

consistent with the commencement of trading in mini-options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

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.

#### 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-NYSEArca-2013-26 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2013-26. 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 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 the filing also will be available for

inspection and copying at the principal office of the Exchange. 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-NYSEArca-2013-26 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69178; File No. SR-FINRA-2013-018]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to FINRA Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information)

March 19, 2013.

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 March 5, 2013, 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 8313 (Release of Disciplinary Complaints, Decisions and Other Information), which governs the release of disciplinary and other information by FINRA to the public. In addition, the proposed rule change would make conforming amendments to certain rules in the FINRA Rule 9000 Series (Code of Procedure) and add a provision to FINRA Rule 9268 (Decision of Hearing Panel or Extended Hearing Panel) regarding the effective date of sanctions.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

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

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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information) governs the release of disciplinary and other information by FINRA to the public. Among other things, the proposed rule change would amend Rule 8313 to establish general standards for the release of disciplinary information to the public to provide greater information regarding FINRA's disciplinary actions, clarify the scope of information subject to Rule 8313, and eliminate provisions that do not address the release of information by FINRA to the public. In addition, the proposed rule change would make conforming amendments to certain rules in the FINRA Rule 9000 Series (Code of Procedure) and add a provision to FINRA Rule 9268 (Decision of Hearing Panel or Extended Hearing Panel) regarding the effective date of sanctions. The proposed rule change is described in detail below.

###### A. Disciplinary Complaints and Disciplinary Decisions

Rule 8313(a) currently provides that in response to a request, FINRA shall release any identified disciplinary complaint or disciplinary decision issued by FINRA (or any subsidiary or Committee thereof) to the requesting party. Absent a specific request for an identified complaint or decision, the rule provides publicity thresholds for the release of information with respect

to disciplinary complaints and disciplinary decisions to the public.<sup>3</sup>

Under the publicity thresholds for disciplinary complaints in current Rule 8313(b)(1), FINRA shall release to the public information with respect to any disciplinary complaint that contains an allegation of a violation of a “designated” statute, rule, or regulation of the SEC, FINRA, or the Municipal Securities Rulemaking Board (“MSRB”), as determined by the FINRA Regulation Board of Directors.<sup>4</sup> In addition, FINRA may release to the public information with respect to any complaint or group of complaints that involves a significant policy or enforcement determination where release of the information is deemed by FINRA’s Chief Executive Officer (“CEO”) (or such other senior officer as the CEO may designate) to be in the public interest.

Under the publicity thresholds for disciplinary decisions in current Rule 8313(c)(1), FINRA shall release to the public information with respect to any disciplinary decision that: (1) Imposes a suspension, cancellation, or expulsion of a member; (2) imposes a suspension or revocation of the registration of an associated person; (3) imposes a suspension or bar of a member or associated person from association with all members; (4) imposes monetary sanctions of \$10,000 or more upon a member or associated person; or (5) contains an allegation of a violation of a designated rule. As is the case with disciplinary complaints, FINRA may release information with respect to any disciplinary decision or group of decisions that involves a significant policy or enforcement determination where its release is deemed by FINRA’s CEO, or his or her designee, to be in the public interest. Rule 8313(c)(1) also currently contains an omnibus provision that permits FINRA to release information on any disciplinary or other decision issued pursuant to the Rule 9000 Series not specifically enumerated, regardless of the sanctions imposed, with redacted names of the parties and other identifying information. Rules 8313(c)(1)(A) and (c)(1)(B) currently set forth redaction standards for the release of information with respect to disciplinary decisions where only certain respondents in a decision on

<sup>3</sup> Rule 8313 provides for the release of “information with respect to” disciplinary complaints and decisions in light of FINRA’s practice to issue, in addition to the complaints or decisions themselves, information, for example, in press releases or summaries of complaints and decisions that meet the current publicity thresholds, or are otherwise permitted to be released under the rule.

<sup>4</sup> FINRA has identified such rules in *Notice to Members* 97-42 (July 1997).

appeal meet one or more of the publicity thresholds, or where an underlying Office of Hearing Officers (“OHO”) decision meets a publicity threshold, but a later National Adjudicatory Council (“NAC”) decision on the matter does not meet a threshold.

In May 2011, FINRA launched its FINRA Disciplinary Actions online database (“FDA”) to provide interested parties with greater access to information regarding FINRA’s disciplinary actions.<sup>5</sup> The FDA contains copies of FINRA disciplinary actions (dating back to early 2005) that are eligible for publication under Rule 8313. Interested parties may access disciplinary complaints and disciplinary decisions in the FDA to obtain copies of actions they may be interested in regarding a specific firm or associated person as well as obtaining copies of actions that involve a variety of different areas of interest, including specific rule or statutory violations, products or business lines, or supervisory and compliance practices. Interested parties may search the database by entering search criteria, such as an individual’s name, firm name, case number, date range, document type, document text (*e.g.*, such terms as rules citations, product types, sanction, etc.) or CRD number.<sup>6</sup> However, the disciplinary information available for publication in the FDA (or otherwise available for release by FINRA) currently is limited by the publicity thresholds in Rule 8313.

