

Attachment A

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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Text of Proposed New FINRA Rules (Marked to Show Changes from NASD Rule 1010 Series; NASD Rule 1010 Series to be Deleted in its Entirety from the Transitional Rulebook)

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1000. MEMBERSHIP APPLICATION AND ASSOCIATED PERSON REGISTRATION

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[1010. Membership Proceedings]

1011. Definitions

Unless otherwise provided, terms used in the Rule 1010 Series shall have the meaning as defined in Rule 0120.

(a) through (b) No Change.

(c) "Covered Pending Arbitration Claim"

The term "Covered Pending Arbitration Claim," means:

(1) For purposes of a business expansion as described in IM-1011-2:

(A) An investment-related, consumer initiated claim filed against the Associated Person that is unresolved; and whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the member's excess net capital.

(2) For purposes of an event described in Rule 1017(a)(4):

(A) An investment-related, consumer initiated claim filed against the transferring member or its Associated Persons that is unresolved; and whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the transferring member's excess net capital.

For purposes of this definition, the claim amount includes claimed compensatory loss amounts only, not requests for pain and suffering, punitive damages or attorney's fees.

(c) through (n) renumbered to (d) through (o).

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IM-1011-2. Business Expansions and Covered Pending Arbitration Claims

If a member is seeking to add one or more Associated Persons involved in sales and one or more of those Associated Persons has a Covered Pending Arbitration Claim, an unpaid arbitration award or unpaid settlement related to an arbitration, and the member is not otherwise required to file a Form CMA in accordance with Rule 1017, the member may not effect the contemplated business expansion unless the member has first submitted a written letter to the Department, in a manner prescribed by FINRA, seeking a materiality consultation for the contemplated business expansion. The Department shall consider the letter and other information or documents and determine in the public interest and the protection of investors that either: (1) the member is not required to file a Form CMA in accordance with Rule 1017 and may effect the contemplated business expansion; or (2) the member is required to file a Form CMA in accordance with Rule 1017 and the member may not effect the contemplated business expansion unless the Department approves the Form CMA.

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1013. New Member Application and Interview

(a) through (b) No Change.

(c) Notification of Pending Arbitration Claims, Unpaid Arbitration Awards or Unpaid Settlement Agreements Related to Arbitration

The Applicant shall promptly notify the Department in writing of any arbitration claim that is filed, awarded or becomes unpaid before a decision constituting final action of FINRA is served on the Applicant.

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1014. Department Decision

(a) Standards for Admission

After considering the application, the membership interview, other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the Applicant meets each of the following standards:

(1) through (2) No Change.

(3) The Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and NASD Rules, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department shall take into consideration whether:

(A) No Change.

(B) an Applicant's or Associated Person's record reflects a sales practice event[, a pending arbitration,] or a pending private civil action;

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(C) an Applicant or Associated Person is the subject of a pending, adjudicated, or settled regulatory action or investigation by the [Commission]SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated, or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea; [or]

(D) an Applicant, its control persons, principals, registered representatives, other Associated Persons, any lender of 5[%] percent or more of the Applicant's net capital, and any other member with respect to which these persons were a control person or a 5[%] percent lender of its net capital is subject to unpaid arbitration awards, other adjudicated customer awards, or unpaid arbitration settlements;

(E) an Applicant or Associated Person is the subject of a pending arbitration claim;

(D) through (F) renumbered to (F) through (H).

(4) through (14) No Change.

(b) Granting or Denying Application

(1) In reviewing an application for membership, the Department shall consider whether the Applicant and its Associated Persons meet each of the standards in paragraph (a). Where the Department determines that the Applicant or its Associated Persons are the subject of any of the events set forth in Rule 1014(a)(3)(A), [and] (C), (D), (F) and [through] (E)G, and (E) for new member applications, a presumption exists that the application should be denied. The Applicant may overcome the presumption by demonstrating that it can meet each of the standards in paragraph (a), notwithstanding the existence of any of the events set forth in Rule 1014(a)(3)(A), [and] (C), (D), (F) and [through] (E)G, and (E) for new member applications.

