

proposed rule changes were published for comment in the **Federal Register** on March 4, 2021.<sup>3</sup> On April 7, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to either approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to approve or disapprove the proposed rule changes.<sup>5</sup> On May 26, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule changes.<sup>6</sup> The Commission has received comment letters on the proposed rule changes.<sup>7</sup>

Section 19(b)(2) of the Act<sup>8</sup> provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule changes were published for notice and comment in the **Federal Register** on March 4, 2021.<sup>9</sup> August 31, 2021 is 180 days from that date, and October 30, 2021 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule changes so that it has sufficient time to consider the proposed rule changes, the issues raised in the comment letter that has been submitted in connection therewith, and the Exchanges' response to the comment letter. Accordingly, the Commission, pursuant to Section

19(b)(2) of the Act,<sup>10</sup> designates October 30, 2021 as the date by which the Commission should either approve or disapprove the proposed rule changes (File Nos. SR-NYSE-2021-14, SR-NYSEAMER-2021-10, SR-NYSEArca-2021-13, SR-NYSECHX-2021-03, SR-NYSENAT-2021-04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Vanessa A. Countryman,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92793; File No. SR-FINRA-2021-020]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Form CMA (Continuing Membership Application Form)

August 27, 2021.

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 August 20, 2021, 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 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 (1) amend Form CMA (Continuing Membership Application Form) required under Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) to conform to amendments to the Membership

Application Program ("MAP") rules<sup>4</sup> as described in File No. SR-FINRA-2020-011, which become effective on September 1, 2021;<sup>5</sup> and (2) make non-substantive and technical changes to Form CMA.<sup>6</sup> The proposed rule change does not make any changes to the text of FINRA rules.

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

The MAP rules require an applicant for continuing membership to file an application that includes a Form CMA.<sup>7</sup> Form CMA is organized into sections that align with the standards for admission set forth in Rule 1014(a) (Standards for Admission). Each section begins with a description of the applicable standard in Rule 1014(a), followed by a series of questions related to that standard that are intended to help the applicant provide the responses needed to demonstrate that it

<sup>4</sup> The MAP rules consist of Rules 1011 through 1019, which reside under the Rule 1000 Series (Member Application and Associated Person Registration).

<sup>5</sup> See Securities Exchange Act Release No. 90635 (December 10, 2020), 85 FR 81540 (December 16, 2020) (Order Approving File No. SR-FINRA-2020-011, as Modified by Amendment No. 1) ("SEC Order"). See also *Regulatory Notice* 21-09 (March 2021) (announcing September 1, 2021, as the effective date of the amendments to the MAP rules, and different effective dates of the amendments to other FINRA rules to address brokers with a significant history of misconduct).

<sup>6</sup> FINRA is separately developing comprehensive changes to the MAP rules in connection with the retrospective review of this rule set, which will also require conforming amendments to the standardized forms. See *Regulatory Notice* 18-23 (July 2018) (requesting comment on a proposal regarding the MAP rules).

<sup>7</sup> See Rule 1017(b)(2).

<sup>3</sup> See Securities Exchange Act Release Nos. 91217 (February 26, 2021), 86 FR 12715 (March 4, 2021) (SR-NYSE-2021-14); 91218 (February 26, 2021), 86 FR 12744 (March 4, 2021) (SR-NYSEAMER-2021-10); 91216 (February 26, 2021), 86 FR 12735 (March 4, 2021) (SR-NYSEArca-2021-13); 91219 (February 26, 2021), 86 FR 12724 (March 4, 2021) (SR-NYSECHX-2021-03); and 91215 (February 26, 2021), 86 FR 12752 (March 4, 2021) (SR-NYSENAT-2021-04) (collectively, the "Notices").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 91490 (April 7, 2021), 86 FR 19313 (April 13, 2021). The Commission designated June 2, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule changes.

<sup>6</sup> See Securities Exchange Act Release No. 92033 (May 26, 2021), 86 FR 29601 (June 2, 2021).

<sup>7</sup> Comments received on the Notices are available on the Commission's website at: <https://www.sec.gov/comments/sr-nyse-2021-14/srnyse202114.htm>.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> See Notices, *supra* note 3.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(31).