To further increase access to information regarding FINRA’s disciplinary actions, the proposed rule change would eliminate the restrictions to publication of the specified actions by eliminating the publicity thresholds in Rules 8313(b)(1) and (c)(1) as well as the provision addressing the release of “identified” disciplinary complaints and disciplinary decisions in Rule 8313(a).<sup>7</sup> In their place, the proposed rule change would adopt general standards for the release of disciplinary complaints, disciplinary decisions, and other information to the public.<sup>8</sup>

<sup>5</sup> The FDA is available at <http://www.finra.org/Industry/Enforcement/DisciplinaryActions/FDAS/>.

<sup>6</sup> The FDA also includes decisions issued by the SEC and federal appellate courts that relate to FINRA disciplinary actions that have been appealed.

<sup>7</sup> Notwithstanding the proposed elimination of the provision in Rule 8313(a) addressing the release of identified complaints and decisions to a requesting party, FINRA will continue to respond to requests for, and provide access to, identified complaints and decisions.

<sup>8</sup> In light of the elimination of the publicity thresholds, the proposed rule change also would delete from Rule 8313 the redaction standards made necessary by the publicity thresholds in current paragraphs (c)(1)(A) and (c)(1)(B).

Specifically, proposed Rule 8313(a)(1) would provide that FINRA shall release to the public a copy of, and at FINRA’s discretion information with respect to, any disciplinary complaint or disciplinary decision issued by FINRA.<sup>9</sup> Subject to limited exceptions discussed below, FINRA would release such information in unredacted form.

In general, FINRA believes that greater access to information regarding its disciplinary actions provides valuable guidance and information to members, associated persons, other regulators, and investors. Releasing detailed disciplinary information to the public can serve to deter and prevent future misconduct and to improve overall business standards in the securities industry. It also allows investors to consider firms’ and representatives’ disciplinary histories when considering whether to engage in business with them. In addition, firms may use such information to educate their associated persons as to compliance matters, highlighting potential violations and related sanctions, as well as informing the firms’ compliance procedures involving similar business lines, products, or industry practices. Further, any firm or individual facing allegations of rule violations may access existing disciplinary decisions to gain greater insight on related facts and sanctions.

FINRA also believes that the current publicity thresholds in Rule 8313(c) have created an inconsistency in FINRA’s release of information given that information that may not be disclosed under the current rule is often publicly available through other sources. For example, the proposed rule change would allow FINRA to make available in the FDA (or otherwise) disciplinary information that is available in BrokerCheck, but is not eligible for publication by FINRA under the current publicity thresholds.<sup>10</sup> Specifically, the disclosure questions in Section 14 of Form U4, among other things, require the reporting of regulatory complaints alleging, and any findings of, a violation of self-regulatory organization rules. As such, BrokerCheck reports may include

<sup>9</sup> The proposed rule change would eliminate as unnecessary references to “groups of” disciplinary complaints and disciplinary decisions. *See* Rule 8313(b)(1) and (c)(1). FINRA does not view the proposed rule change as distinguishing between the release of individual, versus groups of, disciplinary complaints and disciplinary decisions.

<sup>10</sup> The information about members and registered persons made available through BrokerCheck is derived from the Central Registration Depository (CRD®). Information in the CRD system is obtained through the uniform registration forms (*i.e.*, Forms U4, U5, and U6, and Forms BD, BDW, and BR).

unredacted summary information regarding a FINRA disciplinary action that FINRA is not permitted to release in the monthly notice of Disciplinary and Other FINRA Actions or in the FDA under the current publicity thresholds.

The proposed general standard for disciplinary complaints and disciplinary decisions also would better align FINRA's publication standards with the practices of the SEC and other regulators. The SEC publishes on its Web site copies of enforcement actions, including administrative proceedings and complaints filed in federal court, regardless of the type or nature of sanctions imposed. FINRA believes that to avoid confusion, the availability of disciplinary information generally should not differ among regulators. Interested parties should be able to review comparable disciplinary complaints and decisions irrespective of the forum in which the case is brought or the type or nature of sanctions imposed.

