

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77212; File No. SR-FINRA-2016-004]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt FINRA Rule 0151 (Coordination with the MSRB) and Amend FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities)

February 23, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 10, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to adopt FINRA Rule 0151 (Coordination with the MSRB) regarding coordination between FINRA and the Municipal Securities Rulemaking Board (“MSRB”), as required by the Exchange Act. FINRA also proposes to amend FINRA Rule 0150 to better align the language of the rule with the relevant language in the Exchange Act.

The text of the proposed rule change is available on FINRA’s Web site 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

##### Background

The proposed rule change would adopt FINRA Rule 0151 regarding coordination between FINRA and the MSRB. The proposed rule change would also amend FINRA Rule 0150 to better align the language of the rule with the relevant language in the Exchange Act.

##### Statutory Requirement

With respect to the proposed adoption of Rule 0151, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 added Section 15A(b)(15) to the Exchange Act.<sup>4</sup> Section 15A(b)(15) of the Exchange Act mandates that the rules of a national securities association require the association to: (i) Request guidance from the MSRB in interpretation of the rules of the MSRB;<sup>5</sup> and (ii) provide information to the MSRB about the enforcement actions and examinations of the association under 15 U.S.C. Section 78o-4(b)(2)(E) so that the MSRB may assist in such enforcement actions and examinations and evaluate the ongoing effectiveness of the rules of the MSRB.

With respect to the proposed amendments to Rule 0150, Section 15A(f) of the Exchange Act provides that “[n]othing in subsection (b)(6) or (b)(11) of [Section 15A] shall be construed to permit a registered securities association to make rules concerning any transaction by a registered broker or dealer in a municipal security.”<sup>6</sup>

##### Proposal

FINRA, a national securities association, is proposing to adopt Rule 0151 addressing coordination between FINRA and the MSRB to comply with

the statutory requirement. Specifically, proposed Rule 0151 would state that FINRA will request guidance from the MSRB in interpretation of the rules of the MSRB. Proposed Rule 0151 would also state that FINRA will provide information to the MSRB about the enforcement actions and examinations pertaining to municipal securities brokers, municipal securities dealers, and municipal advisors conducted by FINRA regarding the Exchange Act and the rules and regulations thereunder and the rules of the MSRB, so that the MSRB may: (i) Assist in such enforcement actions and examinations; and (ii) evaluate the ongoing effectiveness of the rules of the MSRB (collectively, “coordination”).

FINRA notes that the reference to “enforcement actions and examinations pertaining to municipal securities brokers, municipal securities dealers, and municipal advisors conducted by FINRA regarding the Exchange Act and the rules and regulations thereunder and the rules of the MSRB” in proposed Rule 0151 is intended as a non-substantive change from the statutory language in Section 15A(b)(15) of the Exchange Act,<sup>7</sup> which instead includes a cross-reference to 15 U.S.C. Section 78o-4(b)(2)(E). FINRA proposes the change in the proposed rule for ease of reference and not to reflect any substantive change from the statutory requirement.

FINRA believes that proposed Rule 0151 reflects FINRA’s current close coordination with the MSRB and satisfies the requirements of Section 15A(b)(15) of the Exchange Act.<sup>8</sup> FINRA has regulatory responsibilities to, among other things, engage in surveillance of the securities markets, administer qualification examinations, perform examinations and investigations, and enforce the Exchange Act, the rules and regulations thereunder, the rules of FINRA, and the rules of the MSRB as to its member firms and their associated persons, for the protection of investors and in the public interest. These responsibilities extend to broker-dealers engaged in municipal securities activities and municipal advisory activities and persons associated with such firms.

FINRA is also proposing to amend Rule 0150 to better align the language of the rule with the relevant language in Section 15A(f) of the Exchange Act.<sup>9</sup> Specifically, FINRA is proposing to amend Rule 0150(b) to provide that FINRA rules are not intended to be, and

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 15 U.S.C. 78o-3(b)(15).

<sup>5</sup> Section 15B of the Exchange Act provides, among other things, that the MSRB shall adopt rules with respect to municipal securities transactions effected by brokers, dealers and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers and municipal advisors. 15 U.S.C. 78o-4(b)(2).

<sup>6</sup> 15 U.S.C. 78o-3(f).

<sup>7</sup> 15 U.S.C. 78o-3(b)(15).

<sup>8</sup> 15 U.S.C. 78o-3(b)(15).

<sup>9</sup> 15 U.S.C. 78o-3(f).

shall not be construed as, rules concerning transactions in municipal securities. FINRA notes that this change is consistent with the approach in NASD Rule 0114 (Effect on Transactions in Municipal Securities) which provided that FINRA rules shall not be construed to apply to transactions in municipal securities.<sup>10</sup>

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change to adopt Rule 0151 will further the purposes of the Act by addressing coordination between FINRA and the MSRB, consistent with Section 15A(b)(15) under the Exchange Act.<sup>12</sup> In addition, the proposed rule provides transparency to municipal securities brokers, municipal securities dealers, municipal advisors and investors regarding coordination between FINRA and the MSRB. FINRA also believes that the proposed amendments to Rule 0150(b) will further the purposes of the Act by better aligning the language of the rule with the relevant language in Section 15A(f) of the Exchange Act.<sup>13</sup>

### 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. Under the proposed rule change, FINRA would adopt as part of its rulebook the statutory requirements for coordination with MSRB around rulemaking and enforcement and examination actions that seek to enhance FINRA's regulatory programs and the rulemaking of the

MSRB. Given FINRA's responsibilities under the Exchange Act and the degree of coordination between FINRA and the MSRB, which reflects regulatory and market conditions, the proposed rule change is consistent with current practices and therefore would not at this time impose additional burdens or costs on FINRA or firms.

