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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67082; File No. SR-FINRA-2012-018)

May 31, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1, to Amend NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) to Adopt Form CMA

I. Introduction

On February 28, 2012, 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 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) and to adopt Form CMA ("Form"), a new standardized electronic form. The Form must be used by members who apply for approval of a change in ownership, control, or business operations consistent with Rule 1017. The proposed rule change was published for comment in the Federal Register on March 8, 2012.[3] The Commission received four comment letters on the proposed rule change.[4]

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 66508 (March 2, 2012), 77 FR 14052.

4 See March 14, 2012 letter from Kevin A. Carreno, President, Experts Counsel Inc. ("EC Letter"); March 29, 2012 letter from David T. Bellaire, Esq., General Counsel and Director of Government Affairs, Financial Services Institute, to Elizabeth M. Murphy, Secretary ("Secretary"), Commission ("FSI Letter"); March 29, 2012 letter from Stephen H. Cohen, Partner, Loeb & Loeb LLP, to Secretary, Commission ("LL Letter"); March 29, 2012 letter from Howard Spindel, Senior Managing Director, Integrated Management Solutions, to Secretary, Commission ("IMS Letter").

On May 8, 2012, FINRA filed Amendment No. 1[5] and a letter in response to the comments.[6] The Commission is approving the proposed rule change as modified by Amendment No 1.[7]

II. Description of the Proposal

NASD Rule 1017 requires members, upon specified changes in ownership, control, or business operations, to file a continuing membership application and enumerates the information that must be provided to FINRA for FINRA to review. FINRA proposes to amend NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of change in Ownership, Control, or Business Operations) to adopt the Form, a new standardized electronic form to be used by members subject to the continuing membership process. FINRA worked with an industry task force comprised of representatives from small and large firms to develop the Form. FINRA believes that the Form will reduce the administrative burden for applicants that must comply with the Rule and enable its staff to review the applications in more effective and efficient manner.

III. Summary of Comments

The Commission received four comment letters on the proposed rule change.[8] One commenter urged the Commission to approve the proposed rule change, stating the use of the

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5 Amendment No. 1 is technical in nature, and the Commission is not publishing it for public comment.

6 See May 8, 2012, letter from Patricia Albrecht, Associate General Counsel, FINRA, to Secretary, Commission ("FINRA Letter").

7 On April 18, 2012, FINRA granted an extension of time until June 6, 2012, for the Commission to act on the filing.

8 See supra note 4.

Form will provide member firms with clarity and will streamline the process.[9] The remaining commenters raised the following issues:

The Form is Overbroad and Confusing

Three commenters expressed concern that the Form would impose new and unnecessary demands for information, adding to confusion and resulting in greater delays for most members.[10] One commenter expressed concern the Form would impose needless, burdensome requirements on both member firms and FINRA to sift through irrelevant information, adding unnecessarily to the time required for applicants to file, and for FINRA to review, an application pursuant to Rule 1017.[11] Another commenter said the amount of detail requested in the Form will have a negative effect on most members, and place an increased administrative burden on small firms.[12] Another commenter questioned whether the Form will require members to provide irrelevant data, given that members will have one basic application process that must serve the needs of all FINRA members, regardless of size and complexity.[13] The commenter expressed hope that indicating a negative response that maintains the status quo will result in an application process that is relatively short.[14] Additionally, the commenter stated FINRA staff

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9 FSI Letter at 3. Another commenter supported the proposed rule change, but expressed concern about "problems embedded in the CMA process that puts [sic] smaller firms at a huge disadvantage." IMS Letter at 5.

10 IMS Letter, LL Letter, EC Letter.

11 LL Letter at 2. The commenter offered seven examples of how the Form is overbroad, confusing, and beyond the scope of a member firm's current obligations under Rule 1017. Id. at 3-4.

12 EC Letter ("…the amount of detail requested in over 45 pages in an electronic application will lead to much greater delays and confusion for most members. It will also significantly increase the administrative burden on small firms.")

13 IMS Letter at 1, 3.

should be allowed to exercise its judgment when determining the potential harm to the public and whether a closer analysis is warranted, depending on the size and complexity of operations of the firm.[15]

FINRA Should Conduct a More Comprehensive Review of the CMA Process and Shorten Timeframes for Approval of Rule 1017 Applications

One commenter stated that Rule 1017 has a disproportionate impact on small firms, and that FINRA staff "has routinely used the 1017 process to delay potential business opportunities for small firms to the detriment of the firms [sic] shareholders, employees and clients."[16] The commenter asked the Commission to reject the proposed amendments, and to require FINRA to conduct a more comprehensive review of the Change of Membership process to allow for greater flexibility for small firms.[17]

Two commenters stated FINRA should reduce the timeframe for approval of Rule 1017 applications. One commenter suggested 60 days was appropriate.[18] Another commenter suggested that 30 days was adequate for a simple continuing membership application that has been accepted as substantially complete, and that 60 days should suffice for more complex applications.[19]

IV. FINRA's Response to Comments

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14 Id. at 3.

