

the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2014-127 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-NASDAQ-2014-127. 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 Web site (<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 Web site 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; 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-NASDAQ-2014-127 and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73966; File No. SR-FINRA-2014-038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Adoption of FINRA Rule 3110(e) (Responsibility of Member To Investigate Applicants for Registration) in the Consolidated FINRA Rulebook

December 30, 2014.

I. Introduction

On September 18, 2014, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt NASD Rule 3010(e) relating to background investigations as FINRA Rule 3110(e) in the consolidated FINRA rulebook ("Consolidated FINRA Rulebook"). The proposed rule change was published for comment in the **Federal Register** on October 3, 2014.³ The Commission received 10 comment letters in response to the Notice.⁴ On December 8, 2014,

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73238 (September 26, 2014), 79 FR 59884 (October 3, 2014) (Notice of Filing of SR-FINRA-2014-038) ("Notice").

⁴ See Letters to Brent J. Fields, Secretary, Commission, from Joseph C. Peiffer, Executive Vice President and President-Elect, Public Investors Arbitration Bar Association, dated October 16, 2014 ("PIABA Letter"); William A. Jacobson, Clinical Professor of Law, Cornell University Law School, dated October 20, 2014 ("Cornell Letter"); William Beatty, President, North American Securities Administrators Association, Inc., dated October 22, 2014 ("NASAA Letter"); Kyle Ortiz and Kathryn Hesse, Law Student Clinicians, Investor Advocacy Clinic, Michigan State University College of Law, dated October 23, 2014 ("Michigan State Letter"); John Astarita and Olivia Darius, Student Interns, John Jay Legal Services, Inc., Pace University School of Law, dated October 24, 2014 ("Pace Letter"); Kevin Zambrowicz, Associate General Counsel and Managing Director, the Securities Industry and Financial Markets Association, dated October 24, 2014 ("SIFMA Letter"); Michele Van Tassel, President, Association of Registration

Management, dated October 24, 2014 ("ARM Letter"); Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, dated October 24, 2014 ("Wells Fargo Letter"); and David T. Bellaire, Executive Vice President and General Counsel, the Financial Services Institute, dated October 24, 2014 ("FSI Letter"). See also email from Suzanne Shatto, dated October 6, 2014 ("Shatto Letter"). Comment Letters are available at: <http://www.sec.gov/comments/sr-finra-2014-038/finra2014038.shtml>.

II. Description of the Proposal, as Modified by Amendment No. 1

As part of the process of developing the Consolidated FINRA Rulebook, FINRA is proposing to adopt NASD Rule 3010(e) (Qualifications Investigated) relating to background investigations as FINRA Rule 3110(e). According to FINRA, the proposed rule change streamlines and clarifies the rule language. For instance, NASD Rule 3010(e) currently provides that "[e]ach member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making such a certification in the application of such person for registration with this Association," whereas proposed FINRA Rule 3110(e) provides that "[e]ach member shall ascertain by investigation the good character, business reputation, qualifications and experience of an applicant before the member applies to register that applicant with FINRA and before making a representation to that effect on the application for registration." Further, proposed FINRA Rule 3110(e) clarifies that a firm is required to review a copy of an applicant's most recent Form U5 (Uniform Termination Notice for Securities Industry Registration) if the applicant previously has been registered with FINRA or another self-regulatory organization.⁶

⁵ See SR-FINRA-2014-038, Amendment No. 1, dated December 8, 2014, ("Amendment No. 1"). Amendment No. 1 is described below in Section II and the text of Amendment No. 1 is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, and on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

⁶ FINRA also is proposing to re-label current FINRA Rule 3110(e) (Definitions) as FINRA Rule 3110(f) (Definitions) and update the cross-references in FINRA Rule 3110 to reflect this change.

