, the sample period for this analysis is based on appeals filed during the 2013–2016 period, instead of the full review period (2013–2018).

[75] These estimates are based on appeals filed by brokers, or jointly filed by brokers and firms, and excludes appeals that were filed only by firms. These estimates likely underrepresent the overall risk of customer harm posed by these brokers, because they are based on a specific set of events and outcomes used for classifying brokers for the proposed amendments to the MAP Rules. In addition, these brokers had other disclosure events after their appeal was filed, and some of these other events may also be associated with risk of customer harm.

[76] FINRA also anticipates that the proposed changes to Rule 9556, which will establish an expedited proceeding for failures to comply with conditions or restrictions, will help ensure that the firms will comply with the conditions and restrictions imposed.

[77] Brokers and firms that choose to defend against motions for conditions and restrictions and that pursue expedited reviews of orders imposing conditions or restrictions would incur additional costs associated with these reviews.

[78] The proposal may also impose costs on issuers in limited instances where a firm is enjoined from participating in a private placement and the issuer is especially reliant on that firm. The private issuer may incur search costs to find a replacement firm or individual and incur other direct and indirect costs associated with the offering.

[79] FINRA has no estimate for the time associated with subsequent appeals.

Many broker-appellants, however, are not employed with any member firms when their NAC appeal is filed or leave shortly after the appeal is filed. FINRA examined the employment history, including employment start and end dates, of the 131 brokers [80] associated with NAC appeals during the review period, and estimates that 54 of them (or 41 percent) were not employed by any member firm during the appeal process, 33 of them (or 25 percent) were employed by a member firm only for part of the appeal process, and 44 of them (or 34 percent) were employed by a member firm throughout the appeal process.

FINRA notes that consistent with existing FINRA guidance, some firms may have already established heightened supervision of individuals while their disciplinary matters are on appeal.[81] The existing heightened supervision plans may address all, some or none of the conditions or restrictions imposed by the Hearing Panel Officer. Accordingly, for these firms the anticipated costs of this proposal may be lower.

Other Economic Impacts

In developing the proposal, FINRA considered the possibility that, in some cases, this proposal may limit activities of brokers and firms, while their disciplinary matter is under appeal, in instances where the restricted activities do not pose a risk to customers. In such cases, these brokers and firms may lose economic opportunities, and their customers may lose the benefits associated with the provision of these services. FINRA believes that the proposed rule changes mitigate such risks by requiring the conditions or restrictions imposed to be reasonably necessary for the purpose of preventing customer harm and by providing a respondent with the right to seek expedited review of a motion to modify or remove any or all of the conditions and restrictions. Further, as discussed above, approximately 66 percent of the broker-appellants during the review period either were not employed by a member firm during the appeal process or were employed by a member firm only for part of the appeal process. Accordingly, these brokers would not be impacted by this proposal or would be subject to the proposed limitations only for a limited period of time.

[80] These 131 brokers correspond to those associated with a NAC appeal during the review period (2013–2018). The 75 brokers discussed in the Anticipated Benefits section above are a subgroup of brokers associated with a NAC appeal during the 2013–2016 period. *See supra* note 74.

[81] *See Regulatory Notice* 18–15 (April 2018).

2. Proposed Amendments to the FINRA Rule 9520 Series

The proposed rule amendments would impact statutorily disqualified individuals and their employing firms while the SD Application is being processed. These individuals would be subject to heightened supervision during the pendency of their SD Applications.

Anticipated Benefits

The primary benefit of this proposed rule change would arise from greater oversight by employing firms of the activities of statutorily disqualified individuals during the pendency of their SD Applications, thereby reducing the potential risk of customer harm during this period. In order to assess the potential risk posed by these individuals during the pendency of their SD Applications, FINRA examined whether individuals associated with an SD Application filed during the 2013–2016 period had a disclosure event [82] at any time from the filing of the SD Application through two years after filing.[83] Based on this analysis, FINRA estimates that 26 (or 51 percent) of the 51 individuals associated with SD Applications during the 2013–2016 period had a total of 41 disclosure events during the interstitial period after the filing of their SD Application.[84]

Anticipated Costs

The costs associated with this proposal would fall primarily on firms that incur direct and indirect costs associated with establishing and implementing the tailored heightened supervision plan while an SD Application is under review. As discussed above, the costs would likely vary significantly across firms and could increase if the statutorily disqualified individuals also serve as principals, executive managers, or owners or operate in other senior capacities. Moreover, the heightened supervision requirement may deter some firms from retaining these individuals and, as a result, these individuals may find it more difficult to remain in the industry.

[82] For purposes of this analysis, ''disclosure event'' included final criminal matters and specified risk events, as defined in proposed Rule 1011(h) and (p).

[83] This analysis includes events that occurred and reached a resolution from the SD Application filing year until the end of two years later to allow sufficient time for events that occurred during the eligibility proceeding to reach a resolution. Accordingly, the sample period for this analysis is based on SD Applications filed during the 2013–2016 period, instead of the full review period (2013–2018).

[84] This likely underrepresents the overall risk of customer harm, because the disclosure events in this analysis included only final criminal matters and specified risk events.

3. Proposed Amendments to the BrokerCheck Rule

The proposed amendments would impact taping firms and their registered persons. Taping firms have a proportionately significant number of registered persons who were associated with firms that were expelled by a self-regulatory organization or had their registration revoked by the SEC for sales practice violations, and as a result, may pose greater risk to their customers.

Anticipated Benefits

The primary benefit of this proposed rule change would arise from the investor protection benefits associated with disclosing a firm's status as a ''taping firm'' through BrokerCheck to the investors. This would allow investors to make more informed choices about the brokers and firms with which they conduct business. The anticipated benefits would increase with the likelihood that a potential or actual customer to a taping firm seeks information through BrokerCheck.

Anticipated Costs

The proposal would not impose any direct costs on brokers or firms. Nonetheless it may impact their businesses, as investors may rely on information about a firm's status as a taping firm in determining whom to engage for financial services and brokerage activities. Disclosing the status of a firm as a ''taping firm'' through BrokerCheck may also further deter firms from hiring or retaining brokers who were employed previously by disciplined firms in order to avoid the ''taping firm'' thresholds and resulting disclosure on BrokerCheck.[85]

4. Proposed Amendments to MAP Rules

The proposed rule change would directly impact individuals with one or more final criminal matters or two or more specified risk events within the prior five years, who seek to become owners, control persons, principals or registered persons of a member firm. To estimate the number of brokers who would meet the proposed criteria, FINRA analyzed the categories of events and conditions associated with the proposed criteria for all brokers during the review period. For each year, FINRA determined the approximate number of

[85] As discussed above, only four firms during the review period became subject to the taping requirements of Rule 3170. As a result, FINRA does not anticipate that this proposal would be associated with significant economic impacts, including the anticipated benefits or costs.

brokers who met the proposed criteria and became owners, control persons, principals or registered persons of a member firm. As discussed in more detail below, this analysis showed that there were 110–215 such individuals, per year, who would have met the proposed criteria had it been in place during the review period.

The proposal is intended to apply to brokers who may pose greater risks to their customers than other brokers. A framework for evaluating the effectiveness of the criteria is to observe the rate at which brokers identified collectively by the criteria are substantially more likely to have regulatory-related events, including specified risk events and final criminal matters, than their peers. Based on FINRA's analysis of all individuals who sought to become owners, control persons, principals or registered persons of a member firm during the review period, individuals who would have met the proposed criteria had on average 1.4–1.6 final criminal matters and specified risk events (per broker), while other brokers had on average 0.002–0.004 such events (per broker).[86] These estimates suggest that individuals who would have been affected by this proposal (had it been in place during the review period) had on average over 450–900 times more final criminal matters and specified risk events than other brokers during the same review period.

Anticipated Benefits

The primary benefit of the proposed amendments would be to reduce the potential risk of future customer harm by individuals who meet the proposed criteria and seek to become an owner, control person, principal, or registered person of a member firm. FINRA believes the proposed rule change would further promote investor protection by applying stronger standards for continuing membership with FINRA and for changes to a current member firm's ownership, control or business operations. These benefits would primarily arise from changes in broker and firm behavior and increased scrutiny by FINRA of brokers who meet the proposed criteria during the review of a materiality consultation and, where appropriate, a CMA.

