

## Trading Activity Fee (TAF)

### FINRA Adopts TAF Exemption for Proprietary Trading Firms

Effective Date: November 6, 2023

#### Summary

FINRA has amended its By-Laws to exempt from the Trading Activity Fee (TAF) any transaction by a proprietary trading firm that occurs on an exchange of which the proprietary trading firm is a member.

The amendment to FINRA's TAF will take effect on November 6, 2023.

The amended text of the FINRA By-Laws is set forth in [Attachment A](#).

Questions regarding this *Notice* should be directed to:

- ▶ for payment questions, FINRA Finance, at (240) 386-5910 or [ar@finra.org](mailto:ar@finra.org); or
- ▶ for legal or interpretive questions, Faisal Sheikh, Assistant General Counsel, Office of General Counsel, at (202) 728-8370 or [faisal.sheikh@finra.org](mailto:faisal.sheikh@finra.org).

#### Background and Discussion

Section 15(b)(8) of the Securities Exchange Act of 1934 (SEA) generally requires that a registered broker-dealer that effects transactions in securities must be a member of a national securities association unless the broker-dealer effects transactions in securities solely on a national securities exchange of which it is a member, unless an exemption is available under SEA Rule 15b9-1.<sup>1</sup> On August 23, 2023, the SEC adopted amendments to Rule 15b9-1 that will significantly narrow the exemption from FINRA membership ("Rule 15b9-1 Amendments").<sup>2</sup> Under the Rule 15b9-1 Amendments, a proprietary trading firm will be required to become a FINRA member if the firm effects transactions other than on an exchange of which it is a member, unless: (i) such transactions result solely from orders that are routed by a national securities exchange of which the firm is a member to comply with Rule 611 of Regulation NMS or the Options Order Protection and Locked/Crossed Market Plan; or (ii) are solely for the purpose of executing the stock leg of a stock-option

October 18, 2023

#### Notice Type

- ▶ Rule Amendment

#### Suggested Routing

- ▶ Compliance
- ▶ Institutional
- ▶ Legal
- ▶ Operations
- ▶ Senior Management
- ▶ Trading

#### Key Topics

- ▶ Market Making
- ▶ Proprietary Trading Firms
- ▶ Trading Activity Fee

#### Referenced Rules

- ▶ Rule 611 of Regulation NMS
- ▶ Schedule A to FINRA By-Laws, Section 1
- ▶ SEA Rule 15b9-1
- ▶ Section 15(b)(8) of the Exchange Act

order.<sup>3</sup> The Rule 15b9-1 Amendments will be effective on November 6, 2023, and the compliance date will be September 6, 2024.<sup>4</sup>

Proprietary trading firms that become FINRA members as a result of the Rule 15b9-1 Amendments will become subject to FINRA's existing rules, as applicable, including the TAF. FINRA has amended the TAF to provide an exemption for transactions by a proprietary trading firm effected on a national securities exchange of which the proprietary trading firm is a member.<sup>5</sup> For purposes of the TAF exemption, a "proprietary trading firm" is a member that:

- (i) trades exclusively its own capital;
- (ii) does not have "customers," which shall include any person, other than a broker or dealer, with whom the member engages, or within the past six months has engaged, in securities activities; and
- (iii) conducts all trading through the firm's accounts by traders that are owners of, employees of, or contractors to the firm, or employees of an affiliate of the firm.

Transactions by a proprietary trading firm otherwise than on an exchange of which the firm is a member—whether on another exchange of which the firm is not a member, or off-exchange—will remain subject to the TAF, unless another exemption applies. Both proprietary trading firms newly joining FINRA as a result of the 15b9-1 Amendments and existing member proprietary trading firms that satisfy the conditions described above will be eligible for the TAF exemption.

The TAF exemption for proprietary trading firms will be effective November 6, 2023.

## Endnotes

1. FINRA is currently the only registered national securities association.
2. See SEA Release No. 98202 (August 23, 2023), 88 FR 61850 (September 7, 2023) (Exemption for Certain Exchange Members; Final Rule).
3. See Rule 15b9-1 Amendments at 61893.
4. See Rule 15b9-1 Amendments at 61850.
5. See SEA Release No. 97798 (June 26, 2023), 88 FR 42404 (June 30, 2023) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2023-009).

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