

Member that is rated 7 on the CRRM, NSCC charges 20 percent of the Member's aggregate CNS Fails Positions.<sup>20</sup>

NSCC explains that of the 20 percent charge, 10 percent is imposed pursuant to Procedure XV, Section I.(A)(1)(f) of the Rules, which describes NSCC's current CNS Fail Charge,<sup>21</sup> while the remaining 10 percent of the charge is imposed pursuant to Procedure XV, Section I.(B)(1) of the Rules, which authorizes NSCC's to require Members on the Watch List to make additional Clearing Fund deposits as determined by NSCC.<sup>22</sup> To clarify NSCC's current practices with respect to the assessment and collection of the CNS Fails Charge in the Rules, NSCC proposes to amend the Rules to clearly state that, for any Member that is rated 7 on the CRRM, the CNS Fails Charge would be 20 percent of the Member's aggregate CNS Fails Positions.<sup>23</sup>

### C. Detailed Description of the Proposed Rule Changes

To effectuate the proposed change, NSCC proposes to amend Rule 1 of the Rules<sup>24</sup> to add a definition for CNS Fails Position. The proposed definition would provide that the term "CNS Fails Position" means either a Long Position or a Short Position that did not settle on the Settlement Date.<sup>25</sup> NSCC is also proposing to amend Procedure XV, Section I.(A)(1)(f) of the Rules to provide that a Member's Clearing Fund contribution shall include an amount that is calculated by multiplying the current market value for such Member's aggregate CNS Fails Positions by (i) 5 percent for Members rated 1 through 4 on the CRRM; (ii) 10 percent for Members rated 5 or 6 on the CRRM; or (iii) 20 percent for Members rated 7 on the CRRM.<sup>26</sup>

## II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>27</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder

applicable to such organization. The Commission believes the proposal is consistent with Act, specifically Section 17A(b)(3)(F) of the Act and Rule 17Ad-22(e)(23)(i)<sup>28</sup> under the Act, as discussed below.

### A. Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act, requires, in part, that NSCC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>29</sup>

The proposed rule change would clarify and provide additional transparency to NSCC members regarding NSCC's current practices surrounding the assessment and collection of the CNS Fails Charges associated with each Member. Specifically, the proposed Rule would clearly state that Members with a CRRM rating of 7 are charged 20 percent of the Member's aggregate CNS Fails Positions (instead of the less transparent approach of charging 10 percent pursuant to the CNS Fails Charge and 10 pursuant to a separate Watch List charge). By doing so, this proposed rule change would help the Rules to be more transparent, accurate, and clear, which would better enable Members to understand their respective rights and obligations with respect to their NSCC membership and, in turn, support NSCC's clearance and settlement of securities transactions. Therefore, the Commission believes that the proposed rule change related to the CNS Fails Charge would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>30</sup>

### B. Consistency With Rule 17Ad-22(e)(23)(i)

Rule 17Ad-22(e)(23)(i) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures.<sup>31</sup>

As described above, the proposed rule change seeks to clarify in NSCC's Rules the current practices with respect to the assessment and collection of the CNS Fails Charge. Specifically, NSCC proposes to amend the Rules to include a definition for CNS Fails Position and clearly state NSCC's current practices regarding the assessment and collection of the CNS Fails Charge, including the

percentages that NSCC charges Members according to their CRRM rating. In doing so, the Commission believes that proposed rule change would help promote disclosure of relevant rules and material procedures relating to the CNS Fails Charge, consistent with Rule 17Ad-22(e)(23)(i) under the Act.<sup>32</sup>

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act<sup>33</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-NSCC-2017-015 be, and hereby is, *approved*.<sup>34</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81781; File No. SR-FINRA-2017-027]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to Capital Acquisition Broker Rules 203 (Engaging in Distribution and Solicitation Activities With Government Entities) and 458 (Books and Records Requirements for Government Distribution and Solicitation Activities)

September 29, 2017.

## I. Introduction

On August 17, 2017, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt Capital Acquisition Broker Rules 203 (Engaging in Distribution and Solicitation Activities with Government

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Notice, 82 FR at 40177.

