

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-98850; File No. SR-FINRA-2023-014)

November 3, 2023

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish a Short-Form Membership Application Process and Partial Fee Waiver for Certain Firms Applying Due to Amended Exchange Act Rule 15b9-1

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 30, 2023, 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 adopt (1) FINRA Interpretive Material 1013-3 (“IM-1013-3”) that would set forth a short-form membership application process for firms that apply for FINRA membership due to the amendments to Exchange Act Rule 15b9-1,<sup>4</sup> adopted by the Commission

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

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

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

<sup>4</sup> 17 CFR 240.15b9-1.

on August 23, 2023;<sup>5</sup> and (2) FINRA Interpretive Material Section 4(e) of Schedule A to the FINRA By-Laws (“IM-Section 4(e)”) that would provide a partial waiver of the new membership application fee to those firms that are eligible to apply for FINRA membership pursuant to proposed IM-1013-3. Proposed IM-1013-3 and IM-Section 4(e) would be available only to SEC-registered non-FINRA member firms that apply for FINRA membership due to the Commission’s Exchange Act Rule 15b9-1 amendments and, as of August 23, 2023, have been a member of a national securities exchange with which FINRA has had a regulatory service agreement (“RSA”) for the 12-month period prior to August 23, 2023 (“Eligible Firms”).

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

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<sup>5</sup> See Securities Exchange Act Release No. 98202 (August 23, 2023), 88 FR 61850 (September 7, 2023).

On August 23, 2023, the Commission adopted amendments to Exchange Act Rule 15b9-1 that narrowed the exemption from membership in a registered national securities association (“Association”) for certain SEC-registered brokers or dealers that effect securities transactions other than on a national securities exchange of which they are a member.<sup>6</sup> Under amended Exchange Act Rule 15b9-1, a broker or dealer that effects securities transactions other than on a national securities exchange of which it is a member is exempt from Association membership if such broker or dealer (1) is a member of a national securities exchange; (2) carries no customer accounts; and (3) such transactions result solely from orders that are routed by a national securities exchange of which it is a member to comply with order protection regulatory requirements, or are solely for the purpose of executing the stock leg of a stock-option order.<sup>7</sup> Due to the amendments, certain existing SEC-registered brokers or dealers will no longer qualify for the exemption from Association membership and must become FINRA members.<sup>8</sup> The Commission has announced an effective date of November 6, 2023, and a compliance date of September 6, 2024.

Application Review Process for New FINRA Membership Under FINRA Rule 1013 (New Member Application and Interview) and Application Filing Fee

An entity seeking to become a new FINRA member firm must undergo an application process that typically begins by filing Form NMA (Application for New Membership) with FINRA in accordance with Rule 1013.<sup>9</sup> FINRA Rule 1014 (Department Decision) provides that after considering the application, a membership interview, other information and documents

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<sup>6</sup> See supra note 5.

<sup>7</sup> 17 CFR 240.15b9-1.

<sup>8</sup> FINRA is currently the only registered national securities association.

<sup>9</sup> A firm seeking new FINRA membership must also, among other requirements, provide FINRA with the documents and information outlined in Rule 1013(a)(1)(B) through (R).

provided by the applicant or obtained by FINRA, and the public interest and protection of investors, FINRA must determine whether the applicant meets the standards for admission.<sup>10</sup> Under Rule 1014, FINRA must render a decision on a new membership application within 180 days after the application is filed (or such later date as FINRA and the applicant have agreed in writing).<sup>11</sup> When the applicant submits Form NMA, it must also submit the appropriate filing fee pursuant to Section 4(e) of Schedule A to the FINRA By-Laws. As described below, FINRA is proposing to establish a short-form membership application process for Eligible Firms and provide for a partial waiver of the new membership application fee.

#### Short-Form Membership Application Process

In lieu of completing Form NMA and the other requirements under Rule 1013, including the new membership interview, proposed IM-1013-3 would allow an Eligible Firm to undergo a new membership application process that would permit completing a short-form application. An Eligible Firm would otherwise remain subject to all applicable FINRA rules, including the provisions of the FINRA Rule 1000 Series (Membership Application and Associated Person Registration).<sup>12</sup>

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<sup>10</sup> See generally Rule 1014(a).

<sup>11</sup> Pursuant to FINRA Rule 1015 (Review by National Adjudicatory Council), an applicant may file a written request for review of FINRA's decision with the National Adjudicatory Council.

