

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 principal offices 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-NASDAQ-2016-053, and should be submitted on or before May 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77550; File No. SR-FINRA-2015-029]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions), as Modified by Partial Amendment No. 1 and Partial Amendment No. 2, in the Consolidated FINRA Rulebook

April 7, 2016

#### I. Introduction

On July 31, 2015, 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 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a new, consolidated rule addressing accounts

opened or established by associated persons of members at firms other than the firm with which they are associated.

The proposed rule change was published for comment in the **Federal Register** on August 14, 2015.<sup>3</sup> The comment period closed on September 4, 2015. On September 22, 2015, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 12, 2015. The Commission received four comment letters in response to the Notice.<sup>4</sup> On November 10, 2015, FINRA responded to the comments and filed Partial Amendment No. 1 to the current proposal.<sup>5</sup> On November 12, 2015, the Commission issued an order instituting proceedings pursuant to Exchange Act section 19(b)(2)(B)<sup>6</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1.<sup>7</sup> The Commission received one (1) comment letter in response to the Order Instituting Proceedings.<sup>8</sup> On February 10, 2016, the Commission published a notice extending the time period in which the Commission must determine whether to

<sup>3</sup> See Exchange Act Rel. No. 75655 (Aug. 10, 2015), 80 FR 48941 (Aug. 14, 2015) (File No. SR-FINRA-2015-029) ("Notice").

<sup>4</sup> See Letters from Eric Arnold and Clifford Kirsch, Sutherland Asbill & Brennan LLP (for the Committee of Annuity Insurers), dated September 4, 2015 ("Sutherland Letter"); Michael J. Hogan, President and Chief Executive Officer, FOLIO/fn Investments, Inc., dated September 4, 2015 ("FOLIO/fn Letter"); Joseph C. Peiffer, President, Public Investors Arbitration Bar Association ("PIABA"), dated September 3, 2015 ("PIABA Letter"); and Kevin Zambrowicz, Associate General Counsel & Managing Director, and Stephen Vogt, Assistant Vice President & Assistant General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated September 3, 2015 ("SIFMA Letter"). Comment letters are available at [www.sec.gov](http://www.sec.gov). The Commission discussed these comments in the Order Instituting Proceedings. See *infra* note 7.

<sup>5</sup> See Letter from Patrice Gliniecki, Senior Vice President and Deputy General Counsel, FINRA, to the Commission, dated November 10, 2015 ("FINRA Response Letter"). The FINRA Response Letter and the text of Partial Amendment No. 1 are available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, at the Commission's Web site at <http://www.sec.gov/rules/sro/finra/2015/34-75655.pdf>, and at the Commission's Public Reference Room.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Exchange Act Release No. 76430 (Nov. 12, 2015), 80 FR 72118 (Nov. 18, 2015) (Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change to Adopt FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions), as Modified by Partial Amendment No. 1) ("Order Instituting Proceedings"). The comment period closed on December 9, 2015.

<sup>8</sup> See Letter from Laura Crosby-Brown, dated November 13, 2015 ("Crosby-Brown Letter").

approve or disapprove the proposed rule change to April 8, 2016.<sup>9</sup> On March 2, 2016, FINRA responded to the comment letter received in response to the Order Instituting Proceedings and filed Partial Amendment No. 2.<sup>10</sup>

This order approves the proposed rule change, as modified by Partial Amendment No. 1 and Partial Amendment No. 2 (collectively, the "Amendments").<sup>11</sup>

#### II. Description of the Proposed Rule Change<sup>12</sup>

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>13</sup> FINRA is proposing to adopt new FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook, and to delete NASD Rule 3050, Incorporated New York Stock Exchange ("NYSE") Rules 407 and 407A, and Incorporated NYSE Rule Interpretations 407/01 and 407/02.<sup>14</sup>

##### A. Current NASD Rule 3050

Current NASD Rule 3050 provides a means to inform member firms about transactions effected by their associated persons in accounts established outside the firm. This information gives members an opportunity to weigh the effect these accounts may have on the firm and its customers.<sup>15</sup> The rule imposes specified obligations on

<sup>9</sup> See Exchange Act Release No. 77103 (Feb. 10, 2016), 81 FR 8109 (Feb. 17, 2016) (Notice of Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions), as Modified by Partial Amendment No. 1, in the Consolidated FINRA Rulebook).

