Dated: September 17, 2024.

**Edward R. Hawkens,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel, Rockville, Maryland.*

[FR Doc. 2024–21648 Filed 9–20–24; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–360, OMB Control No. 3235–0409]**

## Submission for OMB Review; Comment Request; Extension Rule 17Ad–15

*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 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–15 (17 CFR 240.17Ad–15) (''Rule 17Ad–15'') under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 17Ad–15 requires every registered transfer agent to establish written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions. Every registered transfer agent is also required to establish procedures, including written guidelines where appropriate, to make certain that the transfer agent uses those standards to determine whether to accept or reject guarantees from eligible guarantor institutions. In implementing these requirements, the Commission aims to ensure that registered transfer agents treat eligible guarantor institutions equitably.

Additionally, Rule 17Ad–15 requires every registered transfer agent to make and maintain records in the event the transfer agent determines to reject signature guarantees from eligible guarantor institutions. Registered transfer agents' records must include, following the date of rejection, a record of the rejected transfer, along with the reason for rejection, the identification of the guarantor, and an indication whether the guarantor failed to meet the transfer agent's guarantee standards. Rule 17Ad–15 requires registered transfer agents to maintain these records for a period of three years. The Commission designed these mandatory recordkeeping requirements to assist the Commission and other regulatory agencies with monitoring registered transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

The Commission estimates that approximately 315 registered transfer agents will spend a total of approximately 12,600 burden hours per year complying with recordkeeping requirements of Rules 17Ad–15 (based on approximately 40 burden hours per year per registered transfer agent). The Commission also estimates the aggregate annual internal cost of compliance for the approximately 315 registered transfer agents is approximately $4,019,400 (based on 40 hours annual burden × $319 hourly wage × 315 respondents). This reflects a decline in aggregate annual internal cost of compliance of $650,760 due to the decrease in the number of registered transfer agents from 366 to 315.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB 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 to: (i) *www.reginfo.gov/public/do/PRAMain* and (ii) Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: September 18, 2024.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2024–21685 Filed 9–20–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–101065; File No. SR–FINRA–2024–001]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Rule 3240 (Borrowing From or Lending to Customers) To Strengthen the General Prohibition Against Borrowing and Lending Arrangements

September 17, 2024.

### I. Introduction

On January 2, 2024, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–FINRA–2024–001) to amend FINRA Rule 3240 (Borrowing From or Lending to Customers).[3] As stated in the Notice, the proposed rule change would strengthen the general prohibition against borrowing and lending arrangements, narrow some of the existing exceptions to that general prohibition, amend the immediate family exception,[4] and enhance the requirements for notifying and obtaining member firms' approval of such arrangements.[5]

The proposed rule change was published for public comment in the **Federal Register** on January 22, 2024.[6] The public comment period closed on February 12, 2024. The Commission received comment letters related to this filing.[7] On February 21, 2024, FINRA consented to an extension of 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 April 19, 2024.[8]

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 99351 (Jan. 16, 2024), 89 FR 3968 (Jan. 22, 2024) (File No. SR–FINRA–2024–001) (''Notice''), *https://www.govinfo.gov/content/pkg/FR-2024-01-22/pdf/2024-01068.pdf.*

[4] *See infra* note 28 and accompanying text.

[5] *See* Notice.

[6] *Id.*

[7] The comment letters are available at *https://www.sec.gov/comments/sr-finra-2024-001/srfinra2024001.htm.*

[8] *See* letter from Ilana Reid, Associate General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, filed with the Commission on February 21, 2024. This letter is available at *https://www.finra.org/sites/*

Continued

On April 18, 2024, the Commission published an order instituting proceedings to determine whether to approve or disapprove the proposed rule change.[9] On April 26, 2024, FINRA responded to the comment letters received in response to the Notice.[10] On July 15, 2024, FINRA consented to an extension of the time period in which the Commission must approve or disapprove the proposed rule change to September 18, 2024.[11] This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

### *A. Background*

FINRA Rule 3240 generally prohibits, with exceptions, registered persons from borrowing money from, or lending money to, their customers. The rule has five tailored exceptions,[12] 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 firm,[13] the borrowing or lending arrangements meet the conditions applicable to the relevant exception [14] and, when required, the registered person notifies the member firm prior to entering into a borrowing or lending arrangement and obtains the member firm's pre-approval in writing.[15]

### *B. Proposed Rule Change*

#### 1. The General Prohibition on Borrowing From or Lending to Customers

The proposed rule change would amend the title of FINRA Rule 3240 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.'' [16] FINRA stated that the proposed rule change would make the regulatory purpose more prominent by emphasizing that the rule is ''first and foremost'' a general prohibition against borrowing or lending arrangements between registered persons and their customers (a ''broker-customer relationship'').[17]

The proposed rule change would also make substantive changes to FINRA Rule 3240 to extend the application of the rule to: (1) borrowing or lending arrangements that pre-exist the initiation of a broker-customer relationship; [18] (2) borrowing or lending arrangements entered into within six months after a broker-customer relationship ends by defining a ''customer'' to include ''any customer that has, or in the previous six months had, a securities account assigned to the registered person at any member;'' [19] (3) indirect borrowing or lending arrangements with related parties of the registered person or customer; [20] and (4) owner-financing arrangements.[21] The Commission describes each aspect of the proposed rule changes in turn.

#### a. Pre-Existing Borrowing and Lending Arrangements

Currently, Rule 3240(a) states ''[n]o person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person. . . .'' The proposed rule change would amend Rule 3240(a) to extend the rule's general requirements concerning borrowing and lending arrangements—including the general prohibition—to borrowing and lending arrangements that pre-exist a new broker-customer relationship.[22] Specifically, the proposed rule change would amend Rule 3240(a) to prohibit registered persons from initiating a broker-customer relationship with a person with whom the registered person has an existing borrowing or lending arrangement unless the conditions of the proposed rule are met.[23]

#### b. Expansion of the Definition of Customer

The proposed rule change would similarly extend the application of the rule to borrowing or lending arrangements entered into within six months after a broker-customer relationship ends.[24] Specifically, the proposed rule change would add new FINRA Rule 3240.02 (Customer) to define ''customer,'' for purposes of Rule 3240, as including ''any customer that has, or in the previous six months had, a securities account assigned to the registered person at any member.'' [25]

#### c. Borrowing and Lending Arrangements With Related Parties of the Registered Person or Customer

The proposed rule change would add new FINRA Rule 3240.05 (Arrangements with Persons Related to Either the Registered Person or the Customer) to extend Rule 3240 to indirect borrowing or lending arrangements involving related parties of the customer or registered person. Specifically, the proposed rule change 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 directly between the registered person and the customer.[26] Accordingly, the proposed rule change would expressly state that such arrangements would not be consistent with Rule 3240 unless the conditions set forth in Rule 3240 are satisfied.[27] FINRA stated that the proposed rule change would address the potential for customer abuse that arises in these more indirect borrowing and lending arrangements.[28]

#### d. Owner-Financing Arrangements

The proposed rule change would add Rule 3240.03 (Owner-Financing Arrangements) to expressly state that, for purposes of Rule 3240, borrowing or lending arrangements include owner-financing arrangements.[29] For example, Rule 3240 would apply to situations

*default/files/2024-02/SR-FINRA-2024-001-Extension1.pdf.*

[9] *See* Exchange Act Release No. 99988 (Apr. 18, 2024), 89 FR 31242 (Apr. 24, 2024) (File No. SR–FINRA–2024–001) (''Order Instituting Proceedings'').