To scope these potential benefits and assess the potential risk posed by brokers who would meet the proposed criteria, FINRA evaluated the extent to which brokers who would have met the criteria during 2013–2016 (had the criteria existed) and sought the proposed roles were associated with ''new'' final criminal matters or specified risk events after having met the proposed criteria. These ''new'' events correspond to events that were identified or occurred after the broker's meeting the proposed criteria, and do not include events that were pending at the time of meeting the criteria and subsequently resolved in the years afterwards. As shown in Exhibit 3e, FINRA estimates that, in 2013, 215 brokers would have met the proposed criteria and sought the proposed roles. These brokers were associated with 35 ''new'' final criminal matters or specified risk events that occurred after their meeting the proposed criteria, between 2014 and 2018. Exhibit 3e similarly shows the number of events associated with brokers who would have met the proposed criteria and sought the proposed roles in 2014, 2015, and 2016. Across 2013–2016, there were 635 unique brokers who would have met the proposed criteria and sought the proposed roles, and these brokers were associated with a total of 93 events that occurred in the years after they met the proposed criteria.

Exhibit 3e also shows, for the 2013–2016 period, a factor representing a multiple for the average number of events for brokers who would have met the proposed criteria and sought the proposed roles relative to other brokers who sought the proposed roles. For example, the factor of 16x for 2013 indicates that brokers meeting the proposed criteria and seeking the proposed roles in 2013 had on average 16 times more new events (per broker) in the subsequent years (2014–2018) than other brokers who sought those roles in 2013.[87] Overall, this analysis demonstrates that brokers who would have met the proposed criteria and sought the proposed roles during the 2013–2016 period had on average approximately 16–49 times more new criminal matters and specified risk events after meeting the criteria than other brokers who sought the proposed roles.

Anticipated Costs

The cost of this proposal would fall on the firms that seek to add owners, control persons, principals or registered persons who meet the proposed criteria. These firms would be directly impacted by the proposals through the requirements to seek a materiality consultation with FINRA and, potentially, to file a CMA. While there is no FINRA fee for seeking a materiality consultation, firms may incur internal costs or costs associated with engaging external experts in conjunction with the filing of a CMA. In addition, the proposal could result in delays to a firm's ability to add owners, control persons, principals or registered persons who meet the proposed criteria, during the time the mandatory materiality consultation and any required CMA is being processed. FINRA examined the time to process materiality consultations and determined that, on average, these consultations are completed within eight to ten days, although this time period could be longer depending on the complexity of the contemplated expansion or transaction and the aggregate number of consultations under review. These anticipated costs may deter some firms from hiring individuals meeting the proposed criteria, who as a result may find it difficult to remain in the industry or bear other labor market related costs.

Other Economic Impacts

To provide transparency and clarity regarding the application of this proposal, the proposed criteria is based on disclosure events required to be reported on the Uniform Registration Forms. Information about disclosure events reported on the Uniform Registration Forms is generally available to firms and FINRA. Accordingly, firms would be able to identify the specific set of disclosure events that would count towards the proposed criteria and replicate the proposed thresholds using available data, with a few exceptions.[88] In determining the proposed numeric threshold, FINRA considered three key factors: (1) The different types of reported disclosure events; (2) the counting criteria (*i.e.,* the number of reported events required to trigger the obligations); and (3) the time period over which the events are counted. In

[86] As discussed above, the proposed criteria includes individuals with one or more ''final criminal matters'' or two or more ''specified risk events'' in the prior five years. The individuals who would have met the proposed criteria as a result of two or more ''specified risk events'' in the prior five years had on average 2.3–2.9 such events during the review period.

[87] Brokers meeting the proposed criteria and seeking the proposed roles in 2013 had on average 0.16 new events (per broker) in the subsequent years (2014–2018) compared to 0.01 events (per broker) for other brokers seeking the proposed roles.

[88] Firms have access to disclosure events reported on Form U4, U5, and U6 filings for individuals who were previously registered with the same firms or with other firms. Firms do not have access, however, to information regarding individuals that is disclosed on another firm's Form BD. Firms may not have access to information about disclosure events for individuals, including control affiliates, who were not previously registered.

evaluating the proposed numeric threshold versus alternative criteria, significant attention was given to the impact of possible misidentification of individuals; specifically, the economic trade-off between including individuals who are less likely to subsequently pose risk of harm to customers, and *not* including individuals who are more likely to subsequently pose risk of harm to customers. There are costs associated with both types of misidentifications. For example, subjecting individuals who are less likely to pose a risk to customers to mandatory materiality consultations, and potentially CMAs, would impose additional costs on these individuals, their affiliated firms and customers. The proposed numeric threshold aims to appropriately balance these costs in the context of economic impacts associated with the proposed amendments to the MAP Rules.

The proposal may create incentives for changes in behavior to avoid meeting the proposed threshold. Under the proposal standing alone, brokers and firms may be more likely to try to settle customer complaints or arbitrations below $15,000 so that their settlements do not count towards the proposed threshold. To the extent, if any, that customers also would be willing to settle for less, this change may reduce the compensation provided to customers.[89] Alternatively, it could increase the time, effort and costs for customers associated with negotiating a settlement, even if the settled amount would not change. Brokers and firms also may consider underreporting the disclosure events to avoid being subject to the proposed rule. However, this potential impact is mitigated by the facts that many of the events are reported by FINRA or other regulators, incorrect or missing reports can trigger regulatory action by FINRA, and FINRA rules require firms to take appropriate steps to verify the accuracy and completeness of the information contained in the Uniform Registration Forms before they are filed. FINRA also has the ability to check for unreported events, particularly those that third parties report in separate public notices, such as the outcomes of some civil proceedings.

FINRA recognizes that in some instances, firms may not be able to identify certain individuals with disclosure events who may seek to become owners, control persons, principals or registered persons of the firm. Similarly, firms may have less incentive to conduct appropriate due diligence on those individuals for whom firms may not have readily available disclosure history.[90] Firms still would be required, however, to seek information on relevant disclosure events from individuals who seek to become principals or registered persons, as part of the registration process, and take reasonable steps (*e.g.,* by conducting background checks) to verify the accuracy and completeness of the information provided by the individuals. Nonetheless, FINRA recognizes that in some cases, even after conducting reasonable due diligence, firms may not have the required information to identify certain individuals who meet the proposed criteria, and these individuals may continue to pose risk of future investor harm. FINRA believes that these risks are mitigated by its own examination risk programs that monitor and examine individuals for whom there are concerns of ongoing misconduct or imminent risk of harm to investors. These programs identify high-risk individuals based on the analysis of data available to the firms as well as additional regulatory data available to FINRA.[91]

In developing this proposal, FINRA analyzed disclosure events reported on the Uniform Registration Forms for all individuals during the review period. For each year, FINRA evaluated the data and determined the approximate number of individuals who would have met the proposed numeric threshold of one or more final criminal matters or two or more specified risk events in the prior five years. Exhibit 3a shows the disclosure categories that FINRA considered and the subcategories that were used for identifying final criminal matters and specified risk events. The exhibit also shows the mapping of these disclosure categories to the underlying questions in Form U4.[92] Exhibit 3b shows the corresponding mapping of these disclosure categories to the questions in Form BD.[93] Exhibit 3c provides a breakdown of the disclosure categories for all individuals registered with FINRA in 2018.[94] The exhibit illustrates the impacts of refining subcategories of reported disclosure events and using different numeric thresholds on the number of disclosure events and the number of registered persons associated with these events.[95] This analysis has led FINRA to initially propose the numeric threshold set forth in the current proposal.

The additional proposed obligations would only apply to individuals with one or more final criminal matters or two or more specified risk events within the prior five years who seek to become owners, control persons, principals, or registered persons of a firm. Accordingly, FINRA examined registration information in order to identify all individuals who would have met the proposed criteria and sought the proposed roles during the review period. Those identified serve as a reasonable estimate for the number of individuals who would have been directly impacted by this proposal had it been in place at the time. This analysis indicates that there were 110–215 such individuals per year, as shown in Exhibit 3d. These individuals represent 0.09–0.16 percent of individuals who became owners, control persons, principals, or registered

[89] The proposed $15,000 threshold for customer settlements corresponds to the reporting threshold for the Uniform Registration Forms and for the settlement information to be displayed through BrokerCheck. Accordingly, the change in incentives to brokers and firms associated with the proposed rule should be considered in the presence of the incentives already in place.

[90] For example, as discussed above, firms do not have access to disclosure events for non-registered control affiliates at other firms. FINRA uses disclosure events reported on Form BD across all firms to identify disclosure records of non-registered control affiliates.

[91] *See supra* note 88.

[92] Forms U5 and U6 have questions similar to Form U4 that can also be mapped to the disclosure categories in Exhibit 3a.

[93] Form BD includes information on disclosure events for individual control affiliates, including non-registered control affiliates that may not have Form U4, U5, or U6 filings. Form BD is the primary source of information on disclosure events for these unregistered control affiliates. Form BD includes information on final criminal matters and certain specified risk events associated with regulatory actions and civil judicial actions, but does not include information on customer awards or settlements.

[94] Exhibit 3c does not include information on individuals who were not registered with FINRA in 2018. These non-registered individuals may include non-registered associated persons, including non-registered control affiliates.