<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).

can meet each of the standards described under Rule 1014(a), and to facilitate FINRA's review of the application.<sup>8</sup> An applicant is able to provide its documents and information by attaching files in various formats (e.g., .docx, .pdf, .xlsx) or by entering free form text in text boxes, and making selections through screen components such as drop-down menus and radio buttons, among others.

#### Recent Amendments to the MAP Rules

On December 10, 2020, FINRA amended the MAP rules, among other FINRA rules, to address the issue of persons with a significant history of misconduct and the member firms that employ them.<sup>9</sup> As amended, Rule 1017 includes new paragraph (a)(7), which requires a member to file a continuing member application ("CMA") whenever a natural person seeking to become an owner,<sup>10</sup> control person,<sup>11</sup> principal or registered person of a member has, in the prior five years, one or more "final criminal matters" (as defined in new Rule 1011(h)<sup>12</sup>) or two or more "specified risk events" (as defined in new Rule 1011(p)<sup>13</sup>), and the member is not otherwise required to file a Form CMA in accordance with Rule 1017, unless the member has submitted a written request to FINRA seeking a materiality consultation for such contemplated activity. As part of the materiality consultation, Rule 1017(a)(7) also provides that FINRA will determine in the public interest and the protection of investors that either the member is not required to file a Form CMA and may effect the contemplated activity, or the member is required to file a Form CMA in accordance with Rule 1017 and the member may not effect the contemplated activity unless FINRA approves the Form CMA. In addition, Rule 1017(a)(7) provides that

<sup>8</sup> The sections of Form CMA that are marked with a red asterisk require the applicant to provide a response.

<sup>9</sup> See *supra* note 5.

<sup>10</sup> For purposes of Rule 1017(a)(7) only, the term "owner" has the same meaning as "direct owner" and "indirect owner" on the Uniform Application for Broker-Dealer Registration ("Form BD") Schedules A and B, as amended from time to time. See Rule 1017(a)(7).

<sup>11</sup> For purposes of Rule 1017(a)(7), the term "control person" means a person who would have "control" as defined on Form BD, as amended from time to time. See Rule 1017(a)(7).

<sup>12</sup> See paragraph (h) under Rule 1011 (defining "final criminal matter") as amended by SR-FINRA-2020-011, *supra* note 5.

<sup>13</sup> See paragraph (p) under Rule 1011 (defining "specified risk event") as amended by SR-FINRA-2020-011, *supra* note 5. See also Securities Exchange Act Release No. 92710 (August 19, 2021) (Order Approving File No. SR-FINRA-2021-011) (amendment to the "specified risk event" definition).

Interpretative Material ("IM")-1011-1 (Safe Harbor for Business Expansions) is not available to the member when a materiality consultation is required under Rule 1017(a)(7).<sup>14</sup>

#### Proposed Conforming Amendments to Form CMA

As a result of the recent amendments to the MAP rules, FINRA is proposing to amend Form CMA to: (1) List in the section of the form entitled "Type of Continuing Membership Application" all of the events under Rule 1017(a) that require a member to file Form CMA; (2) incorporate questions into Form CMA that relate specifically to Rule 1017(a)(7); and (3) make other non-substantive and technical changes in the form for clarity and consistency, and to promote efficiency. FINRA believes that these proposed conforming changes to Form CMA and the non-substantive and technical changes will help guide an applicant to provide the responses needed to demonstrate that it can meet the standards set forth under Rule 1014(a), and to facilitate FINRA's review of the application in light of the recent amendments to the MAP rules.

#### A. Amend Form CMA's "Type of Continuing Membership Application" Section To List All of the Events Specified in Paragraphs (a)(1) Through (a)(7) Under Rule 1017

As noted above, Form CMA is organized into sections that correspond to the standards for admission set forth in Rule 1014(a), with each section containing its own set of questions, some of which are mandatory, related to that particular standard for admission.<sup>15</sup> But before an applicant proceeds with completing those sections, Form CMA requests the applicant to identify all applicable types of changes in ownership, control, or business operations in the section titled, "Type of Continuing Membership Application." This section currently bears two headers that categorize some Rule 1017(a) events as either "Ownership of asset transfer changes," covering the events described under Rule 1017(a)(1) through Rule 1017(a)(4), or "Change(s) in business operations," covering the events

<sup>14</sup> Relatedly, new IM-1011-3 (Business Expansions and Persons with Specified Risk Events) provides that IM-1011-1 is not available to any member that is seeking to add a natural person who has, in the prior five years, one or more final criminal matters or two or more specified risk events and seeks to become an owner, control person, principal, or registered person of the member. In general, IM-1011-1 creates a safe harbor for specified categories of business expansions, subject to certain thresholds, that a member may undergo without filing a CMA.