Furthermore, the proposed rule provides a benefit by providing transparency regarding coordination between FINRA and the MSRB.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder.

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. FINRA stated that waiver of the operative delay is appropriate as Rule 0151 will address coordination between FINRA and the MSRB, consistent with Section 15A(b)(15) under the Act.<sup>16</sup> With respect to the proposed amendments to Rule 0150, FINRA stated that waiver of the operative delay is appropriate as the proposed amendments to Rule 0150(b) will better align the language of the rule with the relevant language in Section 15A(f) of the Exchange Act,<sup>17</sup> and also noted that the proposed language is consistent with previously approved rule language.<sup>18</sup> For these reasons, the Commission believes that waiving the 30-day operative delay is consistent

with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>19</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

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

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2016-004 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-2016-004. 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 Web site (<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 Web site viewing and printing in the Commission's Public

<sup>19</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> In 2008, FINRA incorporated NASD Rule 0114's statement that FINRA rules are not applicable to transactions in municipal securities into NASD Rule 0116 (Application of Rules of the Association to Exempted Securities), and transferred NASD Rule 0116, as amended, into the consolidated FINRA rulebook as Rule 0150. See SR-FINRA-2008-026.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> 15 U.S.C. 78o-3(b)(15).

<sup>13</sup> 15 U.S.C. 78o-3(f).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

<sup>16</sup> 15 U.S.C. 78o-3(b)(15).

<sup>17</sup> 15 U.S.C. 78o-3(f).

<sup>18</sup> See *supra* note 10 and accompanying text.

Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2016-004, and should be submitted on or before March 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77210; File No. SR-NYSEMKT-2016-27]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 1206 and 1212T of the NYSE MKT Company Guide

February 23, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on February 17, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>5</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Sections 1206 and 1212T of the NYSE MKT Company Guide (the “Company Guide”) to delete an outdated reference. The proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://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 Exchange recently established a Committee for Review (“CFR”) as a subcommittee of the Regulatory Oversight Committee.<sup>6</sup> As approved, the CFR was the successor to, among others, the Committee on Securities, a committee of the Exchange board of directors that reviews determinations to limit or prohibit the continued listing of an issuer’s securities on the Exchange. In connection with this filing, the Exchange made conforming amendments to Sections 1206 and 1212T of the Company Guide, among others, to replace references to the “Committee on Securities” with “Committee for Review.” As a result, two conforming references to a “Committee on Securities Council” became references to a “Committee for Review Council.”<sup>7</sup> More specifically, prior to the recent amendment, Section 1206 referred to a “Committee on Securities Council.” As recently amended, Section 1206 of the Company Guide describes the process for discretionary review by the Exchange board of directors of delisting decisions

of the Committee for Review, and provides that the board of directors may, among other things, “remand the matter to the Committee for Review Council, Panel, or Staff with appropriate instructions.”<sup>8</sup>

Similarly, prior to the recent amendment, Section 1212T referred to a “Committee on Securities Council.” Section 1212T governs certain legacy listing applications, and provides for a discretionary review by the Exchange’s board of directors of Committee for Review determinations not to approve an issuer’s listing application.<sup>9</sup> The amended language provides that a discretionary review by the Exchange board of directors can be, among other things, remanded to the “Committee for Review Council, Panel, or Staff with appropriate instructions.”<sup>10</sup>

The Exchange proposes to amend Section 1206(d) and 1212T(h)(ii) to delete the outdated reference to “Council” in both rules. The Exchange currently does not have a constituted body known as the Committee for Review Council, and did not have a Committee on Securities Council prior to the recent amendment. The reference that was in the rules to a Committee on Securities Council is a legacy reference pre-dating the acquisition of the American Stock Exchange by the NYSE in 2008.<sup>11</sup>

The use of “Council” in Sections 1206 and 1212T is accordingly obsolete. A remand by the Exchange board of directors under either Section 1206(d) or 1212T(h)(ii) prior to the amendments could only have been to the Committee on Securities Panel making the contested determination or Exchange staff, and a remand under the proposed revised rules would only be to the Committee for Review Panel making the contested determination or to Exchange staff. The Exchange is, therefore, proposing to delete the outdated reference to “Council.”

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act<sup>12</sup> in general, and with Section 6(b)(5)<sup>13</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

<sup>8</sup> See Company Guide, Section 1206(e).

<sup>9</sup> See Company Guide, Section 1212T(h).

<sup>10</sup> See *id.* at (h)(ii).

<sup>11</sup> See, e.g., Securities Exchange Act Release No. 53398 (March 2, 2006), 71 FR 12738 (SR-Amex-2005-107).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> See Securities Exchange Act Release No. 77008 (February 1, 2016) (SR-NYSEMKT-2015-106).

<sup>7</sup> See Securities Exchange Act Release No. 76638 (December 14, 2015), 80 FR 79117 (SR-NYSEMKT-2015-106).