[95] Exhibit 3c shows the number of criminal disclosures and ''disclosures considered in developing specified risk events'' (regulatory action disclosures, civil judicial disclosures, and customer complaint, arbitration, and civil litigation disclosures)—including final and pending disclosures—for brokers who were registered with FINRA in 2018, over such brokers' entire reporting history; the number of brokers associated with these disclosure events; and the impact of refining the disclosure categories and the periods over which these events are counted. For example, the exhibit shows that brokers who were registered with FINRA in 2018 had, over their entire reporting history, 19,655 criminal disclosures and 134,928 ''disclosures considered in developing specified risk events.'' It also shows that 41,915 individuals had, over their entire reporting history, one or more criminal disclosures or two or more ''disclosures considered in developing specified risk events.'' When narrowing the disclosure categories to include only the ''final criminal matters'' and ''specified risk events'' as defined in this proposal (including the five-year lookback period), the results narrow to 174 final criminal matters and 2,616 specified risk events, and to 414 brokers who met the proposed numeric threshold of one or more final criminal matters or two or more specified risk events in the prior five years.

persons with a new member in any year during the review period.[96]

FINRA also analyzed firms that employed individuals who would be directly impacted by this proposal. The analysis shows that in each year over the review period, there were between 74–155 firms employing individuals who would have met the proposed criteria. Approximately 41 percent of these firms were small, 12 percent were mid-size, and the remaining 47 percent were large.[97] FINRA estimates that approximately 31 percent of the individuals meeting the proposed criteria and who sought the proposed roles were employed by small firms, ten percent by mid-size firms and 59 percent by large firms.

(d) Alternatives Considered

FINRA recognizes that the design and implementation of the rule proposals may impose direct and indirect costs on a variety of stakeholders, including member firms, associated persons, regulators, investors, and the public. Accordingly, in developing its rule proposals, FINRA sought to identify alternative ways to enhance the efficiency and effectiveness of the proposals while maintaining their regulatory objectives. The following provides a discussion of the alternatives FINRA considered for the current proposals.

1. Proposed Amendments to the FINRA Rule 9200 Series and FINRA Rule 9300 Series

As an alternative to the proposal to authorize Hearing Officers to impose conditions or restrictions, FINRA considered whether to require sanctions imposed by the FINRA Hearing Panel or Hearing Officer in disciplinary decisions to be effective during the pendency of the NAC appeals and subsequent appeals. FINRA believes that such an approach could be too restrictive in disciplinary matters with significant sanctions and where the risk of harm may be specific to particular activities. Accordingly, FINRA believes that conditions and restrictions that are tailored specifically to the risk posed by the individuals during the pendency of the appeals, and are reasonably necessary for the purpose of preventing customer harm, would provide a better balance between protecting investors and preventing undue costs on individuals and firms while their appeals are pending.

2. Proposed Amendments to the FINRA Rule 9520 Series

This proposal would subject statutorily disqualified individuals employed with member firms to heightened supervision during the pendency of their SD Applications. Considering that the problem addressed by the proposed amendments to the FINRA Rule 9520 Series is very specific, FINRA did not consider any significant alternatives to this targeted proposal.

3. Proposed Amendments to FINRA Rule 8312

Considering that this proposal would likely not be associated with material economic impacts, FINRA did not consider any significant alternatives to this proposal.[98]

4. Proposed Amendments to the FINRA Rule 1000 Series

FINRA considered several alternatives to the numeric and categorical thresholds for identifying individuals who would be subject to the proposed amendments to the MAP Rules. In determining the proposed threshold, FINRA focused significant attention on the economic trade-off between incorrect identification of individuals who may *not* subsequently pose risk of harm to their customers, and *not* including individuals who may subsequently pose risk of harm to customers. FINRA also considered three key factors: (1) The different types of reported disclosure events, (2) the counting criteria (*i.e.,* the number of reported events), and (3) the time period over which the events are counted. FINRA considered several alternatives for each of these three factors.

a. Alternatives Associated With the Types of Disclosure Events

In determining the different types of disclosure events, FINRA considered all categories of disclosure events reported on the Uniform Registration Forms, including the financial disclosures and the termination disclosures. FINRA decided to exclude financial disclosures, which include personal bankruptcies, civil bonds, or judgments and liens. While these events may be of interest to investors in evaluating whether or not to engage a broker, these types of events are not *by themselves* direct evidence of customer harm.

FINRA also considered whether termination disclosures should be included as specified risk events. Termination disclosures include job separations after allegations against the brokers.[99] Certain termination disclosures reflect conflicts of interest between the firm and the broker and, as a result, may not necessarily be indicative of misconduct. Further, the underlying allegations in the termination disclosures may be associated with other disclosure events, such as those associated with customer settlements or awards, regulatory actions or civil judicial actions, which are already included in the proposed criteria. Where so, the underlying conduct posing potential future customer harm would be captured in the proposed criteria. As a result, FINRA did not include termination disclosures as specified risk events. Accordingly, FINRA considered the remaining five categories of disclosure events listed in Exhibit 3a.

Within each disclosure category included in the proposed criteria, FINRA considered whether pending matters should be included or if the criteria should be restricted to final matters that have reached a resolution not in favor of the broker. Pending matters may be associated with an emerging pattern of customer harm and capture timely information of potential ongoing or recent misconduct. However, pending matters may also include disclosure events that remain unresolved or subsequently get dismissed because they lack merit or suitable evidence. FINRA excluded pending matters in the current proposal because the potential adverse impacts on the individuals who may be identified because of pending matters would likely outweigh the benefit of including pending matters.[100]

Exhibit 3a shows the five categories of disclosure events that were considered and the subcategories that were included in the proposed criteria. For criminal matters, FINRA considered whether criminal charges that do not result in a conviction or a plea of guilty or nolo contendere (no contest) should be included in the proposed criteria. These events correspond to criminal matters in which the associated charges

[96] These percentages are calculated by dividing FINRA's estimate of the number of individuals who met the proposed criteria each year during the review period and sought the proposed roles (110–215 individuals per year) by the number of individuals who became owners, control persons, principals, or registered persons with a new member each year during the review period (122,003–131,156 individuals per year).

[97] *See supra* note 71.

[98] As discussed above, there were only four firms that became subject to the taping requirements of Rule 3170 during the review period.

[99] Termination disclosures involve situations where the individual voluntarily resigned, was discharged, or was permitted to resign after allegations.

[100] For example, individuals who may be identified on a fixed numeric threshold based upon pending matters could find it difficult to become owners, control persons, principals, or registered persons of a member firm while these matters are pending, even if such matters are subsequently dismissed. *See also* Exhibit 3c.

were subsequently dismissed or withdrawn and, as a result, are not necessarily evidence of misconduct. Accordingly, FINRA only included criminal convictions, including pleas of guilty or nolo contendere (no contest), in the proposed criteria.

For customer settlements and awards, FINRA considered whether settlements and awards in which the broker was not ''named'' should be considered as a specified risk event. These ''subject of'' customer settlements and awards correspond to events where the customer initiates a claim against the firm and does not specifically name the broker, but the firm identifies the broker as required by the Uniform Registration Forms.[101] In these cases, the broker is not party to the proceedings or settlement. There may be conflicts of interest between the firm and the broker such that the claim may be attributed to the broker without the ability of that broker to directly participate in the resolution. Accordingly, FINRA excluded ''subject of'' customer settlements and awards from the proposed criteria. FINRA recognizes that excluding these events may also undercount instances where the broker may have been responsible for the alleged customer harm.

For civil judicial actions and regulatory actions, FINRA considered whether all sanctions associated with final matters should be included in the proposed criteria or whether certain less severe sanctions should be excluded. Final regulatory action or civil judicial action disclosures may be associated with a wide variety of activities, ranging from material customer harm to more technical rule violations, such as a failure to make timely filings or other events not directly related to customer harm. However, due to the way in which such information is currently reported, it is not straightforward to distinguish regulatory or civil judicial actions associated with customer harm from other such actions.[102] In the absence of a reliable way to identify regulatory and civil judicial actions associated with customer harm, FINRA considered using a proxy of severity of the underlying sanctions as a way to exclude events that are likely not associated with material customer harm. Therefore, FINRA is proposing to include regulatory actions or civil judicial actions that are associated with more severe sanctions, such as bars, suspensions or monetary sanctions above a *de minimis* dollar threshold of $15,000. FINRA notes that relying strictly on a proxy for severity would likely exclude certain regulatory actions or civil judicial actions that are associated with customer harm, and may include certain regulatory actions or civil judicial actions that are not associated with customer harm.

