SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81438; File No. SR–FINRA–2017–027]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of 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)

August 18, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 17, 2017, 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. 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 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) that would apply established ''pay-to-play'' and related rules to the activities of member firms that have elected to be governed by the Capital Acquisition Broker (''CAB'') Rules and that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers.

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

FINRA 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 [3] by investment advisers (the ''SEC Pay-to-Play Rule'').[4] 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.'' [5] 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.[6]

Based on this regulatory framework, on August 25, 2016, the SEC approved FINRA Rules 2030 and 4580 to establish a comprehensive regime to regulate the activities of member firms that engage in distribution or solicitation activities with government entities on behalf of investment advisers.[7] On September 20, 2016, the SEC, by order, found that FINRA Rule 2030 imposes substantially equivalent or more stringent restrictions on member firms than the SEC Pay-to-Play Rule imposes on investment advisers and is consistent with the objectives of the SEC Pay-to-Play Rule.[8] These rules enable member firms to continue to engage in distribution and solicitation activities with government entities on behalf of investment advisers while at the same time deterring member firms from engaging in pay-to-play practices.

In October 2016, FINRA published a *Regulatory Notice* announcing Commission approval of FINRA Rules 2030 and 4580.[9] The *Notice* also announced that Rules 2030 and 4580 will become effective on August 20, 2017.

FINRA Capital Acquisition Broker Rules

On August 18, 2016, the SEC approved [10] a separate set of FINRA rules for firms that meet the definition of a ''capital acquisition broker'' and that elect to be governed under this rule set. 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. 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.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''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 or bond ballot initiatives as a quid pro quo for the receipt of government contracts. *See* FINRA *Regulatory Notice* 16–40 (October 2016) at 9, note 1.

[4] *See* Investment Advisers Act Release No. 3043 (July 1, 2010), 75 FR 41018 (July 14, 2010) (S7–18–09) (Political Contributions by Certain Investment Advisers) (''SEC Pay-to-Play Rule Adopting Release''). *See also* Investment Advisers Act Release No. 3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) (S7–36–10) (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) (S7–18–09) (Political Contributions by Certain Investment Advisers; Ban on Third Party Solicitation; Extension of Compliance Date).

[5] *See* Investment Advisers Act Rule 206(4)–5(a)(2)(i)(A), 17 CFR 275.206(4)–5(a)(2)(i)(A).

[6] *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.

[7] *See* Securities Exchange Act Release No. 78683 (August 25, 2016), 81 FR 60051 (August 31, 2016) (SR–FINRA–2015–056) (Approval Order). *See also* Securities Exchange Act Release No. 76767 (December 24, 2015), 80 FR 81650 (December 30, 2015) (SR–FINRA–2015–056) (Proposing Release).

[8] *See* Investment Advisers Act Release No. 4532 (September 20, 2016), 81 FR 66526 (September 28, 2016) (S7–16–16).

[9] *See* FINRA *Regulatory Notice* 16–40 (October 2016).

[10] *See* Securities Exchange Act Release No. 78617 (August 18, 2016), 81 FR 57948 (August 24, 2016) (SR–FINRA–2015–054) (Order Approving Rule Change as Modified by Amendment Nos. 1 and 2 to Adopt FINRA Capital Acquisition Broker Rules).

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. FINRA believes that the CAB Rules should be clarified to reflect that FINRA Rule 2030 and the related record-keeping requirements of FINRA Rule 4580 apply to CABs. As stated above, 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.'' The SEC Pay-to-Play Rule defines a ''regulated person'' to include a member firm subject to a FINRA pay-to-play rule.

The proposed rule change would make clear that CABs are subject to FINRA's pay-to-play rule and, therefore, that CABs, similarly to non-CAB member firms, are ''regulated persons'' that 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, while at the same time deterring CABs from engaging in pay-to-play practices.

To make this clarification, FINRA proposes the addition of CAB Rule 203, which would provide that all capital acquisition brokers are subject to FINRA Rule 2030. CAB Rule 458 would provide that all capital acquisition brokers are subject to FINRA Rule 4580.

Effective Date

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] 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.

[11] 15 U.S.C. 78*o*–3(b)(6).

FINRA believes that the proposed rule change would make clear that CABs are subject to the same regime that regulates the activities of non-CAB member firms that engage in distribution or solicitation activities with government entities on behalf of investment advisers, while deterring CABs from engaging in pay-to-play practices. In the absence of this proposed rule change, under the SEC's Pay-to-Play Rule, CABs could be prohibited from receiving compensation for engaging in distribution and solicitation activities with government entities on behalf of investment advisers following the effective date of FINRA Rule 2030 because the rule set for CABs does not expressly provide that FINRA Rule 2030 applies to CABs. FINRA believes that clarifying that FINRA Rule 2030 and the related record-keeping requirements of FINRA Rule 4580 apply to CABs is a more effective regulatory response to the concerns identified by the SEC regarding third-party solicitations than an outright ban on such activity. Thus, the proposed rule change is intended to make clear that CABs, similarly to non-CAB member firms, are ''regulated persons'' that can engage in distribution and solicitation activities with government entities on behalf of investment advisers in accordance with the SEC Pay-to-Play rule, while at the same time deterring such firms from engaging in pay-to-play practices.

