

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74890; File No. SR-FINRA-2015-009)

May 6, 2015

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 2272 to Govern Sales or Offers of Sales of Securities on the Premises of Any Military Installation to Members of the U.S. Armed Forces or their Dependents

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 23, 2015, 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 substantially 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 adopt FINRA Rule 2272, which would govern sales or offers of sales of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents.

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

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

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

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

The proposed rule change would adopt FINRA Rule 2272, which would govern sales or offers of sales of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents.

Statutory Requirement

The Military Personnel Financial Services Protection Act ("Military Act") was enacted to protect members of the U.S. Armed Forces from unscrupulous practices regarding sales of insurance, financial and investment products.<sup>3</sup> Congress amended Section 15A(b) of the Exchange Act with the enactment of the Military Act to require FINRA, as a registered securities association, to adopt rules governing the sales or offers of sales of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents.<sup>4</sup> Such rules must require: (1) the broker-dealer performing brokerage services to clearly and conspicuously disclose to potential investors (a) that the securities offered are not being offered or provided by the broker-dealer on behalf of the federal government, and that its offer is not sanctioned, recommended, or encouraged by the federal government and (b) the identity of the registered broker-dealer offering the securities; (2) such broker-dealer to perform an appropriate suitability

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<sup>3</sup> Pub. L. No. 109-290, 120 Stat. 1317.

<sup>4</sup> 15 U.S.C. 78o-3(b).

determination, including consideration of costs and knowledge about securities, prior to making a recommendation of a security to a member of the U.S. Armed Forces or a dependent thereof; and (3) that no person receive any referral fee or incentive compensation in connection with a sale or offer of sale of securities, unless such person is an associated person of a registered broker-dealer and is qualified pursuant to the rules of a self-regulatory organization.<sup>5</sup>

### Proposal

FINRA, as a registered securities association, is proposing to adopt Rule 2272 to comply with the statutory requirements of the Military Act. Proposed Rule 2272 would require that any member engaging in sales or offers of sales of securities on the premises of a military installation to any member of the U.S. Armed Forces or a dependent thereof shall clearly and conspicuously disclose in writing, which may be electronic, to such potential investor prior to engaging in sales or offers of sales of securities to such investor: (1) the identity of the member offering the securities; and (2) that the securities offered are not being offered or provided by the member on behalf of the federal government, and that the offer of such securities is not sanctioned, recommended or encouraged by the federal government.<sup>6</sup> Electronic delivery of the disclosures required by proposed Rule 2272 must be consistent with SEC guidance on the use of electronic media to satisfy delivery obligations which, among other things, requires affirmative consent of the customer for delivery of certain documents.<sup>7</sup>

Proposed Rule 2272 also would incorporate the suitability obligations under FINRA Rule 2111. Specifically, the proposed rule would explicitly provide that a member must satisfy the

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<sup>5</sup> 15 U.S.C. 78o-3(b)(14).

<sup>6</sup> See proposed Rule 2272(b).

<sup>7</sup> See Securities Exchange Act Release No. 37182 (May 6, 1996); 61 FR 24644 (May 15, 1996). See also Securities Exchange Act Release No. 42728 (April 28, 2000); 65 FR 25843 (May 4, 2000).

suitability obligations imposed by Rule 2111 when making a recommendation on the premises of a military installation to any member of the U.S. Armed Forces or a dependent thereof.<sup>8</sup> FINRA believes that the suitability obligations imposed by Rule 2111 satisfy the statutory requirement that FINRA adopt rules requiring its members to perform an appropriate suitability determination, including consideration of costs and knowledge about securities, prior to making a recommendation to a member of the U.S. Armed Forces or a dependent thereof. FINRA has previously stated that the cost associated with a recommendation is one factor for a member or an associated person to consider when determining whether a security or investment strategy is suitable for a customer pursuant to Rule 2111.<sup>9</sup> Further, Rule 2111 requires a member or associated person to use reasonable diligence to obtain and consider, among other things, the customer's investment experience.<sup>10</sup>

Proposed Rule 2272 also would provide that no member shall cause a person to receive a referral fee or incentive compensation in connection with sales or offers of sales of securities on the premises of a military installation with any member of the U.S. Armed Forces or a dependent thereof, unless such person is an associated person of a registered broker-dealer who is appropriately qualified consistent with FINRA rules, and the payment complies with applicable federal securities laws and FINRA rules.<sup>11</sup>

For purposes of the proposed rule change, FINRA proposes to define "military

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<sup>8</sup> See proposed Rule 2272(c).

