purposes of this clause (A), ''consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA, and access to consolidated Options Information and access to Proprietary Information are deemed ''equivalent'' if *Proprietary Information and consolidated Options Information, whether disseminated on a streaming- or per usage-basis,* [both kinds of information] are equally accessible on the same terminal or work station; [and]

(B) a Member may not disseminate its Proprietary Information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of Options Information;[.] *and*

(C) dissemination of consolidated Options Information for the same classes or series of options that are included in the Proprietary Information must be displayed in a context in which a trading or order-routing decision can be implemented (i.e., the point of order entry or modification). Consolidated Options Information must also be provided if a registered representative of a broker-dealer provides a quotation to a customer that can be used to assess the current market or the quality of trade execution.

* * * * *

III. Solicitation of Comments

The Commission seeks comment on the Amendment. Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number 4–820 on the subject line.

Paper Comments

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

All submissions should refer to file number 4–820. 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 website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Sponsors. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number 4–820 and should be submitted on or before February 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01071 Filed 1–19–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99351; File No. SR–FINRA–2024–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 3240 (Borrowing From or Lending to Customers)

January 16, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2024, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend Rule 3240 (Borrowing From or Lending to Customers) to strengthen the general prohibition against borrowing and lending arrangements, narrow some of the existing exceptions to that general prohibition, modernize the immediate family exception, and enhance the requirements for giving notice to members and obtaining members' approval of such arrangements.

The text of the proposed rule change is available on FINRA's website at *https://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Rule 3240 generally prohibits, with exceptions, registered persons from borrowing money from or lending money to their customers. The rule has five tailored exceptions, available only when the registered person's member firm has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member, the borrowing or lending arrangements meet the conditions in one of the exceptions[3] and, when required, the registered person notifies the member of a borrowing or lending arrangement, prior to entering into such arrangement, and

[26] 17 CFR 200.30–3(a)(85).

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

[2] 17 CFR 240.19b–4.

[3] *See* Rule 3240(a)(2)(A) (the ''immediate family exception''); Rule 3240(a)(2)(B) (the ''financial institution exception''); Rule 3240(a)(2)(C) (the ''registered persons exception''); Rule 3240(a)(2)(D) (the ''personal relationship exception''); Rule 3240(a)(2)(E) (the ''business relationship exception'').

obtains the member's pre-approval in writing. The exceptions are for limited situations where the likelihood that the registered person and customer entered into the borrowing or lending arrangement by virtue of the broker-customer relationship is reduced, and the potential risks are outweighed by the potential benefits of allowing registered persons to enter into arrangements with such customers.

Rule 3240 was last amended in 2010, when it became part of the consolidated FINRA rulebook.[4] In August 2019, FINRA launched a retrospective review of Rule 3240, as part of a larger retrospective review of FINRA's rules and administrative processes that help protect senior investors from financial exploitation.[5] In December 2021, FINRA published *Regulatory Notice* 21–43 (''*Notice* 21–43''), which (1) summarized the predominant themes that emerged during the retrospective review of Rule 3240; (2) issued guidance concerning approvals of permissible borrowing or lending arrangements; and (3) based on feedback received during the retrospective rule review, sought comment on proposed amendments to Rule 3240.[6]

Proposed Rule Change

FINRA is proposing to amend Rule 3240 to strengthen the general prohibition against borrowing and lending arrangements, narrow some of the existing exceptions to that general prohibition, modernize the immediate family exception, and enhance the requirements for giving notice to members and obtaining members' approval of such arrangements.[7]

The General Prohibition on Borrowing From or Lending to Customers

Rule 3240 generally prohibits registered persons from borrowing from or lending to their customers. To make this regulatory purpose more prominent, the proposed rule change would amend the rule's title from ''Borrowing From or Lending to Customers'' to ''Prohibition on Borrowing From or Lending to Customers,'' and change the title of Rule 3240(a) from ''Permissible Lending Arrangements; Conditions'' to ''General Prohibition; Permissible Borrowing or Lending Arrangements; Conditions.'' These changes would emphasize that the rule is, first and foremost, a general prohibition.

In addition, the proposed rule change would strengthen this general prohibition in three ways. First, Rule 3240(a) would be amended to clarify that the rule's general requirements concerning borrowing and lending arrangements—including the general prohibition—apply to arrangements that pre-exist a new broker-customer relationship. Currently, Rule 3240(a) begins, ''[n]o person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person . . . .'' FINRA is proposing to amend this introductory clause in Rule 3240(a) to also prohibit registered persons from initiating a broker-customer relationship with a person with whom the registered person has an existing borrowing or lending arrangement.

Second, FINRA is proposing to add Rule 3240.02 (Customer). Proposed Rule 3240.02 would define ''customer'' to include, for purposes of Rule 3240, any customer that has, or in the previous six months had, a securities account assigned to the registered person at any member. This would extend the rule's limitations to borrowing or lending arrangements entered into within six months after a broker-customer relationship terminates. This proposed definition would align with the definition of ''customer'' in FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer), a rule that addresses similar types of conflicts.[8]

Third, FINRA is proposing to add Rule 3240.05 (Arrangements with Persons Related to Either the Registered Person or the Customer). Proposed Rule 3240.05 would extend the rule's requirements to borrowing or lending arrangements that involve similar conflicts as ones presented by arrangements directly between registered persons and their customers. Specifically, proposed Rule 3240.05 would provide that ''[a] registered person instructing or asking a customer to enter into a borrowing or lending arrangement with a person related to the registered person (*e.g.,* the registered person's immediate family member or outside business) or to have a person related to the customer (*e.g.,* the customer's immediate family member or business) enter into a borrowing or lending arrangement with the registered person would present similar conflict of interest concerns as borrowing or lending arrangements between the registered person and the customer and would not be consistent with this Rule [3240] unless the conditions set forth in [Rule 3240(a)(1), (2), and (3)] are satisfied.'' [9] This would address the potential for customer abuse that arises when a registered person induces a customer to enter into a borrowing or lending arrangement with a person or entity related to the registered person or, likewise, induces a customer to have a person or entity related to the customer enter into an arrangement with the registered person.[10]

In addition, FINRA is proposing to add Rule 3240.03 (Owner-Financing Arrangements) to expressly state that, for purposes of Rule 3240, borrowing or lending arrangements include owner-financing arrangements. For example, Rule 3240 would apply to situations where a registered person purchases real estate from his customer, the customer agrees to finance the purchase, and the registered person provides a promissory note for the entire purchase price or arranges to pay in installments.[11]

The ''Immediate Family'' Definition

One of the few exceptions to Rule 3240's general prohibition is for borrowing or lending arrangements with a customer who is a member of the registered person's immediate family.[12] Currently, Rule 3240(c) defines ''immediate family'' to mean ''parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person

[4] *See Regulatory Notice* 10–21 (April 2010).

[5] *See Regulatory Notice* 19–27 (August 2019). In October 2020, FINRA published a report that summarized other aspects of that retrospective rule review. *See Regulatory Notice* 20–34 (October 2020).

[6] In *Notice* 21–43, FINRA also discussed some similarities and differences between Rule 3240 and the federal and state regulatory approaches for investment advisers and their supervised persons, and encouraged a broader dialogue about whether a more uniform regulatory approach would enhance investor protection.

[7] Where appropriate in context, FINRA refers herein to ''borrowing and lending'' rather than ''borrowing or lending.'' No references to ''borrowing and lending,'' however, should be interpreted to mean that Rule 3240 only applies to arrangements that have both a borrowing component and a separate lending component. Rule 3240 generally prohibits registered persons from borrowing money from *or* lending money to a customer.

[8] *See* Rule 3241.01 (Customer).

[9] The conditions in Rule 3240(a)(1), (2) and (3) are that the member has written procedures allowing the borrowing or lending of money between registered persons and customers; the borrowing or lending arrangement meets one of the conditions; and the notification and approval requirements are satisfied.