FINRA notes that, in general, copies of and information with respect to disciplinary complaints and disciplinary decisions would be released to the public through the FDA and FINRA's monthly notice of Disciplinary and Other FINRA Actions. If a disciplinary complaint posted in the FDA is dismissed or withdrawn, the order dismissing or withdrawing the complaint would accompany the complaint. With respect to the issuance of press releases in connection with disciplinary complaints, FINRA would retain its current practice of only issuing press releases in those situations where there is a significant policy or investor protection reason to do so.

The proposed rule change also would clarify the scope of Rule 8313 by defining the terms "disciplinary complaint" and "disciplinary decision."<sup>11</sup> For the purpose of the rule, the term "disciplinary complaint" would mean any complaint issued pursuant to the Rule 9200 Series (Disciplinary Proceedings), and the term "disciplinary decision" would mean any decision issued pursuant to the Rule 9000 Series, including decisions issued by the OHO, the NAC, or the FINRA Board ("Board"), orders accepting offers of settlement, and Letters of Acceptance, Waiver and Consent ("AWCs"). The term disciplinary decision would not include decisions issued pursuant to the Rule 9550 Series (Expedited Proceedings), Rule 9600 Series (Procedures for Exemptions), Rule 9700 Series (Procedures on Grievances Concerning

the Automated Systems), or Rule 9800 Series (Temporary Cease and Desist Orders), or decisions, notifications, or notices issued pursuant to the Rule 9520 Series (Eligibility Proceedings), which are addressed by separate provisions in proposed Rule 8313.<sup>12</sup> The proposed rule change would clarify that consistent with current practice, minor rule violation plan ("MRVP") letters issued pursuant to Rule 9216 (Acceptance, Waiver, and Consent; Plan Pursuant to SEA Rule 19d-1(c)(2)) and Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)) are not subject to Rule 8313.

#### B. Temporary Cease and Desist Orders ("TCDOs")

Rule 8313(c)(1) currently states that FINRA shall release to the public information with respect to any TCDO. The proposed rule change would adopt this provision with minor changes in proposed Rule 8313(a)(2) to provide that FINRA shall release to the public a copy of, and at FINRA's discretion information with respect to, any order or decision issued by FINRA under the Rule 9800 Series, which addresses TCDOs.

#### C. Statutory Disqualification Decisions

Rule 8313 currently does not specifically address the release of statutory disqualification decisions to the public. Pursuant to the omnibus provision in Rule 8313(c)(1), discussed above, FINRA currently releases information on statutory disqualification decisions issued by the NAC pursuant to the Rule 9520 Series with the names of members and associated persons redacted. Under proposed Rule 8313(a)(2), FINRA would release to the public unredacted copies of, and at FINRA's discretion information with respect to, statutory disqualification decisions, notifications, and notices issued pursuant to the Rule 9520 Series by either the NAC or FINRA's Member Regulation Department ("Member Regulation") that will be filed with the SEC.<sup>13</sup>

As discussed above in the context of disciplinary complaints and

disciplinary decisions, FINRA believes that subject to limited exceptions, information should be released to the public in unredacted form. Under the current publicity rule, FINRA releases information regarding the underlying conduct that led to a statutory disqualification, and the safeguards imposed, including restrictions on permissible activities and heightened supervisory plans; however, FINRA does not disclose the identity of the statutorily disqualified individuals or member firms. The proposed rule change would provide for the release of such identities because FINRA believes that it would provide investors with valuable information about the individuals and firms with whom they conduct business. Further, to the extent that information regarding the underlying conduct that results in an individual or firm being subject to a statutory disqualification decision is reported to the CRD system, identifying information regarding such individuals and firms is available in BrokerCheck.

#### D. Expedited Proceeding Decisions

Rules 9552 through 9558<sup>14</sup> provide a procedural mechanism for FINRA to address certain types of misconduct (e.g., a failure to pay fees or dues or a failure to meet eligibility or qualification standards) more expeditiously than would be possible using the FINRA disciplinary process. Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series) allows member firms and associated persons to request a hearing regarding the action that often results in a stay of the sanction or limitation. Rule 8313(c)(1) currently states that FINRA may release to the public information with respect to any expedited proceeding decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of a member, or a suspension or bar of the association of a person with a member, unless FINRA determines otherwise. Separately, the "Notice to Membership" provisions in Rules 9552, 9553, 9554, 9555, 9556, 9558, and 9559 currently

<sup>14</sup> See Rule 9552 (Failure to Provide Information or Keep Information Current), Rule 9553 (Failure to Pay FINRA Dues, Fees and Other Charges), Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution), Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services), Rule 9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders), Rule 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties), and Rule 9558 (Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Exchange Act).

<sup>12</sup> See proposed Rules 8313(a)(2), (a)(3), and (a)(5).