[10] *See* letter from Ilana Reid, Associate General Counsel, Office of General Counsel, FINRA, dated April 26, 2024, *https://www.sec.gov/comments/sr-finra-2024-001/srfinra2024001-463852-1226394.pdf (''FINRA Comment Response'').*

[11] *See* letter from Ilana Reid, Associate General Counsel, Office of General Counsel, FINRA, to Dan Fisher, Division of Trading and Markets, Commission, dated July 15, 2024, *https://www.finra.org/sites/default/files/2024-07/SR-FINRA-2024-001-Extension2.pdf.*

[12] *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 person exception''); Rule 3240(a)(2)(D) (the ''personal relationship exception''); Rule 3240(a)(2)(E) (the ''business relationship exception'').

[13] *See* Rule 3240(a)(1).

[14] *See* Rule 3240(a)(2).

[15] *See* Rules 3240(a)(3) and 3240(b).

[16] Proposed Rule 3240 and proposed Rule 3240(a).

[17] *See* Notice at 3969.

[18] Proposed Rule 3240(a).

[19] Proposed Rule 3240.02.

[20] Proposed Rule 3240.05.

[21] Proposed Rule 3240.03.

[22] *See* Notice at 3969.

[23] Proposed Rule 3240(a).

[24] *See* Notice at 3969.

[25] Proposed Rule 3240.02.

[26] Proposed Rule 3240.05.

[27] *Id.*

[28] Notice at 3969.

[29] Proposed Rule 3240.03.

where a registered person purchases real estate from their 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.[30] Accordingly, such owner-financing arrangements would not be consistent with Rule 3240 unless the conditions set forth in Rule 3240 are satisfied.

2. The ''Immediate Family'' Definition

Currently, Rule 3240 has an exception from the general prohibition for borrowing or lending arrangements with a customer who is a member of the registered person's immediate family.[31] 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 whom the registered person supports, directly or indirectly, to a material extent.'' [32]

FINRA stated that, in order to ''modernize'' the ''immediate family'' definition,[33] the proposed rule change would amend the definition to make it consistent with the definition in FINRA Rule 3241,[34] which addresses similar potential conflicts of interest to Rule 3240.[35] Specifically, the proposed rule change would amend Rule 3240(c) to replace ''husband or wife'' with ''spouse or domestic partner'' and include ''step and adoptive relationships.'' [36] In addition, the proposed rule change would amend the ''any other person'' clause to limit it to ''any other person who resides in the same household as the registered person'' and who the registered person ''financially supports, directly or indirectly, to a material extent.'' [37]

3. The Close Personal Relationship and Business Relationship Exceptions

Currently, Rule 3240 has an exception from the general prohibition for borrowing or lending arrangements based on 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'' (the ''personal relationship exception'').[38] Similarly, the rule's general prohibition currently does not apply to borrowing or lending arrangements based on a ''business relationship outside of the broker-customer relationship'' (the ''business relationship exception'').[39]

The proposed rule change would narrow the personal relationship exception to apply only to personal relationships that are ''bona fide'' and ''close,'' and maintained outside of, and formed prior to, the broker-customer relationship.[40] The proposed rule change would also narrow the business relationship exception to borrowing and lending arrangements that are based on a ''bona fide business relationship'' maintained outside of the broker-customer relationship.[41]

In addition to narrowing the personal relationship and business relationship exceptions, the proposed rule change would add new Rule 3240.04 (Close Personal Relationships; Business Relationships), which would provide a list of non-exhaustive factors [42] to help firms evaluate whether a borrowing or lending arrangement is based on a bona fide close personal relationship or a bona fide business relationship. The non-exhaustive factors in proposed Rule 3240.04 are: ''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.'' [43] Proposed Rule 3240.04 would also provide examples of ''close personal relationships,'' including, ''a childhood or long-term friend or a godparent, and other similarly close personal relationships.'' [44] Additionally, proposed Rule 3240.04 would provide an example of a ''business relationship'' to include ''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.'' [45]

FINRA stated that the proposed rule change would ''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.'' [46]

4. Notification and Approval Requirements

Currently, Rule 3240(b) requires notification and approval for certain of the excepted borrowing or lending arrangements.[47] Generally, the exceptions for borrowing or lending arrangements involving personal relationships, business relationships, and registered persons require member firm notification and approval. In contrast, the exceptions for borrowing or lending arrangements with immediate family members and financial institutions do not require member firm notification and approval. The proposed rule change would make the following changes to the notification and approval requirements.

a. Approval Requirements for the Close Personal Relationship, Business Relationship, and Registered Persons Exceptions

Current Rule 3240(b)(1)(A) provides that a registered person shall notify the member firm of borrowing or lending arrangements made within the personal relationship exception,[48] business relationship exception,[49] or the registered persons exception [50] prior to entering into such arrangements, and that the member firm shall pre-approve in writing such arrangements.[51] The proposed rule change would amend Rule 3240(b)(1) to make clear that, while registered persons cannot proceed with such arrangements without their member firm's prior approval, the member firm is not required to approve the arrangement.[52] Specifically, the proposed rule change would delete the ''shall pre-approve'' language and instead require the registered person to provide notice ''prior to entering into such arrangements'' or ''prior to the modification of such arrangements'' and ''obtain the member's approval.'' [53]

Further, the proposed rule change would amend the notification and approval requirements in Rule 3240(b)(1) to cover borrowing or lending arrangements that pre-exist the broker-

[30] *See* Notice at 3969.

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

[32] Rule 3240(c).

[33] *See* Notice at 3970; *see also* FINRA Rule 3241.

[34] *See* Notice at 3970.

[35] *See* Notice at 3977. FINRA Rule 3241 governs registered persons who are named a customer's beneficiary or hold a position of trust for a customer. FINRA Rule 3241 and FINRA Rule 3240 are both designed to prevent harm to customers due to registered persons being in a position of power and responsibility in their lives. *See* Notice at 3977 n.56.

[36] Proposed Rule 3240(c).

[37] *Id.*

[38] Rule 3240(a)(2)(D).

[39] Rule 3240(a)(2)(E).

[40] Proposed Rule 3240(a)(2)(D).

[41] Proposed Rule 3240(a)(2)(E).

[42] *See infra* Section II.B.4.e.

[43] Proposed Rule 3240.04.

[44] *Id.*

[45] *Id.*

[46] *See* Notice at 3970.

[47] *Id.*

[48] Rule 3240(a)(2)(D).

[49] Rule 3240(a)(2)(E).

[50] Rule 3240(a)(2)(C).

[51] Rule 3240(b)(1)(A).

[52] *See* Notice at 3970.