[10] Proposed Rule 3240.05 is based, in part, on feedback received during the retrospective review that some registered persons attempt to circumvent Rule 3240 by structuring arrangements with persons related to the registered person or the customer.

[11] *See, e.g.,* James K. Breeze, Letter of Acknowledgment, Waiver and Consent, Case ID 2008012846501 (June 30, 2009); Vincenzo G. Covino, Letter of Acknowledgment, Waiver and Consent, Case ID 2009020793901 (Feb. 9, 2012).

[12] *See* Rule 3240(a)(2)(A).

whom the registered person supports, directly or indirectly, to a material extent.''

During the retrospective review of Rule 3240, FINRA received feedback that the definition of ''immediate family'' should be modernized. The proposed rule change would modernize the ''immediate family'' definition to match the definition of the same term in Rule 3241, which also has exceptions for situations in which the customer is a member of the registered person's immediate family.[13] Specifically, the proposed rule change to Rule 3240(c) would replace ''husband or wife'' with ''spouse or domestic partner'' and amend the definition so that it ''includes step and adoptive relationships.'' In addition, the ''any other person'' clause would be revised to be limited to ''any other person who resides in the same household as the registered person and the registered person financially supports, directly or indirectly, to a material extent.''

The Personal Relationship and Business Relationship Exceptions

Currently, two exceptions to the rule's general prohibition are for arrangements based on (1) a ''personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker-customer relationship''; and (2) a ''business relationship outside of the broker-customer relationship.'' [14] Due to concerns expressed during the retrospective review of Rule 3240 that the personal relationship exception may be exploited—and to make more clear what kinds of personal relationships would be within the exception—FINRA proposes to narrow the personal relationship exception to arrangements that are based on a ''bona fide, close personal relationship between the registered person and the customer maintained outside of, and formed prior to, the broker-customer relationship.'' [15] This language would replace the requirement that ''the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker-customer relationship'' to narrow the scope of the exception and clarify the types of relationships that would be within the exception. For similar reasons, FINRA proposes to amend the business relationship exception to be limited to arrangements that are based on a ''bona fide business relationship outside of the broker-customer relationship.'' [16]

In addition to narrowing the personal relationship and business relationship exceptions, FINRA is proposing to add Rule 3240.04 (Close Personal Relationships; Business Relationships), which would provide factors for evaluating whether a borrowing or lending arrangement is based on a close personal relationship or a business relationship. The proposed factors would include, but would not be limited to, when the relationship began, its duration and nature, and any facts suggesting that the relationship is not bona fide or was formed with the purpose of circumventing the purpose of Rule 3240. Proposed Rule 3240.04 is intended to help establish the scope of the close personal relationship and business relationship exceptions, focus on the most relevant factors when evaluating whether a close personal relationship or business relationship exists, and ensure that members consider meaningfully the potential issues involved in the proposed arrangement.

To provide even more guidance about the scope of the close personal relationship and business relationship exceptions, proposed Rule 3240.04 would also provide illustrative examples of these relationships. Specifically, it would provide that examples of relationships that are close personal relationships include, but are not limited to, a childhood or long-term friend, a godparent, and other similarly close relationships. Additionally, proposed Rule 3240.04 would provide that an example of a business relationship includes, but is not limited to, a loan from a registered person to a small outside business that the registered person co-owned for years for the sole purpose of providing the business with additional operating capital.[17]

Notification and Approval Requirements

The proposed rule change would also amend Rule 3240's notification and approval requirements. Currently, Rule 3240(b) contains notification and approval requirements for borrowing or lending arrangements within the five exceptions, which vary depending on which exception applies. With respect to the personal relationship, business relationship, and registered persons exceptions, Rule 3240(b)(1) provides that a registered person shall notify the member of borrowing or lending arrangements prior to entering into such arrangements, and that the member shall pre-approve in writing such arrangements.[18] With respect to the immediate family member exception, Rule 3240(b)(2) provides, in pertinent part, that a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval. With respect to the financial institution exception, Rule 3240(b)(3) provides, in pertinent part, that a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval, provided that ''the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose and creditworthiness.''

FINRA is proposing several amendments to all these notification and approval requirements. First, FINRA is proposing to amend Rule 3240(b)(1) to clarify that, although registered persons are required to obtain the member's prior approval of arrangements within the close personal relationship, business relationship, or registered persons exceptions, the member is not required to approve such arrangements. As explained above, Rule 3240(b)(1) currently provides that the member ''shall pre-approve'' such arrangements, which could imply incorrectly that the member must approve the arrangement or modification and may not disapprove it. To preclude this incorrect interpretation, the proposed rule change would delete the ''shall pre-approve'' language and instead require the

[13] *See* Rule 3241(a)(1)(A) and (a)(2)(A) and (c).

[14] *See* Rule 3240(a)(2)(D) and (E). Although Rule 3240(a)(2)(D) and (E) refer to ''the lending arrangement,'' and do not explicitly mention a ''borrowing arrangement,'' these exceptions are not intended to exclude borrowing arrangements. FINRA therefore proposes a technical amendment to make clear that those exceptions apply to ''borrowing or lending'' arrangements based on a personal relationship or a business relationship.

[15] Where appropriate in context, FINRA refers herein to proposed Rule 3240(a)(2)(D) as the ''close personal relationship exception.'' *See also supra* note 3 (defining current Rule 3240(a)(2)(D) as the ''personal relationship exception'').

[16] The term ''bona fide'' in the close personal relationship and business relationship exceptions was not included in the proposal in *Notice* 21–43. FINRA proposes to add the term ''bona fide'' to emphasize that for either of these exceptions to apply, the close personal relationship or business relationship must be legitimate. Adding the term ''bona fide'' would also align with language in proposed Rule 3240.04, discussed below.

[17] The proposal in *Notice* 21–43 did not include an illustrative example of a business relationship in proposed Rule 3240.04. It has been added in response to comments to *Notice* 21–43 requesting examples of relationships within that exception.

[18] Rule 3240(b)(1) contains similar notification and approval requirements for modifications to borrowing or lending arrangements.

registered person to provide the member with notice of the arrangements or modifications ''prior to entering into such arrangements'' or ''prior to the modification of such arrangements'' and ''obtain the member's approval.'' [19]

The proposed rule change would also amend the notification and approval requirements that apply to borrowing or lending arrangements within the registered persons, personal relationship and business relationship exceptions, to correspond with the proposed amendments that would clarify that the general prohibition applies to pre-existing arrangements. Specifically, proposed Rule 3240(b)(1)(B) would require registered persons, prior to the initiation of a broker-customer relationship at the member with a person with whom the registered person has an existing borrowing or lending arrangement, to notify the member in writing of existing arrangements within the registered persons, personal relationship and business relationship exceptions and obtain the member's approval in writing of the broker-customer relationship.[20]

Further, the proposed rule change would require that all notices required under Rule 3240 be in writing and retained by the member. Currently, Rule 3240 does not specify that notice must be given in writing, and the record-retention provision in Rule 3240.01 requires members only to preserve written approvals. The proposed rule change would require registered persons to give written notice and require members to preserve records of such written notice for at least three years.[21]

The proposed rule change would also amend the provisions that address notice and approval of arrangements within the immediate family and financial institution exceptions, to correspond with the proposed amendments that would clarify that the general prohibition applies to arrangements that pre-exist the broker-customer relationship. Currently, under Rule 3240(b)(2) and (3), the member's written procedures may indicate that registered persons are not required to notify the member or receive member approval of arrangements within the immediate family exception or arrangements within the financial institution exception that meet the additional conditions set forth in Rule 3240(b)(3). To extend these provisions to pre-existing arrangements, the proposed rule change would amend Rule 3240(b)(2) and (3) to provide that the member's procedures may also indicate that registered persons are not required to notify the member or receive member approval of such arrangements either prior to or subsequent to initiating a broker-customer relationship.