<sup>15</sup> See *supra* note 8.

described under Rule 1017(a)(5).<sup>16</sup> Currently, Form CMA's "Type of Continuing Membership Application" section presents the events under Rule 1017(a)(1) through Rule 1017(a)(5), some of which appear in a summary fashion, without rule references.<sup>17</sup> FINRA is proposing to amend this section of Form CMA so that all the events described under Rule 1017(a), including those set forth in paragraphs (a)(6) and (a)(7), and their respective rule references would be listed in the form. In addition, FINRA is proposing to delete the two headers—"Ownership of asset transfer changes" and "Change(s) in business operations"—for clarity and to facilitate presenting the events under Rule 1017(a)(1) through 1017(a)(7) sequentially.

Specifically, the proposed changes to Form CMA's "Type of Continuing Membership Application" section would add the following three types of changes in ownership, control, or business operations that an applicant may select, as applicable, with references to the corresponding provisions in Rule 1017(a)(6)<sup>18</sup> and (a)(7):

<sup>16</sup> Rule 1017(a)(5) provides that a member shall file a CMA for approval of a "material change in business operations," which is defined in Rule 1011(m). Currently on Form CMA, the "Change(s) in business operations" category lists five options that an applicant may select to further identify the type of material change involved. Three of those options correspond to changes that are set forth in subparagraphs (1), (2) and (3) under the definition of "material change in business operations" in Rule 1011(m). A fourth option describes an expansion of Associated Persons, offices, or number of markets made. A fifth "other" option also is included because the definition of "material change in business operations" is not exhaustive. See *generally* paragraph (m) under Rule 1011 as amended by SR-FINRA-2020-011 (renumbering from paragraph (l) to paragraph (m)), *supra* note 5; IM-1011-1; Rule 1017(b)(2)(C).

<sup>17</sup> For example, Rule 1017(a)(1) provides that a CMA is required for "a merger of the member with another member, unless both are members of the New York Stock Exchange, Inc. or the surviving entity will continue to be a member of the New York Stock Exchange, Inc.[]" Form CMA, in the Type of Continuing Membership Application section, summarizes this event as "Merger of the member with another member." In another example, while Rule 1017(a)(2) states that a CMA is required for "a direct or indirect acquisition by the member of another member, unless the acquiring member is a member of the New York Stock Exchange, Inc.[]" Form CMA summarizes such event as a "[d]irect or indirect acquisition by the member of another member." Except for one technical change pertaining to the event that corresponds to Rule 1017(a)(3), FINRA is not proposing to change the descriptions of Rule 1017(a)(1) through Rule 1017(a)(5) as they currently appear in Form CMA.

<sup>18</sup> FINRA recently made changes to Form CMA to account for Rule 1017(a)(6). See Securities Exchange Act Release No. 89867 (September 15, 2020), 85 FR 58404 (September 18, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-028).

□ Any direct or indirect acquisition or transfer of a member's assets or any asset, business or line of operation where the transferring member or an Associated Person of the transferring member has a "covered pending arbitration claim," an unpaid arbitration award or an unpaid settlement related to an arbitration (FINRA Rule 1017(a)(6)(A))

□ Business expansion to add one or more Associated Persons involved in sales and one or more of those Associated Persons has a "covered pending arbitration claim," an unpaid arbitration award or an unpaid settlement related to an arbitration (FINRA Rule 1017(a)(6)(B))

□ Natural person seeks to become an owner, control person, principal or registered person of a member and has, in the prior five years, one or more "final criminal matters" or two or more "specified risk events" (FINRA Rule 1017(a)(7))

These proposed conforming changes to this section of Form CMA will list all of the events under Rule 1017(a). Additionally, the specific references on Form CMA to the applicable subsections of Rule 1017 will give applicants clarity about which events require them to submit Form CMA to FINRA for approval.

