SECURITIES AND EXCHANGE COMMISSION
[Release No. 34–89305; File No. SR–FINRA–
2020–011]

Self-Regulatory Organizations;
Financial Industry Regulatory
Authority, Inc.; Order Instituting
Proceedings To Determine Whether To
Approve or Disapprove a Proposed
Rule Change, as Modified by
Amendment No. 1, To Address Broker-
Dealers With a Significant History of
Misconduct


I. Introduction

On April 3, 2020, Financial Industry
Regulatory Authority, Inc. ("FINRA")
filed with the Securities and Exchange
Commission ("Commission"), pursuant
to Section 19(b)(1) of the Securities
Exchange Act of 1934 ("Exchange
Act")1 and Rule 19b–4 thereunder,2 a
proposed rule change to amend FINRA’s
rules to help further address the issue of
broker-dealers with a significant history
of misconduct and the firms that employ
them. The proposed rule change was
published for comment in the Federal
Register on April 14, 2020.3 On
May 27, 2020, FINRA consented to an
extension of the time period in which
the Commission must approve the
proposed rule change, disapprove the
proposed rule change, or institute
proceedings to determine whether to
approve or disapprove the proposed
rule change to July 13, 2020.4 On July 2,
2020, FINRA responded to the
comment letters received in response to
the Notice and filed an amendment to
the proposed rule change ("Amendment
No. 1").5

The Commission is publishing this
order pursuant to Section 19(b)(2)(B) of
the Exchange Act 6 to solicit comments
on Amendment No. 1 from interested
persons and to institute proceedings to
determine whether to approve or
disapprove the proposed rule change, as
modified by Amendment No. 1.

Institution of proceedings does not
indicate that the Commission has
reached any conclusions with respect to
the proposed rule change, nor does it
mean that the Commission will
ultimately disapprove the proposed rule
change. Rather, as discussed below, the
Commission seeks additional input from
interested parties on the changes to the
proposed rule change, as set forth in
Amendment No. 1.

II. Description of the Proposed Rule
Change

Background

FINRA’s proposed rule change would:
(1) Amend the FINRA Rule 9200 Series
(Disciplinary Proceedings) and the 9300
Series (Review of Disciplinary
Proceedings 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 broker-dealer or
respondent associated person, and
require the member broker-dealer
employing a respondent associated
person to adopt heightened supervisory
procedures for such associated person,
when a disciplinary matter is appealed
to the National Adjudicatory Council
("NAC") or called for NAC review; (2)
mandate the FINRA Rule 9520 Series
(Eligibility Proceedings) to require
member broker-dealers to adopt
heightened supervisory procedures for
statutorily disqualified associated
persons during the period a statutory
disqualification eligibility request is
under review by FINRA; (3) amend
FINRA Rule 8312 (FINRA BrokerCheck
Disclosure) to require the disclosure
through FINRA BrokerCheck of the
status of a member broker-dealer as a
taping firm7 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
broker-dealer to submit a written
request to FINRA’s Department of
Member Regulation, through the
Membership Application Group ("MAP
Group"), seeking a materiality
consentation 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 events8 seeks to become
an owner, control person, principal or
registered person of the member broker-
dealer.9

Proposed Rule Change to the FINRA
Rule 9200 Series (Disciplinary
Proceedings) and the 9300 Series
(Review of Disciplinary Proceedings by
National Adjudicatory Council and
FINRA Board; Application for SEC
Review)

Currently, FINRA rules require that
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.10 In turn, the filing of an
application for Commission review
stays the effectiveness of any sanction,
other than a bar or an expulsion,
imposed in a decision constituting a
final FINRA disciplinary action.11

In the Notice, FINRA expressed
concern about customers who could
engage in securities transactions with

---

1 See letter from Michael Garavese, Associate
General Counsel, Office of General Counsel, FINRA,
to Daniel Fisher, Branch Chief, Division of Trading
and Markets, U.S. Securities and Exchange
2 See letter from Michael Garavese, Associate
General Counsel, Office of General Counsel, FINRA,
to Vanessa Countrystan, Secretary, U.S. Securities
and Exchange Commission, dated July 2, 2020
("FINRA Letter"). The FINRA Letter is available at
the Commission’s website at
https://www.sec.gov/,
comments/sr-finra-2020-011/srfinra2020011-
7390765-2190226.pdf.
5 See Exchange Act Release No. 88600 (Apr. 8,
disciplined respondents during the pendency of an appeal from, or a NAC review of, a hearing panel or hearing officer disciplinary decision. According to FINRA, “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 an appeal or review and add an interim layer of investor protection while the appellate review of the disciplinary proceeding remains pending.”