<sup>12</sup> While FINRA typically has 180 days after a firm submits a new membership application to issue a decision, absent any factors that might prompt a request for additional information or for a full membership application, FINRA anticipates that it can process most applications for Eligible Firms and issue a decision in line with, or in many cases more quickly than, FINRA's current Fast-Track Review process timeframe for eligible applications. Under the Fast-Track Review process, FINRA aims to process eligible full membership applications within 100 days. See *infra* note 14.

FINRA recognizes that Eligible Firms have already undergone a membership application and review process with at least one national securities exchange to determine whether these firms were fit for membership. In addition, FINRA currently has substantial information about and experience with these firms and therefore is familiar with their businesses and associated risks (e.g., operational risks, market risk, market integrity risk) by virtue of the regulatory services FINRA provides pursuant to the RSAs it has with the national securities exchanges of which Eligible Firms are members.<sup>13</sup> For example, FINRA already conducts exams of Eligible Firms pursuant to an RSA, including trading-related exams for most of these firms. FINRA also provides, among other regulatory services, cross-market surveillance, investigations and disciplinary services pursuant to those RSAs. Some of the Eligible Firms are also affiliates of member firms. For these reasons, FINRA believes an abbreviated, short-form membership application process is appropriate for the Eligible Firms and that, in most cases, FINRA can effectively determine whether an Eligible Firm meets the membership standards in Rule 1014 without requiring submission of a Form NMA, provision of additional information or engaging in a formal interview with the firm.

Nonetheless, depending on particular facts and circumstances, FINRA may find it necessary to obtain additional information to evaluate an Eligible Firm for membership. To that end, proposed IM-1013-3 would provide that FINRA, in the public interest and for the protection

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<sup>13</sup> FINRA already has access to most, if not all, documents and information that would be required of these Eligible Firms during the membership application process. For example, by virtue of the regulatory services FINRA provides pursuant to the RSAs and related Central Registration Depository (“Web CRD<sup>®</sup>”) agreements it has with the national securities exchanges of which Eligible Firms are members, FINRA has access to, among other documents and information, Forms BD, Forms U4 for all registered persons and principals and other information available on Web CRD<sup>®</sup>, as well as Risk Assessment Reports, financial filings such as FOCUS Reports and Annual Reports and most recent Examination Reports with accompanying files and dispositions.

of investors, may require an Eligible Firm to provide FINRA with additional information or documents or meet any other requirement pursuant to Rule 1013, or to apply for membership pursuant to the full application and interview process under Rule 1013.<sup>14</sup> In addition, proposed IM-1013-3 would provide that if an Eligible Firm’s application for FINRA membership seeks to materially expand or change the firm’s business operations, such firm would be required to apply for new FINRA membership pursuant to the full application and interview process under Rule 1013, including completing Form NMA and submitting the appropriate application fee set forth in Section 4(e) of Schedule A to the FINRA By-Laws.<sup>15</sup>

Proposed IM-1013-3 would also require an Eligible Firm to submit the short-form application to FINRA at least 120 calendar days before the amended Exchange Act Rule 15b9-1 compliance date to provide FINRA with the time to process a firm’s short-form membership application before the amended Exchange Act Rule 15b9-1 compliance date—unless FINRA, in its discretion, agrees to accept an application after this deadline but before the amended Exchange Act Rule 15b9-1 compliance date.<sup>16</sup> As stated above, the Commission has announced a compliance date of September 6, 2024.

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<sup>14</sup> Factors that might prompt a request for additional information or a full membership application could include, for example, whether an Eligible Firm’s associated person is subject to a statutory disqualification or there are regulatory gaps identified that such firm would need to address to come into compliance with FINRA rules.

<sup>15</sup> If a firm is approved for FINRA membership and subsequently contemplates a business expansion to include activities beyond the scope underlying the new membership approval or a material change in business operations as that term is defined in paragraph (m) under FINRA Rule 1011 (Definitions), then such firm must apply for approval for a change in business operations pursuant to FINRA Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) and would be subject to the appropriate fee pursuant to Schedule A to the FINRA By-Laws.

<sup>16</sup> As stated above, certain factors may prompt a request for additional information or for a full membership application, which could prolong the time needed for FINRA to process a firm’s application and issue a decision. Therefore, FINRA would encourage firms to

