

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76359; File No. SR-FINRA-2015-032]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) To Reduce the Waiting Period for the Release of Information Reported on Form U5

November 5, 2015.

I. Introduction

On September 14, 2015, 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 to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to reduce the 15-day waiting period for the release of information reported on Form U5 (Uniform Termination Notice for Securities Industry Registration) through BrokerCheck. The proposed rule change was published for comment in the **Federal Register** on October 1, 2015.³ The Commission received two comment letters on the proposed rule change.⁴ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

BrokerCheck provides the public with information on the professional background, business practices, and conduct of FINRA members and their associated persons. The information that FINRA releases through BrokerCheck is derived from the Central Registration Depository (“CRD”), the securities industry online registration and licensing database. FINRA member firms, their associated persons and regulators report information to the CRD system via the uniform registration forms.⁵

Rule 8312 governs the information that FINRA releases to the public through BrokerCheck. Pursuant to this rule, most of the information that FINRA releases through BrokerCheck is made available the day after it is filed with the CRD system.⁶ Rule 8312(d)(5), however, prohibits FINRA from releasing Form U5 information for 15 days following the filing of such information. According to FINRA, this 15-day waiting period was established to give brokers on whose behalf the Form U5 was submitted an opportunity to comment on the disclosure event either through a Form U4, or by submitting a comment directly to FINRA to be included on BrokerCheck.⁷

FINRA has proposed to shorten this 15-day waiting period for the release of Form U5 disclosure information. Specifically, the proposed rule change will amend Rule 8312(d)(5) to provide that FINRA shall not release events reported on Section 7 of Form U5 (other than “Internal Review Disclosure” events) for three business days after FINRA’s processing⁸ of the filing.⁹ However, if an event is reported on Form U5 and the same event is thereafter reported on Form U4 before the three-business-day period expires, FINRA will release the Forms U4 and U5 information simultaneously upon processing; this three-business-day period may be shortened.¹⁰

III. Comment Letters

Commenters support the proposal.¹¹ One commenter, while supporting the proposed rule change, believes that FINRA needs to go further to “address and correct the present system that allows for the routine expungement of

for Securities Industry Registration); Form U6 (Uniform Disciplinary Action Reporting Form); Form BD (Uniform Application for Broker-Dealer Registration); and Form BDW (Uniform Request for Broker-Dealer Withdrawal).

⁶ See Notice, *supra* note 3, at 59216.

⁷ See Securities Exchange Act Release No. 55127 (January 18, 2007), 72 FR 3455 (January 25, 2007) (Order Approving File No. SR-NASD-2003-168).

⁸ FINRA states that, for purposes of the proposed rule change, a Form U5 will be considered processed once the Disclosure Reporting Page, which contains the details about a disclosure event, has been reviewed by FINRA staff. FINRA states that most Forms U5 that contain disclosure information are processed within two days of being filed with the CRD system. See Notice, *supra* note 3, at 59216, n.7.

⁹ For example, if disclosure information on Form U5 is processed on Monday, FINRA would release that information via BrokerCheck on Thursday.

¹⁰ For example, if FINRA processes a disclosure event reported on Form U5 on Monday, and on Tuesday processes a Form U4 filed by a broker reporting that event, the Form U5 information would be made publicly available in BrokerCheck on Wednesday, which is the same day that the Form U4 information would be released.

¹¹ See PIABA Letter at 1 and Hammond Letter.

customer claims” from BrokerCheck and to expand the information available to the public through BrokerCheck to include more comprehensive CRD disclosure information that is currently available through some state legacy CRD systems.¹² Another commenter noted that releasing information sooner protects the public and reduces the chance that an investor might deal with a broker who has been terminated.¹³

IV. Discussion and Commission Findings

After careful review of the proposed rule change and the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.¹⁴ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that FINRA’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The proposed rule change, by reducing the waiting period for the release of Form U5 information through BrokerCheck, is designed to enhance investor protection by allowing investors to more quickly access disclosure information reported on Form U5 through BrokerCheck and limiting the time period during which an incomplete picture of a broker’s disclosure history may be displayed in BrokerCheck. In addition, by providing for the simultaneous release of Forms U4 and U5 information on BrokerCheck before the three-business day waiting period in the case where the same disclosure event is reported on both forms, the proposed rule should help to reduce investor uncertainty and confusion regarding the same disclosure event; namely, a broker’s termination from his prior firm.