Finally, in response to comments received in response to *Notice* 21–43, the proposed rule change would establish new obligations on a member when receiving notice of a borrowing or lending arrangement. Specifically, FINRA is proposing to add Rule 3240.06 (Obligations of Member Receiving Notice). Proposed Rule 3240.06 would provide that upon receiving written notice under Rule 3240, the member shall perform a reasonable assessment of the risks created by the borrowing or lending arrangement with a customer, modification to the borrowing or lending arrangement with a customer, or existing borrowing or lending arrangement with a person who seeks to be a customer of the registered person. It would further provide that the member shall also make a reasonable determination of whether to approve the borrowing or lending arrangement, modification to the borrowing or lending arrangement, or, where there is an existing borrowing or lending arrangement with a person who seeks to be a customer of the registered person, the broker-customer relationship. Proposed Rule 3240.06 would be similar to Rule 3241(b)(1), which requires members to perform a ''reasonable assessment'' and ''reasonable determination'' when receiving notice of a registered person being named a customer's beneficiary or holding a position of trust for a customer, and to supplementary material to FINRA Rule 3270 (Outside Business Activities of Registered Persons) that provides factors members must consider upon receiving written notice of an outside business activity.[22]

FINRA intends that a member's ''reasonable assessment'' and ''reasonable determination'' for purposes of proposed Rule 3240.06 would be informed by guidance that FINRA has already provided to members in *Notice* 21–43.[23] Specifically, FINRA expects that a member's ''reasonable assessment'' would take into consideration several factors, such as:

(1) any potential conflicts of interest in the registered person being in a borrowing or lending arrangement with a customer;

(2) the length and type of relationship between the customer and registered person;

(3) the material terms of the borrowing or lending arrangement;

(4) the customer's or the registered person's ability to repay the loan;

(5) the customer's age;

(6) whether the registered person has been a party to other borrowing or lending arrangements with customers;

(7) whether, based on the facts and circumstances observed in the member's business relationship with the customer, the customer has a mental or physical impairment that renders the customer unable to protect his or her own interests;

(8) any disciplinary history or indicia of improper activity or conduct with respect to the customer or the customer's account (*e.g.,* excessive trading); and

(9) any indicia of customer vulnerability or undue influence of the registered person over the customer.

This list is not intended to be exhaustive. Moreover, while a listed factor may not be applicable to a particular situation, the factors that a member considers should allow for a reasonable assessment of the associated risks so that the member can make a reasonable determination of whether to approve the borrowing or lending arrangement, modification to the borrowing or lending arrangement, or, where there is an existing borrowing or lending arrangement with a person who seeks to be a customer of the registered person, the broker-customer relationship. FINRA does not expect a registered person's assertion that the registered person or the customer has no viable alternative person from whom to

[19] *See* proposed Rule 3240(b)(1)(A).

[20] In such situations, if the member does not approve the formation of a broker-customer relationship with the registered person who provided such notice, the customer would still be permitted to seek to initiate a broker-customer relationship with another registered person at the same member.

[21] *See* proposed amendments to Rule 3240(b)(1)(A) and (b)(1)(B) and Rule 3240.01. Rule 3240.01 would also be amended to provide that the record-retention requirements are for purposes of Rule 3240(b), not just Rule 3240(b)(1). As explained above, Rule 3240(b)(1) requires notice and approval of arrangements that are within the personal relationship, business relationship, and registered persons exceptions. While Rule 3240(b)(2) and (3) do not expressly require notice and approval of arrangements within the immediate family member and financial institution exceptions, those subparagraphs imply that members may choose to require such notice and approval of those arrangements.

[22] *See* Rule 3270.01 (Obligations of Member Receiving Notice).

[23] FINRA has explained that this guidance was similar to general guidance that FINRA had published concerning the ''reasonable assessment'' and ''reasonable determination'' requirements in Rule 3241. *See Notice* 21–43, at n.21 (citing Rule 3241(b)(1), *Regulatory Notice* 20–38 (October 2020), and Securities Exchange Act Release No. 89218 (July 2, 2020), 85 FR 41249, 41251 (July 9, 2020) (Notice of Filing of File No. SR–FINRA–2020–020)).

borrow money to be dispositive in the member's assessment. If possible, as part of the member's reasonable assessment of the risks, FINRA would expect a member to try to discuss the arrangement with the customer.[24]

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[25] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that, by strengthening and modernizing Rule 3240, the proposed rule change would enhance investor protection. The proposed rule change would reduce risks to investors through incremental adjustments that strengthen the general prohibition against borrowing and lending arrangements and narrow the few exceptions to the rule. In addition, the proposed rule change would facilitate compliance by clarifying the scope of the general prohibition and the personal relationship and business relationship exceptions.

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

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet its regulatory objective.

(a) Regulatory Need

Rule 3240 generally prohibits registered persons from borrowing from or lending to their customers except when certain conditions are met, as specified in Rule 3240 and described above. Anecdotal evidence from member firms, law clinics, and previous enforcement cases—as well as FINRA's experience in examining and enforcing for compliance with Rule 3240—suggests that there is some ambiguity about the scope of Rule 3240 and certain risks to investors due to conflicts of interest and the superior information that registered persons have about potential risks and returns. As discussed further below, the proposed rule change would reduce ambiguity and aim to mitigate these risks.

(b) Economic Baseline

The economic baseline for the proposed rule change is Rule 3240, members' existing internal procedures regarding borrowing from or lending to a customer, and the extent of investor protection and market efficiency that result. As of the end of 2022, there were 620,882 registered persons and 3,378 registered member firms that would be covered by the proposed rule change, in addition to the registered persons' customers.[26]

Absent Rule 3240, borrowing or lending arrangements between registered persons and their customers would likely be more widespread and riskier due to conflicts of interest and the superior information that registered persons have about potential risks and returns. Rule 3240 generally prohibits these arrangements, and it establishes processes that may help mitigate the potential conflicts of interest in those arrangements that are within the exceptions. In this regard, registered persons may not enter into borrowing or lending arrangements that are within the rule's exceptions unless the registered person's member firm has written procedures allowing the borrowing or lending of money between such registered persons and their customers, and unless the registered person complies with any applicable notification and approval requirements. Members may adopt procedures that are stricter than Rule 3240. However, for purposes of conducting an economic analysis, FINRA does not have comprehensive information readily available about members' borrowing or lending policies or practices.

To understand the potential harm from impermissible borrowing or lending arrangements, FINRA reviewed final FINRA enforcement cases that involved findings of Rule 3240 violations. Between January 2018 and December 2021, there were an average of 15 such enforcement cases per year, totaling 58 cases over the four-year period.[27] The number of cases year over year did not display a noticeable trend. The customer was the borrower in only one of the cases, and the registered person was the borrower in the other 57 cases. The amounts of borrowed or lent money ranged from $1,800 to $1,350,000, with a mean of $163,509 and a median of $70,000.

Customer harm occurs if a loan from the customer is not repaid according to its terms,[28] or if the terms of the loan are substantially worse when compared to prevailing market terms for loans to comparable borrowers. In the enforcement cases in the review period, the customers were often repaid, though it is uncertain whether they were repaid according to the terms of the loan or how those terms would have compared to prevailing market terms. FINRA notes the number of enforcement cases does not represent all violations of Rule 3240 that may have occurred, and thus, does not provide a complete picture of the economic baseline of customer harm.