FINRA also considered several alternative *de minimis* dollar thresholds for disclosure events included in the proposed criteria. For example, FINRA considered higher dollar thresholds of $25,000, $50,000 and $100,000 for customer settlements, customer awards, and monetary sanctions associated with regulatory actions and civil judicial actions. A dollar threshold may capture a dimension of severity of the alleged customer harm. The Uniform Registration Forms establish a *de minimis* dollar reporting threshold of $10,000 for complaints filed prior to 2009 and $15,000 afterwards. The reporting threshold may, however, be low and possibly include instances where the payment was made to end the complaint and minimize litigation costs. However, the dollar threshold does not account for the value of the customers' accounts, and there are likely cases where even low dollar amounts represent remuneration of a significant portion of customer investments. Accordingly, a dollar threshold may be both under-inclusive and over-inclusive, and as a result FINRA considered a range of alternative thresholds. Increasing the dollar threshold from $15,000 to $25,000, $50,000 and $100,000 would decrease the number of individuals impacted by this proposal from 110–215 individuals each year over the review period (as explained above) to 108–207 individuals, 103–197 individuals and 97–180 individuals each year, respectively. Finally, FINRA notes that establishing a *de minimis* dollar threshold that is different than the current reporting requirements could increase confusion among investors and registered persons and would likely create additional incentives for brokers and firms to keep future settlements below the dollar level that would trigger the restrictions, to the detriment of customers.

b. Alternatives Associated With the Counting Criteria

FINRA considered a range of alternative criteria for counting criminal matters or specified risk events. For example, FINRA considered whether the counting criteria for final criminal matters should be two or more final criminal matters or one final criminal matter and another specified risk event. This alternative would effectively count final criminal matters the same way as other specified risk events. FINRA believes that final criminal matters are generally more directly tied to serious misconduct than some of the other specified risk events. Accordingly, FINRA believes that one final criminal matter, as defined by this proposal, should be sufficient to trigger the proposed criteria.[103]

FINRA also considered alternative criteria for counting specified risk events. For example, FINRA considered decreasing the proposed threshold from two specified risk events to one. This alternative would change the proposed criteria to one or more final criminal matters or one (instead of two) or more specified risk events during the prior five-year period. This approach would increase the number of individuals impacted by this proposal from 110–215 individuals to 341–675 individuals each year, over the review period. FINRA also considered increasing the proposed threshold from two specified risk events to three, thereby changing the proposed criteria to one or more final criminal matter or three (instead of two) or more specified risk events during the prior five-year period. This approach would decrease the number of individuals impacted by this proposal from 110–215 individuals to 86–161 individuals each year, over the review period. For the reasons explained above, FINRA considered alternative criteria for counting specified risk events, but chose the specification in the current proposal.

c. Alternatives Associated With the Time Period Over Which the Disclosure Events Are Counted

FINRA also considered alternative criteria for the time period over which final criminal matters and specified risk events are counted. For example, FINRA considered whether final criminal matters or specified risk events should

[101] For example, the Instructions to Form U4 provide that the answer to Questions 14I(4) or 14I(5) should be ''yes'' if the broker was not named as a respondent/defendant but (1) the Statement of Claim or Complaint specifically mentions the individual by name and alleges the broker was involved in one or more sales practice violations or (2) the Statement of Claim or Complaint does not mention the broker by name, but the firm has made a good faith determination that the sales practice violation(s) alleged involves one or more particular brokers.

[102] For example, the Uniform Registration Forms contain information in disclosure reporting pages that could be useful in identifying regulatory actions or civil judicial actions associated with customer harm, but it is stored as ''free-text'' and, therefore, cannot be reliably compared across disclosures.

[103] FINRA recognizes that final criminal matters include felony convictions that may not be investment related (*e.g.,* a conviction associated with multiple DUIs).

be counted over the individual's entire reporting period or counted only over a more recent period. Based on its experience, FINRA believes that events that are more than ten years old do not necessarily pose the same level of possible future risk to customers as more recent events. Further, counting final criminal matters or specified risk events over an individual's entire reporting period would imply that individuals with such events would be subject to the criteria for their entire career, even if they subsequently worked without being associated with any future events. Accordingly, FINRA decided to include final criminal matters or specified risk events occurring only in a more recent period.

FINRA also considered a threshold based on a five-year lookback period for final criminal matters, but a five-to-ten year lookback period for specified risk events. Specifically, FINRA considered a threshold that would be met if the individual had one specified risk event having resolved during the previous ten years, and a second specified risk event resolved during the previous five years, or if the individual had one or more final criminal matters resolved in the prior five-year period. This approach would increase the number of individuals impacted by this proposal from 110–215 individuals to 127–236 individuals each year, over the review period. For the reasons explained above, FINRA considered alternative criteria for the lookback period for specified risk events, but chose the specification in the current proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 18–16 (April 2018). Thirteen comments were received in response to the *Regulatory Notice.*[104] A copy of the *Regulatory Notice* is attached as Exhibit 2a [sic]. A list of commenters is attached as Exhibit 2b [sic]. Copies of the comment letters received in response to the *Regulatory Notice* are attached as Exhibit 2c [sic]. Of the 13 comment letters received, eight were generally in favor of the proposed rule change, two were generally opposed, and one stated that the proposal was an improvement over the status quo but that significantly more action would be needed to protect investors.

FINRA has considered the comments received. In light of some of those comments, FINRA has made some modifications to the proposal. The comments and FINRA's responses are set forth in detail below.

General Support for and Opposition to the Proposal

Five commenters expressed general support for the proposed rule changes in *Regulatory Notice* 18–16, but all had suggestions on how aspects of the proposal should be modified.[105] Two commenters expressed support for the proposed amendments, subject to certain modifications.[106] One commenter expressed general support for the proposed amendments except the proposed amendments to the Rule 1000 Series.[107] Two commenters suggested different approaches that FINRA could take.[108] One commenter expressed opposition to specific aspects of the proposal.[109] One commenter opined that the proposal has numerous deficiencies and offered remedies.[110] All of these commenters' suggestions are discussed in more detail below.

Proposed Amendments to the FINRA Rules 9200 and 9300 Series To Enhance Investor Protection During the Pendency of an Appeal or Call-for-Review Proceeding

➢ Conditions or Restrictions

The proposed amendments to the Rule 9200 and 9300 Series would allow a Hearing Officer to impose conditions or restrictions on the activities of a respondent during the pendency of an appeal to the NAC from, or call for NAC review of, a disciplinary decision.

Some commenters expressed support for these specific proposals. FSI commented that permitting Hearing Officers to impose conditions and restrictions strikes the appropriate balance between the member's rights and investor protection concerns. NASAA supported imposing temporary remedies on parties that lose at the hearing level, writing that it would align FINRA's procedures with federal and state law. PIABA wrote that a disciplinary respondent should not be permitted to conduct business as usual during a disciplinary appeal.

Several commenters requested that a disciplined respondent and firms that associate with a disciplined respondent have an opportunity to propose to the Hearing Officers the conditions and restrictions that should be imposed.[111] Cambridge stated that this opportunity would help ensure that conditions and restrictions are not overly broad and account for a firm's size, resources and ability to supervise, and that it would alleviate concerns about potential lost income, lost opportunities and lost clients that could result from the conditions or restrictions. SIFMA wrote that this opportunity would help ensure that any conditions and restrictions imposed are reasonably necessary for the nature and scale of the misconduct at issue and tailored to a firm's business model, and that it would reduce the number of motions to modify or remove conditions or restrictions.

While FINRA appreciates the comments, FINRA notes that the proposal allows an individual respondent to make arguments concerning the potential conditions and restrictions to the Hearing Officer. In this regard, nothing in the proposed rule change prevents a respondent in a disciplinary proceeding from proposing, in opposition or response to a motion for conditions or restrictions, the conditions and restrictions that could or should be imposed. Likewise, nothing prevents an individual respondent, during the underlying disciplinary proceeding itself, from introducing relevant evidence. Moreover, FINRA rules only give named parties the right to participate in a FINRA disciplinary proceeding, and the complaint issued against an individual respondent will not always name that person's employing firm as a respondent. However, in light of these comments, FINRA is proposing to modify the proposed rule as set forth in *Regulatory Notice* 18–16 to clarify that a respondent's opposition or other response to a motion for conditions or restrictions must explain why no conditions or restrictions should be imposed or specify alternate conditions or restrictions that are sought to be imposed and explain why the conditions or restrictions are reasonably necessary for the purpose of preventing customer harm.

Cambridge stated that the proposal does not address the recourse available for damages that could result from any conditions or restrictions imposed, in the event the underlying disciplinary decision is reversed on appeal. FINRA believes the proposal mitigates such risks. The standard for imposing conditions or restrictions—those that the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm—and the ability to

[104] All references to commenters are to the comment letters as listed in Exhibit 2b.

[105] MML, NASAA, PIABA, SIFMA, Wulff Hansen.

[106] Cambridge, FSI.

[107] Janney.

[108] Better Markets, IBN.

