

## Guidance for Ownership Changes and Asset Transfers 2023

FINRA Rule [1017](#) (Application for Approval in Change of Ownership, Control or Business Operations) specifies the events that require a member firm to submit an application for continuing membership (CMA) using Form CMA. The events include, among others, a merger, acquisition or transfer, or ownership change. When FINRA receives an application, it will conduct an initial review to determine whether the CMA is substantially complete in order for FINRA to begin a meaningful review of it. A CMA that is not substantially complete will be rejected and the applicant will lose a portion of the CMA fee.

One factor that may impede the CMA review process pertains to the documentation and information that may be lacking in an application when it is first submitted to FINRA. This checklist is intended to provide firms with guidance on some key information that may help facilitate the CMA review process. Form CMA is organized by 14 standards for admission as set forth under Rule 1014(a) and specifies the documents and information required to support each standard. The items listed in this Checklist are also organized by standard and focus on the standards and their related documentation and information that an applicant may inadvertently overlook when submitting the application.

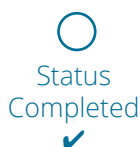
Firms should treat this checklist as a starting point for preparing Form CMA. Firms are advised to review the rules applicable to a CMA, including Rules 1014 and 1017, together with Form CMA. During the course of the review process, FINRA may request additional documents and information as necessary to render a decision on the application.

FINRA reminds firms that there are some timing considerations for submitting a CMA depending upon the contemplated change. For example, a member must file a CMA for approval of a change in ownership or control at least 30 days prior to such change. But notwithstanding this timing consideration and others—where a member or associated person has an unpaid arbitration award or unpaid settlement related to an arbitration at the time of filing the CMA—the member may not effect such change until the member has demonstrated in the application its ability to satisfy such obligation in accordance with Rule 1014 and IM-1014-1. FINRA reminds firms that responses and documentation in a foreign language will not be accepted and must be certified and translated to English, having converted all currencies to U.S. dollars. In addition, FINRA maintains firms’ confidentiality but will not accept redacted documents.

### 1

#### STANDARD 1: OVERVIEW OF THE APPLICANTS

Standard 1 requires an application and all supporting documents to be complete and accurate.



- Provide an overview of the proposed change, including:
  - A detailed business plan that describes the proposed change (also addressed in Standard 4, below), including:
    - The names of the new owners;
    - Specific ownership percentages for all new owner(s);
    - Source of funding for the purchase and recapitalization of the member; and
    - Entity in which the interests are owned.
  - The extent of impact, if any, the contemplated change may have on your firm (e.g., financial, operational, supervisory).
  - Charts that reflect the pre-transaction and post-transaction ownership structure with ownership percentages, as well as management and supervisory structure, if changing (Note: Charts must total 100%).

- If possible, for each proposed change, please provide:
  - Rationale and closing date;
  - Statement as to whether the transaction will include a transfer of assets and liabilities;
  - Whether there will be any new affiliated entities; and
  - Other regulatory approvals required.

## IF APPLICABLE

**Asset Transfers and Mergers**

If your firm will be filing a Form CMA for an asset transfer or a merger, consider providing:

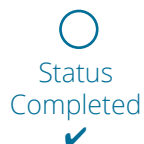
- A statement as to whether each party to the transaction would be required to file a CMA because the contemplated change for each party pertains to any of the events listed in Rule 1017(a).
- A statement explaining whether the customers of the applicant will be notified of the contemplated transaction. If so, the customer notification should accompany the application. If not, please explain how customers will be notified of the transfer.
- A statement explaining whether the applicant plans to file a Form BDW (Uniform Request for Broker-Dealer Withdrawal) either as part of this application or a future application. If so, please confirm all information on Form BD is up-to-date and explain why Form BDW is being filed.
- A statement as to whether the transaction will include a transfer of assets and liabilities, including:
  - Whether the contemplated event may involve a transfer of liabilities:
    - Provide a description of any pending arbitration claims or closed or settlement arbitration matters (e.g., claim amounts, pending matters, current status, amount of settled matters, treatment of unpaid and pending arbitration claims on the applicant's financial statements, among others specified in the Form CMA).
    - FINRA reminds applicants that the acquiring firm will need to be a FINRA member and demonstrate its ability to pay these liabilities.
  - Whether there are any pending or unpaid settled arbitrations or litigation actions against the applicant or any of its associated person(s), such as: unpaid arbitration awards, other adjudicated customer awards, unpaid arbitration settlements, a pending private civil action, or a pending arbitration claim.
  - If liabilities are not transferring, provide a detailed description of each liability and provide a statement of how each will be satisfied.