FINRA also reviewed disclosures on Forms U4 and U5 of consumer-initiated, investment-related arbitrations, civil litigation or customer complaints (written or oral) that included allegations related to a registered person (or former registered person) borrowing money from or lending money to a customer. This information complements the information from the enforcement cases regarding the potential harm caused by impermissible borrowing or lending arrangements, although the disclosures do not necessarily indicate whether or how Rule 3240 was violated. From 2018 to 2021, there was a total of 100 such disclosures over the four-year period, which averaged to 23 disclosures per year. The number of such disclosures declined from 38 in 2018 to 19 in 2021. In 28 of the total 100 identified disclosures, the amount of the compensatory damages claim was not

[24] FINRA notes that the proposed rule change would impact members that have elected to be treated as capital acquisition brokers (''CABs''), given that the CAB Rules incorporate the impacted FINRA rule by reference.

[25] 15 U.S.C. 78*o*–3(b)(6).

[26] *See* 2023 FINRA Industry Snapshot, *https://www.finra.org/sites/default/files/2023-04/2023-industry-snapshot.pdf.* There is no data of the number of customers of the registered member firms.

[27] The number of enforcement cases includes the FINRA disciplinary actions that resulted in a Letter of Acceptance, Waiver, and Consent (AWC), an Order Accepting Settlement (OAS), or a decision issued by FINRA's Office of Hearing Officers, and that resulted in findings that the respondent violated Rule 3240. The number does not include matters resulting in Cautionary Action.

[28] ''Not repaid according to its terms'' could include, but is not limited to, situations in which a customer is not repaid in full or not repaid at the interest rate or by the date agreed upon.

known.[29] In the remaining 70 disclosures excluding two outliers,[30] the alleged compensatory damages claims ranged from $1,800 to $3.7 million, with a mean of $224,760 and a median of $94,600. Fifty-three of the 100 disclosures resulted in settlements, which ranged from $1,800 to $1.3 million. Five of the disclosures resulted in an arbitration award between $2,000 and $150,000. One disclosure resulted in a civil judgment of $85,000.

The extent to which data concerning these consumer-initiated events may inform an economic baseline has some limitations. First, some disclosures allege harm caused by conduct *in addition to* borrowing from or lending to a customer, such as recommending unsuitable investments, so FINRA is unable to determine how much of the alleged harm derives from allegations related to borrowing or lending. Second, the alleged compensatory damages could be a poor proxy for measuring customer harm because the disclosures did not specifically mention the borrowed amounts or have details about whether the loan was repaid, and because nearly all alleged compensatory damages claims were not adjudicated. Nevertheless, to the extent some of the disclosures are of settlements, awards or judgments, those provide a better gauge of the potential customer harm than mere allegations of compensatory damages. Thus, the disclosure data provides a perspective, in addition to the enforcement data, on the prevalence and the scope of borrowing or lending arrangements between registered persons and customers.

To supplement the quantitative analysis above, FINRA also considered its own experience with examining and enforcing for compliance with Rule 3240. Specifically, FINRA is concerned that some registered persons attempt to circumvent the current rule, using tactics such as timing a borrowing or lending arrangement to be entered into after terminating a broker-customer relationship, using other nominal borrowers such as a spouse or business entity of the registered person, or claiming a personal relationship that is not bona fide. For example, FINRA has detected instances in which the registered person re-assigned the customer to another registered person and then immediately entered into a borrowing arrangement with the former customer. These kinds of arrangements present the same kinds of conflicts of interest that Rule 3240 is intended to address, and, as such, also inform the economic baseline.

(c) Economic Impact

By extending the coverage of the rule's general prohibition, narrowing some exceptions, and clarifying certain aspects of the rule, the proposed rule change would result in fewer attempts by registered persons to enter into impermissible arrangements. For example, the expected cost of attempting to enter into a borrowing or lending arrangement that is not within the exceptions would be higher, as the likelihood of getting caught would increase when members, registered persons and customers have better information about permitted arrangements. Further, by reducing ambiguity regarding permissible borrowing or lending arrangements, a registered person who currently avoids a permissible and mutually beneficial borrowing or lending arrangement may be more comfortable entering into such an arrangement because of the proposed rule change.

The proposed rule change would prohibit some arrangements that are allowed under the current rule. For example, the general prohibition does not currently extend to arrangements entered into within six months after a broker-customer relationship ends; under the proposed rule change, it would. Additionally, the proposed rule change would narrow the personal relationship exception, prohibiting some of the arrangements that are permissible under the current rule. FINRA recognizes, however, that the proposed rule change may preclude arrangements that could be mutually beneficial to customers and registered persons and superior to alternative opportunities for borrowing or lending. Furthermore, requiring members to make a reasonable assessment of the risks and a reasonable determination of whether to approve the arrangement or new broker-customer relationship, as the case may be, may lead some members to disallow these arrangements altogether to avoid the cost of making the required assessments and determinations.

The long-term net impact of the proposed rule change on members' compliance costs is less clear. The proposed rule change would likely reduce registered persons' attempts to borrow based on the close personal relationship exception. Further, with the proposed modernized definition of ''immediate family,'' some arrangements that are currently within the personal relationship exception would instead be within the immediate family exception, of which members could choose not to require notification or approval. On the other hand, by clarifying that the rule covers arrangements that pre-exist the initiation of a broker-customer relationship and extending the rule six months after a broker-customer relationship is terminated, members would start receiving notice of the kinds of arrangements of which they are not currently receiving notice and would be required to evaluate whether to approve the arrangement or a new broker-customer relationship, as applicable. Additionally, members may incur additional costs of supervising and monitoring due to the extended time period that the proposed rule change covers. The extent of net savings or costs to members for compliance would depend on the relative prevalence of such cases and the additional monitoring costs.

The proposed rule change requiring members that receive notice of an arrangement to perform a reasonable assessment of the risks created by the arrangement could also raise members' compliance costs in the long term to the extent that members are not currently conducting these assessments. While the current rule requires members, upon receiving notice of an arrangement, to approve the arrangement in writing, the current rule does not require members to conduct a reasonable assessment of the risks of the arrangement prior to giving approval. Some members may already have a robust assessment process while some may have to adjust their process to comply with the proposed rule change. As a result, the compliance cost of the approval process for members that would have to make the adjustments could increase.

Members may also incur increased compliance costs in the short term. Specifically, members may need to update their written procedures in light of the proposed rule change given that Rule 3240 prohibits all arrangements unless the member has procedures permitting them. Members may also have to re-train their staff to become aware of the extended prohibitions, the modernized definition of ''immediate family,'' the proposed factors to consider for arrangements based on close personal relationships and business relationships, and the ''reasonable assessment'' and ''reasonable determination'' requirements. While the proposed rule

[29] For example, in one disclosure, a family member filed the complaint on behalf of a deceased customer without knowing the exact amount borrowed.

[30] In two disclosures, the alleged compensatory damages were $20 million and $43 million, both of which are more than three standard deviations from the mean. FINRA removed these data points in calculating the mean and median to avoid biases caused by outliers.

change would not apply retroactively, as discussed below, members may elect to re-evaluate previously approved arrangements under the proposed rule change. Additionally, members may choose to respond to the proposed rule change by reviewing their current registered persons' borrowing or lending arrangements with their current and previous customers, to the extent they have not already done so.

For members that are not already maintaining written notices and approvals of borrowing or lending arrangements that the proposed rule change would require, there would be additional operational costs. However, FINRA expects the incremental costs to be minimal, as the costs of making and keeping written records are trivial with digital technology.

(d) Alternatives Considered

FINRA considered generally prohibiting all borrowing or lending arrangements between registered persons and customers and eliminating the existing exceptions. FINRA does not propose a complete prohibition for several reasons. As an initial matter, Rule 3240 already contains a general prohibition, and the proposed rule change would strengthen it, by clarifying that it applies to pre-existing arrangements, extending the time period over which the rule would apply, adopting supplementary material that addresses conduct by registered persons regarding arrangements with persons related to the registered person or to the customer, and narrowing some exceptions.

