

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68918; File No. SR-FINRA-2013-014)

February 13, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the General Securities Sales Supervisor (Series 9/10) Registration Category

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “SEA”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 1, 2013, 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 filing with 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 amend NASD Rule 1022(g) (Limited Principal—General Securities Sales Supervisor) and NASD IM-1022-2 (Limited Principal—General Securities Sales Supervisor) to remove the restriction on General Securities Sales Supervisors from approving advertisements as defined in NASD Rule 2210 (Communications with the Public).

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.

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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).

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

Pursuant to NASD Rule 1022(g), if a principal's supervisory activities are limited solely to securities sales activities, the principal may register and qualify as a General Securities Sales Supervisor (Series 9/10) rather than separately register and qualify in multiple principal registration categories as may be applicable, such as registering and qualifying as a General Securities Principal (Series 24) and Registered Options Principal (Series 4) to supervise sales of corporate securities and options, respectively. A person registering as a General Securities Sales Supervisor must satisfy the General Securities Representative (Series 7) prerequisite registration and pass the appropriate qualification examinations for General Securities Sales Supervisors. In addition, General Securities Sales Supervisors are eligible to supervise security futures activities if they complete a firm-element continuing education program that addresses security futures products.<sup>4</sup> NASD IM-1022-2 explains the purpose of the General Securities Sales Supervisor registration category.

NASD Rule 1022(g) expressly prohibits a General Securities Sales Supervisor from

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<sup>4</sup> See NASD Rule 1022(g)(3).

performing any of the following activities: (1) supervision of the origination and structuring of underwritings; (2) supervision of market making commitments; (3) final approval of advertisements as defined in NASD Rule 2210; (4) supervision of the custody of firm or customer funds or securities for purposes of SEA Rule 15c3-3 (Customer Protection—Reserves and Custody of Securities);<sup>5</sup> or (5) supervision of overall compliance with financial responsibility rules.<sup>6</sup>

While General Securities Sales Supervisors are currently prohibited from approving “advertisements” as defined in NASD Rule 2210, they may approve “sales literature”<sup>7</sup> relating to most types of securities.<sup>8</sup>

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<sup>5</sup> 17 CFR 240.15c3-3.

<sup>6</sup> In addition, General Securities Sales Supervisors cannot be included for purposes of satisfying the two-principal requirement under NASD Rule 1021(e)(1). See NASD Rule 1022(g)(2)(B).

<sup>7</sup> NASD Rule 2210 currently defines the term “advertisement” as any material, other than an independently prepared reprint and institutional sales material, that is published, or used in any electronic or other public media, including any website, newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, or telephone directories (other than routine listings). See NASD Rule 2210(a)(1). NASD Rule 2210 currently defines the term “sales literature” as any written or electronic communication, other than an advertisement, independently prepared reprint, institutional sales material and correspondence, that is generally distributed or made generally available to customers or the public, including circulars, research reports, performance reports or summaries, form letters, telemarketing scripts, seminar texts, reprints (that are not independently prepared reprints) or excerpts of any other advertisement, sales literature or published article, and press releases concerning a member’s products or services. See NASD Rule 2210(a)(2). The Commission notes that NASD Rule 2210 was replaced by FINRA Rule 2210 (Communications with the Public), effective February 4, 2013. See infra note 10.

<sup>8</sup> General Securities Sales Supervisors may not approve sales literature relating to options and security futures unless they have additional registrations or qualifications. A Registered Options Principal must approve sales literature relating to options. See FINRA Rule 2220(b)(1) (Options Communications) (currently in effect). Further, as discussed above, General Securities Sales Supervisors must complete a firm-element continuing education program that addresses security futures products to approve sales literature relating to security futures. See NASD Rule 1022(g)(3). In addition, the

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),<sup>9</sup> FINRA adopted NASD Rule 2210 as FINRA Rule 2210 (Communications with the Public).<sup>10</sup> Among other changes from NASD Rule 2210, FINRA Rule 2210 combines the definitions of advertisement, sales literature and independently prepared reprint into a single category—retail communications,<sup>11</sup> and it no longer defines advertisements as a separate category of communications. FINRA made this change because modes of communication have largely rendered obsolete the distinction between sales literature and advertisements. For example, information in a blast email sent to a thousand prospective customers currently would be considered sales literature, but the same information posted to a firm’s website would be considered an advertisement. Sales literature and advertisements generally are subject to the same content standards under NASD Rule 2210. Because FINRA has removed the distinction between advertisements and sales literature in FINRA Rule 2210, FINRA is proposing to amend

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content of any equity research report that constitutes sales literature must be approved by a Research Principal or a Supervisory Analyst. See Notices to Members 04-81 (November 2004) and 07-04 (January 2007).

<sup>9</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

<sup>10</sup> FINRA Rule 2210 was approved by the Commission, but it is not yet effective. See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change; File No. SR-FINRA-2011-035). FINRA Rule 2210 will become effective on February 4, 2013. See Regulatory Notice 12-29 (June 2012).

<sup>11</sup> The term “retail communication” is defined as any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. See FINRA Rule 2210(a)(5).

NASD Rule 1022(g) and NASD IM-1022-2 to remove the restriction on approving advertisements.<sup>12</sup> Thus, the proposed rule change will allow General Securities Sales Supervisors to approve most types of retail communications.<sup>13</sup>

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be February 4, 2013.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</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. FINRA believes that the proposed rule change is also consistent with the provisions of Section 15A(g)(3) of the Act,<sup>15</sup> which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. FINRA believes that the proposed rule change will further these purposes by maintaining consistency between the communications with the

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<sup>12</sup> FINRA had originally proposed to make these changes as part of the proposed consolidated registration and qualification rules. See Regulatory Notice 09-70 (December 2009).

<sup>13</sup> General Securities Sales Supervisors may not approve retail communications relating to options or security futures unless they have additional registrations or qualifications. A Registered Options Principal must approve retail communications relating to options. See FINRA Rule 2220(b)(1) (Options Communications) (effective February 4, 2013). Further, as discussed above, General Securities Sales Supervisors must complete a firm-element continuing education program that addresses security futures products to approve retail communications relating to security futures. See NASD Rule 1022(g)(3). In addition, the content of any equity research report that constitutes a retail communication must be approved by a Research Principal or a Supervisory Analyst. See Notices to Members 04-81 (November 2004) and 07-04 (January 2007). Finally, pursuant to MSRB Rule G-21 (Advertising), advertisements relating to municipal securities must be approved by a Municipal Securities Principal or a General Securities Principal.

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

<sup>15</sup> 15 U.S.C. 78o-3(g)(3).

public rules and the registration and qualification rules, which will assist members and their associated persons in complying with these rules.

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.

The proposed rule change will reduce the burden on firms that may employ a General Securities Sales Supervisor by allowing such firms to more efficiently review and approve retail communications that do not require a specialized registration. The proposed rule change further will streamline the approval process by eliminating any need for a General Securities Principal to review some or all of a retail communication that a General Securities Sales Supervisor is competent to review.

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>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</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 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.

FINRA has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing so will allow FINRA to implement the proposed rule change on February 4, 2013, the same date that FINRA Rule 2210 became effective. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>18</sup>

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2013-014 on the subject line.

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<sup>18</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).

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2013-014 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).