In addition, the proposed rule change adds to FINRA Rule 3110(e) a requirement that firms adopt written procedures that are reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4 (Uniform Application for Securities Industry Registration or Transfer) no later than 30 calendar days after the form is filed with FINRA. The proposed requirement would apply to an initial or a transfer Form U4 for an applicant for registration, not to amendments to Form U4. Proposed FINRA Rule 3110(e) would also require that a firm's written procedures, at a minimum, provide for a national search of reasonably available public records to verify the accuracy and completeness of the information contained in an applicant's Form U4. The requirement to conduct a public records search must be satisfied no later than 30 calendar days after the initial or transfer Form U4 is filed with FINRA. Further, the proposed rule change adds Supplementary Material .15 to FINRA Rule 3110 to establish a temporary program to refund Late Disclosure Fees, subject to specified conditions.⁷

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change as modified by Amendment No. 1, the comments submitted, and FINRA's response to the comments, and believes that FINRA has responded adequately to the concerns raised by the commenters.⁸ For the reasons discussed below, the Commission finds that the proposal is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ 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. By streamlining and clarifying members' obligations relating to background investigations of registered personnel and adding a requirement to adopt written procedures to verify the

accuracy and completeness of the information contained in an applicant's Form U4, including the requirement to conduct a public records search, the proposal should result in complete and accurate information in CRD,¹⁰ which is critical from both a regulatory and an investor protection standpoint. Finally, the proposed temporary program under proposed FINRA Rule 3110.15 to refund Late Disclosure Fees under certain circumstances should incentivize members to more accurately and completely report information relating to judgments and liens. Having complete and accurate information in CRD is important to regulators, the industry, and the public.

As noted above, the Commission received ten comment letters in response to the proposed rule change, all of which support the proposal.¹¹ For example, one commenter states the proposal "will contribute to ensuring the accuracy and completeness of the information disclosed in Form U4."¹² "[A]ccurate [Form] U4 information," adds another commenter, "is critical to FINRA's own regulatory review of an applicant, as well as for customers, whose primary source of public information . . . is through FINRA's BrokerCheck."¹³ Another commenter states that requiring "written procedures for Form U4 verification . . . will enable the member firm to conduct more consistent—and hopefully more thorough—background checks on applicants [for registration]."¹⁴ One commenter "supports the additional requirements" aimed at enhancing the accuracy of information on Form U4 because "the Form U4 serves as the primary avenue through which investors obtain important information about brokers."¹⁵ The same commenter also supports the temporary refund program because it "creates an incentive for firms to make the required updated filings" which in turn would "increase the completeness of information contained in CRD."¹⁶

Three commenters supported the proposal without qualifications.¹⁷ Three commenters provided suggestions, including extending the scope of the proposed public records search to foreign jurisdictions, specifying that members unable to comply with all

verification requirements must demonstrate "reasonable efforts" to do so,¹⁸ clarifying the term "reasonably available public records,"¹⁹ and limiting the proposed refund program to a one-time program.²⁰ Two of these commenters also requested additional clarification regarding the requirements under proposed FINRA Rule 3110(e).²¹ One commenter supported the consolidation of NASD Rule 3010(e) and NYSE Rule 345.11 as proposed FINRA Rule 3110(e), but (1) requested further clarification regarding the investigation and verification requirements; (2) suggested changes to the verification requirement, to the implementation date of the proposal and to the sunset date of the refund program; and (3) requested clarification regarding Questions 14K and 14M on the Form U4.²² Finally, two commenters supported the purpose of the verification requirement, but requested additional clarification regarding its scope, as well as its relationship to the investigation requirement, suggested changes to the 30-day post-submission verification period,²³ as well as to the refund program, and sought clarification on procedures for obtaining reimbursement.²⁴ One of these commenters also requested clarification regarding Questions 14K and 14M on the Form U4.²⁵

1. Relationship Between Investigation and Verification Requirements

Several commenters requested that FINRA clarify the relationship between the investigation and verification requirements under proposed FINRA Rule 3110(e).²⁶ Two of these commenters also asked whether the investigation and verification requirements are duplicative, whether firms can use any of the information obtained in the investigation process to comply with the verification process, and whether firms are required to conduct the verification process after the Form U4 has been filed and separate from the investigation process.²⁷

FINRA responded that although the requirements are closely related, the requirements are complementary, not duplicative, in nature. FINRA states that proposed FINRA Rule 3110(e) requires

⁷ The proposed rule change would delete NASD Rule 3010(f) because it has been rendered obsolete. The proposed rule change would also delete Incorporated NYSE Rule 345.11 and NYSE Rule Interpretation 345.11/01 and/02 as they are substantially similar to proposed FINRA Rule 3110(e), addressed by other rules or otherwise rendered obsolete by the approach reflected in proposed FINRA Rule 3110(e). For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

⁸ 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).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ The information in BrokerCheck is a subset of the information in CRD.