<sup>23</sup> *Id.* NSCC states that Members which are not rated by the CRRM are not subject to the CNS Fails Charge; however, these Members can be placed on the Watch List as deemed necessary by NSCC to protect itself and its Members. *Id.*

<sup>24</sup> Rules, *supra* note 4.

<sup>25</sup> Notice, 82 FR at 40176.

<sup>26</sup> *Id.*

<sup>27</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>28</sup> 15 U.S.C. 78q-1(b)(3)(F); 17 CFR 240.17Ad-22(e)(23)(i).

<sup>29</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>30</sup> *Id.*

<sup>31</sup> 17 CFR 240.17Ad-22(e)(23)(i).

<sup>32</sup> *Id.*

<sup>33</sup> 15 U.S.C. 78q-1.

<sup>34</sup> In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

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

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

Entities) and 458 (Books and Records Requirements for Government Distribution and Solicitation Activities). These rules would apply established “pay-to-play” and related recordkeeping rules to the activities of member firms that have elected to be governed by the Capital Acquisition Broker (“CAB”) <sup>3</sup> Rules and that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers.

The proposed rule change was published for comment in the **Federal Register** on August 24, 2017.<sup>4</sup> The public comment period closed on September 14, 2017. No comment letters were received in response to the Notice. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

As discussed in the Notice and described below, the proposed rule change seeks to clarify that FINRA’s existing pay-to-play rules and related recordkeeping requirements apply to CABs. Under the proposed rules, CABs would be subject to the same restrictions designed to halt pay-to-play practices as non-CAB member firms, which would effectively allow them to engage in distribution and solicitation activities with government entities on behalf of investment advisers.<sup>5</sup>

### A. Pay-to-Play Rules

In July 2010, the SEC adopted Rule 206(4)–5 under the Investment Advisers Act of 1940 addressing pay-to-play practices by investment advisers (the “SEC Pay-to-Play Rule”).<sup>6</sup> The SEC Pay-

to-Play Rule prohibits, in part, an investment adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of the investment adviser unless the person is a “regulated person.”<sup>7</sup> A “regulated person” includes a member firm, provided that: (a) FINRA rules prohibit member firms from engaging in distribution or solicitation activities if political contributions have been made; and (b) the SEC finds, by order, that such rules impose substantially equivalent or more stringent restrictions on member firms than the SEC Pay-to-Play Rule imposes on investment advisers and that such rules are consistent with the objectives of the SEC Pay-to-Play Rule.<sup>8</sup>

Based on the framework of the SEC Pay-to-Play Rule, FINRA proposed Rules 2030 and 4580, which establish a comprehensive regime to regulate the activities of FINRA member firms that engage in distribution or solicitation activities with government entities on behalf of investment advisers, and to deter member firms from engaging in pay-to-play practices.<sup>9</sup> The SEC approved these rules on August 25, 2016,<sup>10</sup> and later found that Rule 2030 imposes substantially equivalent or more stringent restrictions on member firms than the SEC Pay-to-Play Rule imposes on investment advisers, and that it is consistent with the objectives of the SEC Pay-to-Play Rule.<sup>11</sup> Rules 2030 and 4580 became effective on August 20, 2017.<sup>12</sup>

### B. FINRA CAB Rules

On August 18, 2016, the SEC approved a separate set of FINRA rules for firms that meet the definition of a CAB and that elect to be governed under this rule set.<sup>13</sup> Member firms that elect

to be governed under the CAB rule set are not permitted, among other things, to carry or maintain customer accounts, handle customers’ funds or securities, accept customers’ trading orders, or engage in proprietary trading or market-making.

The CAB Rules became effective on April 14, 2017. In order to provide new CAB applicants with lead time to apply for FINRA membership and obtain the necessary qualifications and registrations, CAB Rules 101–125 became effective on January 3, 2017.