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

customer relationship. Specifically, proposed Rule 3240(b)(1)(B) would require registered persons, prior to the initiation of a broker-customer relationship at the member firm with a person with whom the registered person has an existing borrowing or lending arrangement, to notify the member firm in writing of any existing borrowing or lending arrangements within the close personal relationship, business relationship, and registered persons exceptions and obtain the member firm's approval in writing of the broker-customer relationship.[54]

b. Notification and Approval Requirements for the Immediate Family Member Exception

Current Rule 3240(b)(2) provides, in pertinent part, that a member firm's written procedures may indicate that registered persons are not required to notify the member firm or receive member firm approval of borrowing or lending arrangements within the immediate family exception.[55] The proposed rule change would amend Rule 3240(b)(2) to apply the same approach to borrowing or lending arrangements within the immediate family exception that pre-exist the broker-customer relationship.[56] Specifically, the proposed rule change would amend Rule 3240(b)(2) to provide that the member firm's procedures may indicate that registered persons are not required to notify the member firm or receive member firm approval of such arrangements either prior to or subsequent to initiating a broker-customer relationship.[57] FINRA stated, however, that Rule 3240(b)(2) implies that member firms may choose to require such notice and approval of those arrangements.[58]

c. Notification and Approval Requirements for the Financial Institution Exception

Current Rule 3240(b)(3) provides, in pertinent part, that a member firm's written procedures may indicate that registered persons are not required to notify the member firm or receive the member firm's approval of borrowing or lending arrangements within the financial institution exception,[59] 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.'' [60] The proposed rule change would amend Rule 3240(b)(3) to also cover borrowing or lending arrangements within the financial institution exception that pre-exist the broker-customer relationship.[61] Specifically, the proposed rule change would amend Rule 3240(b)(3) to provide that the member firm's written procedures may also indicate that registered persons are not required to notify the member firm or receive the member firm's approval of borrowing or lending arrangements within the financial institution exception entered into either prior to or subsequent to initiating a broker-customer relationship, 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.[62] FINRA stated, however, that Rule 3240(b)(3) implies that member firms may choose to require such notice and approval of those arrangements.[63]

d. Notifications in Writing and Record Retention

Currently, Rule 3240 does not require that registered persons who must notify their member firms of borrowing and lending arrangements to do so in writing.[64] Furthermore, the current rule does not require member firms to retain any notices of borrowing and lending arrangements that they may receive from registered persons; it only requires member firms to retain written approvals.[65] The proposed rule change would require registered persons to notify their member firms in writing of those borrowing and lending arrangements under Rule 3240 that require notification and approval (*i.e.,* the exceptions involving registered persons, close personal relationships, and business relationships).[66]

The proposed rule change would also amend Rule 3240.01 to require member firms to retain the written notifications and approvals records for at least three years after the date that the borrowing or lending arrangement has terminated, or for at least three years after the registered person's association with the member has terminated.[67] The proposed rule change would also require record retention of notices and approvals related to the immediate family and financial institution exceptions, unless the member firm's procedures indicate that registered persons are not required to notify the member firm and/or receive member firm approval.[68]

e. Reasonable Assessment by Member of the Risks Created by the Borrowing or Lending Arrangement

The proposed rule change also would add new Rule 3240.06 (Obligations of Member Receiving Notice). Proposed Rule 3240.06 would require a member firm, upon receiving written notice under Rule 3240, to ''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.'' [69] It would further provide that the member firm 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.'' [70] In the Notice, FINRA stated that a member firm's ''reasonable assessment'' should consider several non-exhaustive 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;

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[54] *See* proposed Rule 3240(b)(1)(B).

[55] Rule 3240(b)(2).

[56] *See* Notice at 3971.

[57] *See* proposed Rule 3240(b)(2).

[58] *See* Notice at 3971 n.21.

[59] The ''financial institution exception'' states that no person associated with a member firm in any registered capacity may borrow money from or lend money to any customer of such person, unless the customer (i) is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business and (ii) is acting in the course of such business. *See* Rule 3240(a)(2)(B).

[60] *See* Rule 3240(b)(3).

[61] *See* Notice at 3971.

[62] *See* proposed Rule 3240(b)(3).

[63] *See* Notice at 3971 n.21.

[64] *See id.* at 3971.

[65] *Id.*

[66] *Id.; see* proposed Rules 3240(b)(1)(A) and (b)(1)(B) and proposed Rule 3240.01.

[67] *See* proposed Rule 3240.01.

[68] *See* Notice at 3971 n.21 (stating that ''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.'').

[69] Proposed Rule 3240.06.

[70] *Id.*

(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.[71]

Moreover, the factors that a member firm 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.'' [72] FINRA also stated in the Notice that it ''would expect a member to try to discuss the arrangement with the customer[,]'' as part of the member firm's reasonable assessment of the risks.[73]

## III. Discussion and Commission Findings

After careful review of the proposed rule change and the comment letters, and FINRA's response to comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[74] Specifically, as explained in more detail below, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA 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.[75]

The proposed rule change would strengthen the general prohibition against borrowing and lending arrangements between registered persons and their customers. Specifically, it would narrow the types of permissible borrowing and lending arrangements by covering relationships that pre-exist a new broker-customer relationship, as well as borrowing or lending arrangements entered into within six months after a broker-customer relationship ends. The proposed rule change would also extend the application of the rule to indirect borrowing and lending arrangements involving related parties of the customer or registered person and to owner-financing arrangements. In addition, the proposed rule change would modify the relationship categories in the immediate family exception. Furthermore, it would require borrowing and lending arrangements based on the close personal relationship and business relationship exceptions be ''bona fide.'' It also would require: registered persons to notify their member firms in writing and obtain member firms' approval of certain borrowing and lending arrangements; member firms to retain records of notices and approvals; and member firms to conduct a reasonable assessment of the risks associated with certain arrangements. Accordingly, and as explained in more detail below, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act. The Commission addresses the proposed rule change's specific provisions, and any related comments, in turn.

### *A. The General Prohibition on Borrowing From or Lending to Customers*

FINRA is proposing to amend the title of FINRA Rule 3240 to ''Prohibition on Borrowing From or Lending to Customers,'' and change the title of Rule 3240(a) to ''General Prohibition; Permissible Borrowing or Lending Arrangements; Conditions.'' Commenters did not specifically comment on this proposed rule change. By emphasizing that FINRA Rule 3240 imposes a general prohibition on registered persons borrowing from or lending to their customers, the proposed rule change highlights the regulatory purpose of the rule to generally prohibit borrowing and lending arrangements.

The proposed rule change would also make several substantive changes to the general prohibition on borrowing from or lending to customers, including extending the rule to cover borrowing and lending arrangements that pre-exist the broker-customer relationship; extending the rule's limitations to borrowing or lending arrangements entered into within six months after a broker-customer relationship ends; and, specifying that certain borrowing and lending arrangements are covered by the general prohibition. The Commission addresses those changes below.

#### 1. Pre-Existing Borrowing and Lending Arrangements

The proposed rule change would amend Rule 3240(a) to provide that the rule's general requirements concerning borrowing and lending arrangements—including the general prohibition—apply to borrowing and lending arrangements that pre-exist a new broker-customer relationship. The proposed rule change would prohibit registered persons from initiating a broker-customer relationship with a person with whom the registered person has an existing borrowing or lending arrangement unless the conditions of the proposed rule are met.[76]

Two commenters supported this change.[77] One of these commenters stated that conflicts of interest would exist in the relationship irrespective of whether or not a borrowing or lending arrangement existed before or after the broker-customer relationship is established.[78] Thus, the commenter noted, broadening and applying the general prohibition to borrowing or lending arrangements that pre-exist the broker-customer relationship will protect investors.[79] Another commenter supported covering borrowing or lending arrangements that pre-exist broker-customer relationship to the extent the proposed rule change would continue to permit any borrowing or lending arrangements.[80] To the extent

[71] *See* Notice at 3971.