### Partial Membership Application Fee Waiver

As stated above, the fee for an application for new membership, submitted through Form NMA, is typically subject to the fee structure set forth under Section 4(e) of Schedule A to the FINRA By-Laws.<sup>17</sup> FINRA is proposing a partial waiver of the new membership application fee for a short-form application submitted pursuant to proposed IM-1013-3. Proposed IM-Section 4(e) would assess one-half the applicable membership application fee set forth in Section 4(e) of Schedule A to the FINRA By-Laws. FINRA believes a partial fee waiver is appropriate with respect to the review of a short-form application submitted by an Eligible Firm because, as stated above, FINRA has substantial information about and experience with these firms and is familiar with their business and associated risks by virtue of the regulatory services FINRA provides pursuant to RSAs with the national securities exchanges of which the Eligible Firms are members. As such, FINRA will not need to obtain the same amount of information from an Eligible Firm that applies with the short-form application or dedicate the same resources to evaluate such an application as it would in other cases. However, as stated above, if FINRA determines that an Eligible Firm must undergo the full application and interview process pursuant to Rule 1013, such firm shall be assessed the full membership application fee set forth in Section 4(e) of Schedule A to the FINRA By-Laws.<sup>18</sup>

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apply for membership pursuant to proposed IM-1013-3 even earlier than 120 days before the compliance date of amended Exchange Act Rule 15b9-1.

<sup>17</sup> Pursuant to Section 4(e) of Schedule A to the FINRA By-Laws, the fees associated with a new FINRA membership application can vary, including a one-time application fee ranging from \$7,500 to \$55,000, depending on the number of registered representatives associated with a firm.

<sup>18</sup> See FINRA By-Laws, Schedule A, Section 4(e).

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>19</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, and must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. FINRA believes the proposed rule change would facilitate efficient and expedited processing of membership applications from the Eligible Firms, while maintaining investor protection by ensuring that these firms meet the applicable standards for FINRA membership. As stated above, the Eligible Firms have already undergone a membership application and review process with at least one national securities exchange to determine whether these firms were fit for membership. In addition, FINRA has substantial information about and experience with these firms and therefore is familiar with their businesses and associated risks (e.g., operational risks, market risk, market integrity risk) by virtue of the regulatory services FINRA provides pursuant to the RSAs it has with the national securities exchanges of which Eligible Firms are members. FINRA also retains the ability to request additional documents or information from an Eligible Firm or to require a firm to undergo the full application and interview process pursuant to Rule 1013, which further protects investors and the public interest.

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<sup>19</sup> 15 U.S.C. 78o-3(b)(6).



FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>20</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed partial waiver of the membership application fee, which would be available to all Eligible Firms that qualify to apply for new FINRA membership pursuant to proposed IM-1013-3, is consistent with an equitable allocation of reasonable fees. FINRA believes the proposed partial fee waiver reflects an equitable allocation of reasonable fees considering the streamlined review process contemplated in the short-form membership application process. As discussed above, to facilitate this streamlined membership application process, FINRA is able to leverage the substantial information about and experience with these firms gained by virtue of the regulatory services FINRA provides pursuant to RSAs with the national securities exchanges of which these firms are members. As such, FINRA would not need to obtain the same amount of information from an Eligible Firm applicant that it would from a non-Eligible Firm applicant. Moreover, the review process would also be streamlined for an Eligible Firm applicant relative to a non-Eligible Firm applicant. Thus, it is equitable to apply the fee waiver only to the Eligible Firms.

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.

Economic Impact Assessment

(a) Regulatory Need

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<sup>20</sup> 15 U.S.C. 78o-3(b)(5).

As discussed above, as a result of amendments to Exchange Act Rule 15b9-1, certain SEC-registered brokers or dealers that effect securities transactions other than on a national securities exchange of which they are a member will no longer qualify for an exemption from Association membership. FINRA understands that as a result, approximately 62 firms may seek to become FINRA members by the compliance date of amended Exchange Act Rule 15b9-1.<sup>21</sup> FINRA further understands that most, if not all, of these firms meet the standards for Eligible Firms as defined above. FINRA can, in most cases, effectively determine whether an Eligible Firm meets the membership standards in Rule 1014 without requiring submission of a Form NMA or subjecting such a firm to the other application and interview requirements of Rule 1013.<sup>22</sup>

The proposed rule change to implement the short-form membership application process would allow FINRA to review membership applications from Eligible Firms efficiently while maintaining investor protection. The partial membership application fee waiver is aligned with the proposed short-form membership application process and the related streamlined review process.

(b) Economic Baseline

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<sup>21</sup> The Commission estimated that, as of April 2023, there were 64 firms that were SEC-registered broker-dealers and exchange members but not FINRA members, and that such firms have forgone FINRA membership presumably in reliance on Exchange Act Rule 15b9-1. See Securities Exchange Act Release No. 98202 (August 23, 2023), 88 FR 61850, 61853-54 (September 7, 2023) (Exemption for Certain Exchange Members; Final Rule). The actual number of firms that may ultimately seek FINRA membership due to the narrowed exemption may change based on several factors. For example, since the Commission's estimate in April 2023, some firms have terminated their status as an SEC-registered broker-dealer or have already become FINRA members.