15 Id.

16 EC Letter.

17 Id.

18 EC Letter.

19 IMS Letter at 5.

FINRA disagreed that the Form employed a "one size fits all" approach, and that the Form would result in unnecessary burdens, delays, and confusion.[20] FINRA stated the Form is designed to gather basic information necessary for all applicants, with "embedded flexibility" to allow for differences among applicants, depending on the type of application being submitted.[21] FINRA noted that the Form uses pre-populating fields that contain information applicants previously provided to FINRA, as well as optional information fields that applicants may use to provide additional information, and that these features were designed to minimize the time required of applicants in filling out the Form, and to reduce the administrative burden on applicants.[22] FINRA stated the use of optional fields is also intended to accommodate the differences in structures among applicants and to allow applicants the ability to provide relevant information depending on their circumstances.[23]

FINRA does not believe that the Form will increase the administrative burden on small firm applicants.[24] Having worked with an industry task force comprised with a majority of representatives from small firms, FINRA stated it "gained valuable insight regarding the potential impact of Form CMA on small firm applicants."[25] FINRA used this information "to make changes intended to provide flexibility and reduce all applicants' administrative burdens" when completing the Form.[26]

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20 FINRA Letter at 3.

21 Id.

22 Id.

23 Id.

24 Id.

25 Id. at 3-4.

26 Id. at 4.

FINRA amended the proposed rule change in response to concerns raised by one commenter that FINRA should delete references to a business plan, pro forma financials, organization chart, and written supervisory procedures contained in NASD Rule 1017(b)(2) to avoid potential confusion. FINRA proposes to delete references to those items, and revised the proposed rule language to require an applicant to submit an application that includes a "Form CMA that includes a detailed description of the change in ownership, control, or business operations."[27]

FINRA addressed a number of questions and comments raised by the commenters regarding the format of the Form, as well as content issues, by clarifying the scope of information that FINRA expects applicants to provide when completing the Form.[28] FINRA does not believe that the information requested in the Form is broader and beyond the scope of information that FINRA currently requests during the continuing membership application process.

With regard to the commenters' suggestions that FINRA reduce the 180-day timeframe provided in NASD Rule 1017 for approving a continuing membership application, FINRA believes these comments are beyond the scope of the proposed rule change.[29] However, FINRA "continues to evaluate opportunities to streamline the application process or, where appropriate, consider revisions or amendments to FINRA's membership rules."[30]

V. Discussion and Commission Findings

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27 Id. at 4.

28 Id., generally, at 4-11.

29 Id. at 11.

30 Id.

After careful review of the proposed rule change, the comment letters, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of 15A of the Act.[31] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6)[32] of the Act, which, among other things, requires that rules of a national securities association be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.[33]

The Commission believes that the proposed rule change is reasonable, and specifically, that the Form and corresponding changes to NASD Rules 1012 and 1017 are reasonably designed to streamline the process for compliance with the continuing membership responsibilities of FINRA members. The Commission supports FINRA's efforts to improve the efficiency of the process and its desire to reduce the overall administrative burden shouldered by members who are subject to the continuing membership process of Rule 1017.

The Commission is not persuaded by the commenters' assertions that the proposal places undue burdens on small firms. The Commission believes that FINRA's efforts to address this issue are sufficient. The Commission notes that FINRA solicited input from small firms in redesigning the continuing membership application process, and the Form is structured to allow

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31 15 U.S.C. 78o-3.

32 15.U.S.C. 78o-3(b)(6).

33 In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

for some degree of flexibility, so that each applicant may tailor its application appropriately. Furthermore, in FINRA's response to the comments, FINRA provided detailed guidance and clarification to help alleviate concerns and confusion generated by the proposal. The Commission supports FINRA's desire to continually examine its policies and procedures to reduce administrative burdens and increase efficiency with regard to continuing membership applications whenever possible. As FINRA undergoes this self-evaluation, the Commission believes FINRA will consider the commenters' suggestion that FINRA reevaluate the necessity of a 180-day approval period for continuing membership applications. In the interim, however, the Commission believes the proposed rule change is both reasonable and consistent with the Act.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR-FINRA-2012-018), as modified by Amendment No. 1, be, and hereby is, approved.

Kevin M. O'Neill
Deputy Secretary

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[34] 15 U.S.C. 78s(b)(2).