

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72543; File No. SR-FINRA-2014-031)

July 3, 2014

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Definition of Hearing Officer to Include Former FINRA Employees Who Previously Worked as Hearing Officers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 2, 2014, 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 amend the definition of “Hearing Officer” to include former employees of FINRA who previously worked as FINRA hearing officers.

Below is the text of the proposed rule change. Proposed new language is in italics.

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9000. CODE OF PROCEDURE

9100. APPLICATION AND PURPOSE

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

9120. Definitions

(a) through (q) No Change.

(r) “Hearing Officer”

The term “Hearing Officer” means an employee of FINRA, or former employee of FINRA who previously acted as a Hearing Officer, who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, the Rule 9700 Series relating to grievances concerning FINRA automated systems, and the Rule 9800 Series regarding temporary cease and desist proceedings brought against members and associated persons.

(s) through (cc) No Change.

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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 is proposing to amend the definition of Hearing Officer to include a former employee of FINRA who is a licensed attorney and who is appointed by the Chief Hearing Officer. The current rule limits the definition of Hearing Officer to current FINRA employees. The proposed rule would permit the Chief Hearing Officer to appoint a former employee of FINRA who previously acted as a Hearing Officer to act in an adjudicative role and fulfill the various adjudicative responsibilities and duties of a Hearing Officer described in the Code of Procedure.

The former employees appointed by the Chief Hearing Officer would be experienced, licensed attorneys who previously acted in the same adjudicative role and fulfilled the same adjudicative responsibilities and duties for FINRA. As a former employee acting and defined as a Hearing Officer, he or she would be subject to the same FINRA rules that address the impartiality of Hearing Officers and the fairness of disciplinary and expedited proceedings as a current Hearing Officer. These include, but are not limited to, the rules prohibiting a party from making ex parte communications to a Hearing Officer,³ prohibiting FINRA's enforcement attorneys who are litigating a case, among others, from advising a Hearing Officer,⁴ and the requirement that a Hearing Officer not have a conflict of interest or bias.⁵

By permitting former employees of FINRA to act as Hearing Officers, the Chief Hearing Officer would be able to take advantage of the expertise of former Hearing

³ Rule 9143 (Ex Parte Communications).

⁴ Rule 9144 (Separation of Functions).

⁵ Rule 9233 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers). For temporary cease-and-desist matters, a former employee appointed as a Hearing Officer would be subject to the provisions on conflict of interest, bias, and motions for disqualification contained in Rule 9820 (Appointment of Hearing Officer and Hearing Panel).

Officers who remain well-versed in the typical securities law violations that are resolved in FINRA disciplinary proceedings. Therefore, the Chief Hearing Officer would be better equipped to fulfill the adjudicative responsibilities and duties described in the Code of Procedure, including appointing Hearing Officers for expedited proceedings, if the need arises. The Chief Hearing Officer also would have greater flexibility to allocate resources to the cases pending before the Office of Hearing Officers.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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. FINRA believes that the proposed rule change also will promote efficiency because it would enable the Chief Hearing Officer to rely on experienced, former employees if the need arises. It is in the public interest, and consistent with the Act's purpose, that FINRA disciplinary allegations be timely resolved and that well-timed sanctions be imposed where necessary to redress customer harm and deter future misconduct.

⁶ 15 U.S.C. 78q-3(b)(6).

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(8) of the Act,⁷ which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members. FINRA believes that the adjudicative process will remain fair, consistent with the Act, because the former employees appointed by the Chief Hearing Officer will be experienced, licensed attorneys who previously acted in the same adjudicative role and fulfilled the same adjudicative responsibilities and duties for FINRA. The former employees also would be subject to the same rules in the Code of Procedure as current Hearing Officers with respect to prohibited communications, independent advice, conflicts of interest, and bias. These important safeguards of procedural fairness will remain intact under the proposed rule change. By allowing former employees to act as Hearing Officers, the proposed rule change will afford the Chief Hearing Officer additional flexibility to rely on the wealth of experience that former FINRA Hearing Officers accumulated during their tenure as Hearing Officers. Former Hearing Officers are thoroughly familiar with the Code of Procedure and the procedural rules and practices that apply to bringing a case to a hearing. The proposed rule change will allow FINRA to draw on past experience in maintaining fair proceedings in disciplinary matters.

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.

⁷ 15 U.S.C. 78q-3(b)(8).

The former employees of FINRA appointed by the Chief Hearing Officer would be experienced, licensed attorneys who previously acted in the same adjudicative role and fulfilled the same adjudicative responsibilities and duties for FINRA. By permitting former employees of FINRA to act as Hearing Officers, the proposed rule change would promote greater efficiency with respect to adjudicatory proceedings and flexibility for the Chief Hearing Officer appointing Hearing Officers for these proceedings.

The proposed rule change would apply to all disciplinary and other adjudicatory proceedings, so all parties in these proceedings after implementation of the proposed rule change would be affected, if at all, in the same way.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2014-031 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-2014-031. This file number should be included on the subject line if e-mail 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 website (<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

website 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-2014-031 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Jill M. Peterson
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).