[72] *See id.*

[73] *See id.* at 3972.

[74] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[75] 15 U.S.C. 78*o*–3(b)(6).

[76] *See id.* at 3969.

[77] *See* letter from William Jacobson, Clinical Professor of Law and Director, Cornell Securities Law Clinic, dated February 12, 2024, at 2, *https://www.sec.gov/comments/sr-finra-2024-001/srfinra2024001-428040-1059142.pdf* (''CSLC'') (emphasizing that by extending the prohibition to situations where financial arrangements pre-date the formal establishment of a broker-customer relationship, ''the amendment aims to prevent potential conflicts of interest or abuses.''); *see also* letter from Joseph C. Pfeiffer, President, Public Investor Advocate Bar Association, dated February 12, 2024, at 1, *https://www.sec.gov/comments/sr-finra-2024-001/srfinra2024001-426619-1057382.pdf* (''PIABA'').

[78] PIABA at 1–2.

[79] PIABA at 1.

[80] *See* letter from Claire McHenry, President, North American Securities Administrators Association, Inc., dated February 12, 2024, at 4,

Continued

that any borrowing or lending arrangements are permitted, this commenter called for strong safeguards to protect investors from ''predatory lending or undue influence in a broker-customer relationship.'' [81]

FINRA stated that the proposed rule change would strengthen the general prohibition against borrowing and lending arrangements by extending the scope of arrangements to which the rule would apply to pre-existing arrangements.[82] In addition, FINRA stated that the proposed rule change would strengthen the notice and approval requirements by, among other things, requiring member firms, upon receiving notice under the proposed rule, to conduct a reasonable assessments of the risks created by a borrowing or lending arrangement and make a reasonable determination of whether to approve it, as described more fully below.[83]

The proposed rule change reasonably extends the general prohibition against borrowing and lending arrangements to cover borrowing or lending arrangements that pre-exist a new broker-customer relationship. By extending this general prohibition to such arrangements, the proposed rule change reasonably extends the scope of the rule while preserving the opportunity for parties to enter into such arrangements in limited circumstances and subject to procedural protections (as discussed below) designed to minimize the impact of the potential conflict. For these reasons, the proposed rule change is reasonably 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.

2. Expansion of the Definition of Customer

The proposed rule change would add new FINRA Rule 3240.02 (Customer) to define ''customer,'' for purposes of Rule 3240, to include any customer who has, or in the previous six months had, a securities account assigned to the registered person at any member firm. FINRA stated that the proposed rule change would extend the rule's limitations to borrowing or lending arrangements entered into within six months after a broker-customer relationship terminates.[84]

One commenter supported this proposed extension of the rule's limitations to borrowing or lending arrangements, but favored extending the covered time period to one year as a stronger anti-evasion measure instead of the proposed six months.[85] The commenter stated that a one-year ''lookback'' time period would curtail attempts to evade this rule and therefore ''enhance investor protection to a greater degree than the proposed six month time period.'' [86] The commenter further stated that FINRA Rule 4111 (Restricted Firm Obligations) uses a one-year ''lookback'' time period.[87]

In response, FINRA stated that it proposed to align the new Rule 3240 time period with the six-month time period in the definition of ''customer'' in Rule 3241, because Rule 3241 addresses similar potential conflicts of interest,[88] whereas Rule 4111's one-year ''lookback'' time period relates to the identification of firms with a significant history of misconduct.[89] FINRA stated that there are costs associated with extending the general prohibition after the broker-customer relationship ends.[90] Such costs relate to evaluating and making reasonable determinations on a host of arrangements about which the member firm was not previously notified, as well as costs associated with continued monitoring for prohibited borrowing and lending arrangements with every customer who transfers an account away from the member firms' registered persons.[91] FINRA stated also that the six-month time period ''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 member firms in tracking transfers of customers' accounts.'' [92]

The proposed rule change reasonably extends the rule's coverage to borrowing and lending arrangements involving customers who in the previous six months had a securities account assigned to a registered person. As a result, the proposed rule change protects investors by broadening the scope of customer relationships covered by the rule's general prohibition and limited exceptions. Further, the six-month limit on how long a broker-dealer must monitor terminated customer accounts reasonably balances the benefits of the rule's protections with the burden of complying with the rule's requirements for an extended period after the termination of the broker-customer relationship. For these reasons, the proposed rule change is reasonably 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.

*https://www.sec.gov/comments/sr-finra-2024-001/srfinra2024001-428019-1058522.pdf* (''NASAA'').

[81] *See id.* Specifically, two commenters who provided comments on specific provisions of the proposed rule change stated a preference for a broad prohibition on all borrowing and lending arrangements. *See* NASAA at 3–4 (identifying a complete ban with no exceptions as the most efficient and effective way to address ''the serious conflicts inherent in such a relationship and the potential for investor harm''); *see also* letter from Jenice Malecki, Jacqueline Candela, and Adam Schreck of Malecki Law, dated February 12, 2024, at 1, *https://www.sec.gov/comments/sr-finra-2024-001/srfinra2024001-428039-1058683.pdf* (''Malecki'') (stating that ''lending arrangements between registered representatives and their customers should be strictly prohibited. Transactions amongst registered representatives and customers inherently involve parties negotiating from disparate bargaining positions.''). In response, FINRA stated that it considered prohibiting all such arrangements but rejected the approach because such arrangements may be mutually beneficial to the contracting parties. *See* FINRA Comment Response at 1–2. FINRA stated also that the proposed rule change would strengthen the general prohibition against such arrangements by extending the scope of arrangements to which the rule would apply and by narrowing some exceptions. *See* FINRA Comment Response at 4. In addition, FINRA stated that the proposed rule change would strengthen the notice and approval requirements, as discussed more fully below. *See id.* As discussed herein, FINRA Rule 3240 generally prohibits registered persons from borrowing money from, or lending money to, their customers but permits such arrangements under limited circumstances designed to minimize the impact of conflicts of interest. The proposed rule change would strengthen the general prohibition against borrowing and lending arrangements between registered persons and their customers. Accordingly, for the reasons discussed in detail below, we find that the proposed rule change is consistent with the public interest and the protection of investors.

[82] *See* FINRA Comment Response at 4.

[83] *Id.*

[84] *See* Notice at 3969.

[85] PIABA at 2.

[86] *Id.*

[87] *Id.*

[88] *See* FINRA Comment Response at 14. Rule 3241.01 defines ''customer'' as ''any customer that has, or in the previous six months had, a securities account assigned to the registered person at any member.'' FINRA Rule 3241 governs registered persons who are named a customer's beneficiary or hold a position of trust for a customer. FINRA Rule 3241 and FINRA Rule 3240 are both designed to prevent harm to customers due to registered persons being in a position of power and responsibility in their lives. *See* Notice 3977 n.56.

[89] *See* FINRA Comment Response at 14. FINRA Rule 4111 addresses risks from broker-dealers with a significant history of misconduct, including firms with a high concentration of individuals with a significant history of misconduct (''Restricted Firms''). For purposes of calculating concentration, the rule covers persons registered with the member firm for one or more days within the one year prior to the date of the annual calculation used for determining Restricted Firm status. *See* Regulatory Notice 21–34 (Sep. 28, 2021), *https://www.finra.org/rules-guidance/notices/21-34.*

[90] *See* FINRA Comment Response at 15.