#### *B. Incorporate Questions To Conform Form CMA to Rule 1017(a)(7)*

Rule 1017(i) provides that in rendering a decision on a CMA, FINRA must consider whether the applicant and its associated persons meet each of the standards in Rule 1014(a). FINRA is proposing to amend two sections in Form CMA, which are "Standard 1: Overview of the Applicants," corresponding to Rule 1014(a)(1) ("Standard 1"), and "Standard 3: Compliance with securities laws, just and equitable principles of trade," corresponding to Rule 1014(a)(3) ("Standard 3"). FINRA believes that these proposed changes would conform Form CMA to, and are necessary to effectively account for, Rule 1017(a)(7). The proposed amendments to Form CMA are described in further detail below.

#### 1. Form CMA's "Standard 1: Overview of the Applicants" Section

Standard 1 requires FINRA to determine whether the application and all supporting documents are complete and accurate. Form CMA's Standard 1 section has several questions that, in general, focus on understanding the circumstances surrounding the contemplated change or event set forth under Rule 1017(a), and are intended to elicit from the applicant the information necessary for FINRA to assess whether Standard 1 is met. For example, the applicant is required to provide a complete description of the

contemplated change, the persons or entities that will become associated or affiliated with the applicant as a result of the contemplated change, and to the extent applicable, a description of the liabilities that will not be included in a transfer of assets or a line of business.<sup>19</sup>

FINRA is proposing to add several new questions to this section that would require the applicant to provide information necessary to support compliance with Rule 1017(a)(7). These proposed questions are intended to collect the necessary information in an efficient manner, as further explained below.

Proposed new Question 5 would require, as marked by the asterisk, the applicant to provide a "yes" or "no" answer to the following question:

5. Is this application required because the Applicant seeks to add a natural person as an owner, control person, principal or registered person who, in the prior five years, has one or more "final criminal matters" or two or more "specified risk events" (as defined in FINRA Rule 1011)?\* (As Rule 1017(a)(7) provides, the term "owner" has the same meaning as "direct owner" and "indirect owner" on Form BD Schedules A and B, as amended from time to time, and the term "control person" means a person who would have "control" as defined on Form BD, as amended from time to time.)

If the applicant's answer to proposed Question 5 is "yes," proposed Question 5.a. would prompt the applicant to identify in a chart, for each "final criminal matter" or "specified risk event," the subject party, that person's CRD number, and, if the matter or event has not been reported on a Uniform Registration Form, a description of the nature of the activity, any findings, any fine or other dispositions.<sup>20</sup> Specifically, proposed Question 5.a. would ask:<sup>21</sup>

<sup>19</sup> See generally Exhibit 3 (Form CMA, Standard 1, Questions 1, 2, and 3, within the category titled "Overview of the proposed change").

<sup>20</sup> See Exhibit 3 (Form CMA, Standard 1, chart accompanying Proposed Question 5.a., within the category titled "Overview of the proposed change"). This proposed chart would be similar to how members, when submitting a request for a materiality consultation pursuant to Rule 1017(a)(7), would need to provide information about individuals' "final criminal matters" and "specified risk events." See Rule 1017(a)(7) (providing that the member's written request for a materiality consultation "must address the issues that are central to the materiality consultation"); Securities Exchange Act Release No. 88600 (April 8, 2020), 85 FR 20745, 20753 (April 14, 2020) (Notice of Filing of File No. SR-FINRA-2020-011) (explaining that a member submitting a request for a materiality consultation would need to provide information relating to the individuals' "final criminal matters" and "specified risk events").

<sup>21</sup> The following quoted material includes references to the Uniform Application for Securities Industry Registration or Transfer ("Form U4"), the Uniform Termination Notice for Securities Industry

a. If the answer to Question 5 is "yes," for each "final criminal matter" or "specified risk event," if the matter or event has been reported on a Uniform Registration Form (*i.e.*, Forms U4, U5, U6, BD), please provide the subject party and that person's CRD number. If the matter or event has not been reported on a Uniform Registration Form, please also provide a description of the nature of the activity, any findings, any fine or other dispositions.

If the applicant's answer to proposed Question 5 is "no," the applicant would not be prompted to answer proposed Question 5.a.

