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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91959; File No. SR-FINRA-2021-011]

This document is scheduled to be published in the Federal Register on 05/26/2021 and available online at [federalregister.gov/d/2021-11077](https://www.federalregister.gov/d/2021-11077), and on [govinfo.gov](https://www.govinfo.gov)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 1011(p) (“Specified Risk Event”)

May 20, 2021.

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 May 12, 2021, the 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 amend FINRA Rule 1011(p) (“specified risk event”), to correct an inadvertent drafting error and clarify the “final regulatory actions” that are included in the “specified risk event” definition for purposes of the Rule 1000 Series (Member Application and Associated Person Registration). Rule 1011(p) was among the rules approved in File No. SR-FINRA-2020-011.³

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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FINRA Rules

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90635 (December 10, 2020), 85 FR 81540 (December 16, 2020) (Order Approving File No. SR-FINRA-2020-011) (“SEC Order”). FINRA announced the effective dates of the rule change in Regulatory Notice 21-09 (March 2021).

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1000. MEMBER APPLICATION AND ASSOCIATED PERSON REGISTRATION

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1011. Definitions

Unless otherwise provided, terms used in the Rule 1000 Series shall have the meaning as defined in Rule 0160.

(a) through (o) No Change.

(p) “specified risk event”

The term “specified risk event” means any one of the following events that are disclosed, or are or were required to be disclosed, on an applicable Uniform Registration Form:

(1) through (3) No Change.

(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].

(q) through (r) No Change.

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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

On December 10, 2020, the Commission approved a proposed rule change concerning brokers with a significant history of misconduct.⁴ The SEC Order approved, in pertinent part, the amendment of the 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 seeking to become an owner, control person, principal, or registered person of the member broker-dealer has, in the prior five years, one or more “final criminal matters” or two or more “specified risk events.”⁵ The amendments to the Rule 1000 Series will become effective on September 1, 2021.⁶

The rules approved in the SEC Order relating to SR-FINRA-2020-011 included Rule 1011(p), which defines “specified risk event” to mean “any one of the . . . events” described in Rule 1011(p) “that are disclosed, or are or were required to be disclosed, on an applicable Uniform Registration Form.” The events described in Rule 1011(p) include, among others, a “final regulatory action” as set forth in Rule 1011(p)(4). Specifically, Rule 1011(p)(4) describes “a final regulatory action” to include final regulatory actions “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.”

⁴ See SEC Order, supra note 3.

⁵ See SEC Order, supra note 3, at 81541.

⁶ See Regulatory Notice 21-09 (March 2021).

The proposed rule change would delete from Rule 1011(p)(4) the phrase “from associating with a member,” which appears after the word “suspension.” Including “from associating with a member” in Rule 1011(p)(4) was an inadvertent drafting error that may suggest incorrectly that it narrows the “final regulatory actions” that are included in the “specified risk event” definition. For example, the current rule text may suggest that the “specified risk event” definition does not include final SEC and CFTC regulatory actions where the sanction against the person was a suspension other than a suspension from associating with a member.

However, as evidenced by other provisions in Rule 1011(p), FINRA did not intend to narrow the scope of “final regulatory actions” that are included in the “specified risk event” definition in this manner. Rule 1011(p)(4) is intended to be consistent with Rule 1011(p)(3), which describes the “final investment-related civil actions” that are included in the “specified risk event” definition. Rule 1011(p)(3) includes final investment-related civil actions that result in a “suspension,” and does not limit the suspensions to suspensions from associating with a member. Moreover, FINRA’s intent to include “final regulatory actions” beyond those resulting in suspensions “from associating with a member” in the “specified risk event” definition is further evidenced by the mapping exhibits that FINRA provided in SR-FINRA-2020-011, which showed how the “final regulatory actions” included within the scope of the “specified risk event” definition included final regulatory actions disclosed on the Uniform Registration Forms that resulted in a “suspension.”⁷ Those mapping exhibits, in turn, were and are consistent with how the relevant sanctions-related questions on the Uniform Registration Forms require the reporting of regulatory actions initiated by numerous regulators and self-regulatory organizations—not just FINRA—and include data fields for “suspension.”⁸ By correcting the inadvertent drafting error

⁷ See Form 19b-4, Exs. 3a and 3b, File No. SR-FINRA-2020-011, available at <https://www.finra.org/sites/default/files/2020-04/SR-FINRA-2020-011.pdf>.

⁸ See Uniform Application for Securities Industry Registration or Transfer (Form U4), Regulatory Action Disclosure Reporting Page, Questions 1 (requesting information about

and clarifying the “final regulatory actions” that are included in the “specified risk event” definition, the proposed rule change will ensure that the rules approved in SR-FINRA-2020-011 fully serve their intended investor-protection purposes.⁹

If the Commission approves the proposed rule change, FINRA expects that the effective date will be September 1, 2021, the same effective date for the amendments to Rule 1000 Series that FINRA announced in Regulatory Notice 21-09.¹⁰

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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, by amending Rule 1011(p)(4) to correct an inadvertent drafting error, and fully and accurately describe the “final regulatory actions” that the definition of “specified risk event” includes, the proposed rule change will provide greater clarity to members and the public and serve the intended investor-protection purposes of the rules approved in SR-FINRA-2020-011.

which regulator initiated the regulatory action) and 13 (Sanction Detail); Uniform Application for Broker-Dealer Registration (Form BD), Regulatory Action Disclosure Reporting Page, Part II, Questions 1 (requesting information about which regulator initiated the regulatory action) and Question 2 (Principal Sanction). FINRA also notes that the data that FINRA provided in SR-FINRA-2020-011 concerning the regulatory action disclosures included regulatory actions that resulted in any suspension, not just suspensions from associating with a member.

⁹ See SEC Order, supra note 3, at 81546 (explaining that the rules approved in SR-FINRA-2020-011 “further promote investor protection by applying additional safeguards and disclosure obligations for a broker-dealer’s continuing membership with FINRA and for changes to a current member broker-dealer’s ownership, control, or business operations,” where those changes involve persons with a significant history of misconduct).

¹⁰ FINRA notes that the proposed rule change would apply to all members, including members that have elected to be treated as capital acquisition brokers (“CABs”), given that the CAB rule set incorporates FINRA Rule 1011 by reference.

¹¹ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change is associated with any material economic impacts or will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to correct an inadvertent drafting error in Rule 1011(p)(4) that resulted in a narrower scope for the "final regulatory actions" that are included in the "specified risk event" definition than FINRA intended.

The aspect of the economic impact assessment undertaken in File No. SR-FINRA-2020-011 that pertained to the amendments to the Rule 1000 Series was based on the broader scope for the "final regulatory actions" that are included in the "specified risk event" definition that FINRA is proposing here. Consistent with FINRA's initial intent, the broader scope for the "final regulatory actions" that are included in the "specified risk event" definition includes, for example, final SEC and CFTC regulatory actions where the sanction against the person was a suspension other than a suspension from associating with a member.

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

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 e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2021-011 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-2021-011. This file number should be included on the subject line if e-mail 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-2021-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11077 Filed: 5/25/2021 8:45 am; Publication Date: 5/26/2021]

¹² 17 CFR 200.30-3(a)(12).