[109] Luxor.

[110] Network 1.

[111] Cambridge, FSI, SIFMA.

request an expedited proceeding before the Review Subcommittee for prompt review of any conditions or restrictions imposed would act to ensure the conditions and restrictions imposed are reasonably tailored to address the potential concerns. The Hearing Officer that imposes conditions or restrictions in the first instance would be knowledgeable about the case and, therefore, well-suited to craft restrictions or conditions that are tailored to addressing the potential customer harm. And if a respondent believes that the conditions or restrictions imposed are too burdensome, the respondent would be permitted to request an expedited review and stay the conditions or restrictions.

Better Markets suggested that Hearing Officers should be required, not just permitted, to impose conditions or restrictions that are necessary to protect investors pending an appeal to the NAC. FINRA believes, however, that it is more appropriate to give Hearing Officers discretion. There may be situations when conditions or restrictions may be deemed not necessary, such as when a respondent firm or a respondent individual's employing firm has already undertaken substantial subsequent remedial measures or when the violations at issue do not involve the risk of customer harm.

FSI and Luxor opposed the standard in proposed FINRA Rule 9285(a) that the Hearing Officer may impose conditions or restrictions that it considers ''reasonably necessary for the purpose of preventing customer harm.'' FSI opined that that standard could lead to conditions or restrictions that are unduly burdensome or unrelated to the misconduct, and it suggested that the standard also require that the conditions and restrictions be ''reasonably designed to prevent further violations of the rule or rules the Hearing Panel or Hearing Officer [in the underlying disciplinary proceeding] has found to have been violated.'' FSI further suggested that, when imposing conditions or restrictions, Hearing Officers be required to consider the firm's size, resources and overall ability to supervise the registered representative's compliance with the conditions or restrictions. Luxor wrote that the proposed standard would have a chilling effect on a respondent's right to appeal because, depending on the conditions and restrictions imposed, the respondent may be unable to afford legal representation or may suffer irreversible damage to a book of business.

FINRA's proposed standard, however, is consistent with the rules of other self-regulatory organizations.[112] Moreover, FINRA believes that the proposed standard—both its use of the term ''reasonably necessary'' and its emphasis on ''for the purpose of preventing customer harm''—provides sufficient and appropriate limiting parameters. FINRA also believes that requiring that conditions or restrictions be reasonably designed to prevent further violations of the rule or rules found to have been violated in the underlying disciplinary decision, as FSI suggests, may not allow the Hearing Officer to adequately address the investor protection concerns that have been raised by the activities of the respondent. As FINRA explained above (and in *Regulatory Notice* 18–16), the conditions and restrictions imposed should target the misconduct demonstrated in the disciplinary proceeding and be tailored to the specific risks posed by the member firm or broker. With regard to FSI's suggestions to amend the standard to require consideration of numerous additional factors, FINRA believes that, for investor protection purposes, the primary driver of the conditions or restrictions should be what is reasonably necessary to prevent customer harm, not the size of the respondent's employing firm or its claims about its resources. FINRA believes that the proposed standard—coupled with the parties' ability to participate in the process, the knowledge of the Hearing Officers, and the availability of an expedited review—are appropriate to yield conditions or restrictions that are targeted at the specific, identifiable risks presented to customers and that are not overly burdensome. FINRA further proposes, that in light of this and other comments, to clarify the process for imposing conditions and restrictions during the pendency of an appeal. Specifically, FINRA is proposing to modify the proposed rule as set forth in *Regulatory Notice* 18–16 to clarify when and how parties can seek to impose reasonably necessary conditions and restrictions following a disciplinary decision by a Hearing Panel or Hearing Officer, the process for a respondent to request an appeal through an expedited proceeding of such conditions and restrictions, and to further clarify that such conditions and restrictions would be stayed during such expedited proceeding.

Several commenters requested that a different burden be applied in proposed Rule 9285(b)(2) for seeking the modification or removal of conditions or restrictions.[113] PIABA suggested that, to modify or remove conditions or restrictions, the respondent should be required to provide clear and convincing evidence of a manifest error by the trier of fact and show the likelihood of success of the underlying appeal. Cambridge and FSI suggested that the respondent should have to show that the Hearing Officer committed an error, that the conditions or restrictions are overly broad, or that they are not narrowly tailored to prevent future occurrences of the underlying violations.

FINRA declines these comments. As explained above, the burden in proposed Rule 9285(b)(2) is that the respondent would have to demonstrate that the conditions or restrictions imposed are not reasonably necessary for the purpose of preventing customer harm. This burden is consistent with the standard set forth in proposed Rule 9285(a) for establishing conditions and restrictions in the first place. Furthermore, FINRA believes that, for fairness reasons, a respondent's ability to seek the modification or removal of conditions or restrictions should not be constrained by the underlying merits of the respondent's disciplinary appeal. Because there would be a separate, specific standard for the imposition of conditions or restrictions—*i.e.,* those that the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm—any conditions or restrictions imposed could be erroneous for a reason that is entirely unrelated to whether a respondent's underlying appeal has a likelihood of success. Likewise, FINRA does not

[112] *See* BOX Rule 12110 (''Pending effectiveness of a decision imposing a sanction on the Respondent, the person, committee or panel issuing the decision (the 'adjudicator') may impose such conditions and restrictions on the activities of the Respondent as it considers reasonably necessary for the protection of investors and the Exchange.''); CBOE Rule 13.11(b) (''Pending effectiveness of a decision imposing a sanction on the Respondent, the Hearing Panel or the CRO, as applicable, may impose such conditions and restrictions on the activities of the Respondent as the Hearing Panel or the CRO, as applicable, considers reasonably necessary for the protection of investors and the Exchange''); CBOE BZX Rule 8.11 (''Pending effectiveness of a decision imposing a penalty on the Respondent, the CRO, Hearing Panel or committee of the Board, as applicable, may impose such conditions and restrictions on the activities of the Respondent as he, she or it considers reasonably necessary for the protection of investors, creditors and the Exchange.''); MIAX Options Rule 1011(b) (''Pending effectiveness of a decision imposing a sanction on the Respondent, the person, committee or panel issuing the decision (the 'adjudicator') may impose such conditions and restrictions on the activities of the Respondent as it considers reasonably necessary for the protection of investors and the Exchange.'').

[113] Cambridge, FSI, PIABA.

support establishing a burden of proof that would be more difficult to meet, such as a ''clear and convincing evidence of a manifest error by the trier of fact'' standard. Thus, FINRA has retained that aspect of the standard proposed in *Regulatory Notice* 18–16 that would require a respondent to demonstrate, when moving to modify or remove conditions or restrictions, that the conditions or restrictions imposed are not reasonably necessary for the purpose of preventing customer harm.

PIABA and Better Markets wrote about the provisions in proposed Rule 9285(b) that would allow a respondent to seek expedited review of an order imposing conditions or restrictions. PIABA supported the proposed expedited review process. Better Markets, on the other hand, wrote that expedited reviews would add burdens to the NAC and cause delays in processing underlying disciplinary appeals. FINRA has retained the proposed expedited review process. FINRA has added the expedited review process to make the overall process more fair for the respondents involved. It also will further investor protection: Because the filing of a motion to modify or remove conditions or restrictions would stay the effectiveness of the conditions or restrictions, an expedited review would allow properly imposed conditions and restrictions to become effective sooner. Moreover, because proposed Rule 9285(b) would assign the NAC's Review Subcommittee—and not the NAC itself—to decide motions to modify or remove conditions or restrictions and establish a 30-day deadline for doing so, FINRA expects that the expedited review process will not result in materially longer times for the NAC to process underlying disciplinary appeals.

Several commenters disagreed with how, pursuant to proposed Rule 9285(b), a motion to modify or remove conditions or restrictions would effect a stay of the conditions or restrictions. Better Markets and NASAA suggested that, for investor protection reasons, there should be no stays. NASAA further commented that permitting stays would be inconsistent with how proposed Rule 9285(b) would require firms to establish heightened supervision over individuals who appeal disciplinary decisions. Luxor, on the other hand, essentially sought to expand stays, writing that no conditions and restrictions should be imposed during a disciplinary appeal except upon a showing by FINRA of clear and convincing evidence of imminent harm to the public.

In light of the conflicting comments and FINRA's belief that the stay provision strikes the right balance, FINRA is proposing to retain the proposed stay provision. It appropriately balances the investor-protection benefits of imposing reasonably necessary conditions and restrictions with the Exchange Act requirement that FINRA provide a fair procedure in disciplinary proceedings. A stay of appropriately issued conditions or restrictions would be in place only during the relatively short duration of an expedited proceeding. Moreover, FINRA does not agree that having a temporary stay of conditions or restrictions during the expedited proceeding process and requiring firms to establish heightened supervision plans during the pendency of appeals are inconsistent. Proposed Rule 9285(e) would require a disciplined respondent's member firm to establish a reasonably designed heightened supervision plan regardless of whether a Hearing Officer imposes conditions and restrictions.[114] Thus, there is no reason for a respondent's firm to delay adopting a heightened supervision plan while any conditions or restrictions are stayed pending an expedited review. Moreover, proposed Rule 9285(e) contemplates that a respondent's firm would need to create an amended plan of heightened supervision that takes into account any conditions or restrictions imposed after the initial plan is adopted.