Accordingly, FINRA proposed amendments to its Rule 9200 Series and Rule 9300 Series that would authorize hearing officers to impose conditions or restrictions on disciplined respondents and require broker-dealers to adopt heightened supervision plans concerning their associated persons who are the disciplined respondents. The proposed rule change would require a heightened supervision plan to be reasonably designed and tailored to include specific supervisory policies and procedures that address the violations found and be reasonably designed to prevent or detect a reoccurrence of the violations. The proposed rule change would also establish a process for an expedited review by the Review Subcommittee of the NAC of any such conditions or restrictions imposed. Specifically, proposed Rule 9285(a) would provide that the hearing officer who participated in an underlying disciplinary proceeding and found that a respondent violated a statute or rule provision which is subsequently appealed to the NAC or called for NAC review, may impose conditions or restrictions on the activities of the respondent during the appeal as the hearing officer considers reasonably necessary for the purpose of preventing customer harm. Under the proposed rule change, the conditions or restrictions imposed by a hearing officer would remain in place until FINRA’s final decision takes effect and all appeals are exhausted.

Proposed Rule Change to the FINRA Rule 9520 Series (Eligibility Proceedings)

The FINRA 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. These eligibility proceedings require a broker-dealer to propose a written plan of heightened supervision of the statutorily disqualified associated person that would become effective upon FINRA’s approval of the broker-dealer’s application to associate with the statutorily disqualified person.

The proposed rule change would amend FINRA Rule 9522 to require a member broker-dealer that files an application to continue associating with a disqualified person under FINRA Rule 9522(a)(3) or Rule 9522(b)(1)(B) to include an interim plan of heightened supervision that would be in effect throughout the entirety of the application review process. The proposed rule change would delineate the circumstances under which a statutorily disqualified person may remain associated with a member broker-dealer while FINRA is reviewing the application.

Proposed Rule Change to FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

FINRA Rule 8312 governs the information FINRA releases to the public through its BrokerCheck system. Currently, FINRA Rule 8312(b) requires that FINRA release information about, among other things, whether a particular member broker-dealer is subject to the provisions of FINRA Rule 3170 (the “Taping Rule”), but only in response to telephonic inquiries via the BrokerCheck toll-free telephone listing. The proposed rule change would remove the requirement that FINRA inform the public that a broker-dealer is subject to the Taping Rule only in response to telephonic inquiry via the BrokerCheck toll-free telephone listing. Specifically, proposed FINRA Rule 8312(b) would require FINRA to release through BrokerCheck information as to whether a particular broker-dealer is subject to the Taping Rule (a “taping firm”). FINRA believes that broadening the disclosure through BrokerCheck of the status of a broker-dealer as a taping firm would help inform more investors of the heightened procedures required of the broker-dealer, which may incentivize investors to research more carefully the background of an associated person associated with the taping firm.

Proposed Rule Change to FINRA Rule 1000 Series (Member Application and Associated Person Registration)

The FINRA Rule 1000 Series govern, among other things, FINRA’s membership proceedings. Currently, a member broker-dealer is permitted (subject to exceptions) to expand its business under the safe-harbor set forth in IM-1011 without the filing and prior approval of a continuing membership application. For example, under the existing parameters of this safe harbor, a broker-dealer could hire an associated person even if he or she has a significant history of misconduct. The proposed rule change would limit the application of the safe harbor by imposing additional obligations on a member broker-dealer when a natural person who 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, control person, principal or registered person of the broker-dealer.

Specifically, when a natural person seeking to become an owner, control person, principal or registered person of a member broker-dealer has, in the prior

See Notice at 20747. Additionally, the Notice sets forth in greater detail how this process would operate.

See Notice at 20748. The proposed rule change would also amend Rule 9556 to grant FINRA the authority to bring an expedited proceeding against a respondent that fails to comply with conditions and restrictions imposed pursuant to proposed Rule 9285 that could result in a suspension or cancellation of membership or suspension or bar from associating with any FINRA member. See Notice at 20749.

See Notice at 20749.

See Notice at 20748.

See Notice at 20746.

See Notice at 20747.

See Notice at 20747.

See Notice at 20747.

See Notice at 20747.

See Notice at 20747.

See Notice at 20747.

See Notice at 20747.

See Notice at 20747.

See Notice at 20747.

See Notice at 20747.

See Notice at 20747.

See Notice at 20747.
five years, one or more “final criminal matters” or two or more “specified risk events,” proposed Rule 1017(a)(7) would require a member broker-dealer to either: (1) File a continuing membership application or (2) submit a written request seeking a materiality consultation for the contemplated activity with the MAP Group.\textsuperscript{28} If the broker-dealer seeks a materiality consultation, the MAP Group would consider, among other things, whether the “final criminal matters” or “specified risk events” are customer-related; whether they 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.\textsuperscript{29} Where FINRA determines that a contemplated change is material, FINRA would instruct the broker-dealer to file a continuing membership application if it intends to proceed with such change. Proposed Rule 1017(a)(7) would establish that the safe-harbor for business expansions in IM–1011–1 would not be available to a member broker-dealer when a materiality consultation is required.\textsuperscript{30}

Additionally, the proposed rule change would adopt a corresponding change to IM–1011–3 (Business Expansions and Persons with Specified Risk Events) to specify that the safe-harbor for business expansions in IM–1011–1 would not be available to any broker-dealer seeking to add a natural person who: (i) Has, in the prior five years, one or more “final criminal matters” or two or more “specified risk events” and (ii) seeks to become an owner, control person, principal or registered person of the member.\textsuperscript{31} In those circumstances, proposed IM–1011–3 would provide that if the broker-dealer is not otherwise required to file a continuing membership application, it must comply with the requirements of proposed FINRA Rule 1017(a)(7).\textsuperscript{32}

The Commission has received five comment letters on the proposed rule change. In response to comments, FINRA submitted the FINRA Letter and Amendment No. 1, amending the proposed rule change as described below.

