

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59586; File No. SR-FINRA-2008-045)

March 17, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the FINRA Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

I. Introduction

The Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) and amended on December 11, 2008¹, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ a proposed rule change relating to amendments to the FINRA Rule 9520 Series, which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws. The proposed rule change was published for comment in the Federal Register on January 13, 2009.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

¹ Amendment No. 1 to SR-FINRA-2008-045 replaced and superseded the original rule filing submitted to the Commission on September 8, 2008.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 59208 (January 6, 2009), 74 FR 1738 (January 13, 2009) (SR-FINRA-2008-045) (notice).

II. Description of the Proposed Rule Change

In light of FINRA's obligation to enforce the federal securities laws, and as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. and the formation of FINRA, FINRA adopted by Board and membership vote a revised By-Law definition of disqualification that is consistent with the federal securities laws, such that any person subject to a statutory disqualification under Section 3(a)(39) of the Act also is subject to disqualification under Article III, Section 4 of the FINRA By-Laws.⁵ Consequently, as further detailed in the proposed Regulatory Notice (filed with the Commission as Exhibit 2 to SR-FINRA-2008-045), FINRA's revised definition of disqualification incorporates three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations with certain other persons subject to disqualification.

Absent the proposed rule change, all persons subject to any of the added categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. The proposed rule change would both amend the text of the FINRA Rule 9520 Series generally to reflect the amended definition of disqualification in the By-Laws, as well as include the proposed Regulatory Notice that outlines in detail the applicable eligibility procedures. The amended FINRA Rule 9520 Series would incorporate by reference the procedures set forth in the Regulatory Notice.

⁵ See Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023) (notice). See also Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (SR-NASD-2007-023) (approval order), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008). See also NASD, SEC No-Action Letter, 2007 SEC No-Act. LEXIS 540 (July 27, 2007).

As further detailed in the Regulatory Notice, the need for a member to file an application with FINRA for approval notwithstanding the disqualification would depend on (1) the type of the disqualification; (2) the date of the disqualification; and (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

The proposed rule change would amend FINRA Rule 9522 to address the initiation of eligibility proceedings and the authority of FINRA's Department of Member Regulation ("Member Regulation") to approve applications relating to a disqualification, where the disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arises under Section 3(a)(39)(E) of the Act (i.e., the added categories of disqualification). Currently, FINRA Rule 9522(a)(1) provides, among other things, that if FINRA staff has reason to believe that a disqualification exists, FINRA staff will issue a written notice to the member or applicant for membership under NASD Rule 1013, specifying the grounds for such disqualification. The proposed amendments to FINRA Rule 9522(a)(1) provide that FINRA staff would issue such written notice with respect to the added categories of disqualification only when the member or applicant is required to file an application pursuant to the Regulatory Notice. Similarly, the proposed rule change would amend FINRA Rule 9522(b) to require a member to file an application with FINRA with respect to the added categories of disqualification only when instructed to submit one by the Regulatory Notice.

Moreover, under the current rules, Member Regulation is responsible for evaluating applications for relief from a disqualification filed by a disqualified member or sponsoring member. In certain circumstances, Member Regulation is authorized to approve the application, while in other cases, Member Regulation must make a

recommendation to either approve or deny the applications to the National Adjudicatory Council (“NAC”). The proposed amendments to FINRA Rule 9522 would authorize Member Regulation to approve applications based on the added categories of disqualification. In the event Member Regulation does not approve these applications, the disqualified member or sponsoring member would have the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.

In addition, if Member Regulation determines that an application relating to a disqualification that arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arises under Section 3(a)(39)(E) of the Act should be approved, but with specific supervisory requirements that have the consent of the disqualified member, sponsoring member and/or disqualified person, then proposed FINRA Rule 9523(b) would authorize Member Regulation to approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NAC. Consistent with the current rule regarding the submission of supervisory plans,⁶ proposed FINRA Rule 9523(b)(1) would provide that, by submitting an executed letter consenting to a supervisory plan, a disqualified member, sponsoring member and/or disqualified person waive the following (in summary):

- (a) the right to a hearing and any right of appeal to challenge the validity of the supervisory plan;
- (b) the right to claim bias or prejudgment by Member Regulation or the General Counsel regarding the supervisory plan; and

⁶ See FINRA Rule 9523(b)(1) (to be renumbered as FINRA Rule 9523(a)(1)).

(c) the right to claim a violation of the ex parte prohibitions or the separation of functions provisions of FINRA Rules 9143 and 9144, respectively, in connection with participation in the supervisory plan.

If the supervisory plan is rejected, the disqualified member, sponsoring member and/or disqualified person would have the right to proceed under FINRA Rule 9524.

The proposed rule change also would make several technical amendments. For example, the proposed rule change would amend FINRA Rule 9522(c) to allow a member that has filed a statutory disqualification application to withdraw that application after the start of a hearing but prior to the issuance of a decision by the NAC by filing a written notice with FINRA's Department of Registration and Disclosure and FINRA's Office of General Counsel. In addition, for purposes of clarity and consistency, the proposed rule change would amend FINRA Rule 9522(e) to replace references that Member Regulation "may grant" or "may approve" certain matters with "is authorized to approve" such matters.

III. Discussion and Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.⁷ In particular, the Commission believes 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,

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3(b)(6).

to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is consistent with the provisions of the Act noted above because it should allow FINRA to integrate filings mandated by the revised definition of disqualification into established programs that monitor subject persons and allow FINRA and the Commission to focus resources on filings that raise important investor protection concerns.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-FINRA-2008-045), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).