¹¹ See *supra* note 4.

¹² See NASAA Letter.

¹³ See PIABA Letter.

¹⁴ See Cornell Letter.

¹⁵ See NASAA Letter.

¹⁶ *Id.*

¹⁷ See Shatto Letter, NASAA Letter and Michigan State Letter.

¹⁸ See PIABA Letter.

¹⁹ See Cornell Letter.

²⁰ See Pace Letter.

²¹ See PIABA Letter and Cornell Letter.

²² See SIFMA Letter and Wells Fargo Letter.

²³ See ARM Letter.

²⁴ See FSI Letter.

²⁵ *Id.*

²⁶ See PIABA Letter, Cornell Letter, SIFMA Letter and ARM Letter.

²⁷ See SIFMA Letter and ARM Letter.

that each member ascertain by investigation the good character, business reputation, qualifications and experience of an applicant before the member applies to register that applicant with FINRA and before making a representation to that effect on the application for registration.²⁸ FINRA also states that if an applicant has been previously registered with FINRA or another self-regulatory organization, proposed FINRA Rule 3110(e) requires that a firm review a copy of the applicant's most recent Form U5, including any amendments, within 60 days of the filing date of the applicant's Form U4.²⁹ FINRA states that, if the firm is unable to review the Form U5, the firm must demonstrate it has made reasonable efforts to do so.³⁰

Proposed FINRA Rule 3110(e) requires that a firm establish and implement written procedures reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4 no later than 30 calendar days after an initial or a transfer Form U4 is filed with FINRA. While this is a new requirement, FINRA explains that it is based on an existing requirement in the Form U4 that the person signing the form certify that he has taken appropriate steps to verify the accuracy and completeness of the information contained in that form. FINRA also states that proposed FINRA Rule 3110(e) expressly requires that a firm's written procedures specify the firm's process for verifying the information in the Form U4 and that the firm complete that verification process no later than 30 calendar days after the Form U4 is filed. FINRA notes that the verification process for some of the information in

the Form U4 is embedded in the form itself.³¹

FINRA states that under proposed FINRA Rule 3110(e), firms must complete the verification process no later than 30 calendar days after the Form U4 is filed with FINRA. The Rule 3110(e) does not require firms to conduct the verification process only during the 30-day window after the Form U4 has been filed or base the verification on information that is obtained only in the 30-day window after the form has been filed. Rather, FINRA states, the 30-day window is intended to accommodate firms that may find it difficult to conduct the verification process before filing an applicant's Form U4, such as where an applicant is hired immediately to fill a needed role at the firm. For most applicants, FINRA expects that firms will conduct the investigation and verification process concurrently using some of the same information and before filing the Form U4. FINRA also encourages firms to complete the verification process before filing the Form U4. FINRA notes that, with respect to amended filings, a firm will incur a Late Disclosure Fee if the disclosure event should have been reported on the initial or transfer Form U4, regardless of whether the firm completes the verification process within the 30-day window in proposed FINRA Rule 3110(e).

FINRA also recognizes that there will on occasion be circumstances beyond a firm's control that prevent completion of the verification process within the 30-day window after the Form U4 is filed with FINRA. FINRA explains, for example, that a firm may not be able to comply with the proposed 30-day window where the firm is relying on fingerprint results for verifying criminal information, and the FBI determines the fingerprints to be "illegible" and requires resubmission of the fingerprints. In such circumstances, FINRA points-out, the firm's procedures should provide that the verification must be completed as soon as practical and the firm should document the basis for the delay.