The proposed conforming changes to Standard 1 of Form CMA are intended to collect necessary information efficiently. Proposed Question 5.a. would reduce the burden on firms to provide FINRA with duplicate information by not requiring applicants to describe each "final criminal matter" or "specified risk event" that was already described on a Uniform Registration Form. Thus, if the matter or event has already been reported on a Uniform Registration Form, the applicant would only need to provide the subject party and that person's CRD number. If the matter or event has not been reported on a Uniform Registration Form, the applicant also would be required to provide a description of the nature of the activity, any findings, any fine or other dispositions, to support compliance with Rule 1017(a)(7). Further, requiring firms to provide the subject party's CRD number would facilitate FINRA's coordination of information entered on Form CMA with information that has been entered on a Uniform Registration Form or provided in a related materiality consultation, and thus enable FINRA to more efficiently monitor for compliance with Rule 1017(a)(7).

Form CMA's Standard 1 section also requests the applicant to provide information on contemplated changes in direct ownership and indirect ownership. For example, the applicant is currently prompted to provide, as applicable, the proposed direct or indirect owner's CRD number, name, roles, the date the role was acquired, the person's ownership percentage, and whether the person is a "control person," among other information. Rule 1017(a)(7) applies when a natural person seeking to become an "owner" or "control person" (among other roles) has, in the prior five years, "one or more final criminal matters or two or more specified risk events." Rule 1017(a)(7) further provides that, for purposes of

Registration ("Form U5"), the Uniform Disciplinary Action Reporting Form ("Form U6"), and the Central Registration Depository ("CRD").

Rule 1017(a)(7), the term “owner” has the same meaning as “direct owner” and “indirect owner” on Form BD Schedules A and B, as amended from time to time. To conform with Rule 1017(a)(7), FINRA is proposing to add a question about whether the contemplated direct or indirect owner of the applicant is a “FINRA Rule 1017(a)(7) Person (*i.e.*, whether such person has one or more ‘final criminal matters’ or two or more ‘specified risk events’ in the prior five years).”<sup>22</sup>

## 2. Form CMA’s “Standard 3: Compliance with securities laws, just and equitable principles of trade” Section

Standard 3 requires FINRA to determine whether an applicant and its associated persons “are capable of complying with” the applicable securities laws and regulations, and with applicable FINRA rules. Standard 3 sets forth several factors, including past and current disciplinary actions and customer claims, that FINRA must consider in making that determination. The existence of certain factors that “[raise] a question of capacity to comply with the federal securities laws and the rules of [FINRA]” results in a rebuttable presumption to deny the application.<sup>23</sup> In general, Form CMA’s Standard 3 section currently includes questions that require an applicant to indicate whether it or any of its associated persons are subject to any of the specified factors described in Standard 3, direct the applicant to provide additional information about those factors, require the applicant to explain, even with the existence of the specified factors, how it will be able to comply with applicable securities laws and regulations and with applicable FINRA rules, ask arbitration-related questions, and prompt the applicant to provide supporting documents.<sup>24</sup>

<sup>22</sup> Member firms also would identify these direct and indirect owners in materiality consultations pursuant to Rule 1017(a)(7). See Rule 1017(a)(7) (providing that a written request for a materiality consultation “must address the issues that are central to the materiality consultation”); Securities Exchange Act Release No. 88600 (April 8, 2020), 85 FR 20745, 20753 (April 14, 2020) (Notice of Filing of File No. SR-FINRA-2020-011) (explaining that a member submitting a request for a materiality consultation would need to provide information relating to the subject person), *supra* note 20.

<sup>23</sup> See *Notice to Members* 04–10 (February 2004) (announcing amendments to Rules 1011, 1014, and 1017); and Rule 1017(i) (setting forth the events that create a rebuttable presumption to deny a CMA).

<sup>24</sup> See generally Form CMA, Standard 3, Questions 1, 2, 3, and 4 (within the category titled “Explain how this Standard is met.”). In 2020, some questions in Form CMA’s Standard 3 section underwent adjustments to align with the arbitration-related amendments to the MAP rules as

FINRA is proposing to add new questions to Form CMA’s Standard 3 section for the same reason that FINRA is proposing new questions to Form CMA’s Standard 1 section, which is to require the applicant to provide information necessary to support compliance with Rule 1017(a)(7). These proposed questions are intended to collect the necessary information in an efficient manner, as further explained below.