[91] *See id.*

[92] *See id.* at 14 (citing FINRA Regulatory Notice 20–38 (Oct. 2020)).

3. Borrowing and Lending Arrangements With Related Parties of the Registered Person or Customer

The proposed rule change would extend the rule's general prohibition to borrowing or lending arrangements with related parties of the customer or registered person that involve conflicts similar to those presented by borrowing or lending arrangements directly between registered persons and their customers. Specifically, proposed new FINRA 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 or to have a person related to the customer 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 be inconsistent with Rule 3240 unless the conditions set forth in Rule 3240(a) are satisfied. FINRA stated that the proposed rule change would address the potential for customer abuse that arises when a registered person: (1) ''induces a customer to enter into a borrowing or lending arrangement with a person or entity related to the registered person'' or (2) ''induces a customer to have a person or entity related to the customer enter into an arrangement with the registered person.'' [93]

Two commenters supported the proposed rule change.[94] One stated that it is a ''good idea'' because ''[t]he same or very similar conflict of interest is present if a registered representative's close family member obtains a loan from a registered representative's client just as if the registered representative obtained it themselves.'' [95] The other commenter stated that the proposed rule change would close ''potential loopholes'' and safeguard against abuses that may occur ''when a registered person induces a customer to enter into financial arrangements with related individuals.'' [96]

The proposed addition of FINRA Rule 3240.05 reasonably extends the rule to cover indirect borrowing or lending arrangements involving parties related to either the registered person or the customer, and thus prevents a registered person from evading the restrictions of Rule 3240. As such, the proposed rule change appropriately addresses conflicts of interest between registered persons and customers that may arise from certain borrowing or lending arrangements with related persons and entities. For these reasons, the proposed rule change is reasonably 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.

4. Owner-Financing Arrangements

Proposed Rule 3240.03 would include owner-financing arrangements as borrowing or lending arrangements that are covered by Rule 3240.[97] For example, the proposed rule change would cover situations where a registered person purchases real estate from their 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.[98] Commenters did not specifically comment on this proposed rule change.

By extending Rule 3240 to cover owner-financing arrangements, the proposed rule change protects investors by addressing financing arrangements that present similar conflicts of interest and a similar potential for abuse as other borrowing and lending arrangements covered by Rule 3240. Generally prohibiting such financing arrangements, unless the conditions of the rule are met, is a reasonable approach to address the potential risk of harm associated with this type of borrowing or lending arrangement. For these reasons, the proposed rule change is reasonably 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.

*B. The ''Immediate Family'' Definition*

Rule 3240's general prohibition on borrowing or lending arrangements provides an exception for arrangements between a registered person and a customer who is a member of the registered person's immediate family.[99] The proposed rule change would update the ''immediate family'' definition to include new relationship categories.[100] Specifically, the proposed rule change would amend Rule 3240(c) to replace ''husband or wife'' with ''spouse or domestic partner'' and amend the definition to include ''step and adoptive relationships.'' [101] In addition, the proposed rule change would amend the ''any other person'' clause to state that it only applies to ''any other person who resides in the same household as the registered person'' and who the registered person ''financially supports, directly or indirectly, to a material extent.'' [102] Commenters supported the proposed rule change.[103]

By amending the definition of ''immediate family,'' the proposed rule change updates the rule to encompass a broader set of familial relationships, while at the same time retaining a reasonably narrow and clear scope, which provides more compliance certainty. In addition, amending the ''any other person'' clause to restrict the definition to those individuals who live with, and are financially supported by, the registered person is a reasonable approach to reducing the potential for the exception to be misused. For these reasons, the proposed rule change is reasonably 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.

*C. The Close Personal Relationship and Business Relationship Exceptions*

Rule 3240 currently includes a personal relationship exception [104] and a business relationship exception [105] to the general prohibition against registered persons borrowing or lending to their customers. The proposed rule change would narrow the personal relationship exception to apply only to personal relationships that are ''bona fide'' and ''close,'' and maintained outside of, and formed prior to, the broker-customer relationship. The proposed rule change would also narrow the business relationship exception to borrowing and lending arrangements that are based on a ''bona fide business relationship'' outside of the broker-customer relationship.[106]

In addition, proposed Rule 3240.04 would provide factors for evaluating

[93] Notice at 3969.

[94] *See* CSLC; PIABA.

[95] PIABA at 2.

[96] CSLC at 2.

[97] Proposed Rule 3240.03.

[98] *See* Notice at 3969 (referencing 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)).

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

[100] *See* Notice at 3970.

[101] Proposed Rule 3240(c).

[102] *Id.*

[103] *See, e.g.,* CSLC at 3 (stating that amending the ''any other person'' clause would align the definition with ''practical considerations'' that would reduce the potential for misuse. Also stating that ''[t]he modernization of this definition showcases a dedication to inclusivity and adaptability. It also works to strengthen the rule, making sure it stays relevant to contemporary society and prevents individuals from exploiting technicalities.''); *see also* PIABA at 2.

[104] Rule 3240(a)(2)(D).

[105] Rule 3240(a)(2)(E).

[106] Proposed Rule 3240(a)(2)(E).

whether a borrowing or lending arrangement is based on a bona fide, close personal relationship or a bona fide business relationship, including ''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.'' [107] Proposed Rule 3240.04 would also provide examples of ''close personal relationships,'' including, ''a childhood or long-term friend or a godparent.'' [108] Finally, proposed Rule 3240.04 would provide as an example of a ''business relationship,'' ''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.'' [109]

One commenter supported the proposed rule change, stating that replacing the current requirement with the bona fide relationship requirement for both the close personal relationship and business relationship exceptions ''eliminates subjectivity and ambiguity'' [110] and ''emphasizes the genuine and sincere nature of the relationship, focusing on authenticity and legitimacy.'' [111] This commenter also stated that the factors test introduced by proposed Rule 3240.04 offer ''clear criteria for evaluation, emphasizing specific aspects such as the duration and nature of the relationship . . ., providing a structured framework for assessing relationship legitimacy.'' [112]

Two other commenters opposed the proposed rule change.[113] One stated that close personal relationships do not ''confer any additional protections from the kinds of conflicted, exploitative, and abusive practices that the rules should be designed to prevent.'' [114] The other commenter stated the proposed amendments to the exceptions would result in the exceptions being too subjectively applied because it asks firms to make judgements of legitimacy and would be difficult to implement.[115] Specifically, the commenter stated that the term ''bona fide'' is vague and ambiguous and that the lack of an explanation or test to discern what constitutes a relationship as legitimate would make it difficult to interpret the application of the exceptions.[116] To address this issue, the commenter requested that FINRA provide more examples of relationships that would qualify for the close personal relationship and business relationship exceptions.[117] In addition, this commenter stated that if the rule's intent is to prohibit arrangements when the personal relationship is formed after the commencement of the broker-customer relationship, it should explicitly say so.[118]