FINRA reminds firms that Rule 1017(a) required Form CMA to be submitted via FINRA Gateway at least 30 days before changes in ownership or control are scheduled to occur, unless the surviving entity meets exception requirements in Rule 1017(c)(4). Firms should discuss such changes with their FINRA Risk Monitoring Analyst (RMA), as well as FINRA's MAP department, prior to filing an application.

## 2

**STANDARD 2: LICENSES AND REGISTRATIONS**

Standard 2 requires an applicant and its associated persons to have all licenses and registrations required by FINRA, the SEC and state regulatory authorities.

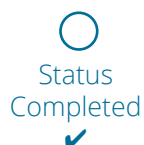


- Identify any changes to your firm's management and registered principals, including:
  - If your firm is adding new principals, address their direct or relevant experience and securities licenses, including licenses required to supervise your firm's business (also addressed in Standard 10, below).
  - If your firm is adding or changing an owner or control person, address whether the new owner or control person will have day-to-day responsibilities relating to the firm and address whether your firm will be pursuing principal registration for such owner or control person.<sup>1</sup>
- If possible, provide an attestation for all non-registered owners and managing directors attesting that they will not be involved in the day-to-day operations of the broker-dealer (including but not limited to hiring, firing, management, etc.) without proper securities license registrations.

## 3

**STANDARD 3: COMPLIANCE WITH SECURITIES LAWS, JUST AND EQUITABLE PRINCIPLES OF TRADE**

Standard 3 requires a determination as to whether an applicant and its associated persons are "capable of complying with" the federal securities laws, the rules and regulations thereunder, and FINRA rules. Standard 3 takes into consideration whether any persons associated with the firm have any disciplinary actions taken against them by other industry authorities, customer complaints, adverse arbitrations, pending or unadjudicated matters, civil actions, remedial actions imposed, or other industry-related matters that could pose a threat to public investors.



- An explanation of how your firm may overcome the presumption to deny the CMA for your firm and your firm's associated persons notwithstanding the existence of the events set forth under Rule 1014(a)(3)(A), (C), (D), (F) and (G).<sup>2</sup>
- In particular, an explanation of how your firm can demonstrate compliance with this Standard in light of any pending or potential regulatory actions, including FINRA, U.S. Securities and Exchange Commission (SEC) or state disciplinary, regulatory and enforcement actions.
- If applicable, an applicant should also be prepared to provide information related to:
  - Adjudicated and pending disciplinary and regulatory actions (including pending FINRA Enforcement actions) and certain disciplinary and regulatory actions trigger the presumption to deny the application;
  - Pending and unpaid arbitrations for your firm's associated persons;

1. See [FINRA Qualification and Registration Requirements Frequently Asked Questions](#).

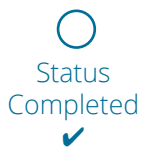
2. See [Regulatory Notice 20-15](#) (May 2020) (describing, among other things, the rebuttable presumption to deny an application); see also [Notice to Members 04-10](#) (February 2004).

- How your firm will pay for any pending and unpaid awards and will expect to see documentation supporting that funds are available to cover these costs (*i.e.*, arbitration plans or escrow agreements)<sup>3</sup>
- Identify any associated persons with a significant history of misconduct, including:
  - Providing details about any heightened supervisory plans for such persons; and
  - Addressing whether any natural person seeking to become an owner, control person, principal or registered person of your firm have, in the prior five years, one or more “final criminal matters” or two or more “specified risk events” and a heightened supervisory plan.<sup>4</sup>

## 4

**STANDARD 4: CONTRACTUAL AND BUSINESS RELATIONSHIPS<sup>5</sup>**

Standard 4 requires that, at the time the application is submitted or shortly thereafter, the applicant should be in a position to describe the contractual or other arrangements and other business relationships that will allow the applicant to operate in accordance with the business plan as submitted. The applicant is also required to submit copies of all draft or final agreements for the proposed business, including those with banks, clearing entities or service bureaus.