PIABA wrote that the proposal should require that an individual respondent's employing firm be notified immediately of any conditions or restrictions imposed. FINRA generally agrees with this comment and, as explained above, has modified the proposal to require that the Office of Hearing Officers or the Office of General Counsel, as appropriate, provide a copy of the order imposing conditions and restrictions to each FINRA member with which the respondent is associated. This would be similar to how FINRA rules currently require that copies of disciplinary decisions be provided to each FINRA member with which a respondent is associated.[115]

➢ Heightened Supervision of Disciplined Respondents

FINRA also received comments concerning the proposed amendments to require, in the event of an appeal or call for review, that an individual respondent's member firm adopt heightened supervisory procedures for that individual respondent.

Better Markets and PIABA expressed support for requiring firms to adopt written plans of heightened supervision while a disciplinary appeal is pending.

FSI and SIFMA stated that requiring firms to adopt written plans of heightened supervision within ten days of any appeal or call for review is an insufficiently short amount of time, and that firms should have 30 days. FINRA believes, however, that the ten-day period is appropriate under the circumstances. The longer the time period without a plan of heightened supervision in place, the greater the risk to investors. Retaining the shorter, ten-day deadline will allow the investor-protection benefits of the heightened supervision plans to be in place sooner. FINRA also believes that the ten-day period is sufficient because a firm should be aware of the potential need to adopt a heightened supervision plan well in advance of when it would be required to do so. In this regard, Form U4 requires that registered persons report when they are the subject of a regulatory complaint that could result in an affirmative answer to other Form U4 disclosure questions that ask about self-regulatory organization findings and disciplinary actions, and FINRA rules require that the Office of Hearing Officers promptly provide a copy of a disciplinary decision to each member with which a respondent is associated. Furthermore, the ten-day deadline for adopting a heightened supervision plan would begin only when the respondent appeals the decision to the NAC or when the matter is called for review. FINRA Rules 9311 and 9312 provide 25 days to file an appeal and 25 to 45 days to call a case for review.

PIABA suggested that a firm required to adopt a plan of heightened supervision pursuant to proposed Rule 9285 also should be required to document its enforcement of that plan. FINRA has previously indicated that documenting the enforcement of a heightened supervision plan could be a useful element of such a plan.[116] Instead of singling out additional provisions like these in the rule text, however, FINRA believes that its published notices provide a thorough source of guidance on heightened supervision plans, including what provisions should

[114] *See also Regulatory Notice* 18–15 (April 2018) (Guidance on Implementing Effective Heightened Supervisory Procedures for Associated Persons with a History of Past Misconduct).

[115] *See* Rule 9268(d).

[116] *See Notice to Members* 97–19 (April 1997) (advising that firms could require supervisors of registered representatives subject to special supervisory arrangements to provide a sign-off on daily activity or to periodically attest in writing that they have carried out the terms of the special supervision).

be included at a minimum, and what other provisions can be part of an effective plan.[117] As needed or appropriate, FINRA would be able to update its published guidance to account for the heightened supervision plans required by the proposed rule change.

Luxor suggested that heightened supervision plans would not be necessary where a Hearing Officer imposes conditions or restrictions. FINRA believes that even when conditions and restrictions are imposed, the respondent's member firm would still need to address, in a heightened supervision plan, how it would implement and execute those conditions and restrictions. Furthermore, heightened supervision plans would be needed to address activities that are not subject to any imposed conditions or restrictions.

Proposed Amendments to the FINRA Rule 9520 Series To Require Automatic Interim Plans of Heightened Supervision of a Disqualified Person During the Period When FINRA Is Reviewing an Eligibility Application

Several commenters specifically approved of the proposed amendments to Rule 9522, which would require a member firm to adopt interim heightened supervisory procedures for a disqualified person during the pendency of the firm's SD Application to continue associating with that disqualified person. NASAA commented that this regulatory gap should be closed. PIABA commented that there is an obvious benefit to the proposal.

Better Markets suggested that firms should be required to adopt a plan of heightened supervision immediately when an associated person is found to have committed acts that are grounds for becoming disqualified, even pending the associated person's appeal of the underlying disqualifying event. While FINRA agrees that there may be benefits to requiring firms to place a disqualified associated person on a heightened supervision plan immediately and before the filing of an application to continue associating with that person, FINRA believes the timing requirement of the proposed rule—to require such a plan once a firm has made a determination to seek approval for continued association with the disqualified associated person—strikes the appropriate balance.

Network 1 wrote that requiring firms to expend resources on developing heightened supervision plans for disqualified persons while an SD Application is pending is a disincentive to hiring the person at all. While FINRA recognizes that the requirement to develop and implement an interim heightened supervision plan in these circumstances may deter some firms from retaining or hiring a disqualified person, FINRA believes that if a firm elects to sponsor a disqualified person it needs to provide greater oversight of the activities of such person during the pendency of the SD Application, thereby reducing the potential risk of customer harm during this period. Moreover, if the SD Application is approved by FINRA, the firm would in almost all cases be required to prepare a plan of heightened supervision.

Aderant noted that although proposed Rule 9522(g) sets a ten-day deadline to remedy a substantially incomplete application that seeks the continued associated of a disqualified person, the version proposed in *Regulatory Notice* 18–16 did not identify the specific event that triggers the ten-day deadline. FINRA agrees that a modification is appropriate and has revised proposed Rule 9522(g) to establish that the event triggering the ten-day deadline is service of the notice of delinquency.

Proposed Amendments to FINRA Rule 8312

The proposed amendments to FINRA Rule 8312 would remove the requirement that the only means through which persons can request information as to whether a particular member is subject to the provisions of the Taping Rule is a telephonic inquiry via the BrokerCheck toll-free telephone listing. The proposed amended rule would permit FINRA to release this information through BrokerCheck regardless of how it is requested.

NASAA agreed with this proposal, stating that it would advance investor protection.

Other commenters opposed it. Luxor wrote that the proposal is punitive, will disproportionately cause reputational damage to small firms, and will create a perception that a taping firm and its representatives are to be viewed negatively simply by association with behavior that occurred at other firms and other persons. Network 1 commented that there is little likelihood the public will understand the difference between a taping firm and a disciplined firm. FINRA notes that Rule 8312 already provides, however, that FINRA will release whether a particular member firm is subject to the Taping Rule in response to telephonic inquiries via the BrokerCheck toll-free telephone listing. The proposed amendments—which will only remove the telephonic inquiry limitation—will simply make it easier for investors to obtain this same information by expanding the means through which investors can access it. Moreover, the comment that the proposed amendments would have a disproportionate effect on small firms has no basis; there is currently only one firm subject to the Taping Rule.

Several comments raised concerns regarding the content of the proposed BrokerCheck disclosure relating to taping firms. Better Markets and PIABA requested that the disclosure be explained in BrokerCheck and include a specific narrative description of why the disclosure is being made. NASAA suggested that the proposed BrokerCheck disclosure appear only on the BrokerCheck reports of the few firms that are subject to the Taping Rule. NASAA further commented that the disclosure should identify the firm as subject to the Taping Rule and explain in plain English what that means. Network 1 and Better Markets raised concerns as to how the proposed amendments would impact the information disclosed through BrokerCheck concerning individuals. Network 1 requested that FINRA amend the proposal to ensure that the information disclosed on BrokerCheck not communicate any ''guilt by association'' for persons who are employees of taping firms and who have ''clean records.'' Better Markets, on the other hand, suggested that the BrokerCheck profiles of individual brokers should denote when they are associated with taping firms.

FINRA appreciates the concerns expressed and agrees that the BrokerCheck disclosure of a firm as being subject to the Taping Rule should include a clear explanation of what that means, to help investors understand why the taping firm is subject to heightened procedures and incent them to research the background of a broker associated with the taping firm.

Proposed Amendments to the FINRA Rule 1000 Series To Impose Additional Obligations on Member Firms That Associate With Persons With a Significant History of Past Misconduct

➢ General Comments

The proposed amendments to the FINRA Rule 1010 Series would require a member firm to submit a letter to Member Regulation seeking a materiality consultation when a natural person that has, in the prior five years, one or more ''final criminal matters'' or two or more ''specified risk events''

[117] *See Notice to Members* 97–17 (April 1997); *Regulatory Notice* 18–15 (April 2018).

seeks to become an owner, control person, principal or registered person.