Moreover, as discussed below, FINRA determined that the enumerated exceptions in Rule 3240, with the proposed rule change described above, are for limited situations where the likelihood that the registered person and customer entered into the borrowing or lending arrangement by virtue of the broker-customer relationship is reduced, and the potential risks are outweighed by the potential benefits of allowing registered persons to enter into arrangements with such customers. *See* discussion *infra* section C.

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

The proposed rule change was published for comment in *Notice* 21–43. Six comments were received in response to *Notice* 21–43. A copy of *Notice* 21–43 appears in Exhibit 2a. Copies of the comment letters received in response to *Notice* 21–43 appear in Exhibit 2b. Of the six comment letters received, three were in favor of the proposed rule change,[31] two were opposed,[32] and one raised issues that were beyond the scope of Rule 3240.[33]

The comments and FINRA's responses are set forth in detail below.

General Support for the Proposal

Three commenters expressed support for the proposal in *Notice* 21–43.[34] SIFMA noted that the proposal would provide greater clarity and guidance to members in assessing which arrangements may be permissible under the exceptions to the prohibition. PIABA specifically expressed support for applying Rule 3240 to arrangements that pre-exist the broker-customer relationship, extending the definition of customer to those who had accounts with a registered person in the previous six months, and making clear that the same or very similar conflicts of interest are present if a registered representative's close family member obtains a loan from a registered representative's customer. University of Pittsburgh expressed support for nearly every change proposed in *Notice* 21–43.[35] PIABA, SIFMA and University of Pittsburgh all supported the proposed modernization of the ''immediate family'' definition.[36]

General Opposition to the Proposal

NASAA and Malecki did not support the proposal in *Notice* 21–43 because they both would favor an outright prohibition on borrowing from or lending to customers.[37] NASAA stated that the proposed changes would continue to subject registered persons to disparate regulatory requirements. In particular, NASAA noted that its model rule concerning Dishonest or Unethical Business Practices of Broker-Dealers and Agents, which lists acts and practices that are considered contrary to high standards of commercial honor and just and equitable principles of trade, prohibits agents from ''[e]ngaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.'' [38]

During the retrospective review of Rule 3240, while some stakeholders also suggested that all borrowing and lending arrangements should be prohibited, others commented that the rule has appropriate exceptions or that the rule should have stronger controls short of a complete prohibition.[39] In evaluating this wide range of views, FINRA considered, as stated in *Notice* 21–43, whether the rule should generally prohibit all borrowing and lending arrangements between registered persons and customers with no exceptions. FINRA decided against this approach, however, for several reasons.

First, Rule 3240 already contains a general prohibition that the proposed rule change would strengthen by extending the period over which the rule would apply, clarifying that the prohibition applies to pre-existing arrangements, and narrowing some of the exceptions. Second, FINRA believes

[31] *See* Letter from Michael Edmiston, President, Public Investors Advocate Bar Association, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated February 14, 2022 (''PIABA''); letter from Bernard V. Canepa, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated February 14, 2022 (''SIFMA''); letter from Alice L. Stewart et al., Esquire, Director, University of Pittsburgh Securities Arbitration Clinic and Professor of Law, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated February 14, 2022 (''University of Pittsburgh'').

[32] *See* Letter from Jenice L. Malecki, Malecki Law, to Marcia E. Asquith, Executive Vice President, Board and External Relations, FINRA, dated February 14, 2022 (''Malecki''); letter from Melanie Senter Lubin, President, North American Securities Administrators Association, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated February 14, 2022 (''NASAA'').

[33] *See* Comment submission from Caleb Benore, dated December 29, 2021 (''Benore'').

[34] *See* PIABA, SIFMA and University of Pittsburgh.

[35] While generally supporting the proposal, University of Pittsburgh had comments regarding the business relationship exception, and PIABA had comments regarding the definition of ''customer.'' Those comments are discussed below.

[36] NASAA, which generally opposed the proposal, also expressed support for the modernization of the definition of ''immediate family.''

[37] In the alternative, NASAA and Malecki recommended various changes to Rule 3240, should it continue to permit any kinds of borrowing or lending arrangements. Those comments are discussed below.

[38] *See* Dishonest or Unethical Business Practices of Broker-Dealers and Agents (adopted May 23, 1983), *https://www.nasaa.org/wp-content/uploads/2011/07/29-Dishonest_Practices_of_BD_or_Agent.83.pdf.* NASAA also commented that its model rule concerning unethical business practices of investment advisers includes a similar prohibition. *See* NASAA Unethical Business Practices Of Investment Advisers, Investment Adviser Representatives, And Federal Covered Advisers Model Rule 102(a)(4)–1 (2019), available at *https://www.nasaa.org/wp-content/uploads/2019/05/NASAA-IA-Unethical-Business-Practices-Model-Rule.pdf* (providing that an investment adviser, an investment adviser representative or a federal covered adviser shall not engage in unethical business practices, including, among other things, ''[b]orrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds'' or ''[l]oaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser'').

[39] *See Notice* 21–43.

that all the exceptions are tailored to permit arrangements for which the potential benefits outweigh related potential risks. The exceptions allow for narrow situations where the likelihood that the registered person and customer entered into the borrowing or lending arrangement by virtue of the broker-customer relationship is reduced. Third, Rule 3240 also contains several protections that restrict a registered person's ability to enter into an arrangement within the five exceptions (*i.e.,* that no arrangements within the exceptions are permitted absent a member's procedures allowing the borrowing or lending of money between registered persons and customers and absent the registered person's compliance with applicable notice and approval requirements). These protections would be further strengthened through the proposed rule change to require members, when receiving written notice of a borrowing or lending arrangement, to make a reasonable assessment of the risks created by a borrowing or lending arrangement and a reasonable determination of whether to approve it.

FINRA does not believe that NASAA's model rule concerning the unethical business practices of broker-dealers and agents warrants changing the general approach of Rule 3240 as a general prohibition with narrow exceptions and associated protections. As explained above, one of the paragraphs in the NASAA model rule prohibits broker-dealer agents from engaging in the practice of borrowing or lending money or securities from a customer. Although some states have adopted that paragraph of the NASAA model rule verbatim,[40] some states have laws or regulations concerning borrowing or lending that are, in many respects, more similar to Rule 3240,[41] or even incorporate Rule 3240 by reference.[42] Moreover, FINRA has not identified any broker-dealer laws or regulations concerning borrowing or lending arrangements in several states that have high concentrations of FINRA-registered broker-dealer firms and branches.[43] Considering that Rule 3240 has a general prohibition on both borrowing arrangements and lending arrangements, limited tailored exceptions, and associated protections, including written-procedures requirements and notice-and-approval requirements, FINRA's rule—in its current form and as proposed—is as strong, if not stronger, than many states' laws.

In addition, NASAA commented that all borrowing and lending arrangements should be prohibited because the conflicts of interest that such arrangements create cannot be mitigated by member firm policies and procedures. NASAA contended that its position is consistent with the Commission's approach regarding certain other broker-dealer conflicts of interest. In this regard, NASAA wrote that the Commission recognized in the context of Regulation Best Interest (''Reg BI'') that some conflicts are so pervasive that they cannot reasonably be mitigated and must be eliminated in their entirety. NASAA contended that the direct personal incentives inherent in borrowing and lending arrangements, and the desire to collect or the duty to pay a customer, are of equal if not greater concern.