### C. Addition of FINRA Pay-to-Play Rules to CAB Rulebook

The CAB Rules subject CABs to a number of FINRA Rules, but do not expressly provide that FINRA Rules 2030 and 4580 apply to CABs. As explained by FINRA in the Notice, the proposed rule change sought to make clear that CABs are subject to FINRA’s pay-to-play rule, which would make CABs, like non-CABs, “regulated persons” that are subject to restrictions designed to halt pay-to-play practices and thus can engage in distribution and solicitation activities with government entities on behalf of investment advisers in accordance with the SEC’s Pay-to-Play Rule.

To make this clarification, FINRA proposed the addition of CAB Rules 203 and 458 to the CAB rule book. CAB Rule 203 would provide that all capital acquisition brokers are subject to existing FINRA Rule 2030. CAB Rule 458 would provide that all capital acquisition brokers are subject to existing FINRA Rule 4580.

## III. Comment Summary

As noted above, no comment letters were received on the proposed rule change.

## IV. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>14</sup> The Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,<sup>15</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

<sup>3</sup> CABs are member firms that engage in a limited range of activities, essentially advising companies and private equity funds on capital raising and corporate restructuring, and acting as placement agents for sales of unregistered securities to institutional investors under limited conditions. See *FINRA Regulatory Notice* 16–37 (October 2016), at 1.

<sup>4</sup> See Exchange Act Release No. 81438 (August 17, 2017), 82 FR 40181 (August 24, 2017) (Notice of Filing of a Proposed Rule Change Relating to Capital Acquisition Broker Rules 203 and 458) (“Notice”).

<sup>5</sup> “Pay-to-play” practices typically involve a person making cash or in-kind political contributions (or soliciting or coordinating others to make such contributions) to help finance the election campaigns of state or local officials as a quid pro quo for the award of government contracts. See *FINRA Regulatory Notice* 16–40 (October 2016) at 9, note 1.

<sup>6</sup> See Investment Advisers Act Release No. 3043 (July 1, 2010), 75 FR 41018 (July 14, 2010) (Political Contributions by Certain Investment Advisers). See also Investment Advisers Act Release No. 3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) (Rules Implementing Amendments to the Investment Advisers Act of 1940); Investment Advisers Act Release No. 3418 (June 8, 2012), 77 FR 35263 (June 13, 2012) (Political Contributions by Certain

Investment Advisers; Ban on Third Party Solicitation; Extension of Compliance Date).

<sup>7</sup> See Investment Advisers Act Rule 206(4)–5(a)(2)(i)(A), 17 CFR 275.206(4)–5(a)(2)(i)(A).

<sup>8</sup> See Investment Advisers Act Rule 206(4)–5(f)(9), 17 CFR 275.206(4)–5(f)(9). A “regulated person” also includes SEC-registered investment advisers and SEC-registered municipal advisors, subject to specified conditions.

<sup>9</sup> See Securities Exchange Act Release No. 76767 (December 24, 2015), 80 FR 81650 (December 30, 2015).

<sup>10</sup> See Securities Exchange Act Release No. 78683 (August 25, 2016), 81 FR 60051 (August 31, 2016).

<sup>11</sup> See Investment Advisers Act Release No. 4532 (September 20, 2016), 81 FR 66526 (September 28, 2016).

<sup>12</sup> See *FINRA Regulatory Notice* 16–40 (October 2016).

<sup>13</sup> See Securities Exchange Act Release No. 78617 (August 18, 2016), 81 FR 57948 (August 24, 2016) (Order Approving Rule Change as Modified by Amendment Nos. 1 and 2 to Adopt FINRA Capital Acquisition Broker Rules).

<sup>14</sup> In approving this rule change, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> 15 U.S.C. 78o–3(b)(6).

principles of trade, and, in general, to protect investors and the public interest. Specifically, the Commission finds that the proposed rule change is consistent with the Exchange Act for the reasons expressed in the Order Approving a Proposed Rule Change to Adopt FINRA Rule 2030—namely, that this proposed rule will discourage CABs, like non-CAB member firms, from engaging in pay-to-play practices that may create market distortions, impede a free and open market, and harm investors and the public interest.<sup>16</sup>

The Commission agrees with FINRA that the proposed rule change will clarify that CABs and non-CAB member firms are subject to the same rule regime as they engage in distribution or solicitation activities with government entities on behalf of investment advisers. Without the proposed rule change, under the SEC's Pay-to-Play Rule, CABs could not be retained by investment advisers to engage in distribution and solicitation activities with government entities on their behalf because the rule set for CABs does not expressly provide that FINRA Rule 2030 applies to CABs. The Commission also agrees with FINRA that having such rules in place will deter CABs from engaging in pay-to-play practices, and that clarifying the application of FINRA Rules 2030 and 4580 to CABs is a more effective regulatory response to concerns regarding third-party solicitations than an outright ban on such activity.