<sup>10</sup> See Letter from Patrice Gliniecki, Senior Vice President and Deputy General Counsel, FINRA, to the Commission, dated March 2, 2016 ("FINRA's Second Letter"). FINRA's Second Letter and the text of Partial Amendment No. 2 are 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.

<sup>11</sup> The text of the proposed rule changes is available at the principal office of FINRA, on FINRA's Web site at <http://www.finra.org>, and at the Commission's Public Reference Room. In addition, you may also find a more detailed description of the original proposed rule change, as amended by Amendment No. 1, in the Notice, and Order Instituting Proceedings.

<sup>12</sup> The proposed rule change, as described in this Item II, is excerpted, in part, from the Notice, which was substantially prepared by FINRA. See Notice.

<sup>13</sup> The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules"). See *id.*

<sup>14</sup> For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

<sup>15</sup> See Exchange Act Release No. 4924 (Aug. 21, 1953).

<sup>17</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.

member firms and associated persons, including:

- *Obligations of Member Firms:* NASD Rule 3050(a) requires that a member (called an “executing member”) that knowingly executes a transaction for the purchase or sale of a security for the account of a person associated with another member (called an “employer member”), or for any account over which the associated person has discretionary authority, must use reasonable diligence to determine that the execution of the transaction will not adversely affect the interests of the employer member. NASD Rule 3050(b) requires that, when an executing member knows that a person associated with an employer member has or will have a financial interest in, or discretionary authority over, any existing or proposed account carried by the executing member, the executing member must:

- (1) Notify the employer member in writing, prior to the execution of a transaction for the account, of the executing member’s intention to open or maintain that account;

- (2) upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to the account; and

- (3) notify the person associated with the employer member of the executing member’s intention to provide the notice and information required by (1) and (2), above.

- *Obligations of Associated Persons:* Associated persons who: (1) Open securities accounts or place securities orders through (a) a member firm other than their employer, or (b) other financial institution that is not a FINRA member, and (2) have a financial interest in, or discretionary authority over, such accounts or orders<sup>16</sup> must comply with the following:

- (1) NASD Rule 3050(c) requires that a person associated with a member, prior to opening an account or placing an initial order for the purchase or sale of securities with another member, must notify both the employer member and the executing member, in writing, of his or her association with the other member. The rule also provides that if the account was established prior to the person’s association with the employer member, the person must notify both members in writing promptly after becoming associated; and

- (2) NASD Rule 3050(d) provides that if the associated person opens a securities account or places an order for the purchase or sale of securities with

a broker-dealer that is registered pursuant to Exchange Act section 15(b)(11) (a notice-registered broker-dealer), a domestic or foreign investment adviser, bank, or other financial institution (*i.e.*, firms that are not FINRA members), then he or she must: (i) Notify his or her employer member in writing, prior to the execution of any initial transactions, of the intention to open the account or place the order; and (ii) upon written request by the employer member, request in writing and assure that the notice-registered broker-dealer, investment adviser, bank, or other financial institution provides the employer member with duplicate copies of confirmations, statements, or other information concerning the account or order. NASD Rule 3050(d) also provides that if an account subject to Rule 3050(d) was established prior to the person’s association with the member, the person must comply with the rule promptly after becoming associated.

In addition, NASD Rule 3050(f) provides that the requirements of Rule 3050 do not apply to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940 (“Investment Company Act”), or to accounts which are limited to transactions in such securities.