FINRA is proposing to add new Question 5 to Form CMA’s Standard 3 section, using language similar to proposed Question 5 in Form CMA’s Standard 1 section. A similar question in Form CMA’s Standard 3 section is needed because information concerning a person described in Rule 1017(a)(7) would be relevant to a CMA filed pursuant to other subparagraphs of Rule 1017(a).<sup>25</sup> Specifically, proposed Question 5 would require the applicant to provide a “yes” or “no” answer to the following:

5. Does this application propose to add a natural person as an owner, control person, principal or registered person who, in the prior five years, has one or more “final criminal matters” or two or more “specified risk events”?\* See FINRA Rule 1017(a)(7). (For purposes of Rule 1017(a)(7), the term “owner” has the same meaning as “direct owner” and “indirect owner” on Form BD Schedules A and B, as amended from time to time, and the term “control person” means a person who would have “control” as defined on Form BD, as amended from time to time.)

If the applicant answers “yes,” the applicant would then be asked in proposed Question 5.a. whether the information was provided above in the section concerning Standard 1, Question 5.a. If the answer to Standard 3, Question 5.a. is “yes,” then the applicant would not be required to complete Question 5.b. If the answer to Standard 3, Question 5.a. is “no,” then the applicant would be required to respond to proposed Question 5.b.:

b. If the answer to Question 5.a. is “no,” for each “final criminal matter” or “specified risk event,” if the matter or event has been reported on a Uniform Registration Form (*i.e.*, Forms U4, U5, U6, BD), please provide the subject party and that person’s CRD number. If the matter or event has not been reported on a Uniform Registration Form, please also provide a description of the nature of the activity, any findings, any fine or other dispositions.

described in File No. SR-FINRA-2019-030. See *supra* note 18.

<sup>25</sup> Rule 1017(a)(7) requires a member to file a CMA only when “the member is not otherwise required to file a Form CMA in accordance with Rule 1017.”

The applicant would be able to provide the information requested in proposed Question 5.b. in a chart identical to the chart proposed to follow Question 5.a. in Form CMA’s Standard 1 section.<sup>26</sup>

The proposed conforming changes to Standard 3 of Form CMA are intended to collect necessary information efficiently. Proposed Questions 5.a. and 5.b. and the accompanying chart to Form CMA’s Standard 3 section would reduce the burden on firms to provide FINRA with duplicate information already provided earlier on Form CMA or separately in a Uniform Registration Form. If the matter or event has already been described in Form CMA’s Standard 1 section, the applicant would be able to cross-reference that description. If the matter or event was not already described in Form CMA’s Standard 1 section but was already reported on a Uniform Registration Form, the applicant would only need to provide the subject party and that person’s CRD number. If the matter or event has not been reported in Form CMA’s Standard 1 section or on a Uniform Registration Form, the applicant would also be required to provide a description of the nature of the activity, any findings, any fine or other dispositions, to support compliance with Rule 1017(a)(7). Further, requiring firms to provide a CRD number would enable FINRA to facilitate FINRA’s coordination of information entered on Form CMA with information that has been entered on a Uniform Registration Form or provided in a related materiality consultation, and therefore enable FINRA to more efficiently gather relevant information.

## C. Other Proposed Non-Substantive, Technical Amendments to Form CMA

FINRA is also proposing several non-substantive, technical changes to Form CMA. First, FINRA is proposing to include in Form CMA’s Standard 1 section and Standard 3 section a reminder to the applicant that, “[e]very Form U4 shall be kept current at all times by supplementary amendments to the original Form U4. See FINRA By-Laws, Art. V, Sec. 2(c).” Form U4 is one of the “Uniform Registration Forms,” as defined by amendments to the MAP rules.<sup>27</sup> Second, FINRA is proposing to amend Form CMA’s “Type of Continuing Membership Application” section to change “comprising” to

<sup>26</sup> See Exhibit 3 (Form CMA, Standard 3, chart accompanying Proposed Question 5.b., within the category titled “Explain how this Standard is met”).

<sup>27</sup> See paragraph (r) under Rule 1011 (defining “Uniform Registration Forms”) as amended by SR-FINRA-2020-011, *supra* note 5.

