

IV. Conclusion

It is therefore ordered, pursuant to Section 19b(2) of the Act,⁴³ that the proposed rule change (SR–NYSE–2016–31) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78851; File No. SR–FINRA–2016–036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt NASD Interpretive Material 2210–2 as FINRA Rule 2211 (Communications With the Public About Variable Life Insurance and Variable Annuities) in the Consolidated FINRA Rulebook

September 15, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 31, 2016, 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, II, and III 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,³ 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 NASD Interpretive Material 2210–2 (Communications with the Public About Variable Life Insurance and Variable Annuities) as FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities) in the consolidated FINRA

rulebook without any substantive changes. FINRA also proposes to update cross-references within other FINRA rules accordingly.

The text of the proposed rule change is available on FINRA’s Web site 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

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),⁴ FINRA is proposing to transfer NASD Interpretive Material 2210–2 (Communications with the Public About Variable Life Insurance and Variable Annuities) (“NASD IM–2210–2”) into the Consolidated FINRA Rulebook as FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities) without any substantive changes.

As with NASD IM–2210–2, proposed FINRA Rule 2211 provides a set of guidelines (“Guidelines”) that must be considered—in addition to the standards governing communications with the public under FINRA Rule 2210 (Communications with the Public)—in preparing communications about variable life insurance and variable annuities.

NASD IM–2210–2 states that the Guidelines are applicable to

“advertisements” and “sales literature” as defined in NASD Rule 2210, as well as “individualized communications such as personalized letters and computer generated illustrations, whether printed or made available on-screen.” The proposed rule change makes technical changes to NASD IM–2210–2 by replacing references to “advertisements,” “sales literature,” and “individualized communications” with the current corresponding terms defined in FINRA Rule 2210. In adopting FINRA Rule 2210, FINRA updated the definitions under NASD Rule 2210 by adopting the defined terms “retail communication,” for written communications that are distributed or made available to more than 25 retail investors within any 30 calendar-day period, and “correspondence” for written communications that are distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.”⁵ Accordingly, the proposed rule change would replace references in NASD IM–2210–2, where applicable, to the terms (1) “advertisements” and “sales literature” with the term “retail communications,”⁶ (2) “individualized communications” with the term “correspondence,” and (3) “communications” with the term “retail communications and correspondence,” as such terms are defined in FINRA Rule 2210. The proposed rule change also would amend paragraph (b)(5) of NASD IM–2210–2 by replacing the heading “sales literature and personalized illustrations” with “retail communications and correspondence,” and by replacing the term “sales literature” in paragraph (b)(5)(B) with the term “retail communications and correspondence,” to reflect the current intent and scope of this provision to include communications containing personalized illustrations that are sent to retail investors irrespective of whether a member distributes or makes them available to more than 25 retail investors within any 30 calendar-day period (qualifying the communication as a “retail communication”) or 25 or

⁴ The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from New York Stock Exchange LLC (“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).

⁵ See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Order Approving File No. SR–FINRA–2011–035). In addition, to the extent that a member distributed or made available a communication that qualified as an independently prepared reprint to more than 25 retail investors within a 30 calendar-day period, the communication also would fall under the definition of “retail communication.”

⁶ See Securities Exchange Act Release No. 64984 (July 28, 2011), 76 FR 46870 (August 3, 2011) (Notice of Filing File No. SR–FINRA–2011–035) (stating that communications that qualified as advertisements and sales literature generally would fall within the term “retail communication”).

⁴³ 15 U.S.C. 78s(b)(2).

⁴⁴ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 17 CFR 240.19b–4(f)(6).

fewer retail investors within any 30 calendar-day period (qualifying the communication as “correspondence”).

In addition, proposed FINRA Rule 2211 closely tracks the language of IM–2210–2 and makes only non-substantive, technical changes to the text of the NASD rule by, for instance, replacing the reference to a legacy NASD rule with the applicable FINRA rule.⁷

These proposed rule changes would correct references in IM–2210–2 for purposes of adopting it as a FINRA rule without changing the substantive meaning.

The proposed rule change also would replace all references to IM–2210–2 in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities) and 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)) with references to FINRA Rule 2211, accordingly.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be 30 days after the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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, which does not substantively change the rule, is consistent with the Act because it is being undertaken pursuant to the rulebook consolidation process, which is designed to provide additional clarity and regulatory efficiency to FINRA members by consolidating the applicable NASD, Incorporated NYSE, and FINRA rules into one rule set.

⁷ FINRA previously solicited comment on a proposal to move IM–2210–2 to the Consolidated FINRA Rulebook with substantive changes. See *Regulatory Notice* 08–39 (July 2008); see also Securities Exchange Act Release No. 61107 (December 3, 2009), 74 FR 65180 (December 9, 2009) (Notice of Filing File No. SR–FINRA–2009–070) (withdrawn on April 27, 2012). Given that FINRA would like to proceed with the rulebook consolidation process expeditiously to provide greater clarity and regulatory efficiency to FINRA members, FINRA is proposing to move IM–2210–2 to the Consolidated FINRA Rulebook without substantive changes at this time, but FINRA may consider proposing substantive changes to the rule as part of future rulemaking.

⁸ 15 U.S.C. 78o–3(b)(6).

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. As noted above, the proposed rule change will not substantively change either the text or application of the rule. FINRA would like to proceed with the rulebook consolidation process expeditiously, which it believes will provide additional clarity and regulatory efficiency to 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 with respect to the proposed rule change to transfer IM–2210–2 into the Consolidated FINRA Rulebook without any substantive changes.⁹

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 Act¹⁰ and Rule 19b–4(f)(6) thereunder.¹¹

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:

⁹ But see *supra* note 7.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b–4(f)(6).

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–2016–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–036. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; 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–2016–036 and should be submitted on or before October 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Brent J. Fields,
Secretary.

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¹² 17 CFR 200.30–3(a)(12).