#### *B. Current NYSE Rules 407 and 407A*

The purpose of NYSE Rule 407 is similar to the purpose of FINRA Rule 3050—to provide member firms information about transactions effected by their associated persons in accounts established outside their firm. According to FINRA, the NYSE and NASD rules are similar with some variations, including:

- NYSE Rule 407(a) is similar to NASD Rule 3050(b), except that Rule 407(a) requires that an executing member receive an employer member’s prior written consent before: (1) Opening a securities or commodities account, or (2) executing any transaction in which a member or employee associated with another member or member organization is directly or indirectly interested. The rule also requires that duplicate confirmations and account statements be sent promptly to the employer.

- NYSE Rule 407(b) is similar to NASD Rules 3050(c) and (d), except that Rule 407(b) generally requires that associated persons who: (1) Establish or maintain a securities or commodities account, or enter into a securities transaction at (a) another member firm, or (b) a domestic or foreign non-member

broker-dealer, investment adviser, bank, or other financial institution,<sup>17</sup> and (2) have a financial interest in, or discretionary authority over, such accounts or transactions must obtain the employer firm’s prior written consent. The rule also requires that persons having accounts or effecting transactions as covered by the rule must arrange for duplicate confirmations and statements (or their equivalents) to be sent to the employer firm. The rule further requires that all such accounts and transactions must periodically be reviewed by the employer member.

- NYSE Rule 407.12 is similar to NASD Rule 3050(f), except that Rule 407.12 excepts the specified transactions and accounts (*i.e.*, transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act, or to accounts which are limited to transactions in such securities, or to monthly investment plan type accounts) only from the obligation to send duplicate confirmations and statements unless requested by the employer.

In addition, NYSE Rule 407A (Disclosure of All Member Accounts) requires members to promptly report to the NYSE any securities account (including accounts at a member or non-member broker-dealer, investment adviser, bank or other financial institution), in which the member has a financial interest or the power to make investment decisions. NYSE Rule 407A also requires a member having such an account to notify the financial institution that carries or services the account that it is a member of the NYSE. In addition, the rule requires that members report to the NYSE when any such securities account is closed. FINRA states that “[t]hese reporting requirements were designed to provide the NYSE with current information about where floor members carry securities accounts.”<sup>18</sup>

NYSE Rule Interpretation 407/01 addresses the process for determining whether the account of a spouse of an associated person should be subject to NYSE Rule 407.

NYSE Rule Interpretation 407/02 provides that NYSE Rule 407(b) applies when an associated person is also a majority stockholder of a non-public corporation that wishes to open a discretionary margin account at another member.

<sup>17</sup> NYSE Rule 407.13 states that, for purposes of the rule, the term “other financial institution” includes, but is not limited to, insurance companies, trust companies, credit unions, and investment companies.

<sup>18</sup> See Notice.

<sup>16</sup> See NASD Rule 3050(e).

*C. Proposed New FINRA Rule 3210, as Amended by Partial Amendment No. 1*<sup>19</sup>

Proposed FINRA Rule 3210(a) would require an associated person to obtain his or her employer firm's prior written consent before opening or otherwise establishing an account in which securities transactions can be effected and in which the associated person has a beneficial interest at a member other than the employer member (*i.e.*, executing member), or at any other financial institution.<sup>20</sup> Proposed FINRA Rule 3210.02, as amended by Partial Amendment No. 1, would establish a rebuttable presumption that an associated person has a beneficial interest in an account held by an individual listed in proposed Rule 3210.02(a)–(d). Specifically, under the proposal, an associated person would be presumed (not deemed) to have a beneficial interest in any account that is held by: (a) The spouse of the associated person, provided that the spouse resides in the same household as the associated person;<sup>21</sup> (b) a child of the associated person or of the associated person's spouse, provided that the child resides in the same household as or is financially dependent upon the associated person; (c) any other related individual over whose account the associated person has control; or (d) any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes. Moreover, proposed FINRA 3210.02, as amended by Partial Amendment No. 1, would allow an associated person to overcome the presumption of beneficial interest in an account by “[demonstrating], to the satisfaction of the employer member, that the associated person derives no economic benefit from the account.”<sup>22</sup> Notably, the proposal would also “[eliminate] the

language in the current rules that references accounts or transactions where the associated person has ‘the power, directly or indirectly, to make investment decisions,’ as set forth in NYSE Rule 407(b), and accounts where the associated person has ‘discretionary authority,’ as set forth in NASD Rule 3050(b).”<sup>23</sup>

Proposed FINRA Rule 3210(b) would require an associated person to provide written notice to the executing member, or other financial institution, of his or her association with the employer member prior to opening or otherwise establishing an account subject to the rule.