In response, FINRA stated that it proposed to narrow the exception and provide factors that are relevant to assessing whether a relationship falls within the scope of either the close personal or business relationship exception precisely because it shared concerns about the scope of these exceptions. In particular, FINRA stated that limiting the personal relationship exception to relationships that are (1) bona fide, (2) close, and (3) maintained outside of, and formed prior to, the broker-customer relationship, ''would reduce the risk that a registered person would concoct a personal relationship with a customer for the purpose of borrowing from or lending to the customer, and . . . address concerns that this exception could be exploited.'' [119] In response to the commenter's request for clarification regarding whether the proposed rule change would cover personal relationships developed after the formation of the broker-customer relationship, FINRA reiterated that relationships formed after the establishment of the broker-customer relationship would not fall within the proposed close personal relationship exception, which would only apply to bona fide, close personal relationships maintained outside of, and formed prior to, the broker-customer relationship.[120] According to FINRA, the close personal relationship exception is designed only to apply where the borrowing or lending arrangement is less likely to have resulted from the broker-customer relationship because the close personal relationship existed prior to the broker-customer relationship and does not involve the two parties being introduced through the broker-customer relationship that may involve conflicts of interest.[121]

In response to commenter requests for more examples of close personal and business relationships, FINRA stated that the examples described in the proposed rule change ''add helpful clarity while giving members the flexibility to consider factors relevant to whether these exceptions apply.'' [122] In declining to provide additional examples, FINRA stated that, ultimately, the applicability of the exceptions depends on the facts and circumstances.[123] However, to the extent any particular scenario raises questions regarding the application of the rule, FINRA would consider issuing additional guidance on a case-by-case basis.[124]

The proposed rule change reasonably limits the personal relationship exception to bona fide, close relationships maintained outside of, and formed prior to, the broker-customer relationship and the business relationship exception to borrowing and lending arrangements that are based on a bona fide business relationship maintained outside of the broker-customer relationship. By narrowing these exceptions in this manner, the proposed rule change would help ensure that these exceptions to the general prohibition are limited to the types of relationships where the risk to investors should be reduced. Similarly, by providing factors for evaluating whether a borrowing or lending arrangement is based on a bona fide, close personal relationship or a bona fide business relationship, as well as examples of close personal relationships and business relationships, the proposed rule change would help parties comply with the terms of these exceptions. For these reasons, the proposed rule change is reasonably 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.

*D. Notification and Approval Requirements*

As stated above, Rule 3240(b) requires notification and approval for certain borrowing or lending arrangements.

[107] Proposed Rule 3240.04.

[108] *Id.*

[109] *Id.*

[110] CSLC at 3.

[111] *Id.; see also* PIABA at 2 (commending ''any effort to limit the exceptions and make very clear that this conduct is not allowed.'').

[112] CSLC at 3.

[113] Malecki; NASAA.

[114] *See* NASAA at 4.

[115] *See* Malecki at 5.

[116] *See id.* at 5–6.

[117] *See id.* at 5–6 (expressing the view that the existing examples are limited and very specific and may not be relatable to most broker-customer relationships).

[118] *See id.* at 5.

[119] *See* FINRA Comment Response at 9.

[120] *Id.*

[121] *See id.* at 9–10 (stating that the situation where an older or vulnerable customer loans money to a registered person who had befriended them after they already formed a broker-customer relationship, would be outside the scope of the proposed close personal relationship exception, and thus, would be prohibited).

[122] *See id.* at 10.

[123] *See id.*

[124] *See id.*

Generally, the exceptions for borrowing and lending arrangements involving personal relationships, business relationships, and registered persons, require member firm notice and approval. The exceptions for borrowing and lending arrangements with immediate family members and financial institutions do not require member firm notification and approval. The proposed rule change would amend the notification and approval requirements of Rule 3240. We discuss the proposed changes separately below.

1. Approval Requirements for the Close Personal Relationship, Business Relationship, and Registered Persons Exceptions

The proposed rule change would amend Rule 3240(b)(1) to clarify that, although registered persons are required to obtain the member firm's prior approval of borrowing or lending arrangements within the close personal relationship, business relationship, or registered persons exceptions, the member firm is not required to approve such arrangements.[125] Specifically, the proposed rule change would delete ''shall pre-approve'' from the current rule and instead require the registered person to provide notice ''prior to entering into such arrangements'' or ''prior to the modification of such arrangements'' and to ''obtain the member's approval.'' Two commenters supported the proposed rule change.[126]

The proposed rule change would clarify that a member firm is not required to pre-approve borrowing or lending arrangements within the close personal relationship, business relationship, or registered persons exceptions. As such, the proposed rule change would strengthen an important existing control on such arrangements, by explicitly making clear that a member firm is not required to approve any such arrangement simply because a registered person notified the member firm. For these reasons, the proposed rule change is reasonably 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.

2. Notification and Approval Requirements for the Immediate Family Member Exception and the Financial Institution Exception

Current Rule 3240(b)(2) provides, in pertinent part, that a member firm's written procedures may indicate that that registered persons are not required to notify the member firm or receive member firm approval either prior to or subsequent to entering into borrowing or lending arrangements with immediate family members.[127] Similarly, current Rule 3240(b)(3) provides, in pertinent part, that a member firm's written procedures may indicate that registered persons are not required to notify the member firm or receive member firm approval of borrowing or lending arrangements within the financial institution exception, 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.'' [128]

The proposed rule change would amend Rule 3240(b)(2) and Rule 3240(b)(3) to apply the same approach to borrowing or lending arrangements within the immediate family exception and the financial institution exception, respectively, to such arrangements that pre-exist the broker-customer relationship.[129] These changes are intended to correspond to and account for the fact that, under the proposed rule change, the general prohibition applies to borrowing or lending arrangements that pre-exist the broker-customer relationship.[130]

Specifically, to extend these provisions to pre-existing arrangements, the proposed rule change would amend Rule 3240(b)(2) to provide that the member firm's written procedures may indicate that registered persons are not required to notify the member firm or receive the member firm's approval of pre-existing borrowing or lending arrangements that would fall within the immediate family exception prior to initiating a broker-customer relationship.[131] Similarly, the proposed rule change would amend Rule 3240(b)(3) to provide that the member firm's written procedures may also indicate that registered persons are not required to notify the member firm or receive member firm approval of pre-existing arrangements that would fall within the financial institution exception prior to initiating a broker-customer relationship, provided the borrowing or lending arrangements meet the restrictions of the exception set forth above.[132]

Two commenters expressed concern that the proposed rule change would not require notice and approval of borrowing or lending arrangements with immediate family members or financial institutions.[133] One of these commenters stated that given the risk of financial exploitation in familial relationships, FINRA should require ''at least the same notification and approval for arrangements with immediate family as it requires for other registered persons and 'close personal' and business relationships.'' [134] The other commenter concurred, stating that the proposed rule change disregards ''important considerations about the perpetrators of financial fraud.'' [135]

In response, FINRA stated that, other than extending the Rule 3240(b)(2) obligations to borrowing and lending arrangements established prior to initiating a broker-customer relationship, the proposed rule change would not amend the existing immediate family exception or require notice or approval of borrowing and lending arrangements with immediate family members.[136] FINRA further stated that Rule 3240 is not intended to encourage registered persons to avoid traditional financing arrangements, but rather to continue to allow for tailored exceptions to the general prohibition on borrowing or lending arrangements in limited 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 (*e.g.,* certain borrowing or lending arrangements with immediate family members and financial institutions).[137] FINRA also identified ''examples of

[125] *See* Notice at 3970.