FINRA believes that the regulatory approach used in Rule 3240 is generally consistent with the approach the Commission took with Reg BI. Reg BI establishes a standard of conduct for broker-dealers and associated persons when they make a recommendation to a retail customer of any ''securities transaction or investment strategy involving securities.'' [44] FINRA notes that Reg BI requires broker-dealers to address conflicts of interest associated with recommendations, including through mitigation, and in certain circumstances where the Commission determined that such conflicts cannot be reasonably mitigated, through elimination. Rule 3240 is generally consistent with the spirit of this regulatory approach. In this regard, Rule 3240 generally prohibits most borrowing and lending arrangements and, thus, eliminates the potential conflicts these arrangements would present. Moreover, the proposed rule change would strengthen the general prohibition, by clarifying that it applies to arrangements that pre-exist a broker-customer relationship, extending it to arrangements that arise within six months after a broker-customer relationship ends, and adding supplementary material concerning conduct by registered persons regarding arrangements with persons related to the registered person or to the customer. Furthermore, as discussed, the rule's tailored exceptions, which would be narrowed under the proposed rule change, are for situations where the potential benefits of the borrowing or lending arrangement—including the benefits of being able to enter into some arrangements without a notice and approval process—outweigh related potential risks. In addition, the rule has additional protections (*i.e.,* the written-procedures requirement and the notice and approval requirements) that would be further enhanced by requiring firms to make a reasonable assessment of the risks and a reasonable determination of whether to approve the arrangement.[45]

In addition, NASAA suggested that FINRA should clarify that members may impose more stringent controls up to and including a total prohibition of borrowing and lending arrangements. When FINRA proposed to adopt Rule 3240 as part of the consolidated FINRA rulebook, it indicated that members can choose to permit registered persons to borrow money from or lend money to their customers consistent with the requirements of the rule or may be more restrictive, including prohibiting borrowing or lending arrangements in whole or in part.[46] In light of NASAA's suggestion, if the proposed rule change is approved, FINRA would reiterate this guidance in the Regulatory Notice announcing the approval of the proposed rule change.

The Immediate Family Exception

NASAA recommended eliminating the immediate family exception because elder financial exploitation is often perpetrated by family members. NASAA also contended that, if the current rule framework is maintained, notification and approval should be required for arrangements with immediate family members, particularly where the customer is a senior or may otherwise be a vulnerable adult under applicable

[40] *See, e.g.,* Georgia (Ga. Comp. R. & Regs. 590–4–5–.16(2)(b)(1) (2011)); Massachusetts (950 Mass. Code Regs. 12.204(1)(b)(1) (2020)); Pennsylvania (10 Pa. Code § 305.019(c)(2)(i) (2018)).

[41] *See, e.g.,* Connecticut (Conn. Agencies Regs. § 36b–31–15b(a)(1) (1995)); Michigan (Mich. Admin. Code r.451.4.27(3)(a) (2019)); New Jersey (N.J. Admin. Code § 13:47A–6.3(a)(43) and (44) (2017)); North Carolina (18 N.C. Admin. Code 6A.1414(c)(1) (1988)).

[42] *See, e.g.,* Colorado (Colo. Code Regs. 704–1 § 51–4.7(H)(2) (2019)); Florida (Fla. Admin. Code Ann. r.69W–600.013(2)(a) (2021)); Nevada (Nev. Admin. Code § 90.327(1)(d)(1) and Nev. Admin. Code § 90.321(1) (2008)).

[43] Specifically, FINRA has not identified state broker-dealer laws or regulations prohibiting borrowing or lending with customers in New York, California, Illinois or Texas. *See generally* 2023 FINRA Industry Snapshot at 22–23, available at *https://www.finra.org/sites/default/files/2023-04/2023-industry-snapshot.pdf.*

[44] *See* 17 CFR 240.15l–1(a)(1).

[45] Moreover, the member's reasonable assessment and determination would be informed by guidance in *Notice* 21–43 that the member's reasonable assessment of the risks may include consideration of, among other factors, ''any potential conflicts of interest in the registered person being in a borrowing or lending arrangement with a customer.''

[46] *See* Securities Exchange Act Release No. 61302 (January 6, 2010), 75 FR 1672, 1673 (January 12, 2010) (Notice of Filing of File No. SR–FINRA–2009–095).

state law. Malecki also raised concerns regarding elder financial exploitation and noted that debt situations can easily cause serious friction within family and friends. Malecki commented that the immediate family exception is too broad, and that only a narrow exception for educational debt for children should be permitted when brokers manage their own children's accounts.

Except for proposing to modify the definition of ''immediate family,'' FINRA does not propose to amend the existing immediate family exception or require notice and approval of arrangements with immediate family members. As explained above, the narrow exceptions to the rule—including for arrangements with immediate family members—are for situations where FINRA believes the likelihood that the registered person has borrowed from or lent money to a customer by virtue of the broker-customer relationship is reduced, and the rule contains additional protections that restrict a registered person's ability to enter into an arrangement within the exceptions.

FINRA believes that Malecki's suggestion to limit the immediate family exception to educational debt for children would narrow the exception too much. There are numerous other examples of beneficial borrowing or lending arrangements between immediate family members, including senior family members.[47] Such loans may cover, for example, medical expenses, child care or elder care expenses, emergency home repair costs, or expenses in the wake of a job loss, or they may support a family member's small business at an interest rate lower than commercially available. Furthermore, FINRA continues to believe, as it did when it previously eliminated from the predecessor to Rule 3240 notice and approval requirements for arrangements with immediate family members, that such requirements may invade the legitimate privacy interests of customers and registered persons.[48] Thus, FINRA believes the potential risks are outweighed by the potential benefits of permitting immediate family members to privately borrow from and lend to each other.

FINRA also reiterates that a registered person is prohibited from entering into a borrowing or lending arrangement with a customer who is an immediate family member, including one who is a senior investor, unless the member adopts written procedures permitting such arrangements. As explained above, members may choose to prohibit all borrowing and lending arrangements, allow only some of the exceptions enumerated in Rule 3240(a)(2), or impose limitations on the exceptions. FINRA believes that, by strengthening the general prohibition and narrowing its exceptions, the proposed rule change would further protect all investors, including senior investors.[49]

The Personal Relationship and Business Relationship Exceptions

Several commenters addressed the personal relationship and business relationship exceptions. Malecki commented that these two exceptions are too broad. Likewise, University of Pittsburgh requested that Rule 3240 limit the business relationship exception to the financial industry and noted that a registered person getting regular haircuts from a hairstylist should not fit within the business relationship exception. University of Pittsburgh also requested that FINRA provide examples of qualifying business relationships and more information about whether a business relationship qualifies for the exception. On this last point, University of Pittsburgh suggested that useful factors may include (1) the financial risks for the parties; (2) the industry involved; and (3) any other factor that may help determine the trust established between the parties and the comparative risks of their past business practices and their potential borrower-lender agreements.

FINRA shares some of these concerns and accordingly has proposed to narrow the personal relationship exception and to provide factors that are relevant to assessing whether a relationship falls within the scope of either exception. Beyond what FINRA proposed in *Notice* 21–43—and in response to the comments—FINRA proposes additional amendments to expressly provide that the personal and business relationships must be ''bona fide'' [50] and provide that an illustrative example of a ''business relationship'' is a loan from a registered person to a small outside business that the registered person co-owned for years for the sole purpose of providing the business with additional operating capital.[51]

FINRA does not believe, however, that additional changes to the personal and business relationship exceptions are warranted. The personal relationship exception, as proposed to be amended, would not permit ''virtually anyone'' to enter into a borrowing or lending arrangement.[52] Rather, the proposed rule change would narrow the personal relationship exception significantly, to apply only to personal relationships that are ''bona fide'' and ''close,'' and maintained outside of, and formed prior to, the broker-customer relationship. This narrower definition would reduce the risk that a registered person would concoct a personal relationship with a customer for the purpose of entering into a borrowing or lending arrangement with that customer, and it would address concerns expressed during the retrospective rule review that the exception can be exploited.