Finally, FINRA states that proposed FINRA Rule 3110(e) requires that a firm's verification process must, at a minimum, provide for a national search of reasonably available public records to verify the accuracy and completeness of the information contained in an

applicant's Form U4. As FINRA explains, similar to the overall verification process, the requirement to conduct a public records search must be satisfied by no later than 30 calendar days after an initial or a transfer Form U4 is filed with FINRA. FINRA also states that the public records search is a new requirement; it is a component of the overall verification process described above. As FINRA explains, public records include, but are not limited to: General information, such as name and address of individuals; criminal records; bankruptcy records; civil litigations and judgments; liens; and business records. FINRA explains, however, that the proposed rule only requires a national search of reasonably available public records.³²

2. Member's Obligation To Adopt Written Procedures for Verification of Information in the Form U4

Two commenters asked whether firms are required to verify all of the information in the Form U4, stating that it may not be feasible or practical to do so in some cases.³³ In response, FINRA states it does not expect firms to verify all of the information in the Form U4 where such verification is not feasible or practical. In such cases, FINRA states that a firm should document that the information could not be verified and document the reason that it could not be verified.

One commenter recommended that the proposed verification requirement, including the minimum public records search requirement, be removed altogether.³⁴ Alternatively, the commenter requested that firms be given 90 days to complete a public records search and any necessary follow ups and asked whether firms are required to complete the entire verification process within the proposed 30-day window. One commenter requested that firms be given a 60- or 90-day period to complete the verification process.³⁵ Another commenter suggested that FINRA amend the proposed rule to require that a firm's written procedures provide that if the firm is unable to complete the verification process within the 30-day window, it must demonstrate to FINRA that it has made reasonable efforts to do

²⁸ FINRA notes this is a principle-based requirement that is substantially similar to the current requirement under NASD Rule 3010(e), and explains that firms are required to complete the investigation process before filing the Form U4. See FINRA, Regulatory Notice 07-55, *Personnel Background Investigations*, (November 2007) available at <https://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p037480.pdf>. Firms must also comply with MSRB Rule G-7 (Information Concerning Associated Persons) for those applicants engaged solely in municipal securities activities. See Municipal Securities Rulemaking Board, *Rule Book*, Rule G-7 (October 2014) available at <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-7.aspx>.

²⁹ If the applicant has been recently employed by a Futures Commission Merchant or an Introducing Broker that is notice-registered with the SEC pursuant to Section 15(b)(11) of the Act, the registering firm also is required to review a copy of the individual's most recent CFTC Form 8-T.

³⁰ FINRA expects firms to use this provision in very limited circumstances, such as where the previous firm fails to file a Form U5 or goes out of business before filing a Form U5.

³¹ FINRA states that the verification process could vary firm by firm, e.g., one firm may verify an applicant's identity and name by checking a valid state-issued driver's license whereas another firm may do so by reviewing a valid government-issued passport.

³² FINRA notes this is a minimum or base requirement, and a firm may find it necessary to conduct a more in-depth search of public records depending on the applicant's job function, responsibilities or position at the firm.

³³ See SIFMA Letter and ARM Letter.

³⁴ See SIFMA Letter.

³⁵ See ARM Letter.

so and explain the cause for the delayed verification.³⁶

In response, FINRA states it is retaining the proposed Form U4 verification requirement and the requirement to conduct a public records search, indicating it continues to believe that the proposed requirements will enhance the accuracy of the information in CRD and ultimately in BrokerCheck. FINRA also clarifies that as described above, firms must complete the verification process by no later than 30 calendar days after the Form U4 is filed with FINRA. FINRA expects that for the majority of applicants, firms will conduct the proposed verification process, including the public records search, before filing the Form U4, a practice that FINRA encourages.

FINRA does not believe that it is necessary to extend the period by which firms must complete the verification process because under FINRA By-Laws, a firm is obligated to file an amended Form U4 no later than 30 calendar days after learning of the facts or circumstances giving rise for the need to file an amendment.³⁷ Therefore, FINRA states, if a firm completes its verification process during the 30-day window in proposed FINRA Rule 3110(e) and learns of facts or circumstances that require the filing of an amended Form U4, the firm will have 30 calendar days from the date it learns of such facts or circumstances to file an amended Form U4; the firm will be subject to any applicable Late Disclosure Fees.

FINRA recognizes that there will on occasion be circumstances beyond a firm's control that prevent completion of the verification process within the 30-day window. In such cases, FINRA states, the firm's procedures should provide that the verification be completed as soon as practical, and the firm should document the basis for the delay. FINRA does not believe that it is necessary to amend the proposed rule text to clarify this point.

