

fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it establishes a fee structure in a manner that encourages market participants to direct their order flow, to provide liquidity, and to attract additional transaction volume to the Exchange.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁹ and Rule 19b-4(f)(2)²⁰ thereunder. 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.

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 email to rule-comments@sec.gov. Please include File Number SR-MIAX-2019-11 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-MIAX-2019-11. This file number should be included on the subject line if email is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2019-11 and should be submitted on or before April 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Eduardo A. Aleman,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85282; File No. SR-FINRA-2018-040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to FINRA Rule 4512 (Customer Account Information)

March 11, 2019.

I. Introduction

On November 28, 2018, 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 revise FINRA Rule 4512 (Customer Account Information) to permit the use of electronic signatures and to also clarify the scope of the rule.

The proposed rule change was published for comment in the **Federal Register** on December 17, 2018.³ The Commission received two comment letters regarding the proposed rule change, both supporting the proposed rule change.⁴ On January 30, 2019 the Commission extended the time to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change to March 17, 2019.⁵ For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change⁶

FINRA proposed to amend paragraph (a)(3) of FINRA Rule 4512 (Customer Account Information) to permit the use of electronic signatures and to clarify the scope of the rule.

With respect to a discretionary customer account maintained by a member, FINRA Rule 4512(a)(3) currently requires a member to obtain a manual dated signature of each named, natural person authorized to exercise discretion in the account. FINRA stated that because the rule only applies to discretionary accounts maintained by a member, the named natural person would inevitably be an associated person of the firm.⁷ Consequently, to

² 17 U.S.C. 240.19b-4.

³ See Securities Exchange Act Release No. 84788 (Dec. 11, 2018), 83 FR 64609 (Dec. 17, 2018) (File No. SR-FINRA-2018-040) ("Notice").

⁴ See Letters from Paul J. Tolley, Senior Vice President, Chief Compliance Officer, Commonwealth Financial Network, dated December 31, 2018 ("Commonwealth Letter"); and Kevin Zambrowicz, Associate General Counsel & Managing Director, SIFMA, dated January 7, 2019 ("SIFMA Letter").

⁵ See Securities Exchange Act Release No. 85003 (Jan. 30, 2019), 84 FR 1809 (Feb. 5, 2019) (File No. SR-FINRA-2018-040) ("Extension").

⁶ The subsequent description of the proposed rule change is substantially excerpted from FINRA's description in the Notice. See Notice, 83 FR 64609-10.

⁷ There is a corresponding requirement under NASD Rule 2510 (Discretionary Accounts) prohibiting members and their registered representatives from exercising any discretionary power in a customer's account unless the customer has given prior written authorization to a stated individual or individuals, and the account has been accepted by the firm as evidenced in writing by the firm or a designated partner, officer or manager of the firm. These signatures need not be manual. In addition, SEA Rule 17a-3(a)(17)(ii) requires that, for discretionary accounts with a natural person, broker-dealers maintain a record containing the dated signature of each natural person to whom

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 240.19b-4(f)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

comply with the rule, members must obtain the associated person's "wet" signature or a copy of his or her wet signature, such as a scanned or faxed copy of the wet signature.⁸ Additionally, the rule also requires members to maintain and preserve a record of the signature for at least six years after the date the account is closed.⁹

According to FINRA, the purpose of the signature is to validate that the authorized associated person is who he or she purports to be. FINRA stated that, in light of the industry's shift towards automated and electronic processes, member firms have requested that FINRA reevaluate the need for wet signatures under the rule. FINRA noted that its members have stated that the requirement to obtain wet signatures raises operational and cost concerns without providing meaningful investor protection benefits. In addition, according to FINRA, some members have noted that the requirement puts them at a competitive disadvantage over investment advisers because investment advisers are allowed to obtain electronic signatures. Finally, FINRA noted that members that have adopted automated and electronic processes have stated that the current requirement results in significant administrative inefficiencies, particularly because all other account documentation, including the customer authorization form, and related recordkeeping may be completed electronically through a streamlined process.¹⁰

In light of technological advances relating to electronic signatures, including with respect to authentication and security, FINRA stated that it believes that the requirement under Rule 4512(a)(3) that members obtain an associated person's wet signature has become obsolete. As a result, FINRA proposed to amend the rule to permit the use of electronic signatures. While FINRA Rule 4512(a)(3) would continue to require members to obtain the signature of an associated person, it

would provide firms the option of obtaining either a manual or an electronic signature.

For purposes of compliance with FINRA Rule 4512(a)(3), a valid electronic signature would be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), the guidance issued by the Commission relating to the E-Sign Act,¹¹ and the guidance provided by FINRA staff through interpretive letters.¹²

In addition to the proposed changes described above, FINRA is proposing to amend Rule 4512(a)(3) to clarify that the rule is limited to discretionary customer accounts maintained by a member for which associated persons of the member are authorized to exercise discretion. Specifically, FINRA is proposing to amend the rule to state that for a discretionary customer account maintained by a member, the member must obtain the dated signature of each named, associated person of the member authorized to exercise discretion in the account.