Proposed FINRA Rule 3210(c) would require an executing member, upon written request by the employer member, to transmit duplicate copies of confirmations and statements, or the transactional data contained therein, with respect to an account subject to the rule.

Proposed FINRA Rule 3210.01 would require an associated person to obtain the written consent of the employer member, within 30 calendar days of becoming so associated, to maintain an account that was opened or otherwise established prior to the person's association with the employer member. The proposed rule also would require the associated person to notify in writing the executing member or other financial institution of his or her association with the employer member.

Proposed FINRA Rule 3210.03, as amended by Amendment No. 1, would exclude from the requirements of FINRA Rule 3210 transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D–12, qualified tuition programs pursuant to section 529 of the Internal Revenue Code, and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to monthly investment plan type accounts.<sup>24</sup>

Proposed FINRA Rule 3210.04 would require an employer member to consider the extent to which it would be able to obtain, upon written request, duplicate copies of confirmations and statements,

<sup>23</sup> See Notice.

<sup>24</sup> As originally proposed, proposed Rule 3210 would have exempted transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D–12, qualified tuition programs pursuant to section 529 of the Internal Revenue Code, and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or accounts that are limited to transactions in such securities, or monthly investment plan type accounts from only subpart (c) of Rule 3210 (discussed above).

or the transactional data contained therein, directly from the non-member financial institution in determining whether to provide its written consent to an associated person to open or maintain an account subject to the rule at a financial institution other than a member.

*D. Partial Amendment No. 2*

FINRA subsequently amended Supplementary Material .02 (“Beneficial Interests”<sup>25</sup>) to proposed Rule 3210, as amended by Partial Amendment No. 1, by:

- Adding the phrase “and to have established” in the first sentence of Supplementary Material .02 to clarify that the associated person would not only be presumed to have a beneficial interest in the accounts specified in Supplementary Material .02(a) through .02(d), but also that the accounts would be presumed to be established by the associated person. FINRA believes this language will clarify that these accounts are covered within the meaning of the phrase “open or otherwise establish” as used in proposed Rule 3210(a);<sup>26</sup>

- Revising the last sentence of Supplementary Material .02 to read: “For purposes of paragraphs (a) and (b) of this Supplementary Material .02, an associated person need not be presumed to have a beneficial interest in, or to have established, an account if the associated person demonstrates, to the reasonable satisfaction of the employer member, that the associated person derives no economic benefit from, and exercises no control over, the account.” FINRA believes that adding “For purposes of paragraphs (a) and (b) of this Supplementary Material .02” is an appropriate clarification, given that the accounts specified in paragraphs (c) and (d) under the Supplementary Material involve control by the associated person, and therefore “there would be no meaningful purpose in attempting to rebut the presumption” of beneficial interest for accounts controlled by the associated person. FINRA also believes that adding the phrase “reasonable satisfaction of the employer member” would clarify that FINRA expects an employer member's determination that the associated person has rebutted the presumption to be reasonable. Moreover, FINRA believes that including the phrase “and exercises no control over” would clarify that the associated person would need to

<sup>19</sup> The description in this section describes the proposed rule change prior to Partial Amendment No. 2, which is described in section D below.

<sup>20</sup> Based on NYSE Rule 407.13 and NASD Rule 3050(d), proposed FINRA Rule 3210.05 provides that the terms “other financial institution” and “financial institution other than a member” include, but are not limited to, any broker-dealer that is registered pursuant to Exchange Act Section 15(b)(11), domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union, and investment company.