<sup>13</sup> All statutory disqualification decisions issued by the NAC are filed with the SEC. In contrast, depending on the nature of the disqualifying event, Member Regulation may or may not have to file a notice of its approval of an application for relief (referred to as a 19h-1 notice or notification) with the SEC. For example, Member Regulation may approve the association of a person without filing a 19h-1 notice or notification with the SEC when the disqualifying event consists of an injunction that was entered more than 10 years ago. See also Exchange Act Rule 19h-1.

<sup>11</sup> See proposed Rule 8313(e).

state that FINRA shall provide notice of any final FINRA action taken under the rules in the next notice of Disciplinary and Other FINRA Actions. The Notice to Membership provision in Rule 9557 requires notice when FINRA imposes a suspension pursuant to the rule, but does not reference final FINRA action because the procedural mechanisms in Rule 9557 differ from the other rules in the expedited proceedings series.

The proposed rule change would consolidate the publication standards for expedited proceeding decisions in proposed Rule 8313(a)(3). Consistent with the current Rule 9550 Series and FINRA practice, the proposed rule would provide that FINRA shall release to the public information with respect to any suspension, cancellation, expulsion, or bar that constitutes final FINRA action imposed pursuant to Rules 9552, 9553, 9554, 9555, 9556, and 9558, and information with respect to any suspension imposed pursuant to Rule 9557. FINRA also shall release a copy of, and information with respect to, any decision issued pursuant to Rule 9559 that constitutes final FINRA action. Accordingly, the proposed rule change would delete the "Notice to Membership" provisions in Rules 9552 through 9559. In general, information with respect to expedited proceeding decisions would continue to be published in FINRA's monthly notice of Disciplinary and Other FINRA Actions.

#### E. Summary Actions

Rule 8313 currently does not specifically address the release of information regarding summary actions taken by FINRA pursuant to Rule 8320 (Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay); however, FINRA generally releases summary information with respect to such actions in its monthly notice of Disciplinary and Other FINRA Actions. To codify FINRA practice, proposed Rule 8313(a)(3) would expressly provide that FINRA shall release to the public information with respect to the summary suspension or expulsion of a member or the summary revocation of the registration of a person associated with a member for a failure to pay fines, other monetary sanctions, or costs pursuant to Rule 8320. FINRA believes that it is in the public interest to provide notice that a member or a registered person is subject to sanctions by FINRA and may not have the authority to conduct business with customers or the public. In general, such information would continue to be published in FINRA's monthly notice of Disciplinary and Other FINRA Actions.

F. Membership and Continuing Membership Application ("MAP") Appeals

Rule 8313(l) currently provides that FINRA shall release to the public, in the form issued by the NAC, information with respect to any MAP appeal decision issued by the NAC pursuant to NASD Rule 1015 (Review by National Adjudicatory Council). The NAC in its discretion may redact certain information from such decisions prior to their issuance.

The proposed rule change would adopt this provision as proposed Rule 8313(a)(4) with changes to, among other things, reflect FINRA's practice with respect to the release of MAP appeal decisions in redacted form. The proposed rule change also would clarify that the release to the public of MAP appeal decisions issued by the Board pursuant to NASD Rule 1016 (Discretionary Review by FINRA Board) are governed by the publicity rule. Proposed Rule 8313(a)(4) would provide that FINRA shall release to the public a copy of, and at FINRA's discretion information with respect to, any MAP appeal decision issued by FINRA pursuant to NASD Rules 1015 and 1016. Copies of, and information with respect to, such decisions shall be released to the public in redacted form; provided, however, the NAC or the Board, in its discretion, may determine to release such decisions and information in unredacted form.

FINRA believes that continuing the practice of redacting MAP appeal decisions is appropriate given that as part of the MAP process, applicants typically are required to disclose, among other things, proprietary information, including business plans, financial plans, and commercial agreements. In addition, denials of MAP applications often are related to firms' capacity limitations or similar operational concerns. Thus, FINRA believes that, as a general matter, the potential harm to firms in releasing denial decisions in unredacted form would not be outweighed by any investor protection benefit.