The Commission believes that BrokerCheck is an important tool for investors to use to help them make informed choices about the individuals and firms with which they conduct business.¹⁶ The Commission believes

¹² See PIABA Letter at 2.

¹³ See Hammond Letter.

¹⁴ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ The Commission encourages investors to utilize all sources of information, including the databases of state regulators, as well as legal search

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75988 (September 25, 2015), 80 FR 59215 (“Notice”).

⁴ See Letter from Joseph C. Peiffer, President, Public Investors Arbitration Bar Association, dated October 19, 2015 (“PIABA Letter”) and Letter from Denise M. Hammond, Law Student, Barry University, dated October 22, 2014 (“Hammond Letter”).

⁵ FINRA discloses through BrokerCheck information that is reported on the following uniform registration forms: Form U4 (Uniform Application for Securities Industry Registration or Transfer); Form U5 (Uniform Termination Notice

that reducing the waiting period for the release of Form U5 disclosure information through BrokerCheck, and releasing Form U4 and Form U5 information regarding the same disclosure event simultaneously on BrokerCheck before the end of the waiting period, will limit the time period during which an incomplete picture of a broker's disclosure history may be displayed in BrokerCheck and should help to reduce investor confusion regarding the reason for a broker's termination. The Commission notes that brokers on whose behalf a Form U5 is submitted will continue to have an opportunity to comment on the reported disclosure event either through a Form U4 or by submitting a broker comment directly to FINRA for inclusion in BrokerCheck.

The Commission appreciates FINRA's efforts to enhance BrokerCheck and encourages FINRA to continue improving it and to consider the suggestions made regarding the expungement of customer claims from BrokerCheck and expanding the information made available to the public through BrokerCheck.¹⁷

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-FINRA-2015-032), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31896; File No. 812-14534]

Wildermuth Endowment Strategy Fund and Wildermuth Advisory, LLC; Notice of Application

November 5, 2015.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an

exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges ("EWCs").

APPLICANTS: Wildermuth Endowment Strategy Fund (the "Fund") and Wildermuth Advisory, LLC (the "Adviser").

FILING DATES: The application was filed on August 13, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 30, 2015, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: Wildermuth Endowment Strategy Fund and Wildermuth Advisory, LLC, c/o David J. Baum, Esq. Alston & Bird, LLC, 950 F Street NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kaitlin C. Bottock, Senior Counsel, at (202) 551-8658, or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Fund is a Delaware statutory trust that is registered under the Act as a non-diversified, closed-end management investment company. The Fund's investment objective is to seek total return through a combination of long-term capital appreciation and income generation.

2. The Adviser is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Fund.

3. The applicants seek an order to permit the Fund to issue multiple classes of shares, each having its own fee and expense structure, and to impose asset-based distribution fees and EWCs.

4. Applicants request that the order also apply to any continuously-offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,¹ acts as investment adviser and which operates as an interval fund pursuant to rule 23c-3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e-4 under the Securities Exchange Act of 1934 ("Exchange Act") (each, a "Future Fund" and together with the Fund, the "Funds").²

5. The Fund is currently making a continuous public offering of its common shares. Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange, nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

6. If the requested relief is granted, the Fund intends to redesignate its common shares as "Class A Shares" and to continuously offer "Class C Shares", and may also offer additional classes of shares in the future. Because of the different distribution fees, services and any other class expenses that may be attributable to the Class A Shares and

¹ A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

² Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

¹⁷ See *supra* note 12 and accompanying text.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).