### III. Description of Amendment No. 1

In the initial filing of the proposed rule change, proposed FINRA Rule 1011(h) defined 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 Forms.” Proposed FINRA Rule 1011(p) defined the term “specified risk event” to mean any one of several specified events “that are disclosed, or were required to be disclosed, on an applicable Uniform Registration Form.” The “was required to be disclosed” language in the proposed “final criminal matter” definition differs in substance from the “are or were required to be disclosed” language in the proposed “specified risk event” definition.\textsuperscript{33} In response to comments, FINRA agreed with some commenters that “this difference should be eliminated, and that both definitions should include disclosures that are required if the member firm and person proceed with the contemplated change, including disclosures that are required on Uniform Registration Forms that have not yet been executed.” Thus, FINRA amended proposed FINRA Rule 1011(h) to include in the definition of “final criminal matter” a relevant criminal event that “is or was” required to be disclosed on a Uniform Registration Form, and to make some grammar- and syntax-related modifications.\textsuperscript{34}

Also in response to comments, FINRA amended proposed FINRA Rule 1017(a)(7) to define “owner” and “control person” for purposes of that proposed rule (and, by extension, IM–1011–3).\textsuperscript{35} Specifically, Amendment No. 1 would modify proposed FINRA Rule 1017(a)(7) to provide that, “for purposes of FINRA Rule 1017(a)(7): (i) the term ‘owner’ has the same meaning as ‘direct owner’ on Form BD Schedule A and ‘indirect owner’ on Form BD Schedule B; and (ii) that ‘control person’ means a person who would have ‘control’ as defined on Form BD.”\textsuperscript{36}

\textsuperscript{28} See Notice at 20752 and 20753.\textsuperscript{29} See Notice at 20753.\textsuperscript{30} See id.\textsuperscript{31} See id.\textsuperscript{32} See id.\textsuperscript{33} See id. (stating that “[d]efining ‘control person’ by reference to the Form BD definition of ‘control’ means that the term would not be defined with reference to the term ‘controlling’ as defined in the FINRA By-Laws, Art. II(h).”)\textsuperscript{34} See id.\textsuperscript{35} See id.\textsuperscript{36} See id.\textsuperscript{37} 15 U.S.C. 78s(b)(2)(B).\textsuperscript{38} See id.\textsuperscript{39} See id.\textsuperscript{40} Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).\textsuperscript{41} See id.\textsuperscript{42} See id.
change, as modified by Amendment No. 1, as it determines whether the proposed rule change should be approved or disapproved.43

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 15A(b)(6) of the Exchange Act, or any other provision of the Exchange Act, rules, and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.44

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by August 3, 2020. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by August 7, 2020.

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 No. 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 No. SR–FINRA–2020–011. This file number should be included on the subject line.


The primary purpose of Rule 17a–10 is to obtain the economic and statistical data necessary for an ongoing analysis of the securities industry. Paragraph (a)(1) of Rule 17a–10 generally requires broker-dealers that are exempted from the requirement to file monthly and quarterly reports pursuant to paragraph (a) of Exchange Act Rule 17a–5 (17 CFR 240.17a–5) to file with the Commission the Facing Page, a Statement of Income (Loss), and balance sheet from Part IIA of Form X–17A–5–1 (17 CFR 249.617), and Schedule I of Form X–17A–5 not later than 17 business days after the end of each calendar year.

Paragraph (a)(2) of Rule 17a–10 requires a broker-dealer subject to Rule 17a–5(a) to submit Schedule I of Form X–17A–5 with its Form X–17A–5 for the calendar quarter ending December 31 of each year. The burden associated with filing Schedule I of Form X–17A–5 is accounted for in the OMB filing associated with Rule 17a–5.

Paragraph (b) of Rule 17a–10 provides that the provisions of paragraph (a) do not apply to members of national securities exchanges or registered national securities associations that maintain records containing the information required by Form X–17A–5 and which transmit to the Commission copies of the records pursuant to a plan which has been declared effective by the Commission.

The Commission staff estimates that approximately 46 broker-dealers will spend an average of 12 hours per year complying with Rule 17a–10. Thus, the total compliance burden is estimated to be approximately 552 hours per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–154, OMB Control No. 3235–0122]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension: Rule 17a–10