Likewise, FINRA believes that the business relationship exception, as proposed to be amended, is appropriately tailored. Rule 3240 currently requires that the qualifying business relationships be ''outside of the broker-customer relationship.'' This language serves to separate the business relationship from the broker-customer relationship, and thus mitigate the potential conflict of interest. The proposed rule change would further narrow this exception by requiring that the business relationship be ''bona fide.'' FINRA does not believe that the ''business relationship'' exception should be further limited to only the financial industry. There is no indication that the risks related to arrangements based on a bona fide business relationship turn on the industry or sector involved.

With respect to University of Pittsburgh's suggested factors, FINRA notes that the proposed rule change would require members, when receiving written notice under Rule 3240, to

[47] FINRA notes that the statements in this section that apply to senior family members also apply to other family members who may be vulnerable adults.

[48] *See* Securities Exchange Act Release No. 49081 (January 14, 2004), 69 FR 3410 (January 23, 2004) (Notice of Filing of File No. SR–NASD–2004–05) (explaining, among other things, that such requirements may invade the legitimate privacy interests of customers and registered persons).

[49] FINRA has maintained a longstanding commitment to protecting senior investors and continues to work to address risks facing this investor population as part of its regulatory mission, including by adopting rules that are intended to address risks related to possible financial exploitation of senior investors. *See, e.g.,* FINRA, *Protecting Senior Investors 2015–2020* (April 30, 2020); *Regulatory Notice* 20–34; Rule 2165 (Financial Exploitation of Specified Adults); Rule 4512.06 (Trusted Contact Person). FINRA further notes that Rule 2010 (Standards of Commercial Honor and Principles of Trade)—which provides that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade—protects investors from unethical behavior and is broad enough to cover a wide range of unethical conduct.

[50] *See* proposed Rule 3240(a)(2)(D) and (E).

[51] *See* proposed Rule 3240.04. FINRA agrees that a loan from a customer from whom the registered person purchases non-commercial consumer goods or services, such as hair styling services, would not fit within the business relationship exception.

[52] *See* Malecki.

perform a reasonable assessment of the risks created and make a reasonable determination of whether to approve the arrangement or broker-customer arrangement, as the case may be. As explained above, a member's reasonable assessment and determination would be informed by the guidance already provided in *Notice* 21–43, which includes a non-exhaustive list of factors to consider when evaluating whether to approve a borrowing or lending arrangement. For example, these factors include, among others, any potential conflicts of interest, the length and type of relationship, the material terms of the arrangement, and the customer's or registered person's ability to repay the loan. These factors are broad enough to cover many of the kinds of specific considerations suggested by University of Pittsburgh, including its suggestion that members consider the industry that the loan involves.

Definition of ''Customer''

Under the proposed rule change, the rule's prohibition would extend to arrangements with any customer who, within the previous six months, had a securities account assigned to the registered person at any member firm.[53] NASAA suggests that the period of time used in proposed Rule 3240.02 should be one year, instead of six months, because Rule 4111 (Restricted Firm Obligations) uses a one-year lookback period.[54]

The Rule 4111 lookback periods (including, among others, the one-year lookback period that pertains to ''Registered Persons In-Scope'' [55]) impact how Rule 4111 identifies firms with a significant history of misconduct. FINRA, however, has proposed a six-month period of time to align proposed Rule 3240.02 with the six-month period in the definition of ''customer'' in Rule 3241, because Rule 3241 addresses similar potential conflicts of interest as Rule 3240.[56] Moreover, FINRA believes the six-month lookback period in proposed Rule 3240.02 strikes an appropriate balance between achieving the regulatory objective of addressing circumvention of the proposed rule change and imposing requirements that are reasonable and appropriate, including reasonable requirements on members in tracking transfers of customers' accounts.[57]

Supervision and Customer-Disclosure Requirements

NASAA suggested that members should be required to incorporate specific supervisory procedures for assessing, and after approving, a borrowing or lending arrangement. Specifically, NASAA commented that the member should be required to document (1) the steps it undertook to assess the risk prior to approving the arrangement; (2) the steps it will take to minimize the conflict of interest; (3) how it communicated to the customer the risk created by the lending arrangement or repayment terms so that the customer appreciates the risk; and (4) an outline of the supervisory measures that it will take. Regarding the member's assessment of a borrowing or lending arrangement, NASAA contended that the rule should require members to evaluate borrowing and lending arrangements, and that the member's assessment should include an interview (preferably by a compliance officer) with the customer outside of the presence of the registered person or, where that is not possible, other verification that the customer benefits from and entered into the arrangement on his or her own volition and without pressure. Regarding supervision after approving an arrangement, NASAA commented that members should closely monitor the account of a customer who is a party to a borrowing or lending arrangement and impose formal conditions, apply heightened scrutiny to these accounts on an ongoing, annual review basis, place the registered person on heightened supervision, and conduct additional reviews on trades and transactions to ensure that recommendations are suitable. Similarly, Malecki commented that all loans except for educational debt for children should be supervised, and that ''supervision of loans'' should be aligned with FINRA rules regarding outside business activities and private securities transactions.[58]

The fundamental approach of FINRA's supervision rule is to require members to establish and maintain a system to supervise the activities of each associated person that is ''reasonably designed'' to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.[59] Likewise, the written supervisory procedures required by FINRA's supervision rule must be ''reasonably designed'' to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.[60] In guidance, FINRA has previously explained that written supervisory procedures should include a description of the controls and procedures used by members to deter and detect misconduct and improper activity.[61] Additionally, at a minimum, written supervisory procedures should include and describe (1) the specific identification of the individual(s) responsible for supervision; (2) the supervisory steps and reviews to be taken by the appropriate supervisor; (3) the frequency of such reviews; and (4) how such reviews shall be documented.[62] FINRA does not believe

[53] *See* proposed Rule 3240.02.

[54] PIABA also suggests that the period of time used in proposed Rule 3240.02 should be one year or more, instead of six months, and cites the time it could take to ''unwind some position a registered representative might recommend.'' It is unclear, however, what kinds of positions this comment pertains to or what would need to be unwound.

[55] *See* Rule 4111(i)(13).

[56] Like Rule 3240, Rule 3241 addresses situations that may create potential conflicts of interest between registered persons and their customers. Specifically, Rule 3241 addresses the potential conflicts that registered persons may face when they are named a customer's beneficiary, executor or trustee, or hold a power of attorney or similar position for or on behalf of a customer. It limits any registered person from being named a beneficiary, executor or trustee, or to have a power of attorney or similar position of trust for or on behalf of a customer, and protects investors by requiring members to affirmatively address registered persons being named beneficiaries or holding positions of trusts for customers. *See Regulatory Notice* 20–38 (Oct. 29, 2020).

[57] Prior to the adoption of Rule 3241, many members ''prohibit[ed] or impos[ed] limitations on being named as a beneficiary or to a position of trust when there is not a familial relationship,'' but FINRA ''observed situations where registered representatives tried to circumvent firm policies, such as resigning as a customer's registered representative [and] transferring the customer to another registered representative.'' *See Regulatory Notice* 20–38. ''To address attempted circumvention of the restrictions (*e.g.,* by closing or transferring a customer's account),'' FINRA defined ''customer'' in Rule 3241 to include ''any customer that has, or in the previous six months had, a securities account assigned to the registered person at any member firm.'' *Id.;* Rule 3241.01. When proposing Rule 3241, FINRA explained that the inclusion of the six-month look-back period ''is important in addressing potential conflicts of interest and circumvention of the proposed rule change.'' *See* Securities Exchange Act Release No. 89218 (July 2, 2020), 85 FR 41249, 41256 (July 9, 2020) (Notice of Filing of File No. SR–FINRA–2020–20). FINRA further explained, in response to a comment suggesting that the proposed definition of ''customer'' include a 12-month lookback provision, that it ''believes the six-month period strikes an appropriate balance between achieving the regulatory objective of addressing circumvention of the proposed rule change by transferring the customer account to another representative and imposing reasonable requirements on member firms in tracking account transfers.'' *Id.*

[58] *See* Rules 3270 (Outside Business Activities of Registered Persons) and 3280 (Private Securities Transactions of an Associated Person).