“composing” to match the language used in Rule 1017(a)(3).<sup>28</sup>

Finally, FINRA is proposing to add within Form CMA’s Standard 1 section new Questions 4.a., 4.b. and 4.c that would efficiently collect the information needed to monitor for compliance with Rule 1017(a)(6). Proposed Questions 4.a. and 4.b. would ask the applicant to indicate whether the CMA is required under Rule 1017(a)(6)(A) or Rule 1017(a)(6)(B), respectively.<sup>29</sup> If the applicant answers “yes” to either question, then proposed Question 4.c. would prompt the applicant to list, for each covered pending arbitration claim, unpaid arbitration award, or unpaid settlement related to an arbitration, the subject party and that person’s CRD number in a chart. FINRA believes that adding these proposed questions and the accompanying chart to Form CMA’s Standard 1 section would efficiently collect the information needed to monitor for compliance with Rule 1017(a)(6).<sup>30</sup> The proposed questions would also achieve parity with the manner FINRA is proposing to elicit information needed to monitor for compliance with Rule 1017(a)(7). Additionally, proposed Question 4 would allow FINRA to readily coordinate information entered on Form CMA with information that may have been entered on a Uniform Registration Form or provided in a materiality consultation.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change on September 1, 2021, to coincide with the

<sup>28</sup> See Rule 1017(a)(3) (requiring, in pertinent part, a member to file an application for approval of “direct or indirect acquisitions or transfers of 25 percent or more in the aggregate of the member’s assets or any asset, business or line of operation that generates revenues *composing* 25 percent or more in the aggregate of the member’s earnings measured on a rolling 36-month basis”) (Emphasis added).

<sup>29</sup> See generally Exhibit 3 (Form CMA, Standard 1, proposed Questions 4, 4.a., 4.b., 4.c. and accompanying chart, within the category titled “Overview of the proposed change”).

<sup>30</sup> The requested information is similar to the information that member firms would provide in a materiality consultation pursuant to Rule 1017(a)(6). See Rule 1017(a)(6)(A) and (B) (providing that the written request for a materiality consultation “must address the issues that are central to the materiality consultation”); see also Checklist for Mandatory Materiality Consultations Under Rule 1017(a)(6), <https://www.finra.org/rules-guidance/guidance/materiality-consultation-process/checklist-under-rule-1017a6> (providing guidance to firms to provide, among other things, the name, title and CRD number of associated persons with a covered pending arbitration claim, unpaid arbitration award or unpaid settlement related to an arbitration).

effective date of the amendments to the MAP rules as announced in *Regulatory Notice* 21–09.<sup>31</sup> The proposed changes to Form CMA conform to the recently amended MAP rules. To facilitate member firm compliance with the amended rules on the date they become effective, it is necessary for the amendments to Form CMA to become effective on the same date.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>32</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.

The proposed changes to Form CMA will conform the form to the amendments to Rule 1017(a)(7), as described in the SEC Order. The proposed changes to Form CMA will also help ensure that applicants for continuing membership provide the information and documentation to produce a complete application package for FINRA’s review.

## 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. FINRA’s recent amendments to the MAP rules, which specify additional events that require a CMA for FINRA’s approval, necessitate conforming changes to the sections of Form CMA pertaining to the type of CMA, Standard 1 and Standard 3. The proposed conforming changes—*i.e.*, listing in Form CMA’s “Type of Continuing Membership Application” section all of the events under Rule 1017(a) that require a member to file Form CMA, and incorporating in Form CMA’s Standard 1 and Standard 3 sections questions that would require the applicant to provide information about an individual’s “final criminal matters” and “specified risk events” that is necessary to support compliance with Rule 1017(a)(7)—are derived from,

<sup>31</sup> FINRA notes that the proposed rule change would impact all members, including members that have elected to be treated as capital acquisition brokers (“CABs”), given that CAB Rule 116 (Application for Approval of Change in Ownership, Control, or Business Operations) incorporates, by reference, Rule 1017, which requires that a member’s application for approval of changes to its ownership, control, or business operations include a Form CMA. See Rule 1017(b)(2).