[126] *See* CSLC at 4 (stating that the proposed rule change ''mitigate the risk of a conflict of interest by clarifying that member firms are empowered to approve or disapprove a proposed arrangement.''); *see also* Malecki at 6 (stating that ''member firms should not be able to 'opt-out' of reviewing and/or approving these types of lending/borrowing transactions with customers.'').

[127] Rule 3240(b)(2). However, as noted above, the current rule allows a member to require such notification and approval for borrowing and lending arrangements with immediate family or financial institutions if the member firm so chooses. *See* Notice at 3971 n.21.

[128] Rule 3240(b)(3).

[129] *See* Notice at 3971.

[130] *See id.*

[131] *See* proposed Rule 3240(b)(2).

[132] *See* proposed Rule 3240(b)(3).

[133] *See* NASAA at 4–5; *see also* Malecki at 6.

[134] *See* NASAA at 5; *see also* Malecki at 6 (stating that ''member firms should not be able to 'opt-out' of reviewing and/or approving these types of lending/borrowing transactions with customers, through their own firm procedures, as it defeats the purpose of and intent behind Rule 3240 itself'').

[135] Malecki at 3 (stating that ''an 'immediate' familial relationship is not a barrier to committing fraud generally, and it should not be used as an exception for allowing lending arrangements between registered representatives and their customers.'').

[136] *See* FINRA Comment Response at 7; *see also* Notice at 3976.

[137] *See* FINRA Comment Response at 6–7.

mutually beneficial borrowing or lending arrangements between immediate family members, including senior family members (*e.g.,* loans to cover medical expenses, dependent care, home repairs, etc.).'' [138] FINRA recognized that ''[p]ermitting family members to privately lend with each other, may also allow family members to obtain small or short-term loans, including at an interest rate lower than commercially available.'' [139] Further, FINRA reiterated 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 firm adopts written procedures permitting such arrangements.[140] FINRA noted that members firms may choose to prohibit all borrowing and lending arrangements, allow only some of the exceptions, or impose limitations on the exceptions.[141] Finally, FINRA stated that requiring notice and approval for borrowing and lending arrangements with immediate family members ''may invade legitimate privacy interests because such a requirement could interfere with or intrude upon personal or private family matters.'' [142] According to FINRA, by strengthening the general prohibition and narrowing its exceptions, the proposed rule change would further protect all investors, including senior investors.[143]

The proposed rule change is not imposing new obligations on borrowing and lending arrangements within the immediate family exception or within the financial institution exception but would extend the existing regime to situations where such financial arrangements pre-exist the formal establishment of a broker-customer relationship. As with all the exceptions under the rule, a registered person can only enter into a borrowing or lending arrangement pursuant to the immediate family exception or financial institution exception if the member firm has adopted written procedures permitting such an arrangement. A member firm's procedures may prohibit all such arrangements, allow only some of the excepted arrangements, or impose limits on the exceptions, as the member firm deems appropriate to be reasonably designed to achieve compliance with the proposed rule change.[144] Accordingly, while not explicitly required, as part of establishing a reasonably designed supervisory system as required under FINRA rules,[145] member firms may nevertheless require notification and approval of arrangements that fall under the immediately family exception and financial institution exception as part of their written procedures based on their assessment of the risks associated with such arrangements.[146] By providing member firms the flexibility to determine whether or not to allow such arrangements, and if so, whether to require notice and approval for such arrangements, and in particular for arrangements within the immediate family exception, FINRA reasonably balances the potential risk of harm associated with such arrangements with the potential benefits of such arrangements and the potential associated privacy concerns. Moreover, as discussed above, the proposed rule change broadens and strengthens the application of the rule by, among other things, covering relationships that pre-exist a new broker-customer relationship, as well as borrowing or lending arrangements entered into within six months after a broker-customer relationship ends, which will add protections to investors, including those whose arrangements fall within the immediate family exception. For these reasons, the proposed rule change is reasonably 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.

3. Notifications in Writing and Record Retention

As stated above, Rule 3240 does not require that registered persons who must notify their member firms of borrowing and lending arrangements do so in writing.[147] Furthermore, the current rule does not require member firms to retain any notices of borrowing and lending arrangements that they may receive from registered persons; it only requires member firms to retain written approvals.[148]

The proposed rule change would require registered persons to notify their member firms in writing of those borrowing and lending arrangements under Rule 3240 that require notification and approval (*i.e.,* the exceptions involving registered persons, close personal relationships, and business relationships).[149] The proposed rule change would also amend Rule 3240.01 to require member firms to retain the written notifications and approvals records for at least three years after the date that the borrowing or lending arrangement has terminated, or for at least three years after the registered person's association with the member has terminated.[150] The proposed rule change would also require record retention of notices and approvals related to the immediate family and financial institution exceptions, unless the member firm's procedures indicate that registered persons are not required to notify the member firm and/or receive member firm approval.[151]

One commenter supported the proposed rule change.[152]

By requiring registered persons to give written notice and requiring member firms to preserve records of such written notice—whether required specifically by the rule or by the member firm's written procedures—for at least three years, the proposed rule change is reasonably designed to help ensure compliance with the amended Rule 3240 and its exceptions. For these reasons, the proposed rule change is reasonably 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.

4. Reasonable Assessment by Member of the Risks Created by the Borrowing or Lending Arrangement

The proposed rule change would add proposed Rule 3240.06, which would require a member firm, after receiving a written notice under Rule 3240, to ''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.'' [153] The proposed rule change would also require that the member firm make a ''reasonable determination of whether to approve the borrowing or

[138] *Id.* at 8.

[139] *Id.*

[140] *See id.*

[141] *Id.*

[142] *Id.*

[143] *Id.* FINRA further stated 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. *See id.*

[144] *See* Rule 3110(b)(1).

[145] *See* Rule 3110(a).

[146] *See infra* Section III.D.4.

[147] *See* Notice at 3971.

[148] *Id.*

[149] *Id.; see* proposed Rules 3240(b)(1)(A) and (b)(1)(B) and proposed Rule 3240.01.

[150] *See* proposed Rule 3240.01.

[151] *See supra* note 68.

[152] *See* CSLC at 4.

[153] Proposed Rule 3240.06.