Lastly, the Commission agrees with FINRA that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In the Notice, FINRA explained that the proposed rule change would subject CABs to the same pay-to-play rules as non-CAB member firms, and therefore, the economic impacts associated with the proposal were contemplated in the Economic Impact Assessment accompanying the filing of FINRA Rules 2030 and 4580. FINRA's Economic Impact Assessment in the Proposing Release for FINRA Rules 2030 and 4580 considered the impact on all FINRA member firms, including firms that at that time engaged solely in activities that were later deemed permissible for CABs.<sup>17</sup>

<sup>16</sup> See Securities Exchange Act Release No. 78683 (August 25, 2016), 81 FR at 60063 (August 31, 2016).

<sup>17</sup> See Securities Exchange Act Release No. 76767 (December 24, 2015), 80 FR 81650, 81656–81658 (December 30, 2015) (at the time of the Economic Impact Assessment, the SEC had not approved the separate set of rules for CABs).

Taking into consideration the foregoing, the Commission believes that the proposal is consistent with the Exchange Act. The Commission believes that the proposal will help protect investors and the public interest by, among other things, clarifying that CABs and non-CAB member firms are subject to the same rule regime as they engage in distribution or solicitation activities with government entities on behalf of investment advisers, and by deterring pay-to-play practices. Accordingly, the Commission believes that the approach proposed by FINRA is appropriate and designed to protect investors and the public interest, consistent with Section 15A(b)(6) of the Exchange Act and the rules and regulations thereunder.

## V. Conclusion

*It is therefore ordered* pursuant to Section 19(b)(2) of the Exchange Act<sup>18</sup> that the proposal (SR–FINRA–2017–027), be and hereby is approved.

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

**Eduardo A. Aleman**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81764; File No. SR–CHX–2017–13]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Sponsored Access

September 29, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4<sup>2</sup> thereunder, notice is hereby given that on September 15, 2017, the Chicago Stock Exchange, Inc. (“CHX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend the Rules of the Exchange (“CHX Rules”) related to Sponsored Access. The text of this proposed rule change is available on the Exchange's Web site at ([www.chx.com](http://www.chx.com)) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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. The CHX 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 Changes

#### 1. Purpose

The Exchange proposes to amend CHX Rules to effect the following changes:

- Amend Article 1, Rule 1 to adopt the following defined terms: “Sponsoring Participant,” “Sponsored Person” and “Sponsored Access.”
- Amend Article 5, Rule 3 to permit Sponsoring Participants to provide Sponsored Access to the Exchange to Sponsored Persons, subject to enhanced requirements. Current Article 5, Rule 3 only permits Sponsoring Participants to provide authorized access to the Exchange's trading facilities to non-Participant<sup>3</sup> broker-dealers. The proposal would permit Participants, non-Participants, broker-dealers and firms that are not broker-dealers to receive Sponsored Access to the Exchange.<sup>4</sup>

<sup>3</sup> A “Participant” is a “member” of the Exchange for the purposes of the Act. See CHX Article 1, Rule 1(s).

<sup>4</sup> The Exchange notes that Nasdaq Stock Market (“Nasdaq”) permits its members to provide Sponsored Access to a “Sponsored Participant,” which may be a non-broker-dealer, subject to the requirements of Nasdaq Rule 4615. According to Nasdaq, a “Sponsored Participant” may be a member, non-member, a broker-dealer or not a broker-dealer, such as “a hedge fund, mutual fund, bank or insurance company.” See Exchange Act Release No. 76449 (November 17, 2015), 80 FR 73011, 73012 (November 23, 2015) (SR–NASDAQ–2015–140).