<sup>32</sup> 15 U.S.C. 78o–3(b)(6).

and effectuate, recent amendments to the MAP rules concerning persons with a significant history of misconduct and the broker-dealers that employ them, as described in the SEC Order. In addition, the proposed changes to Form CMA’s Standard 1 section pertaining to Rule 1017(a)(6) would efficiently collect the information needed to monitor for compliance with that rule in the same manner that FINRA proposes to collect information needed to monitor for compliance with Rule 1017(a)(7). FINRA considered and discussed the potential economic impact of the recent amendments in File No. SR–FINRA–2020–011, including the burden imposed on some applicants to seek a materiality consultation with FINRA, and noted the potential requirement to file a Form CMA and certain associated costs.<sup>33</sup> FINRA believes that the proposed conforming changes to Form CMA and the proposed technical changes described herein would not result in new material economic effects.

## 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>34</sup> and Rule 19b–4(f)(6) thereunder.<sup>35</sup>

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),<sup>36</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay requirement so that the proposed rule change may become operative on September 1, 2021. The Commission hereby grants the request. The

<sup>33</sup> See Securities Exchange Act Release No. 88600 (April 8, 2020), 85 FR 20745, 20755–62 (April 14, 2020) (Notice of Filing of File No. SR–FINRA–2020–011).

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>35</sup> 17 CFR 240.19b–4(f)(6).

<sup>36</sup> 17 CFR 240.19b–4(f)(6)(iii).

Commission finds that the proposed changes to Form CMA conform to the recently amended MAP rules.<sup>37</sup> The Commission therefore finds that the proposed rule change is consistent with the goals set forth by the Commission when it approved amendments to the MAP rules as described in File No. SR-FINRA-2020-011, which become effective on September 1, 2021.<sup>38</sup> The Commission finds that waiving the 30-day operative delay would facilitate firm compliance with the amended MAP rules on the date they become effective.<sup>39</sup> Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay requirement. Therefore the Commission designates the proposed rule change as operative on September 1, 2021.

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2021-020 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-2021-020. 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 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. 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-FINRA-2021-020 and should be submitted on or before August 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Vanessa A. Countryman,**  
Secretary.

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92797; File No. SR-PEARL-2021-32]

### Self-Regulatory Organizations; MIAX PEARL, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Amend the MIAX Pearl Options Fee Schedule To Remove Certain Credits and Increase Trading Permit Fees

August 27, 2021.

#### I. Introduction

On July 1, 2021, MIAX PEARL, LLC ("MIAX Pearl" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant

to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (File Number SR-PEARL-2021-32) to amend the MIAX Pearl Options Fee Schedule ("Fee Schedule") to remove certain credits and increase monthly Trading Permit fees for Exchange Members.<sup>3</sup> The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on July 15, 2021.<sup>5</sup> The Commission has received no comment letters on the proposed rule change. Under Section 19(b)(3)(C) of the Act,<sup>6</sup> the Commission is hereby: (i) Temporarily suspending File Number SR-PEARL-2021-32; and (ii) instituting proceedings to determine whether to approve or disapprove File Number SR-PEARL-2021-32.

#### II. Description of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule to: (1) Delete the definition of and remove the credits applicable to the Monthly Volume Credit for Members; (2) and; (3) amend Section (3)(b) of the Fee Schedule to increase the amount of monthly Trading Permit Fees.

##### Remove "Monthly Volume Credit"

The Exchange proposes to amend the Definitions section of its Fee Schedule to delete the definition of "Monthly Volume Credit" and remove the credits applicable to the Monthly Volume Credit for Members.<sup>7</sup> The Exchange states that the Monthly Volume Credit was established in 2018 to encourage Members to send increased Priority

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

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

<sup>3</sup> The term "Trading Permit" means a permit issued by the Exchange that confers the ability to transact on the Exchange. See Notice, *infra* note 5, at 37379. The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See *id.*

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as "establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization." 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> See Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 ("Notice").

<sup>6</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>7</sup> See Notice, *supra* note 5, at 37379-80.

<sup>37</sup> See *supra* note 5.

<sup>38</sup> *Id.*

<sup>39</sup> Similarly, the Commission finds that the non-substantive and technical changes to Form CMA are consistent with the protection of investors and the public interest.

<sup>40</sup> 17 CFR 200.30-3(a)(12).