<sup>21</sup> As originally proposed, proposed Rule 3210.02 would have deemed an associated person to have a beneficial interest in any account held by a spouse, regardless of residence.

<sup>22</sup> As originally proposed, proposed Rule 3210.02 would have deemed (not presumed) an associated person to have a beneficial interest in any account that is held by an individual listed in Rule 3210.02(a)–(d) for purposes of Rule 3210.

<sup>25</sup> FINRA also proposes revising the header for Supplementary Material .02 to read “Related and Other Persons,” in order to more accurately reflect the content identified in subparts (a) through (d). See FINRA's Second Letter.

<sup>26</sup> See FINRA's Second Letter.

demonstrate not only that he or she derives no economic interest from the account, but also that he or she is not exercising any trading authority.<sup>27</sup>

- Deleting the phrase “provided that the spouse resides in the same household as the associated person.” In so doing, an associated person would be presumed to have a beneficial interest in, and to have established, the account of a spouse, without regard to whether the spouse resides with the associated person. In support of this amendment, FINRA notes that the proposed amendment is consistent with existing FINRA Rule 3110(d)(4)(A)(i).<sup>28</sup> FINRA also believes that presuming an associated person has a beneficial interest in a spouse’s account, regardless of residency, would help ensure the appropriate regulatory oversight of accounts that associated persons could misuse.<sup>29</sup> In addition, FINRA believes that the proposed rebuttable presumption would “afford adequate flexibility for employer members to exclude accounts that pose little or no supervisory risk.”<sup>30</sup> FINRA recognizes that the requirement to rebut this presumption may create a new obligation for associated persons.<sup>31</sup> On balance, however, FINRA believes that the potential costs to associated persons are outweighed by the aforementioned regulatory benefits.<sup>32</sup>

### III. Description of Comments on the Proposal as Amended by Partial Amendment No. 1

As noted above, the Commission received one (1) comment letter in response to the Order Instituting

<sup>27</sup> See FINRA’s Second Letter. FINRA also believes that permitting an associated person to rebut a presumption of beneficial interest in a spouse’s account gives employer members flexibility to consider diverse familial circumstances, such as separation. See FINRA’s Second Letter; see also SIFMA Letter (stating that “[i]t is not uncommon for spouses to maintain completely separate financial lives.”).

<sup>28</sup> See FINRA’s Second Letter. As stated in FINRA Rule 3110(d)(1)(D), “Each member shall include in its supervisory procedures a process for the review of securities transactions that are reasonably designed to identify trades that may violate the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive device that are effected for the . . . covered accounts.” “Covered accounts” are later defined as including “any account introduced or carried by the member that is held by . . . the spouse of a person associated with the member.” FINRA Rule 3110(d)(4)(A)(i).

<sup>29</sup> See FINRA’s Second Letter; but see FINRA Response Letter (stating that it is aware of “the potential difficulties that could arise with respect to spouse accounts as proposed in the original filing.”).

<sup>30</sup> See FINRA Response letter.

<sup>31</sup> See FINRA’s Second Letter.

<sup>32</sup> *Id.*

Proceedings.<sup>33</sup> The commenter argued that certain broker-dealers do not engage in businesses that could lead to the types of violations that the proposed new rules are designed to help prevent. Accordingly, the commenter encouraged FINRA to amend the proposal to “allow firms to decide based on their business model and potential risks whether or not to require the approval of outside accounts and whether the firm must receive statements or transition reports.”<sup>34</sup>

In response to this commenter, FINRA cited “the core supervisory objective that gives rise to the need for the rulemaking . . . discussed in the original filing and in the Partial Amendment No. 1.”<sup>35</sup> FINRA further stated that “sound supervisory practices require that a member firm monitor personal accounts opened or established outside of the firm by its associated persons.”<sup>36</sup> FINRA also stated that it believes the proposed rule would “help facilitate effective oversight of the specified trading activities of associated persons of member”<sup>37</sup> by, among other things, “provid[ing] employer members reasonable flexibility to craft appropriate supervisory policies and procedures according to their business model and the risk profile of their activities.”<sup>38</sup> Accordingly, FINRA declined to make the suggested changes.

### IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comments received, and FINRA’s responses to the comments and proposed Amendments. Based on its review of the record, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.<sup>39</sup> In particular, the Commission finds that the proposal is consistent with Exchange Act section 15A(b)(6), which requires, among other things, that FINRA’s rules 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.<sup>40</sup>

<sup>33</sup> See Crosby-Brown Letter.

<sup>34</sup> *Id.*

<sup>35</sup> See FINRA’s Second Letter.

<sup>36</sup> See Notice; see also FINRA Response Letter.

<sup>37</sup> *Id.*

<sup>38</sup> See FINRA Response Letter; see also Notice.

<sup>39</sup> In approving this proposed rule change, the Commission has considered the proposed rule change’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>40</sup> 15 U.S.C. 78o–3(b)(6).

As stated above, the proposal would update and consolidate into the FINRA Rulebook NASD and NYSE rules that each govern a broker-dealer’s oversight of accounts established by their associated persons at other broker-dealers and other financial institutions. As discussed above, the proposed rule would, among other things: (1) Provide an associated person with the opportunity to rebut a presumption that he or she has a beneficial interest in an account established by certain related and other persons; (2) require an associated person to obtain his or her employer firm’s prior written consent before opening or otherwise establishing an account in which securities transactions can be effected and in which the associated person has a beneficial interest at a member other than the employer member, or at any other financial institution; (3) require an associated person to provide written notice to the executing member, or other financial institution, of his or her association with the employer member prior to opening or otherwise establishing an account subject to the rule; and (4) require an executing member, upon written request by the employer member, to transmit duplicate copies of confirmations and statements, or the transactional data contained therein, with respect to an account subject to the rule.

As stated in the Notice, FINRA designed the proposed rule change to help “facilitate the supervision of the trading activities of associated persons within the framework of FINRA’s . . . supervisory rules.”<sup>41</sup> More specifically, FINRA believes the proposed rule change would “help members ensure that such activities, engaged in at executing members or other financial institutions, do not violate provisions of the [Exchange] Act, its regulations, or FINRA rules, thereby helping to ensure orderly markets.”<sup>42</sup>

The Commission recognizes one commenter’s concern that not requiring a member firm to obtain a duplicate account statement that reflects every associated person’s covered transactions unless the account statement is requested in writing might negatively affect a broker-dealer’s ability to monitor, and thus, supervise trading by its associated persons.<sup>43</sup> The Commission also recognizes, however, that FINRA believes the proposal would create sufficient flexibility for members to “craft appropriate supervisory

<sup>41</sup> See Notice; see also FINRA Response Letter.

<sup>42</sup> See Notice; see also FINRA Response Letter.

<sup>43</sup> See PIABA Letter; also see Notice and Order Instituting Proceedings.

policies and procedures according to their business model and the risk profile of their activities”<sup>44</sup> and that requiring delivery of duplicate account statements would eliminate this flexibility. More importantly, FINRA Rule 3110 regarding broker-dealer supervision establishes the obligation for a member to include in its supervisory procedures a process for the review of securities transactions that are/is reasonably designed to identify trades that may violate the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive practices that are effected for, among other things, covered accounts.

In consolidating the overlapping rules, FINRA proposed deleting certain provisions<sup>45</sup> and amending other provisions. In particular, the proposed rule change would amend the definition of “beneficial interest” to create a rebuttable presumption that an associated person holds a beneficial interest in the financial accounts of certain related and other persons. The Commission recognizes commenters’ concerns that, as a result of this change, an associated person may not always be able to obtain a spouse’s duplicate account statements. Specifically, the two commenters argued that family arrangements are diverse, and that an associated person could have difficulty complying with the rule in the event of pending separation or divorce from a spouse.<sup>46</sup> One of the commenters also suggested that these concerns could extend, for example, to the accounts of a child of an associated person’s spouse.<sup>47</sup> However, we believe that FINRA’s proposal strikes an appropriate balance between the regulatory interests in facilitating adequate supervision over accounts in which the associated person has a beneficial interest, and the possibility that an associated person may not be able to obtain duplicate account statements in certain limited circumstances.