Several commenters expressed general support for the proposed amendments to the Rule 1000 Series.[118] Better Markets characterized requiring materiality consultations before hiring as an important regulatory innovation. NASAA described the proposal as a reasonable means of getting Member Regulation more involved in members' decisions to associate with individuals who have significant disciplinary histories. PIABA wrote that the proposed amendments would promote investor protection, adequately apply stronger standards for continuing membership, and remind firms of the need to keep new representatives with significant disciplinary histories under a well-defined, well-enforced supervisory plan.

Janney and SIFMA commented that the proposed rule requiring materiality consultations is contrary to the spirit of FINRA's current guidance about materiality consultations, which they assert focuses on changes to a firm's business model and not the activity or employability of individuals. FINRA disagrees with this assertion and believes the proposed rule is consistent with FINRA rules governing the membership application process, which considers, among other things, firms' hiring decisions and individuals' past activities. For example, the safe harbor in IM–1011–1 is premised on the notion that hiring a certain number of associated persons involved in sales can be a material change in business operations that requires the filing of a CMA, and the safe harbor is not available to a member firm or a principal of a firm that has a specified disciplinary history. Likewise, FINRA rules require Member Regulation to consider, in new membership applications and CMAs, a variety of criminal, civil, regulatory, and arbitration events when assessing whether an applicant and its associated persons are capable of complying with federal securities laws, the rules and regulations thereunder, and FINRA rules.[119]

Several commenters expressed concern about the possible negative impact of the proposed rule on a firm's hiring practices and the ability of individuals with such events to be hired. Luxor commented that the proposed rule changes are unnecessary, because FINRA can contact a firm when it has hired ''high-risk brokers.'' Luxor also commented that if a person has a license to operate and has not been barred or otherwise precluded from operating, no additional consultation should be required when a firm wishes to hire that person. Janney stated that the investing public and the markets would be better protected by FINRA taking contemporaneous action, instead of disrupting the hiring practices of an unrelated firm as many as five years after the underlying disclosure events in proposed Rule 1017(a)(7) and IM–1011–3 have occurred. Janney also expressed the view that it appears that FINRA would like to review transitions specifically in the context of an affiliation change, and the proposed rule would create the ability to prevent transition of a registered representative without taking enforcement action.

FINRA believes the proposed rule is necessary to ensure that FINRA has a more meaningful regulatory touchpoint at the time an individual with a significant history of misconduct seeks to become an owner, control person, principal or registered person of a member firm. The proposal would apply in the limited circumstance where such individual meets the required thresholds for disclosure events. FINRA believes requiring firms to ask FINRA for a materiality consultation, for example, when it is planning to hire a particular individual that meets the required thresholds, would allow FINRA the opportunity to meaningfully assess the underlying disciplinary events and review the firm's supervisory practices and internal controls. The ability of FINRA to conduct this review contemporaneously furthers investor protection. Moreover, nothing in the proposed rule precludes FINRA from taking enforcement action when necessary or appropriate.

➢ Definitions and Criteria That Would Require a Materiality Consultation

FINRA received numerous comments concerning the definitions in proposed Rule 1011 of ''final criminal matter'' and ''specified risk event'' and the criteria in proposed Rule 1017(a)(7) that would trigger the need to request a materiality consultation. Some commenters expressly supported the proposed definitions and criteria.[120] FSI wrote that the numeric parameters and proposed criteria are sound and reasonable, and it supported how the ''specified risk events'' are final and investment- or regulatory-related. NASAA wrote that the proposed definition of ''final criminal matter'' appropriately captures the scope of disclosable criminal events on the Uniform Registration Forms. PIABA wrote that the criteria and definitions are appropriate and clear enough to avoid confusion, and that the minor compliance costs will be far outweighed by the increased investor protections.

Other commenters suggested alternatives to the proposed definitions and criteria. For example:

- Some commenters proposed that the definition of ''final criminal matter'' include only investment- or fraud-related criminal matters [121] or matters that would generate a risk of customer harm.[122]
- Several commenters proposed that the definition of ''specified risk event'' use a dollar threshold that is either higher [123] or lower [124] than $15,000.
- Some commenters proposed that the final awards and settlements that are counted as ''specified risk events'' be broadened [125] or narrowed.[126]
- Several commenters proposed changes to how ''specified risk events'' would be counted.[127]
- Some commenters suggested that lookback periods for events that would trigger a materiality consultation be either shortened [128] or increased.[129]
- Luxor wrote that additional factors should be included in the criteria for whether a materiality consultation is required, including the length of time the individual has been in the industry,

[118] Better Markets, Cambridge, NASAA, PIABA.

[119] *See* Rule 1014(a)(3).

[120] FSI, NASAA, PIABA.

[121] Luxor, Wulff Hansen.

[122] MML. This commenter also requested guidance concerning whether ''final criminal matter'' would include situations where a person receives a deferred sentence and can clear a conviction through compliance with a court-ordered program. Per the proposed definition, whether a ''final criminal matter'' would count for purposes of proposed Rule 1017(a)(7) and IM–1011–3 would depend on whether the matter ''is disclosed, or was required to be disclosed, on the applicable Uniform Registration Forms.'' The setting aside of a conviction does not necessarily mean that it need not be reported on, or that the matter should be expunged from, the Uniform Registration Forms. *See, e.g.,* Form U4 and U5 Interpretive Questions and Answers, *http://www.finra.org/sites/default/files/Interpretive-Guidance-final-03.05.15.pdf* (Questions 14A and 14B, Interpretive Question and Answer 2, stating that ''[e]ach order setting aside a conviction will be reviewed by RAD staff to determine if the conviction must be reported'').

[123] Cambridge, IBN, Janney, MML. Cambridge asserted that some unfair high-risk characterizations resulting from a $15,000 threshold would involve control persons, principals and registered persons who are required to disclose events due to a managerial role but are ''likely not directly involved in'' the underlying violations in those disclosed events. FINRA notes that the proposed definition of ''specified risk event'' does not include final awards or settlements where the person was not named but is only the ''subject of.''

[124] Better Markets.

[125] NASAA.

[126] Luxor, Network 1.

[127] Luxor, MML, Wulff Hansen.

[128] Luxor.

[129] NASAA.

the number of events during that period, and the circumstances of those events.

• Several commenters suggested narrowing the kinds of business expansions that would require materiality consultations.[130]

After considering all the commenters' suggested alternative definitions and criteria, FINRA has decided to retain the definitions of ''final criminal matter'' and ''specified risk events'' and the criteria that would trigger a materiality consultation that it proposed in *Regulatory Notice* 18–16. Many of the comments concern issues that FINRA already considered and addressed in the economic assessment in *Regulatory Notice* 18–16, and the comments have not persuaded FINRA that any changes to the definitions or criteria would be more efficient or effective at addressing the potential for future customer harm presented. As FINRA explained in *Regulatory Notice* 18–16, the primary benefit of the proposed rule change would be to reduce the potential risk of future customer harm by individuals who meet the proposed criteria and seek to become an owner, control person, principal or registered person of a member firm. The proposed rule change would further promote investor protection by applying stronger standards for changes to a current member firm's ownership, control or business operations, including the potential that such changes would require the filing and approval of a CMA. In developing this proposal, one of the guiding principles was to provide transparency regarding the proposal's application, so that firms could largely identify with available data the specific set of disclosure events that would count towards the proposed criteria and whether a proposed business change would trigger the need for a materiality consultation. This is why FINRA's proposal is based mostly on events disclosed on the Uniform Registration Forms, which are generally available to firms and FINRA.

While FINRA generally agrees with the comments that the proposed materiality consultation process should account for situations where numerous ''specified risk events'' are related,[131] it does not believe that modifying the rule-based criteria is the best way to do so. Rather, FINRA believes the materiality consultation process should allow it to assess an individual's particular events. Moreover, based on experience gained through the materiality consultations, FINRA may be able to develop guidance for the Department concerning situations involving the ''specified risk events'' that could affect whether a proposed business expansion is or is not material.

Wulff Hansen suggested that a materiality consultation should be required when a person having two or more ''specified risk events'' is already associated with a member and seeks to become an owner or control person. FINRA notes that the proposed rule already would require materiality consultations for internal moves. As explained above, however, the proposed rule would not apply when a person who meets the proposed criteria in proposed Rule 1017(a)(7) is already a principal at a member firm and seeks to add an additional principal registration at that same firm. In that instance, the proposed rule amendments would not require a materiality consultation.

