

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78130; File No. SR-FINRA-2016-019)

June 22, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt NASD Rule 2830 as FINRA Rule 2341 (Investment Company Securities) in the Consolidated FINRA Rulebook

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 June 9, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> 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 adopt NASD Rule 2830 (Investment Company Securities) as FINRA Rule 2341 (Investment Company Securities) in the consolidated FINRA rulebook without any substantive changes. FINRA also proposes to update cross-references within other FINRA rules accordingly.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),<sup>4</sup> FINRA is proposing to transfer NASD Rule 2830 (Investment Company Securities) into the Consolidated FINRA Rulebook as FINRA Rule 2341 (Investment Company Securities) without any substantive changes. NASD Rule 2830 regulates members’ activities in connection with the sale and distribution of securities of companies registered under the

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<sup>4</sup> The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from New York Stock Exchange LLC (“NYSE”) (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

Investment Company Act of 1940 (“investment company securities”).<sup>5</sup> In connection with the distribution and sale of investment company securities, NASD Rule 2830 limits the sales charges members may receive, prohibits directed brokerages arrangements, limits the payment and receipt of cash and non-cash compensation, sets conditions on discounts to dealers, and addresses other issues such as members’ purchases and sales of investment company securities as principal.

Proposed FINRA Rule 2341 closely tracks the language of NASD Rule 2830 and makes only non-substantive, technical changes to the text of the NASD rule by, for instance, replacing the reference to a legacy NASD rule with the applicable FINRA rule and making other non-substantive, technical conforming changes.<sup>6</sup>

In addition, the proposed rule change makes technical changes to paragraph (b)(10) of NASD Rule 2830. Paragraph (b)(10) of NASD Rule 2830 incorporates by reference several definitions under the Investment Company Act, including “open-end management investment company.” However, the Investment Company Act does not define the term “open-end management investment company,” but defines “management company,” and divides this term

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<sup>5</sup> As with NASD Rule 2830, FINRA Rule 2341 would not regulate members’ activities in connection with variable insurance contracts, which are regulated by FINRA Rule 2320 (Variable Contracts of an Insurance Company).

<sup>6</sup> FINRA previously solicited comment on a proposal to move NASD Rule 2830 to the Consolidated FINRA Rulebook with substantive changes. See Regulatory Notice 09-34 (June 2009); see also Securities Exchange Act Release No. 64386 May 3, 2011), 76 FR 26779 (May 9, 2011) (Notice of Filing File No. SR-FINRA-2011-018) (withdrawn on August 1, 2011). Given that FINRA would like to proceed with the rulebook consolidation process expeditiously to provide greater clarity and regulatory efficiency to FINRA members, FINRA is proposing to move NASD Rule 2830 to the Consolidated FINRA Rulebook without substantive changes at this time, but FINRA may consider proposing substantive changes to the rule as part of future rulemaking.

into two sub-classifications, “open-end company” and “closed-end company.”<sup>7</sup> Accordingly, paragraph (b)(10) of proposed FINRA Rule 2341 would incorporate the definitions of “open-end company” and “closed-end company” from the Investment Company Act, rather than “open-end management investment company.” The proposed rule change would then replace references to the terms “open-end management investment company,” “open-end investment company,” and “open-end management company” in NASD Rule 2830(c), (d), (g), (h), (i) and (j) with references to “open-end company.” Similarly, the proposed rule change would replace references to the term “closed-end investment company” in NASD Rule 2830(d) and (j) with a reference to “closed-end company.” These proposed changes would correct these references in the NASD rule for the purposes of adopting it as a FINRA rule, without changing the substantive meaning. FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be 30 days after the date of the filing.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change, which does not substantively change the rule, is consistent with the Act because it is being undertaken pursuant to the rulebook consolidation process, which is designed to provide additional clarity and regulatory efficiency to FINRA members by consolidating the applicable NASD, Incorporated NYSE, and FINRA rules into one rule set.

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<sup>7</sup> See Sections 4(3) and 5(a) of the Investment Company Act.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed rule change will not substantively change either the text or application of the rule. FINRA would like to proceed with the rulebook consolidation process expeditiously, which is believed will provide additional clarity and regulatory efficiency to members.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

#### 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-2016-019 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2016-019. 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 a.m. and 3 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-2016-019 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>11</sup>

Brent J. Fields  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).