Another commenter argued that additional types of transactions and accounts should be excluded from the obligations of the proposed rule,

<sup>44</sup> See FINRA Response Letter; also see Notice and Order Instituting Proceedings.

<sup>45</sup> For example, the proposed rule would not include existing NASD rules that affect accounts over which associated persons make investment decisions or have discretionary authority to the proposed new rule. FINRA believes that the activities in these types of accounts involve private securities transactions subject to FINRA Rule 3280, making application of the proposed new rule redundant. See Notice and FINRA’s Response Letter.

<sup>46</sup> See SIFMA Letter; FOLIO*fn* Letter.

<sup>47</sup> See FOLIO*fn* Letter.

asserting that they pose limited risks with respect to the need to oversee associated persons’ accounts.<sup>48</sup> This commenter recommended that FINRA exempt transactions in “all insurance contracts that are securities” from the obligation to provide the employer member with duplicate account documents.<sup>49</sup> Although FINRA declined to exempt insurance products from the rule’s requirements, it agreed to “consider whether further exceptions are appropriate based on the attributes of specific insurance products.”<sup>50</sup>

In sum, the Commission believes that the proposal would help protect investors and the public interest by establishing a framework through which a member can adequately supervise securities-related activities of their associated persons at firms other than the one with which they are associated.<sup>51</sup> We also believe this rule makes the core supervisory obligation more operationally workable for employer firms.

In addition, the proposal enables members to design a supervisory system that suits their respective business model and risk profiles. In this regard, the proposal would allow firms to decide, based on their respective business model and potential risks, whether to approve outside accounts and whether the firm wants to receive duplicate account statements and other related account documents. For example, FINRA states that members could impose obligations on their associated persons beyond those required by the proposal, such as “tak[ing] a more expansive view of the accounts the associated person should disclose than is otherwise required by the [proposed] rule.”<sup>52</sup>

<sup>48</sup> See Sutherland Letter.

<sup>49</sup> *Id.*

<sup>50</sup> See FINRA Response Letter; see also Order Instituting Proceedings.

<sup>51</sup> FINRA Rule 3110(d) (Transaction Review and Investigation) requires that a member’s supervisory procedures include a process for reviewing securities transactions effected in, among others, accounts of their associated persons, reasonably designed to identify trades that may violate the provisions of the Exchange Act, its regulations, or FINRA rules prohibiting insider trading and manipulative and deceptive devices. See FINRA Response Letter.

<sup>52</sup> See FINRA Response Letter; see also FINRA Response Letter (stating that “the rule [does not] limit the employer member’s discretion to set requirements with respect to the holding of outside accounts”); see also FINRA Response Letter (stating that “the rule does not prevent employer members from crafting policies and procedures that require associated persons to disclose the types of transactions and accounts specified under [proposed FINRA Rule 3210.03] and to provide related information”).

Similarly, FINRA notes that “the rule does not limit the discretion of executing members to craft

The Commission believes that FINRA gave due consideration to the proposal and met the requirements of the Exchange Act. For these reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

## V. Conclusion

*It is therefore ordered* pursuant to Exchange Act section 19(b)(2)<sup>53</sup> that the proposal (SR-FINRA-2015-029), as modified by the Amendments, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>54</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77554; File No. SR-CBOE-2016-023]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

April 7, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 1, 2016, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 adopt the Frequent Trader Program. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at

policies and procedures with respect to the account activity of persons associated with other firms.” See FINRA Response Letter.

<sup>53</sup> 15 U.S.C. 78s(b)(2).

<sup>54</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.