

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72854; File No. SR-FINRA-2014-036)

August 15, 2014

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Composition of Hearing Panels and Extended Hearing Panels in Disciplinary Proceedings

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 7, 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 FINRA Rule 9231 to add a category of persons eligible to be a Panelist on a Hearing Panel or an Extended Hearing Panel constituted to conduct disciplinary proceedings. FINRA is also proposing to make a conforming amendment to FINRA Rule 9232, which comprises criteria for the appointment of a Panelist to a Hearing Panel or an Extended Hearing Panel.

Below is the text of the proposed rule change. Proposed new language is underscored; proposed deletions are in brackets.

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

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

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9200. DISCIPLINARY PROCEEDINGS

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9230. Appointment of Hearing Panel, Extended Hearing Panel

9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer

(a) No Change.

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in Rule 9234 (a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of FINRA or retired therefrom.

(1) Except as provided in subparagraph (2) below, the Chief Hearing Officer shall select as a Panelist a person who:

(A) through (B) No Change.

(C) previously served on a disciplinary subcommittee of the National Adjudicatory Council or the National Business Conduct Committee, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; [or,]

(D) previously served as a Director or a Governor, but does not serve currently in any of these positions[.]; or,

(E) currently serves or previously served on a committee appointed or approved by the FINRA Board, but does not serve currently on the National Adjudicatory Council or as a Director or a Governor.

(2) No Change.

(c) through (e) No Change.

9232. Criteria for Selection of Panelists and Replacement Panelists

(a) through (c) No Change.

(d) Criteria for Appointment of a Panelist

After the Chief Hearing Officer designates the Primary District Committee, the Chief Hearing Officer shall select Panelists from the current members of the Primary District Committee, the other categories of persons eligible to serve as Panelists as set forth in Rule 9231(b)(1)(A) through [(D)](E) or, if applicable, in Rule 9231(c), who are located in the same geographic area as the Primary District Committee, and, if applicable, from the current or former members of the Market Regulation Committee, based upon the following criteria:

(1) through (4) No Change.

(e) 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rules 9231 and 9232 govern the appointment of a Hearing Panel or an Extended Hearing Panel and establish criteria for the selection of Panelists. The proposed rule change would amend FINRA Rule 9231 to add a category of persons eligible to serve as a Panelist on a Hearing Panel or an Extended Hearing Panel to include a person who currently serves or served previously on a committee appointed or approved by the FINRA Board. The proposed rule change would also make a conforming amendment to FINRA Rule 9232, which establishes criteria for the appointment of eligible Panelists to Hearing Panels and Extended Hearing Panels. The proposed rule change will provide FINRA with a larger pool of individuals that have adequate experience and expertise to serve as Panelists.

Background

FINRA’s disciplinary process begins with the Department of Enforcement or Department of Market Regulation filing a complaint with the Office of Hearing Officers that alleges a member or person associated with a member is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and related regulations.<sup>3</sup> Thereafter, the Chief Hearing Officer assigns a Hearing Officer to preside over the disciplinary proceeding,<sup>4</sup> and appoints Panelists to a Hearing Panel or, if

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<sup>3</sup> See FINRA Rule 9211.

<sup>4</sup> See FINRA Rule 9213(a). A “Hearing Officer” is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative

applicable, an Extended Hearing Panel to conduct the disciplinary proceeding.<sup>5</sup> Trial-level hearings take place before a Hearing Panel or an Extended Hearing Panel, which listens to the presentation of evidence and issues a written decision setting forth findings as to whether a respondent engaged in the alleged misconduct and describing the sanctions, if any, imposed.<sup>6</sup> A Hearing Panel or an Extended Hearing Panel decision is generally appealable to, and subject to discretionary review by, the National Adjudicatory Council (“NAC”).<sup>7</sup>

Under FINRA Rule 9231, a Hearing Officer and two industry Panelists, who are either currently associated with FINRA member firms or retired therefrom, compose a Hearing Panel or an Extended Hearing Panel.<sup>8</sup> The Chief Hearing Officer appoints Panelists from a pool of eligible persons that currently includes persons who: (1)

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responsibilities in disciplinary and other proceedings. FINRA Rule 9120(r). The Hearing Officer exercises a key role in the disciplinary proceeding and, among other things, administers pre-hearing matters, including most motions, resolves procedural and evidentiary matters, oversees the settlement and discovery process, regulates the course of the proceeding, and drafts a decision that represents the view of the majority of the Hearing Panel or Extended Hearing Panel. See generally FINRA Rule 9235. The proposed rule change would not alter the important role of professional Hearing Officers in disciplinary proceedings.

<sup>5</sup> FINRA Rules 9213(b), 9231(a). The Chief Hearing Officer appoints an Extended Hearing Panel if, upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors, the Chief Hearing Officer determines that a matter shall be an “Extended Hearing.” See FINRA Rules 9120(i), 9231(c). Because of the demands on his or her time, the Chief Hearing officer is authorized to compensate a Panelist serving on an Extended Hearing Panel in accordance with the rates set for individuals who serve as arbitrators in the FINRA forum. See FINRA Rule 9231(c).