#### G. Permissive Publication of Certain Decisions and Notices

The proposed rule change would add a new provision in proposed Rule 8313(a)(5) that would permit FINRA to release to the public a copy of, and information with respect to, any decision or notice issued pursuant to Rule 6490 (Processing of Company-Related Actions),<sup>15</sup> the Rule 9600 Series

(Procedures for Exemptions),<sup>16</sup> the Rule 9700 Series (Procedures on Grievances Concerning the Automated Systems),<sup>17</sup> and any other decision appealable to the SEC under Exchange Act Section 19(d). FINRA is proposing permissive publication for items issued under Rule 6490 and the Rule 9700 Series because FINRA does not publish these decisions or notices on a wholesale basis; however, FINRA may determine that there is public benefit to releasing a specific decision or notice issued under these rules to provide guidance to other firms or to alert the public to an investor protection issue.<sup>18</sup>

With respect to exemption decisions, the proposed rule change would permit, but not require, exemption decisions issued under the Rule 9600 Series to be released to the public because Rule 9610, which governs the application for exemptive relief, authorizes members to request relief from a diverse set of member conduct rules that have differing benefits to publication. Today, FINRA posts to its Web site exemption decisions for several rules listed in Rule 9610, in large part, to provide guidance to members, investors, and other interested parties to assist them in understanding the rationale for the decisions to grant or deny requests for exemptive relief.<sup>19</sup>

The proposed rule change broadly would provide for the release of "any other decision" appealable to the SEC under Exchange Act Section 19(d) to avoid the need to make future amendments to Rule 8313 in the event of additional rulemaking that results in FINRA issuing decisions that may be

related to announcements for Exchange Act Rule 10b-17 Actions and Other Company-Related Actions to facilitate the orderly trading and settlement of OTC securities.

<sup>16</sup> The Rule 9600 Series allows a member seeking exemptive relief, as permitted under certain FINRA and NASD rules and MSRB Rule G-37, to file a written application with the appropriate department or staff of FINRA. The proposed rule change would make conforming amendments to Rule 9620, which governs exemption decisions issued under the Rule 9600 Series, to reflect the permissive nature of proposed Rule 8313(a)(5).

<sup>17</sup> The Rule 9700 Series sets forth procedures for redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by FINRA, or its subsidiaries, and approved by the SEC, not otherwise provided for by the FINRA rules.

<sup>18</sup> In general, FINRA is not in the practice of releasing copies of, or information with respect to, decisions or notices addressing company-related actions or grievances concerning the automated systems.

<sup>19</sup> Consistent with current practice under the Rule 9600 Series, FINRA will continue to consider statements included by an applicant to show good cause to treat a decision as confidential in whole or in part.

<sup>15</sup> Under Rule 6490, FINRA's Operations Department reviews and processes documents

appealed to the SEC under Exchange Act Section 19(d).

#### H. Publication of Information Deemed by FINRA's CEO To Be in the Public Interest

As stated above, notwithstanding the existing publicity thresholds, FINRA Rules 8313(b)(1) and (c)(1) currently allow FINRA to release information with respect to any disciplinary complaint or disciplinary decision that involves a significant policy or enforcement determination where the release of such information is deemed by FINRA's CEO to be in the public interest. Consistent with these provisions, proposed Rule 8313(a)(6) would provide that FINRA may release to the public a copy of, and information with respect to, any complaint, decision, order, notification, or notice issued under FINRA rules, where the release of such information is deemed by FINRA's CEO (or such other senior officer as the CEO may designate) to be in the public interest, in such format as he or she finds appropriate. FINRA is proposing to retain the provision providing FINRA's CEO with discretion to release additional information to address instances in which publication is not otherwise permitted under Rule 8313, but the release of information is deemed by the CEO to be in the public interest. For example, this would allow the CEO to release notices issued under the expedited proceedings rules that do not involve a suspension, cancellation, expulsion, or bar, such as notices of limitations imposed under FINRA's financial rules pursuant to Rule 9557.

#### I. Release Specifications

Rule 8313 currently requires copies of, and information with respect to, disciplinary complaints and disciplinary decisions released to the public to be accompanied by certain disclosure statements regarding their status. FINRA requires these disclosures so that disciplinary complaints and disciplinary decisions released to the public are viewed in an appropriate context and to provide adequate protections to the parties named in the complaint or decision. Rules 8313(a)(1) and (b)(2) currently require that disciplinary complaints and information with respect to disciplinary complaints released to the public be accompanied by the following statement: "The issuance of a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.

Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint."

The proposed rule change would retain in Rule 8313(b)(1) a modified version of the disclosure statement for copies of, and information with respect to, disciplinary complaints. Proposed Rule 8313(b)(1) would provide that copies of, and information with respect to, any disciplinary complaint released to the public pursuant to Rule 8313(a) shall indicate that a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. FINRA believes that copies of, and information with respect to, disciplinary complaints released to the public should continue to be accompanied by a disclosure statement that alerts recipients that the alleged violations contained in FINRA's complaint have not resulted in a decision or finding against the respondent.