One commenter requested that FINRA confirm that the proposed verification requirement, including the public records search, applies to an initial Form U4 filed with FINRA through CRD requesting registration with FINRA and that the proposed requirement does not apply to a Form U4 filed by an affiliate of a member or a registration transferred through the mass transfer process.³⁸ The commenter also suggested that FINRA replace the term "transfer Form U4" as used in the proposed FINRA Rule 3110(e) with the term "relicense Form

U4" and amend the proposed rule text to include a reference to "an applicant's initial or relicense Form U4."

In response, FINRA states that the proposed verification requirement, including the public records search, applies to an initial Form U4 or a transfer Form U4. The term "initial Form U4" refers to the Form U4 filing required when an individual is registering with a FINRA member for the first time, including in the context of dual registration, or is registering with a FINRA member after more than two years have passed since the individual was last registered with a FINRA member. The term "transfer Form U4" refers to the Form U4 filing required when a registered person transfers from one FINRA member to another FINRA member. FINRA is not replacing the term "transfer Form U4". With respect to a Form U4 filed by a member that is an affiliate of another member, FINRA further states that the verification requirement would apply to the filing to the extent that it is considered an initial or a transfer Form U4 (e.g., a dual registration). The proposed verification requirement would not apply to the mass transfer process because that process does not require the filing of a Form U4. FINRA is proposing to clarify that the verification requirement, including the public records search, applies to an applicant's initial or transfer Form U4.

3. Member's Obligation To Conduct a Search of Reasonably Available Public Records

One commenter suggested that the public records search should extend to foreign jurisdictions in some circumstances, such as where an applicant has been registered with a foreign securities regulator or has resided in a foreign jurisdiction.³⁹ In response, FINRA states that it is often difficult to assess the comparability of a foreign country's laws, rules and regulations to those in the United States, particularly as it relates to the purposes of this proposed rule, and therefore, the requirement should be limited to a national search of reasonably available public records.⁴⁰ One commenter recommended that FINRA clarify the term "reasonably available public records" so that firms have an objective standard for compliance purposes.⁴¹

³⁹ See PIABA Letter.

⁴⁰ FINRA notes, however, that firms may find it necessary to conduct a search of public records in a foreign jurisdiction as part of their verification process and, where appropriate, should ensure such a search is consistent with applicable foreign laws, rules and regulations.

⁴¹ See Cornell Letter.

One commenter stated that FINRA should revise the proposed rule text to specifically identify the information in the Form U4 that firms are expected to verify through a public records search or define the term "public records" so the scope of the requirement is less uncertain.⁴² The commenter noted that business records are listed as an example of public records, but many business records (e.g., business formation documents) are not maintained in a comprehensive national database and may not be offered by a third-party service provider. In response, FINRA states that while public records include, among other records, business records, proposed FINRA Rule 3110(e) only requires a national search of reasonably available public records. FINRA further states that, as indicated above, the scope of what is considered reasonably available public records may change over time. Therefore, rather than define the term "reasonably available public records," FINRA believes that it is more useful for compliance purposes to specify the public records that are currently considered reasonably available, which include criminal records, bankruptcy records, judgments and liens.

One commenter asked FINRA to confirm that, to the extent that the proposed rule requires firms to obtain an investigative consumer report for an applicant, firms can rely on the applicant's consent on a Form U4 for purposes of complying with applicable laws, rules and regulations requiring an applicant's consent to obtain such reports, otherwise firms will need to implement additional procedures to ensure compliance with such laws, rules and regulations in each jurisdiction.⁴³ In response, FINRA states that the proposed rule does not require firms to obtain investigative consumer reports to comply with the requirements of the rule and that, with regard to the Form U4 or any similar report the firm may rely upon, it is the responsibility of the registering firm to determine whether consent on the Form U4 or any other document is in compliance with the laws, rules and regulations of the particular jurisdiction in which the firm and the applicant are operating.

4. Implementation Date

One commenter requested that FINRA extend the implementation date of proposed FINRA Rule 3110(e) from December 1, 2014, to December 1, 2015, so that firms have sufficient time to establish or revise their written

⁴² See SIFMA Letter.

⁴³ *Id.*

³⁶ See PIABA Letter.

³⁷ See FINRA By-Laws, Article V, Section 2(c).