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. While CABs have a more limited scope of permitted activities relative to other member firms, they still may engage, for example, in providing advice to municipalities either as issuer or as participant in the issuance. The proposed rule change would allow CABs to be subject to the same pay-to-play rules as other non-CAB member firms. As such, the economic impacts associated with this proposal are all contemplated in the Economic Impact Assessment accompanying the filing of FINRA Rules 2030 and 4580. In this regard, 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.[12]

[12] *See supra* note 7. *See also* Securities Exchange Act Release No. 76767 (December 24, 2015), 80 FR 81650, 81656–81658 (December 30, 2015) (SR–FINRA–2015–056) (at the time of the Economic Impact Assessment, the SEC had not approved the separate set of rules for CABs).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2017–027 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–2017–027. 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–2017–027 and should be submitted on or before September 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81440; File No. SR–NYSE–2017–30]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 2 to Proposed Rule Change To Amend Section 102.01B of the NYSE Listed Company Manual To Provide for the Listing of Companies That List Without a Prior Exchange Act Registration and That Are Not Listing in Connection With an Underwritten Initial Public Offering and Related Changes to Rules 15, 104, and 123D

August 18, 2017.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 13, 2017, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The proposed rule change was published for comment in the **Federal Register** on June 20, 2017.[4] The Commission received one comment on the proposed rule change.[5] On August 3, 2017, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to September 18, 2017.[6]

The Exchange filed Amendment No. 2 to the proposed rule change on August 16, 2017, which amended and replaced the proposed rule change.[7] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.[8]

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

The Exchange proposes to amend: (i) Footnote (E) to Section 102.01B of the NYSE Listed Company Manual (the ''Manual'') to modify the provisions relating to the qualification of companies listing without a prior Exchange Act registration; (ii) Rule 15 to add a Reference Price for when a security is listed under Footnote (E) to Section 102.01B; (iii) Rule 104 to specify DMM requirements when a security is listed under Footnote (E) to Section 102.01B and there has been no trading in the private market for such security; and (iv) Rule 123D to specify that the Exchange may declare a regulatory halt in a security that is the subject of an initial listing on the Exchange. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, 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, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend: (i) Footnote (E) to Section 102.01B of the Manual to modify the provisions relating to the qualification of companies listing without a prior Exchange Act registration; (ii) Rule 15 to add a Reference Price for when a security is listed under Footnote (E) to Section 102.01B; (iii) Rule 104 to specify DMM requirements when a security is listed under Footnote (E) to Section 102.10B and there has been no trading in the private market for such security; and (iv) Rule 123D to specify that the Exchange may declare a regulatory halt in a security that is the subject of an initial listing on the Exchange.[9]

Amendments to Footnote (E) to Section 102.01B

Generally, the Exchange expects to list companies in connection with a firm commitment underwritten initial public offering (''IPO''), upon transfer from another market, or pursuant to a spin-off. Companies listing in connection with an IPO must demonstrate that they have $40 million in market value of

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 809333 (June 15, 2017), 82 FR 28200 (June 20, 2017)(''Notice'').

[5] *See* letter from James J. Angel, Associate Professor of Finance, Georgetown University, dated July 28, 2017.

[6] *See* Securities Exchange Act Release No. 81309 (August 3, 2017), 82 FR 37244 (August 9, 2017).

[7] The Exchange filed Amendment No. 1 to the proposed rule change on July 28, 2017 and withdrew Amendment No. 1 on August 16, 2017.

[8] In Amendment No. 2, the Exchange, among other things, provides that a Designated Market Maker (''DMM'') can only use a trading price in a private placement market as a reference price and to facilitate a fair and orderly opening on the first day of trading in a security being listed under proposed Footnote (E) to Section 102.01(B) of the NYSE's Listed Company Manual (''non-IPO new listing'') if the private placement market has had recent sustained history of trading prior to listing. If there is no recent sustained history of trading prior to listing in the private placement market, the proposal states that the DMM will consult with a financial advisor to the issuer of the security to establish a reference price pursuant to Exchange Rule 15 and facilitate a fair and orderly opening pursuant to Exchange Rule 104. Amendment No. 2, also amended the proposal to delete the proposed regulatory halt provision for an initial public offering so that the proposed new regulatory halt authority is only applicable to a security that is the subject of a non-IPO new listing. Amendment No 2 also adds language to make clear that the regulatory halt authority for a non-IPO new listing will be terminated when the DMM opens the security for trading. The proposed new regulatory halt will, therefore, only apply during the pre-opening period on the first day of trading on the Exchange in a non-IPO new listing.

[9] The Exchange has previously filed this proposal as SR–NYSE–2017–30. *See* Securities Exchange Act Release No. 80933 (June 15, 2017), 82 FR 28200 (June 20, 2017) (SR–NYSE–2017–30). This Amendment No. 2 replaces and supersedes the original filing of SR–NYSE–2017–30 in its entirety.