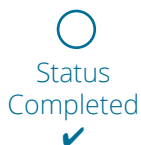


- If possible, provide documentation of all business relationships, including:
  - Copies of all corporate resolutions, minutes and other equivalent documentation authorizing the change;<sup>6</sup>
  - Transactional documents governing the change, including all referenced exhibits and schedules (*e.g.*, purchase agreement);
  - Copies of all formation and governing documents for the proposed structure;
  - Copies of any new service agreements or business contracts the firm will execute as a result of the proposed change (*i.e.*, expense sharing agreement and clearing agreements); and
  - All exhibits, schedules, disclosure schedules, addendums and relevant materials for the documents noted above.

## 6

**STANDARD 6: COMMUNICATIONS AND OPERATIONAL SYSTEMS**

Standard 6 requires that the communications and operational systems that the applicant intends to employ for the purpose of conducting business with customers and other members must be adequate and provide reasonably for business continuity with respect to: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures that may impede customer usage or firm order entry or execution; system redundancies; disaster recovery plans; system security; disclosures to be made to potential and existing customers who may use such systems; and supervisory or customer protection measures that may apply to customer use of, or access to, such systems.



- If your firm is adding a new communication platform, or is making material changes to the existing platform, your firm may be expected to present a demonstration of the functionality of the platform as part of the application review process so please confirm it is ready at the **time of filing**.

3. See [IM-1014-1](#) (Evidence of Ability to Satisfy Unpaid Arbitration Awards, Other Adjudicated Customer Awards, Unpaid Arbitration Settlements or, for New Member Applications, Pending Arbitration Claims); see also [Regulatory Notice 20-15](#) (FINRA Amends Governing its Membership Application Program to Incentivize Payment of Arbitration Awards).

4. See [Regulatory Notice 21-09](#) (FINRA Adopts Rules to Address Brokers With a Significant History of Misconduct)

5. This checklist does not address Standard 5. FINRA may require your firm to provide materials to address Standard 5.

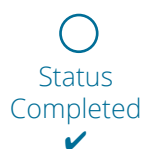
6. If the broker-dealer is requesting a change because an owner has passed away, please provide their will, trust or other estate planning documents.

- In addition to the demonstration of your communication platform, during the membership interview, or during a separate meeting, your firm should expect to demonstrate:
  - Onboarding of customers;
  - Flow of a typical transaction from start to finish, including execution, clearance and settlement;
  - Trade reporting, if applicable; and
  - Risk management controls.
- Provide an overview of your firm's surveillance and reporting functionality for the platform(s).
- Include an updated or amended business continuity plan (BCP), if applicable. The BCP plan should contain information on how the firm will contact their customers in the event of a system outage, and how the customer can access their funds/and or securities in the event of a system outage (*i.e.*, a phone number customers can call).

## 7 STANDARD 7: MAINTAINING ADEQUATE NET CAPITAL

Standard 7 notes that, if determined to be necessary, FINRA has the right to impose higher net capital requirements beyond the minimum requirements. An applicant must meet the provisions of SEA Rules 15c3-1 and 17a-11, the SEC's net capital rule and early warning rule, respectively. These are two of the key financial responsibility rules of the SEC, and FINRA members must strictly comply with these provisions at all times.

7



- Identify your firm's required minimum net capital.
- Provide for a detailed description of the source(s) of the funds to be used for the purchase, as well as evidence of the source of funds (*e.g.*, three months trail of bank statements).
- Provide evidence of financial wherewithal to sustain your firm for 12 months, where financial wherewithal is, at a minimum, calculated as fixed expenses minus reasonable projected revenue.
- Pro forma financial statements indicating 12-month projected revenue from your firm's business activity and any new expenses your firm expects (*i.e.*, new vendor agreements to be signed or new equipment to be purchased).
- Evidence of financial wherewithal to fund new business activity (if requested as part of the ownership change) and meet net capital requirements (*i.e.*, bank statements).
- FINRA reminds firms that responses and documentation (including bank statements) in a foreign language will not be accepted and must be certified and translated to English. In addition, FINRA will not accept redacted documents.