FINRA has stated that it will announce the effective date of the rule change in a *Regulatory Notice* to be published no later than 60 days following a Commission approval, and the effective date will be no later than 30 days following publication of that *Regulatory Notice*.¹³

III. Comment Summary

As noted above, the Commission received two comment letters on the proposed rule change,¹⁴ both supporting the proposal. Both commenters noted that the requirement to obtain a manual or "wet" signature is outdated or generally inconsistent with the move toward an increase in the use of technology, including the use of electronic signatures.¹⁵ One commenter indicated that it already executes essentially all client account and transactional paperwork with the use of electronic signatures, and that the requirement to obtain a manual

signature slows down its processes for opening discretionary accounts.¹⁶

Both commenters noted that the administrative and operational inefficiencies and burdens resulting from the requirement to obtain manual signatures place member firms at a competitive disadvantage against investment advisers that are not subject to such a requirement without providing additional investor protections.¹⁷ The commenters support the proposed rule change, and one commenter urged the Commission and FINRA to consider other opportunities to eliminate manual signature requirements in favor of electronic methods.¹⁸

IV. Discussion and Commission Findings

After careful consideration of the proposed rule change and the comment letters, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.¹⁹ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,²⁰ 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. The Commission believes that the proposal will simplify the process by which member firms validate the identity of an authorized associated person, and thereby lower costs to member firms by reducing operational inefficiencies. Moreover, the Commission believes the proposed rule change is reasonably designed to prevent fraudulent practices in connection with the use of electronic signatures because it provides that a valid electronic signature would be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the E-Sign Act. The proposed rule change is also consistent with Commission guidance relating to the E-Sign Act, and prior FINRA staff guidance regarding electronic signatures.²¹

discretionary authority was granted. This signature also need not be manual.

⁸ The terms "manual" and "wet" are used interchangeably in this proposed rule change.

⁹ For retention purposes, members may choose to maintain and preserve the signature record on any of the acceptable media specified in SEA Rule 17a-4, including electronic storage media consistent with SEA Rule 17a-4(f).

¹⁰ To comply with FINRA Rule 4512(a)(3), most of these firms currently print a paper copy of the account record and require that the authorized associated person physically sign it. They then convert the paper record to an electronic record for retention on electronic storage media. These firms have stated that this two-step process creates unnecessary inefficiencies and administrative burdens.

¹¹ See Securities Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001) (Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f)).

¹² See, e.g., Letter from Nancy Libin, NASD, to Jeffrey W. Kilduff, O'Melveny & Myers, LLP, dated July 5, 2001, <http://www.finra.org/industry/interpretive-letters/july-5-2001-1200am>.

¹³ See Notice, 83 FR at 64610.

¹⁴ See *supra* note 6.

¹⁵ See Commonwealth Letter at 1-2; see also SIFMA Letter at 1.

¹⁶ See Commonwealth Letter at 2.

¹⁷ See Commonwealth Letter at 1; see also SIFMA Letter at 2.

¹⁸ See Commonwealth Letter at 2; see also SIFMA Letter at 3.

¹⁹ 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).

²⁰ 15 U.S.C. 78o-3(b)(6).

²¹ See *supra* notes 11-12 and accompanying text.

For these reasons, the Commission believes the proposed rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-FINRA-2018-040) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33395; 812-14929]

O'Shaughnessy Asset Management, LLC, et al.

March 11, 2019.

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

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(c) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds.

APPLICANTS: O'Shaughnessy Asset Management, LLC (the "Initial Adviser"), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940; Advisors Series Trust (the "Trust"), a statutory trust created under the Delaware Statutory Trust Act and registered under the Act as an open-end management investment company; and Quasar Distributors, LLC (the "Initial Distributor"), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

FILING DATES: The application was filed on July 18, 2018, and amended on November 19, 2018 and March 1, 2019.

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 April 5, 2019, and should be accompanied by proof of service on 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, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants: O'Shaughnessy Asset Management, LLC, 6 Suburban Avenue, Stamford, CT 06901; Advisors Series Trust, 615 East Michigan Street, Milwaukee, WI 53202; Quasar Distributors, LLC, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Thankam A. Varghese, Attorney-Adviser, at (202) 551-6446, or Parisa Haghshenas, Branch Chief, at (202) 551-6723 (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 website 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.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds ("ETFs").¹ Fund shares will be purchased and redeemed at their NAV in Creation Units (other than pursuant to a distribution reinvestment program, as described in the application). All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant," which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond closely to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.²

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis, or issued in less than Creation Unit size to investors participating in a distribution reinvestment program. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified

¹ Applicants request that the order apply to the initial fund and any additional series of the Trust and any other existing or future open-end management investment company or future series thereof (each, included in the term "Fund"), each of which will operate as an ETF and will track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (each, an "Underlying Index"). Each Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto, an "Adviser") and (b) comply with the terms and conditions of the application. For purposes of the requested order, the term "successor" is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

² Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).