³⁸ See SIFMA Letter.

procedures and address the operational issues resulting from the proposed rule.⁴⁴ In response, FINRA states that it expects firms to have an existing process in place to verify the information contained in an applicant's Form U4 noting that currently the person signing the form on behalf of the firm must certify that he has taken appropriate steps to verify the accuracy and completeness of the information contained in the form. FINRA also states it understands that most firms already conduct some form of public records search;⁴⁵ consequently, the proposed new requirements should not create an unreasonable burden for firms.

FINRA recognizes that the proposed rule imposes an affirmative obligation on firms to establish and implement written procedures to comply with the Form U4 verification process to the extent they currently do not have such procedures, and that such procedures must include a search of reasonably available public records. Thus, to accommodate any potential operational issues resulting from the proposed new requirements, FINRA is proposing to extend the implementation date of proposed FINRA Rule 3110(e) from December 1, 2014 to July 1, 2015.

5. Temporary Program To Address Underreported Form U4 Information

One commenter recommended that the refund program should be a one-time program and stated that FINRA should not use such programs in the future for late disclosure reporting because it may provide firms with negative reinforcement for untimely Form U4 reporting.⁴⁶ In response, FINRA states that the refund program under proposed FINRA Rule 3110.15 is intended to incentivize members to report underreported information and save FINRA the time and regulatory resources expended in contacting firms and requesting that such information be reported. FINRA also states that program is intended to run concurrent with FINRA's one-time search of specific financial public records, and thus is of limited duration. FINRA notes it may find it necessary to provide such programs in the future depending on the circumstances, but it will do so judiciously and only where appropriate.

Another commenter requested that FINRA consider adopting a more

permanent refund program or extending the sunset date from March 31, 2015 to December 1, 2015.⁴⁷ FINRA states that the refund program is intended to run concurrent with FINRA's one-time search of specific financial public records on all registered persons, which FINRA expects to complete on or before August 2015. FINRA is thus proposing to extend the sunset date of the program from March 31, 2015 to July 31, 2015. One commenter suggested that Question 14M on the Form U4 is ambiguous and open to interpretation and requested that FINRA revise the eligibility conditions under the refund program to address this perceived ambiguity.⁴⁸ According to the commenter, Question 14M on the Form U4 is confusing because one could argue that if an unsatisfied judgment or lien is satisfied within the 30-day window of having to file an amended Form U4, the firm would not have to amend the Form U4 to mark "yes" because the lien was satisfied before the filing deadline. The commenter also stated that if a firm learns of an unreported satisfied lien, the language of Question 14M suggests that the firm does not have to report such lien because it is not currently unsatisfied. The commenter stated that FINRA should modify the program to refund Late Disclosure Fees to members if the judgment or lien (1) occurred while the individual was registered with a prior firm; (2) is more than five years old; or (3) is under \$5,000. The commenter also asked whether the refund will be automated or whether firms have the burden to prove that they satisfy the conditions of the program to receive a refund.

FINRA is proposing to revise the refund program to address concerns regarding the assessment of the Late Disclosure Fee in circumstances where the unsatisfied judgment or lien has been satisfied, and at the time it was unsatisfied was of a relatively low amount (under \$5,000) and was reportable before the introduction of the procedures regarding the application of the Late Disclosure Fee to the reporting of judgments and liens on the Form U4 that became effective on August 13, 2012.⁴⁹ FINRA states the proposed revisions also address circumstances where the failure to report related to a mistaken belief that satisfying the judgment or lien shortly after learning it was unsatisfied (within 30 calendar

days of when it became unsatisfied) obviated the need to report the matter.⁵⁰

As revised, the members will receive a refund of Late Disclosure Fees assessed for the late filing of responses to Form U4 Question 14M (unsatisfied judgments or liens) if the Form U4 amendment is filed between April 24, 2014, and July 31, 2015, and one of the following conditions is met: (1) The judgment or lien has been satisfied, and at the time it was unsatisfied, it was under \$5,000 and the date the judgment or lien was filed with a court (as reported on Form U4 Judgment/Lien DRP, Question 4.A.) was on or before August 13, 2012; or (2) the unsatisfied judgment or lien was satisfied within 30 days after the individual learned of the judgment or lien (as reported on Form U4 Judgment/Lien DRP, Question 4.B.). The program has a retroactive effective date of April 24, 2014, and as revised it will sunset on July 31, 2015. With respect to refund procedures, FINRA explains that firms initially will be charged a Late Disclosure Fee and subsequently receive a refund in their FINRA Flex-Funding Account if they can establish, or if FINRA otherwise determines, that the conditions of the revised program have been satisfied.