(2) through (3) No Change.

(c) through (g) No Change.

••• Supplementary Material: -----

.01 Evidence of Ability to Satisfy Unpaid Arbitration Awards, Other Adjudicated Customer Awards, Unpaid Arbitration Settlements or, for New Member Applications, Pending Arbitration Claims. To the extent that the Applicant or Associated Person is subject to unpaid arbitration awards, other adjudicated customer awards, unpaid arbitration settlements or, for new member applications, pending arbitration claims, the Applicant may overcome the presumption to deny the application set forth in Rules 1014(b) and 1017(i) if the Applicant submits with an application documentation that evidences the ability to satisfy all such awards, settlements or claims. Such documentation may include an escrow agreement, insurance coverage, a clearing deposit, a guarantee, a reserve fund or the retention of proceeds from an asset transfer, or such other forms that the Department may determine to be acceptable. The Applicant may provide a written opinion of an independent, reputable U.S. licensed counsel

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knowledgeable as to the value of such arbitration claims. Any demonstration by an Applicant of its ability to satisfy these outstanding obligations will be subject to a reasonableness assessment by the Department.

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1017. Application for Approval of Change in Ownership, Control, or Business Operations

(a) Events Requiring Application

A member shall file an application for approval of any of the following changes to its ownership, control, or business operations:

(1) through (3) No Change.

(4) Notwithstanding subparagraph (3) of Rule 1017(a), any direct or indirect acquisitions or transfers of a member's assets or any asset, business or line of operation where the transferring member or an Associated Person of the transferring member has a Covered Pending Arbitration Claim, unpaid arbitration award or unpaid settlement related to an arbitration, and the member is not otherwise required to file a Form CMA in accordance with Rule 1017, unless the member has submitted a written letter to the Department, in a manner prescribed by FINRA, seeking a materiality consultation for the contemplated transfer. The Department shall consider the letter and other information or documents and determine in the public interest and the protection of investors that either: (1) the member is not required to file a Form CMA in accordance with Rule 1017 and may effect the proposed transaction; or (2) the member is required to file a Form CMA in accordance with Rule 1017 and the member may not effect the proposed transaction unless the Department approves the Form CMA.

(4) through (5) renumbered to (5) through (6).

(b) No Change.

(c) Effecting Change and Imposition of Interim Restrictions

(1) through (3) No Change.

(4) Notwithstanding subparagraphs (1)–(3) of Rule 1017(c), where a member or Associated Person has a unpaid arbitration award or unpaid settlement agreement related to an arbitration at the time of filing an application under Rule 1017, the member may not effect such change until the member has demonstrated in the application its ability to satisfy such obligation in accordance with Rule 1014 and the Supplementary Material therein.

(d) through (g) No Change.

(h) Notification of Pending Arbitration Claims, Unpaid Arbitration Awards or Unpaid Settlement Agreements Related to Arbitration

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The Applicant shall promptly notify the Department in writing of any arbitration claim that is filed, awarded or becomes unpaid before a decision constituting final action of FINRA is served on the Applicant.

([h]i) Department Decision

(1) The Department shall consider the application, the membership interview, other information and documents provided by the Applicant or obtained by the Department, the public interest, and the protection of investors. In rendering a decision on an application submitted under Rule 1017(a), the Department shall consider whether the Applicant and its Associated Persons meet each of the standards in Rule 1014(a). Where the Department determines that the Applicant or its Associated Person are the subject of any of the events set forth in Rule 1014(a)(3)(A), [and] (C), (D), (F) and [through] ([E]G), a presumption exists that the application should be denied. The Applicant may overcome the presumption by demonstrating that it can meet each of the standards in Rule 1014(a), notwithstanding the existence of any of the events set forth in Rule 1014(a)(3)(A), [and] (C), (D), (F) and [through] ([E]G).

(A) through (B) No Change.

(2) through (4) No Change.

(i) through (l) renumbered to (j) through (m).

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