➢ Materiality Consultation Procedures

FSI and Janney requested that FINRA develop additional procedures for the materiality consultation process. For example, these commenters wrote that FINRA should establish time frames for FINRA staff to issue a decision in a materiality consultation, with one commenter explaining that time deadlines would allow firms to minimize litigation risks when making hiring decisions. FSI asked that FINRA consider establishing rule-based remedies for firms that disagree with FINRA staff's materiality consultation decisions, and a rule-based requirement that FINRA explain in writing a decision that requires a firm to file a CMA.[132] MML suggested that the proposed rule should outline the issues that would be central to the Department's materiality determination and clarify the proposed requirement that a member submit a written letter to the Department in a ''manner prescribed by FINRA.''

In general, FINRA believes that additional rule-based procedures for the materiality consultation process would undermine its informality, flexibility and expedited nature. By analogy, FINRA's existing materiality consultation process has no written-decision requirement and no appeal process. Nevertheless, FINRA believes it would be helpful to provide guidance about the materiality consultation process that would be required by the proposed rule, to supplement the already published guidance about FINRA's existing materiality consultation process.[133] For that reason, FINRA has explained in detail—both in *Regulatory Notice* 18–16 and above—the kinds of information that the firm should provide when seeking a materiality consultation required by proposed Rule 1017(a)(7) and what information would be relevant to the Department's materiality decision. FINRA also will provide more guidance as necessary as to what firms should provide when seeking the materiality consultation required by the proposed rule amendments.

Miscellaneous Comments

SIFMA requested that FINRA provide a notification to firms of registered persons who have ''specified risk events,'' similar to how FINRA provides information gathered in its public records searches for information relating to bankruptcies, judgments and liens, asserting that individuals may not identify and disclose ''specified risk events'' to firms in a timely manner. FINRA appreciates this suggestion, but notes that the events included in the definition are derived from the Uniform Registration Forms and, therefore, firms should generally be able to conduct appropriate due diligence to identify such individuals. Indeed, FINRA Rule 3110(e) already requires firms to establish and implement written procedures reasonably designed to verify the accuracy and completeness of the information contain in an applicant's initial or transfer Form U4, which would include verifying the accuracy and completeness of answers and disclosures concerning ''final criminal matters'' and the events covered by the definition of ''specified risk events.''

Cambridge commented that persons should have the opportunity to confidentially submit an application seeking a materiality consultation to ''pre-qualify'' a transition from one firm

[130] Janney, Luxor, MML, SIFMA, Wulff Hansen.

[131] MML, Wulff Hansen.

[132] FSI also wrote that additional procedures would be appropriate because the materiality consultations would be a rule-based requirement, not voluntary.

[133] *See* The Materiality Consultation Process for CMAs, *https://www.finra.org/rules-guidance/guidance/materiality-consultation-process.* FINRA's existing guidance provides that a materiality consultation submission should include, but is not limited to, the following: (i) A description of the proposed change in business sufficient for staff to understand the scope of the business and how it will be conducted; (ii) why the firm believes that the proposed new business or product is similar in scope or nature to their existing business; (iii) the anticipated impact the change will have to the firm's supervisory structure; (iv) any impact the proposed change will have to the firm's capital or liquidity; (v) the nature and scope of updates required to written supervisory procedures, systems and firm operations; (vi) any recent disciplinary matters that relate to the proposed activities as well as how the firm's overall regulatory history may impact the ability of the firm to effectively conduct the activity; and (vii) any relevant documentation to support the proposal.

to another and gain confidence that they are free to make such a transfer. FINRA does not believe, however, that prequalification of a person with a significant history of misconduct would be appropriate, or even possible, in the absence of additional information about, among other things, the specific context in which the person would be associated with a new firm and the activities and history of such proposed new firm.

Better Markets opined that the proposed rule change would reflect an improvement over the status quo but is still insufficient, and that FINRA should do more to reduce the number of brokers with a significant history of misconduct and the prevalence of recidivism. Specifically, Better Markets wrote that FINRA should ban brokers with two criminal convictions or three ''specified risk events'' at a $5,000 level (instead of the proposed $15,000 level) and immediately and permanently expel a firm where more than 20% of its brokers have three or more ''specified risk events.'' Better Markets also suggested that FINRA engage in more investor education on the topic of recidivist brokers, design a user-friendly disclosure system that clearly identifies brokers with a demonstrable pattern of violations, and repeal the part of FINRA Rule 9311 that stays a Hearing Panel or Hearing Officer decision pending an appeal to the NAC.

FINRA's efforts to address the risks posed by brokers with a significant history of misconduct are ongoing, and FINRA appreciates comments on additional steps that FINRA might take. Some of Better Markets' suggestions, however, amount to a request that FINRA create new categories of ''statutory disqualification.'' Federal law defines the types of misconduct that presumptively disqualify a broker from associating with a firm, and amending what qualifies as a statutory disqualification is beyond FINRA's jurisdiction. In addition, FINRA does not agree that repealing the provision in Rule 9311(b) that stays the effect of a Hearing Panel or Hearing Officer decision would be appropriate at this time. FINRA's rule that stays the effect of a Hearing Panel or Hearing Officer decision is consistent with rules of other self-regulatory organizations and the SEC.[134] Moreover, the proposed rule change would protect investors during a disciplinary appeal by empowering Hearing Officers to impose conditions and restrictions that they consider reasonably necessary for the purpose of preventing customer harm.

Miscellaneous Comments Outside the Scope of the Proposal

Some comments raised concerns regarding broader issues, such as arbitration proceedings and public disclosure of arbitration settlements,[135] the composition of Hearing Panels in FINRA's disciplinary proceedings,[136] questions about whether firms are permitted to pay disqualified persons consistent with FINRA Rule 8311,[137] various Constitutional protections that FINRA should adopt in investigations and disciplinary proceedings,[138] and how FINRA might improve the Taping Rule to prevent non-compliance with that rule.[139] FINRA believes, however, that these comments are all outside the scope of the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2020–011 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–2020–011. This file number should be included on the subject line if email 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–

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[134] *See, e.g.,* 17 CFR 201.360(d) (providing that an SEC ALJ's initial decision shall not become final as to a party or person who timely files a petition for review); CBOE Rule 13.11(b) (providing that sanctions shall not become effective until the Exchange review process is completed or the decision otherwise becomes final); NASDAQ PHLX Rule 9311(b) (providing that an appeal to the Exchange Review Council from a disciplinary decision shall operate as a stay until the Exchange Review Council issues a decision); NYSE CHX Article 12, Rule 6 (providing that the enforcement of any orders or penalties shall be stayed upon the filing of a notice of appeal pending the outcome of final review by a Judiciary Committee or the Board of Directors).

[135] IBN suggested that FINRA should have local arbitration hearings, with panels composed of local representatives and local firms, and that FINRA should eliminate mandatory arbitration or require arbitrators to be lawyers and follow the rule of law. Network 1 commented that FINRA should consider the ''prejudicial effect'' on brokers of the six-year limitations period for filing an arbitration claim and of nuisance-value arbitration actions brought by non-attorney representatives; that references to arbitration claims brought by a non-attorney representative that are settled or that result in an award in favor of the broker should be removed from the broker's public record; and that an arbitration claim brought by a non-attorney representative that results in a settlement should not be made available to the public at all.

[136] Network 1 commented that FINRA adjudicatory panels should include one attorney with a demonstrated history of representing brokers or member firms, securities industry experience, and knowledge of securities laws, regulations and rules and industry practices in the investment banking and securities businesses. It also commented that FINRA should establish a process for soliciting ''bona fide neutrals'' to sit on adjudicatory panels.

[137] Network 1.

[138] Network 1.

[139] NASAA.

2020–011 and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[140]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07777 Filed 4–13–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88589; File No. SR–NYSEAMER–2020–22]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10E

April 8, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 27, 2020, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

The Exchange proposes to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on October 20, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, 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, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on October 20, 2020. The pilot program is currently due to expire on April 20, 2020.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10E that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Rule 7.10E to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange later amended Rule 7.10E to extend the pilot's effectiveness to the close of business on April 20, 2020.[11]

The Exchange now proposes to amend Rule 7.10E to extend the pilot's effectiveness for a further six months until the close of business on October 20, 2020. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[12] In such an event, the remaining sections of Rule 7.10E would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10E.

The Exchange does not propose any additional changes to Rule 7.10E. Extending the effectiveness of Rule 7.10E for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the

[140] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEAmer–2010–60).

[5] *See* Securities Exchange Act Release No. 68801 (Feb. 1, 2013), 78 FR 8630 (Feb. 6, 2013) (SR–NYSEMKT–2013–11).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSEMKT–2014–37).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71820 (March 27, 2014), 79 FR 18595 (April 2, 2014) (SR–NYSEMKT–2014–28).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85563 (April 9, 2019), 84 FR 15241 (April 15, 2019) (SR–NYSEAMER–2019–11).

[11] *See* Securities Exchange Act Release No. 87354 (October 18, 2019), 84 FR 57139 (October 24, 2019) (SR–NYSEAMER–2019–44).

[12] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.