[59] *See* Rule 3110(a); *see also NASD Notice to Members* 99–45 (June 1999).

[60] *See* Rule 3110(a)(1) and (b)(1).

[61] *See NASD Notice to Members* 98–96 (December 1998); *see also NASD Notice to Members* 99–45, *supra* note 59.

[62] *See NASD Notice to Members* 98–96, *supra* note 61; *see also NASD Notice to Members* 99–45, *supra* note 59.

it is necessary or appropriate to further prescribe specific supervisory procedures that members should use when supervising for compliance with Rule 3240.

In response to the comments, however, FINRA is proposing stronger controls for when a member considers whether to approve a borrowing or lending arrangement or, where there is a pre-existing borrowing or lending arrangement, a new broker-customer relationship—specifically, the proposed requirement that a member, upon receiving written notice under Rule 3240, perform a ''reasonable assessment'' of the risks and a ''reasonable determination'' of whether to approve the arrangement or new broker-customer relationship, as the case may be.[63] As explained above, FINRA intends that a member's reasonable assessment and reasonable determination would be informed by the guidance that FINRA provided in *Notice* 21–43 concerning the factors members may consider when assessing whether to approve a borrowing or lending arrangement. FINRA believes this guidance would help members, when performing the reasonable assessments and determinations required under the proposed rule change, evaluate the key risks and conflicts and afford appropriate flexibility in evaluating which factors may apply to a particular situation.[64]

In a related comment, NASAA suggested that FINRA should require registered persons, at a minimum, to disclose to customers the factors listed in the guidance provided in *Notice* 21–43. Although NASAA refers to those factors as ''the Proposal's recommended disclosures,'' the factors in *Notice* 21–43 are intended to help guide a member's assessment of whether to approve a loan; they were not designed or intended to be the basis of customer disclosures about a loan. Nevertheless, FINRA notes that that guidance states that FINRA expects a member, if possible and as part of the member's evaluation of whether to approve a borrowing or lending arrangement, to try to discuss the arrangement with the customer.

Retroactivity

NASAA commented that applying the proposed rule change retroactively could provide benefits to investors and recommended retroactive disclosure of pre-existing borrowing and lending arrangements.[65] FINRA seeks, however, to avoid creating situations that would require registered persons and customers to terminate borrowing or lending arrangements or broker-customer relationships that, when entered into, were permissible under the current version of Rule 3240. In general, the proposed rule change would not apply retroactively to borrowing or lending arrangements that were entered into prior to the effective date of the proposed rule change and were permissible under the current version of Rule 3240.[66] Rather, the proposed rule change would apply only to (1) new arrangements and new broker-customer relationships that occur after the effective date of the proposed rule change; and (2) modifications that occur after the effective date of the proposed rule change of borrowing or lending arrangements that were entered into before the effective date.[67] Although FINRA is not proposing to require members to re-evaluate previously approved arrangements, members would have the discretion to do so.[68]

Harmonization of Regulatory Approaches to Financial Professionals' Borrowing and Lending Arrangements

In *Notice* 21–43, FINRA described some similarities and differences between Rule 3240 and the federal and state regulatory approaches for investment advisers and their supervised persons. FINRA sought to encourage and inform a broader dialogue about whether the similar risks presented when any financial professional borrows from or lends money to customers warrants a more uniform approach to regulating this activity. SIFMA commented that it welcomes a discussion on harmonizing the regulatory approaches, where appropriate.

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–FINRA–2024–001 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–FINRA–2024–001. 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

[63] *See* proposed Rule 3240.06.

[64] With respect to Malecki's comment that ''supervision of loans'' should be aligned with FINRA rules regarding outside business activities and private securities transactions, FINRA notes that Rule 3270 does not require members to ''supervise'' outside business activities. However, if a loan constitutes a private securities transaction, then Rule 3280—and any applicable supervisory obligations—would apply. *See* Rule 3280(c)(2) (discussing supervisory requirements involving private securities transactions for compensation); 3280(d) (discussing private securities transactions not for compensation, where a member may ''at its discretion'' require the person to adhere to specified conditions); 3280(e)(1) (defining ''private securities transaction'' and several exclusions to that definition).

[65] FINRA assumes that NASAA's comment about ''pre-existing'' arrangements concerns arrangements that were entered into before the effective date of the proposed rule change.

[66] For example, the proposed rule change to narrow the personal relationship exception would not apply retroactively to a borrowing or lending arrangement that was entered into prior to the effective date of the proposed rule change and that was permissible under the current personal relationship exception.

[67] FINRA reiterates, however, that the current rule's general prohibition against borrowing and lending arrangements between registered persons and customers already applies to arrangements that pre-existed the formation of the broker-customer relationship, and that the proposed rule change would clarify that scope.

[68] FINRA also notes that FINRA's supervision rule would require a member to follow-up on ''red flags'' indicating problematic activity related to borrowing or lending arrangements between registered persons and their customers, including arrangements that were entered into prior to the effective date of the proposed amendments. *See* Securities Exchange Act Release No. 89218 (July 2, 2020), 85 FR 41249, 41251 (July 9, 2020) (Notice of Filing of File No. SR–FINRA–2020–20) (explaining that Rule 3110 (Supervision) includes the ''longstanding obligation to follow-up on 'red flags' indicating problematic activity'').

post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR–FINRA–2024–001 and should be submitted on or before February 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01068 Filed 1–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–182, OMB Control No. 3235–0237]

Submission for OMB Review; Comment Request; Extension: Form N–54A

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act''), certain investment companies can elect to be regulated as business development companies, as defined in Section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)). Under Section 54(a) of the Investment Company Act (15 U.S.C. 80a–53(a)), any company defined in Section 2(a)(48)(A) and (B) may elect to be subject to the provisions of Sections 55 through 65 of the Investment Company Act (15 U.S.C. 80a–54 to 80a–64) by filing with the Commission a notification of election, if such company has: (1) a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''); or (2) filed a registration statement pursuant to Section 12 of the Exchange Act for a class of its equity securities. The Commission adopted Form N–54A (17 CFR 274.53) as the form for notification of election to be regulated as a business development company.

The purpose of Form N–54A is to notify the Commission that the investment company making the notification elects to be subject to Sections 55 through 65 of the Investment Company Act, enabling the Commission to administer those provisions of the Investment Company Act to such companies.

The Commission estimates that on average approximately 21 business development companies file these notifications each year. Each of those business development companies need only make a single filing of Form N–54A. The Commission further estimates that this information collection imposes a burden of 0.5 hours, resulting in a total annual PRA burden of 10.5 hours. Based on the estimated wage rate, the total cost to the business development company industry of the hour burden for complying with Form N–54A would be approximately $4,462.50.

The collection of information under Form N–54A is mandatory. The information provided by the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by February 21, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 17, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01099 Filed 1–19–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires Federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before March 22, 2024.

ADDRESSES: Send all comments by email to Tamara Jennings, Sr. Loan Specialist, Office of Financial Assistance, Small Business Administration at *tamara.jennings@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Tamara Jennings, Sr. Loan Specialist, (202) 205–6674, *tamara.jennings@sba.gov* or Curtis B. Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: For SBA financial assistance programs, SBA Form 413 Personal Financial Statement (PFS) collects information regarding the assets and liabilities of certain owners, officers and guarantors of the small business applicant benefiting from such assistance and is used when analyzing the applicant's repayment abilities or creditworthiness. SBA's Surety Bond Guaranty Program uses the Form 413 PFS information during the claim recovery process. The information is also collected from applicants and participants in SBA's 8(a) Business Development (BD) and Women-Owned Small Business (WOSB) Program certification process to determine

[69] 17 CFR 200.30–3(a)(12).