Similarly, Rules 8313(a)(2) through (a)(4) and (c)(2) currently require copies of, and information with respect to, disciplinary decisions released to the public to be accompanied by disclosure statements. Under the current rule, a disciplinary decision released prior to the expiration of the time period provided under the Rule 9000 Series for appeal or call for review within FINRA or while such an appeal or call for review is pending must be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by FINRA. In addition, a final decision of FINRA that is released prior to the time period provided under the Exchange Act for appeal to the SEC or while such an appeal is pending must be accompanied by a statement that the findings and sanctions of FINRA are subject to review and modification by the SEC. And, a final decision of FINRA that is released after the decision is appealed to the SEC must be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the SEC.

The proposed rule change would consolidate and streamline the disclosure statements for copies of, and information with respect to, disciplinary decisions and would expand the statement to cover other items released to the public pursuant to proposed Rule 8313(a). Proposed Rule 8313(b)(2) would provide that copies of, and

information with respect to, any disciplinary decision or other decision, order, notification, or notice released to the public pursuant to Rule 8313(a) prior to the expiration of the time period provided for an appeal or call for review as permitted under FINRA rules or the Exchange Act, or while such an appeal or call for review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by FINRA or the SEC. FINRA believes that accompanying copies of, and information with respect to, disciplinary decisions released to the public with a disclosure statement provides necessary context to a non-final disciplinary action and alerts persons viewing such information as to the status of these actions. In addition, FINRA believes that the proposed consolidation and expansion of the disclosure statements in Rule 8313 serve to facilitate the release of disciplinary information to the public electronically in the FDA because such disclosure will be clearly indicated in the FDA, but will not accompany each complaint or decision.

#### J. Discretion To Redact Certain Information or Waive Publication

As noted above, FINRA has determined that subject to limited exceptions, disciplinary information should be released to the public in unredacted form. However, FINRA believes it is necessary in releasing information to the public to balance investor protection benefits with the harm that may result if certain confidential customer information or information that raises personal safety or privacy concerns is released to the public. Accordingly, the proposed rule change would add a new provision in proposed Rule 8313(c)(1) that would permit FINRA, notwithstanding the requirements of proposed Rule 8313(a), to redact, on a case-by-case basis, information that contains confidential customer information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns. FINRA takes the same approach with respect to the release of information in BrokerCheck.<sup>20</sup> The proposed rule change aims to broaden the types and, on balance, the amount

<sup>20</sup> See Rule 8312(d) (FINRA BrokerCheck Disclosure) (FINRA reserves the right to exclude on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns).

of information released by FINRA to the public to establish a principled basis for disclosure that meets FINRA's investor protection objectives, yet fairly addresses privacy interests.

Similarly, the proposed rule change would adopt with minor changes a statement from current Rule 8313(c)(1) that provides FINRA with discretion to waive the requirement to release a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. The proposed rule change would expand this provision to give FINRA discretion to waive the requirement to release any item under paragraph (a) of the proposed rule. Accordingly, proposed Rule 8313(c)(2) would provide that notwithstanding paragraph (a) of the proposed rule, FINRA may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any disciplinary complaint, disciplinary decision or other decision, order, notification, or notice under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

FINRA believes it should retain the discretion to waive the requirement to release information under the proposed rule in the event FINRA is presented with truly unique circumstances where the release of information would violate fundamental notions of fairness or work an injustice. FINRA does not believe that decisions should be treated differently than other items that are required to be released under paragraph (a) of the proposed rule.

#### K. Notification of Appeals of FINRA Decisions

Rule 8313(g) currently requires FINRA to provide notice to the membership and the press that a FINRA disciplinary decision that meets certain publicity thresholds is appealed to the SEC. The notice must be released as soon as possible after the SEC notifies FINRA of such appeal and it must state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the SEC. The proposed rule change would adopt this provision with minor changes as proposed Rule 8313(d), eliminating the publicity thresholds and the limitation on notification to the membership and the press.

Proposed Rule 8313(d) would state that FINRA shall provide notice to the public if a disciplinary decision of FINRA is appealed to the SEC and the

notice shall state whether the effectiveness of the decision has been stayed pending the outcome of proceedings before the SEC. FINRA provides notification of appeals to the SEC, including information regarding whether sanctions imposed have been stayed during the pendency of the appeal, in the monthly notice of Disciplinary and Other FINRA Actions. FINRA also intends to indicate whether a disciplinary decision available in the FDA has been appealed to the SEC so that parties using the FDA are clear as to the status of the disciplinary decision. In addition, FINRA notes that the FDA includes decisions issued by the SEC that relate to FINRA disciplinary actions that have been appealed.