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.'' [154] FINRA stated that it expects a member firm's reasonable assessment to take into consideration a non-exhaustive list of factors that may lead to undue harm to the customer as a result of a borrowing or lending arrangement with a registered person.[155]

One commenter supported the proposed rule change, stating that a reasonable assessment could result in ''more questionable arrangements being scrutinized, leading to improved investor protection.'' [156] Two commenters suggested modifications to the reasonable assessment requirement.[157] To help regulators assess and compare approval and supervision practices across firms, one of these commenters suggested that the reasonable assessment provisions should require a minimum amount of disclosure and include documentation of the steps the member firm took to assess the risk ahead of approving the loan agreement, the steps the member firm took to minimize the conflict of interest, how the member firm communicated the risk to the customer, and an outline of supervisory measures the member firm will take.[158] In addition, this commenter suggested that a ''reasonable assessment and determination process should include an interview (preferably by a compliance officer) with the customer outside the presence of the registered person'' or, where that is not possible, a requirement that the member firm verify that the customer benefits from the loan and was not pressured into it.[159] Furthermore, this commenter recommended that the proposed rule change require the member firm to apply heightened scrutiny to the underlying accounts or impose other appropriate conditions where a firm approves a borrowing or lending arrangement, or approves a new broker-customer relationship where there is a pre-existing borrowing or lending arrangement.[160] Finally, this commenter called for the list of factors FINRA provided in the Notice to be included in the rule text.[161] The other commenter suggested that a registered person be ''required to disclose to a customer, in writing, that such arrangements are presumptively prohibited and to document the exception under which the lending arrangement falls'' and that member firms should be required to consult with the customer before approving a borrowing or lending arrangement to ensure the customer receives a full and fair disclosure about the terms of the arrangement.[162] In addition, this second commenter recommended that the proposed rule change require member firms that allow registered persons to enter lending arrangements with their customers to collateralize any such loans that such member firms approve.[163]

In response, FINRA stated that FINRA Rule 3110 (Supervision) requires each member firm 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.'' FINRA stated that member firms could consider incorporating the commenter's suggested supervisory and disclosure requirements into their systems for supervising for compliance with Rule 3240, but FINRA is not requiring them here.[164] FINRA did not include the list of factors in the rule text, explaining that given the flexibility firms have to develop their own supervisory systems under Rule 3110, ''it is not necessary or appropriate to prescribe specific supervisory procedures in Rule 3240.'' [165] FINRA did, however, highlight guidance regarding ''the minimum that should be included in written supervisory procedures, including: (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.'' [166] With respect to the suggestion that the terms of the arrangement should be discussed with, and disclosed to, the customer, FINRA reiterated that it expects a member to consider the reasonable assessment factors noted earlier—several of which pertain to the terms of the arrangement and the nature of the parties—and to try to discuss the arrangement with the customer.[167] FINRA also stated that regardless of the terms of a member firm's supervisory system, Rule 3110 requires member firms to follow-up on red flags related to borrowing or lending arrangements between registered persons and their customers.[168]

Requiring a member firm, after receiving written notice under Rule 3240, to perform a reasonable assessment of the risks created by the borrowing or lending arrangement with

[154] *Id.*

[155] *See* Notice at 3971 (listing the following factors: (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 firm'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).

[156] CSLC at 6.

[157] NASAA at 5–6; Malecki at 6.

[158] *See* NASAA at 5–6.

[159] *See id.* at 6 (stating that an interview would help ensure the borrowing or lending arrangement does not put the customer at risk of undue influence).

[160] *Id.* at 6 (stating that heightened supervision would guard against the conflicts of interest that come with these relationships, and that an enhanced review of trades and transactions in the account should at least be required when the customer is elderly or otherwise vulnerable to exploitation).

[161] *See* NASAA at 5.

[162] *See* Malecki at 7.

[163] *See id.* at 2–3 (stating that other than prohibiting borrowing and lending arrangements, the only way to ensure that a customer is not harmed is to require member firms to have '''skin' in such arrangements.'').

[164] *See* FINRA Comment Response at 12. FINRA also stated that the non-exhaustive list of factors FINRA expects members to consider address ''many of the commenters' concerns,'' including consideration of: (1) any potential conflicts of interest in the registered person being in a borrowing or lending arrangement with a customer; (2) the material terms of the borrowing or lending arrangement; (3) the customer's or the registered person's ability to repay the loan; (4) the customer's age; (5) 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; and (6) any indicia of customer vulnerability or undue influence of the registered person over the customer. *See id.* at 13. FINRA further stated that those factors along with the guidance in FINRA Regulatory Notice 21–43 (Dec. 2021) would ''help members evaluate the key risks and conflicts while giving members appropriate flexibility in evaluating which factors may apply to a particular situation.'' *See id.* at 14.

[165] FINRA Comment Response at 12–13 (stating that ''FINRA rules concerning duties, conflicts and responsibilities related to associated persons generally do not set forth specific supervisory procedures that member firms must adopt to satisfy the requirements of FINRA's supervision rule. See generally Rule 2000 Series (Duties and Conflicts; Rule 3000 Series (Supervision and Responsibilities Related to Associated Persons)'').

[166] *Id.* at 12 (referencing guidance from Notice to Members 98–96 and Notice to Members 99–45 regarding tailoring the supervisory system to the member firm's business).

[167] *See id.* at 14.

[168] *See id.* at 12–13.

a customer and, based on that assessment, to make a reasonable determination of whether to approve the borrowing or lending arrangement, is reasonably designed to protect investors. Whether a specific borrowing or lending arrangement creates the potential for a conflict or other abuse that could harm an investor requires analysis of the facts and circumstances. Because of its supervisory obligations, a broker-dealer is both obligated and best positioned to analyze the facts and circumstances related to a borrowing or lending arrangements between one of its registered persons and a customer. In addition, consistent with the flexibility firms have to develop their own supervisory systems under Rule 3110, the member firm is also best positioned to determine reasonable controls to supervise for compliance with the proposed rule change based on its assessment of the risks involved with a borrowing or lending arrangement that falls within one of the five exceptions to Rule 3240. While not required, reasonably designed controls could include the supervisory, disclosure or other requirements suggested by commenters (such as providing disclosure, collateralizing loans between one of its registered persons and a customer, interviewing customers, and applying heightened scrutiny as it perceives higher risks). As such, the proposed rule change represents an important safeguard for protecting investors from conflicts or other abuses that could harm them in such arrangements. Moreover, in exercising its supervisory obligations under FINRA Rule 3110, a member firm may always choose to prohibit or restrict borrowing and lending arrangements as it sees fit and in light of the risks presented by an arrangement. For example, if the broker-dealer determines that the risks to the customer of lending money to a registered person cannot be effectively managed, the proposed rule change would allow the firm to disapprove or further restrict the arrangement. For these reasons, the proposed rule change is reasonably 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.

## IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.[169]

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act[170] that the proposal (SR–FINRA–2024–001), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[171]

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–101064; File No. SR–FINRA–2024–014]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 6897(b) (CAT Cost Recovery Fees) To Implement a Historical Consolidated Audit Trail Recovery Assessment

September 17, 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 September 5, 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 and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend FINRA Rule 6897(b) (CAT Cost Recovery Fees) to implement a historical Consolidated Audit Trail (''CAT'') recovery assessment designed to permit FINRA to recoup its contributions to recoverable historical costs of the National Market System Plan Governing the Consolidated Audit Trail incurred prior to January 1, 2022.[5]

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

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

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

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

1. Purpose

Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification, or execution.[6] On November 15, 2016, the Commission approved the CAT NMS Plan (''Plan'' or ''CAT NMS Plan'').[7] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for Consolidated Audit Trail, LLC (''CAT LLC'') to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented

[169] 15 U.S.C. 78*o*–3(b)(6).

[170] 15 U.S.C. 78s(b)(2).

[171] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Pursuant to Section 11.3(b) of the CAT NMS Plan, FINRA filed a separate proposed rule change to establish fees assessed to Industry Members, payable to Consolidated Audit Trail, LLC, related to recoverable historical CAT costs incurred prior to January 1, 2022. *See* File No. SR–FINRA–2024–013. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule).

[6] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

[7] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''CAT NMS Plan Approval Order'').