## 8 STANDARD 8: FINANCIAL CONTROLS

Standard 8 requires the applicant to have financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder, and FINRA rules.

8



- Address any changes to your firm's current accounting system or Financial and Operational Principal (FinOp).
- Describe your firm's FinOp's experience and how it meets the needs of your firm's business, as well as the FinOp's allocated time to focus on your firm.

## 9

**STANDARD 9: WRITTEN PROCEDURES**

Standard 9 requires the applicant to have compliance, supervisory, operational, and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of the applicant's proposed business.



Status  
Completed



- If your firm is proposing to make changes to business lines or supervision as part of the ownership change, provide all additions or changes to the firm's Written Supervisory Procedures (WSPs) that address those changes.
- Confirm that all WSPs clearly state:
  - Who – Identify the principal or supervisor responsible for conducting the subject procedure;
  - What – Provide a description of the specific procedure that is to be conducted by the principal or supervisor;
  - When – State when or how often the specific procedure is to be conducted; and
  - How Evidenced – Address how your firm will evidence the fact that the procedure has been conducted.

## 10

**STANDARD 10: SUPERVISORY STRUCTURE**

Standard 10 requires the applicant to have a supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and FINRA rules.



Status  
Completed



- Detail any changes to the supervisory structure, including:
  - Providing a chart depicting names of supervisors and the corresponding reporting registered representatives;
  - Addressing whether the supervisors are producing;
  - Explaining the one year direct or two years related experience in the activity the individual(s) intend to supervise; and
  - Explaining any remedial action(s), such as heightened supervision.

## 11

**STANDARD 11: BOOKS AND RECORDS<sup>7</sup>**

Standard 11 requires the applicant to have a recordkeeping system that enables the applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements and a staff that is sufficient in qualifications and number to prepare and preserve required records.



Status  
Completed



- Describe any changes to your firm's books and records, including the types of records maintained, service providers for recordkeeping and complying with recordkeeping requirements.
- If your firm will have a foreign main office, if possible, provide a statement to confirm that it will remain in compliance with this Standard, and FINRA will have access to all books and records.

7. This checklist does not address Standards 12-14. FINRA may require your firm to provide materials to address Standards 12-14.

## FINRA Compliance Tool Disclaimer

This optional tool is provided to assist member firms in fulfilling their regulatory obligations. This tool is provided as a starting point and you must tailor this tool to reflect the size and needs of your firm. Using this tool does not guarantee compliance with or create any safe harbor with respect to FINRA rules, the federal securities laws or state laws, or other applicable federal or state regulatory requirements. This tool does not create any new legal or regulatory obligations for firms or other entities.

**Updates** – This tool was last updated on April 7, 2023. This tool does not reflect any regulatory changes since that date. FINRA periodically reviews and updates these tools. FINRA reminds member firms to stay apprised of new or amended laws, rules and regulations, and update their WSPs and compliance programs on an ongoing basis.

**Additional Guidance** – Member firms seeking additional guidance on certain regulatory obligations should review the [Broker-Dealer Registration Topic Page](#), [Private Placements Topic Page](#) and other relevant FINRA [Topic Pages](#). Applicants are also encouraged to avail themselves of MAP's pre-filing meeting process by contacting MAP at [membership@finra.org](mailto:membership@finra.org) or 212-858-4000 – Option 5 – Membership Applications.

**Staff Contact(s)** – FINRA's Office of General Counsel (OGC) staff provides broker-dealers, attorneys, registered representatives, investors and other interested parties with interpretative guidance relating to FINRA's rules. Please see [Interpreting the Rules](#) for more information.

### OGC staff contacts:

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(202) 728-8000

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(202) 728-8317

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[membership@finra.org](mailto:membership@finra.org)  
(212) 858-4000 (Option 5 – Membership Applications)