<sup>9</sup> See Regulatory Notice 12-25 (May 2012). FINRA stated that the cost associated with a recommendation is one of many important factors to consider when determining whether the subject security or investment strategy involving a security or securities is suitable.

<sup>10</sup> See Rule 2111(a) (requiring that a member or associated person use reasonable diligence to obtain and consider a customer's investment profile, which includes the customer's investment experience). See also Regulatory Notice 12-25.

<sup>11</sup> See proposed Rule 2272(d).

installation” to include “any federally owned, leased or operated base, reservation, post, camp, building or other facility to which members of the U.S. Armed Forces are assigned for duty, including barracks, transient housing and family quarters.”<sup>12</sup> FINRA will read with interest comments as to whether proposed Rule 2272 should be broadened to apply to sales or offers of sales of securities both on and off the premises of a military installation to any member of the U.S. Armed Forces or a dependent thereof. In this regard, FINRA reminds members that any such sales or offers of sales of securities off the premises of a military installation must comply with applicable FINRA rules, including suitability requirements, and that any misleading representation made to a member of the U.S. Armed Forces or a dependent thereof off the premises of a military installation that the securities are being offered or provided on behalf of, or sanctioned, recommended, or encouraged by the federal government would be otherwise prohibited by FINRA rules.<sup>13</sup>

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</sup> which requires, among other things, that FINRA rules must be designed

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<sup>12</sup> See proposed Rule 2272(a). The proposed definition is consistent with the definition included in the Military Sales Practices Model Regulation adopted by the National Association of Insurance Commissioners. See <http://www.naic.org/store/free/MDL-568.pdf>.

<sup>13</sup> See, e.g., Rules 2010, 2020, and 2210.

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

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 the proposed rule change will further the purposes of the Act by providing members of the U.S. Armed Forces and their dependents on the premises of military installations with clear disclosure that the securities offered are not being offered or provided by the member on behalf of the federal government, and that the offer of such securities is not sanctioned, recommended or encouraged by the federal government. The proposed rule change also would require persons receiving referral fees or other incentive compensation in connection with such sales to be appropriately qualified associated persons of a broker-dealer so as to mitigate potentially abusive and unscrupulous sales practices.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Proposed Rule 2272 is intended to benefit members of the U.S. Armed Forces and their dependents on the premises of military installations by providing enhanced disclosure about securities investments and limiting compensation for referrals.

According to the 2012 National Financial Capability Study's Military Report,<sup>15</sup> approximately half of the survey respondents hold non-retirement investments and approximately 65% have self-directed retirement plans. In addition, approximately two-thirds of respondents indicated that they have consulted with a financial professional outside the military

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<sup>15</sup> The report and related materials can be found at: <http://www.usfinancialcapability.org/resultsm.php>. The report is based on a survey of 1,000 members of the U.S. Armed Forces, including active duty personnel, activated Reserve and National Guard personnel, and Reserve and National Guard personnel not currently on active duty.

over the past five years.

The Department of Defense has separately imposed requirements for personal commercial solicitations, including offers and sales of securities, on the premises of military installations. Among other things, the Department of Defense has required: (i) registering persons seeking to solicit on the premises of military installations with the installation's commander prior to soliciting on the premises; (ii) checking the person's license status and complaint history prior to granting permission for soliciting on the premises; (iii) permitting only previously scheduled meetings in a location designated by the commander or in family quarters; and (iv) maintaining a list of persons and companies who have had their commercial solicitation privileges withdrawn.<sup>16</sup> The Department of Defense's requirements have the practical effect of limiting access to the premises of military installations for the purpose of commercial solicitations.

The proposed rule change would impose additional costs on members that offer to sell securities on the premises of U.S. military installations to members of the U.S. Armed Forces and their dependents. Specifically, members would be required to provide additional disclosure and to adopt supervisory policies and procedures reasonably designed to ensure that the disclosure is provided where required. FINRA anticipates that the disclosure required by proposed Rule 2272 would be provided with other materials and disclosures typically provided to potential investors.

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

Written comments were neither solicited nor received.

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<sup>16</sup> See Department of Defense Instruction No. 1344.07 (March 30, 2006).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-009 on the subject line.

#### Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2015-009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all



comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-009 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Robert W. Errett  
Deputy Secretary

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