<sup>22</sup> The full membership application process may be required in some cases. See supra note 14.

The economic baseline for the proposed rule change includes the full application and interview process provided in Rule 1013, the membership application fee set forth in Section 4(e) of Schedule A to the FINRA By-Laws, and the recent amendments to Exchange Act Rule 15b9-1. FINRA understands that approximately 62 firms may seek to become FINRA members by the compliance date for amended Exchange Act Rule 15b9-1.

(c) Economic Impacts

i. Anticipated Benefits

Eligible Firms that successfully become FINRA members through the short-form membership application process would benefit from financial and non-financial cost savings given that these firms would not be required to provide documents and other information that are required under the full application and interview process. Eligible Firms would also receive a financial benefit from paying only one-half of the membership application fee. Becoming FINRA members more quickly would also resolve earlier any uncertainty firms may have about being able to join FINRA by the Commission's compliance date for its amendments to Exchange Act Rule 15b9-1.

ii. Anticipated Costs

Relative to the baseline, FINRA anticipates little or no additional risks to market integrity or investors. FINRA will obtain additional information or documents or require a firm to go through the regular NMA process if such is in the public interest and for the protection of investors. A firm that seeks to materially expand or change its business operations when applying would be required to apply for FINRA membership pursuant to all requirements under Rule 1013. A firm that is approved for FINRA membership and subsequently contemplates a business expansion to include activities beyond the scope underlying the new membership

approval or a material change in business operations would be required to apply for approval for a change in business operations pursuant to Rule 1017 and be subject to the appropriate fee pursuant to Schedule A to the FINRA By-Laws.

iii. Anticipated Competitive Effects

Relative to the baseline in which Eligible Firms would go through the full application and interview process and pay the full membership application fee, FINRA anticipates minimal competitive effects, if any. A streamlined membership application process for Eligible Firms would provide them certainty that they will be able to continue their business in compliance with amended Exchange Act Rule 15b9-1. Such certainty would mitigate any concerns regarding their ability to compete in the security markets without interruption.

In addition, Eligible Firms that successfully become FINRA members through the short-form membership application process would retain the resources that they would have otherwise spent on the full application and interview process and would pay only one-half of the membership application fee. These firms may use these resources for operational or investment purposes. Regarding the membership application fee, however, FINRA anticipates that the median amount waived would be \$6,250.<sup>23</sup> FINRA does not believe that this amount would significantly impact an Eligible Firm's business. Similarly, with respect to firms that seek FINRA membership but do not meet the proposed definition of "Eligible Firm" and therefore are not able to avail themselves of the short-form membership application and partial fee waiver, FINRA does not anticipate that the existence of the proposal would deter such firms from applying for FINRA membership or place them at a significant disadvantage relative to Eligible

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<sup>23</sup> The average amount waived is anticipated to be \$6,840 and ranges from \$3,750 to \$15,000.

Firms. Thus, FINRA expects that the effect of the proposed rule change on industry structure and competition would be insignificant.

(d) Alternatives Considered

FINRA considered charging the full membership application fee for Eligible Firms. However, FINRA believes a partial membership application fee waiver is appropriate because, as stated above, FINRA would not need to obtain the same amount of information from an Eligible Firm applicant or dedicate the same resources to evaluate such applicant as it would for a typical new applicant because FINRA is able to leverage the substantial information about and experience with these firms gained by virtue of the regulatory services FINRA provides pursuant to the RSAs with the national securities exchanges of which the Eligible Firms are members.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>24</sup> and Rule 19b-4(f)(6)<sup>25</sup> thereunder.

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<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>26</sup> 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>27</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. FINRA proposes to make the proposed rule change operative on the date of filing to allow Eligible Firms to apply for FINRA membership pursuant to proposed IM-1013-3 beginning on, or as close as possible to, the November 6, 2023 effective date of amended Exchange Act Rule 15b9-1. FINRA stated that while under the proposed rule change Eligible Firms must apply for membership at least 120 days before the September 6, 2024 compliance date of amended Exchange Act Rule 15b9-1, some firms have already inquired about beginning the application process. For those firms that wish to apply close to the effective date, this will also provide FINRA with additional time to process such Eligible Firms' applications and provide more certainty that they will be able to continue their business in compliance with amended Exchange Act Rule 15b9-1. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>28</sup>

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<sup>26</sup> 17 CFR 240.19b-4(f)(6).

<sup>27</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>28</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 (<https://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-2023-014 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-2023-014. 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 (<https://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 the filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-FINRA-2023-014 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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<sup>29</sup> 17 CFR 200.30-3(a)(12).