Rule 8313(h) currently requires FINRA to provide notice to the membership in the event an appeal to the courts is filed from an SEC disciplinary decision in a case previously appealed to it from a FINRA decision that meets certain publicity thresholds. The notice must be provided as soon as possible after FINRA receives a formal notice of appeal and must include a statement whether the order of the SEC has been stayed. The proposed rule change would delete Rule 8313(h) because it limits notice to the membership based on the publicity thresholds that would be eliminated under the proposed rule change, and notification of an appeal to the courts from an SEC disciplinary decision is best addressed by the SEC. FINRA notes that the FDA includes decisions issued by federal appellate courts that relate to FINRA disciplinary actions that have been appealed.

Rule 8313(i) currently provides that any order issued by the SEC imposing sanctions or fines on a member that meet certain publicity thresholds must be released to the public through a notice containing the effective date thereof. The order must be released to the public as soon as possible after FINRA receives the SEC's order. The proposed rule change would delete paragraph (i) because it limits notice based on the publicity thresholds that would be eliminated under the proposed rule change, and the release of SEC orders to the public is best addressed by the SEC.

#### L. Provisions Outside the Scope of Rule 8313

To clarify the scope of Rule 8313, the proposed rule change would eliminate provisions that are outside the purview of the rule, which is intended solely to address the release of disciplinary and other information by FINRA to the

public. Rules 8313(d) and (e) currently address when certain disciplinary decisions become effective. Rule 8313(d) states, if a decision issued pursuant to the Rule 9000 Series other than by the NAC is not appealed to or called for review by the NAC, the decision shall become effective on a date set by FINRA but not before the expiration of 45 days after the date of the decision. The proposed rule change would delete Rule 8313(d) because it addresses the effective date of certain disciplinary decisions rather than the release of disciplinary information to the public.

The proposed rule change would move the rule language regarding the effectiveness of sanctions to Rule 9268 (Decision of Hearing Panel or Extended Hearing Panel), which addresses hearing panel decisions, including their content and to whom they are disseminated. Proposed Rule 9268(f) (Effectiveness of Sanctions) would provide that unless otherwise provided in the majority decision issued under Rule 9268(a): (1) A sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of FINRA for purposes of Exchange Act Rule 19d-1(c)(1) shall become effective on a date to be determined by FINRA; and (2) a bar or an expulsion specified in a decision shall become effective immediately upon the decision becoming the final disciplinary action of FINRA for purposes of Exchange Act Rule 19d-1(c)(1).<sup>21</sup>

The proposed rule change would clarify the process for when sanctions imposed in a hearing panel decision become effective in a substantially similar format to the parallel provision for decisions issued by the NAC or the FINRA Board in Rule 9360 (Effectiveness of Sanctions). Although the language in proposed Rule 9268(f) differs slightly from Rule 8313(d), the timing for the effectiveness of sanctions would remain unchanged. When a hearing panel decision imposes a bar or expulsion that sanction becomes effective if the case is not appealed or called for review. A respondent or FINRA's Departments of Enforcement or Market Regulation have [sic] 25 days after service of a decision to appeal a decision issued pursuant to Rule 9268 or Rule 9269 (Default Decisions). The NAC has 45 days to call a case for review; therefore, a bar imposed in a hearing panel decision that is not appealed or called for review takes effect after 45 days from the date the decision is issued. When a hearing

<sup>21</sup> The proposed rule change would make conforming amendments to Rule 9268(b)(6).

panel decision imposes any other sanction (and does not set a date for the sanction to take effect), if there is no appeal or call for review, the sanctions will take effect on a date determined by FINRA.

Rule 8313(e) states that notwithstanding paragraph (d) of the rule, expulsions and bars imposed in AWCs and settlements shall become effective upon approval or acceptance by the NAC and information regarding any sanctions imposed may be released to the public immediately upon such approval or acceptance. The proposed rule change would eliminate paragraph (e) as unnecessary because paragraph (a) of the proposed rule would govern the publication of AWCs and settlements, and AWC and settlement documents address the effective dates for the sanctions imposed pursuant to such decisions.

Rule 8313(f) currently provides that a decision called for review by the Board shall be stayed pending a final determination by the Board. The proposed rule change would delete paragraph (f) because it does not address publication standards and whether a finding is stayed pending a decision by the Board, or otherwise, is governed by the appropriate provision(s) in the Rule 9000 Series.

In addition, the proposed rule change would eliminate Rule 8313(j), which states that cancellations of membership or registration pursuant to the FINRA By-Laws and rules shall be released to the public as soon after the effective date of the cancellation as possible. The proposed rule change would delete paragraph (j) as unnecessary because decisions regarding such sanctions would be released to the public pursuant to paragraph (a) of the proposed rule, and it is standard FINRA practice to release information in a timely and efficient manner.