6. Clarification of Questions 14K and 14M on the Form U4

One commenter requested that FINRA file with the Commission as part of a proposed rule change its FAQ statement⁵¹ that a compromise with creditors is a compromise with one or more creditors for purposes of Question 14K on the Form U4.⁵² The commenter also noted that Question 14M on the Form U4 is confusing because it asks "Do you have any unsatisfied judgments or liens against you," which could imply that a "yes" response is required only if an applicant currently has an outstanding unsatisfied judgment or lien. To clarify this point, the commenter suggested model language for FINRA's consideration. Similarly, another commenter requested that

⁵⁰ FINRA believes that there is a misconception regarding the obligation to report unsatisfied judgments and liens under Question 14M on the Form U4. The obligation to amend a Form U4 arises on the date a registered person receives notice or learns that he is subject to an unsatisfied judgment or lien, and an amended Form U4 should be filed no later than 30 calendar days from that date, regardless of whether the registered person satisfies the judgment or lien in the interim period before the 30-day deadline for filing a Form U4 amendment.

⁵¹ See FINRA, *Form U4 and U5 Interpretive Questions and Answers* (January 2013), available at <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p119944.pdf>.

⁵² See SIFMA Letter.

⁴⁴ *Id.*

⁴⁵ NASAA stated that "firms usually have in place a review process to verify the information contained in the Form U4 for most registration applicants" and, as such, the requirement formalizes an industry best practice. See NASAA letter.

⁴⁶ See Pace Letter.

⁴⁷ See SIFMA Letter.

⁴⁸ See FSI Letter.

⁴⁹ See FINRA, Information Notice, *Late Disclosure Fee Related to Reporting of Judgment/Lien Events* (August 2012), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p152106.pdf>.

FINRA clarify Question 14M on the Form U4 to remove any confusion regarding its scope.⁵³ In addition, the commenter stated that FINRA should clarify that it will not fine firms in instances where they did not treat a short sale as a compromise with creditors under Question 14K on the Form U4 prior to FINRA's guidance on the subject. In response, FINRA states it believes that these comments are outside the scope of the proposed rule change, and should be addressed in the context of changes to the Form U4 or its interpretations.

IV. Accelerated Approval

The Commission finds good cause to approve the proposed rule change, as amended by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The amendment responds to issues raised by commenters and makes minor modifications in response to the comments. Accelerated approval would allow FINRA to implement the amended proposal without delay. The proposal will provide firms with an incentive to determine if additional disclosures on Form U4 are required for their registered personnel, ultimately resulting in more complete and accurate information in WebCRD, and as a consequence in BrokerCheck. As noted by FINRA and the commenters, WebCRD is an important tool used by regulators, as well as the public to get information about registered persons with whom they may wish to do business. Therefore, implementing the proposal without delay is in the public interest. Accordingly, the Commission believes that good cause exists, pursuant to Section 19(b)(2) of the Act,⁵⁴ to approve the proposed rule change, as amended by Amendment No. 1, on an accelerated basis.

V. 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-FINRA-2014-038 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FINRA-2014-038. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room 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 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-2014-038 and should be submitted on or before January 27, 2015.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)⁵⁵ of the Act, that the proposed rule change (SR-FINRA-2014-038) be and hereby is approved, as amended, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁶

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73963; File No. SR-NYSEArca-2014-141]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Bylaws of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc., To Designate Its Chief Strategic Officer, Chief Technology Officer and General Counsel as "Senior Officers" of ICE

December 30, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on December 29, 2014, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Bylaws (the "ICE Bylaws") of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. ("ICE"), to designate its Chief Strategic Officer, Chief Technology Officer and General Counsel as "Senior Officers" of ICE. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, 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, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

⁵³ See FSI Letter.

⁵⁴ 15 U.S.C. 78s(b)(2).

⁵⁵ *Id.*

⁵⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.