Finally, the proposed rule change would delete as unnecessary Rule 8313(k), which provides that information released to the public must identify the rules violated, describe the conduct constituting such violation, and may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by FINRA to be in the public interest. FINRA notes that it is standard practice for this information to be included in disciplinary items released to the public and FINRA intends to continue this practice under the proposed rule.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following

Commission approval. The effective date will be no later than 120 days following publication of the *Regulatory Notice* announcing Commission approval. The proposed rule change would apply prospectively beginning on the effective date established by FINRA following Commission approval. Once effective, the proposed rule change will govern the release of disciplinary and other information for all new and pending matters.<sup>22</sup>

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>23</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. The proposed amendments aim to provide clarity and consistency regarding the release by FINRA of disciplinary and other information to the public. To that end, the proposed rule change would establish general standards for the release of disciplinary information to the public to provide greater access to information regarding FINRA's disciplinary actions, clarify the scope of information subject to Rule 8313, and eliminate provisions that do not address the release of information by FINRA to the public. FINRA believes that greater access to information regarding its disciplinary actions provides valuable guidance and information to members, associated persons, other regulators, and the investing public.

FINRA also believes that the current publicity thresholds have created an inconsistency in FINRA's release of information given that information that may not be disclosed under the current rule is often publicly available through other sources. For example, the proposed rule change would allow FINRA to make available in the FDA (or otherwise) disciplinary information that is available in BrokerCheck, but is not eligible for publication by FINRA under the current publicity thresholds, and would better align FINRA's publication standards with the practices of the SEC and other regulators.

<sup>22</sup> Offers of settlement and AWCs are entered into with the express agreement that the publication of such items will be pursuant to Rule 8313. Accordingly, publication of any order accepting an offer of settlement or AWC entered into prior to the effective date of the proposed rule change would be governed by the version of the rule in effect as of the date of such offer or AWC.

<sup>23</sup> 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 will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA does not believe that the proposed rule change will have a significant negative impact on members and associated persons or impose new costs. Rather, FINRA believes that the proposed rule change may have a positive impact on members, associated persons, other regulators, and investors because greater access to information regarding FINRA's disciplinary actions provides valuable guidance and information to all parties.

Among other things, FINRA is proposing to eliminate the restrictions to publication in the current rule by eliminating the publicity thresholds because releasing detailed disciplinary information to the public can serve to deter and prevent future misconduct and to improve overall business standards in the securities industry. It also allows investors to consider firms' and representatives' disciplinary histories when considering whether to engage in business with them. In addition, firms may use such information to educate their associated persons as to compliance matters, highlighting potential violations and related sanctions and inform their own compliance procedures. Further, any firm or individual facing allegations of rule violations may access existing disciplinary decisions to gain greater insight on related facts and sanctions. Moreover, FINRA does not anticipate that the proposed rule change will negatively impact members, associated persons, or investors because information that may not be disclosed under the current rule is often already publicly available through other sources such as BrokerCheck.

FINRA considered continuing its current practice of redacting identifying information regarding statutorily disqualified individuals and member firms in statutory disqualification decisions released to the public. However, FINRA is proposing to release such information unredacted because it determined that access to information regarding the identity of statutorily disqualified individuals and member firms, in addition to the underlying conduct that led to a statutory disqualification, and the safeguards imposed, including restrictions on permissible activities and heightened supervisory plans, provides investors with valuable information about the individuals and firms with whom they

conduct business. Further, to the extent that information regarding the underlying conduct that results in an individual or firm being subject to a statutory disqualification decision is reported to the CRD system, identifying information regarding such individuals and firms is available in BrokerCheck. In contrast, FINRA considered releasing MAP decisions unredacted and determined that the potential harm to firms in releasing such decisions in unredacted form would not be outweighed by any investor protection benefit. In this regard, applicants typically are required to disclose proprietary information, including, among other things, business plans, financial plans, and commercial agreements. Moreover, denials of MAP often are related solely to operational concerns. As such, FINRA is proposing to continue releasing such decisions in redacted form.

An alternative to the proposed rule change would be to maintain the publication standards in the current rule. FINRA believes that the current rule lacks clarity and consistency and does not serve the public interest because members, associated persons, other regulators, and investors would all benefit from greater access to information relating to FINRA's disciplinary actions, and information that is limited for publication under the current rule is often available from other sources.

*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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2013-018 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-018. 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 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 FINRA's principal office. 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-2013-018, and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-06718 Filed 3-22-13; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>24</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69174; File No. SR-NYSEMKT-2013-26]

**Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain Rules To Accommodate the Trading of Option Contracts Overlying 10 Shares of Certain Securities**

March 19, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 18, 2013, NYSE MKT LLC ("NYSE MKT" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 certain rules to accommodate the trading of option contracts overlying 10 shares of a security ("mini-options contracts"). The text of 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.

<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.