<sup>6</sup> See generally FINRA Rule 9260 Series.

<sup>7</sup> See FINRA Rule 9311.

<sup>8</sup> See FINRA Rule 9231(b) and (c).

currently serve or previously served on a District Committee;<sup>9</sup> (2) previously served on the NAC; (3) previously served on a disciplinary subcommittee of the NAC or its predecessor; (4) previously served as a Director or Governor, but do not currently serve in any of these positions; or (5) in limited cases, currently serve or previously served on the Market Regulation Committee.<sup>10</sup>

Panelists are also the subject of certain selection criteria under FINRA Rule 9232. Among other things, the Chief Hearing Officer must designate a District Committee as the “Primary District Committee” based on the facts and circumstances of the case.<sup>11</sup> After designating the Primary District Committee, the Chief Hearing Officer must select Panelists from the current members of the Primary District Committee, the other categories of persons eligible to serve as Panelists who are located in the same geographic area as the Primary District Committee, or current or former members of the Market Regulation Committee, based upon criteria that include their expertise, the absence of any conflict of interest or bias, availability, and the frequency with which a person has served as a Panelist during the previous two years.<sup>12</sup>

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<sup>9</sup> FINRA District Committees are called upon to apply their knowledge and expertise of issues facing the securities industry to support FINRA’s investor protection mission, and they serve an important role in the regulatory process. District Committee members are elected by direct nomination based on firm size. See generally FINRA Regulation By-Laws, Article VIII.

<sup>10</sup> See FINRA Rule 9231(b) and (c).

<sup>11</sup> See FINRA Rules 9120(y), 9232(a) and (c).

<sup>12</sup> See FINRA Rule 9232(d). FINRA Rule 9232(e) provides the Chief Hearing Officer with the flexibility to select one or both Panelists from outside the area of the designated Primary District Committee where such Panelists more clearly meet the criteria set forth in the rules and the public interest or the administration of FINRA’s regulatory and enforcement program would be enhanced by the selection of such Panelists.

## Proposal to Expand the Pool of Eligible Panelists

FINRA places a high value on a fair, efficient, and expeditious disciplinary process. Although FINRA Rules 9231 and 9232 establish Panelist eligibility and selection criteria, service on a Hearing Panel or an Extended Hearing Panel is voluntary. The pool of Panelists eligible under FINRA Rule 9231 to serve on Hearing Panels and Extended Hearing Panels may appear large, but the Chief Hearing Officer, in practice, relies primarily upon the willingness of current and former District Committee members to serve as Panelists in disciplinary proceedings.<sup>13</sup> These individuals, who are typically experienced, senior executives or managers of their respective firms, frequently do not possess the flexibility to devote significant time and attention away from their businesses to serve as Panelists, particularly as Panelists for those complex and lengthy matters that require the Chief Hearing Officer to appoint an Extended Hearing Panel to conduct the disciplinary proceeding.<sup>14</sup> Even in those instances where a current or former member of a District Committee expresses a willingness to serve as a Panelist, geographic and other selection criteria under FINRA Rule 9232 may impose additional limitations on serving.

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<sup>13</sup> For example, although former members of the NAC and former Directors and Governors are eligible to serve as Panelists under FINRA Rule 9231, they are subject to competing burdens on their time as they are also eligible to serve on the subcommittees of the NAC that hear appeals from Hearing Panel and Extended Hearing Panel decisions. See FINRA Rule 9331(a)(1). The number of disciplinary matters that require Panelists from the pool of current or past members of the Market Regulation Committee is small.

<sup>14</sup> Finding Panelists willing to serve on Extended Hearing Panels, which are commonly appointed in cases where the hearing is expected to last longer than four days and may last weeks, presents particular challenges for the Chief Hearing Officer. FINRA has experienced an increase in the complexity and length of some disciplinary matters, resulting in a rise in the number of proceedings requiring the service of Extended Hearing Panels.

To ensure that the Chief Hearing Officer is able to quickly and efficiently assign disciplinary matters so that they may be scheduled for a hearing and resolution, FINRA proposes to amend FINRA Rule 9231 to expand the pool of persons eligible to serve as Panelists. The proposed rule change would add one category of persons eligible to serve on a Hearing Panel or an Extended Hearing Panel for a disciplinary proceeding.<sup>15</sup> This additional category includes a person who currently serves or previously served on a committee appointed or approved by the FINRA Board that is not currently a member of the NAC or a Director or Governor.<sup>16</sup>

In effect, the proposed rule change enlarges the number of FINRA committees from which experienced and expert Panelists could be drawn to encompass industry members that serve, or have served, on the FINRA Advisory Committees, including, for example, the Compliance Advisory Committee, Corporate Financing Committee, Financial Responsibility Committee, Fixed Income Committee, Investment Dealer/Insurance Affiliate Committee, and Membership Committee.<sup>17</sup> Members of the FINRA Advisory Committees, like members of the District Committees, are typically experienced, senior executives and managers of their respective firms. They provide

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<sup>15</sup> By extension, the proposed rule change would also expand the pool of persons eligible to serve as Panelists on Hearing Panels for some expedited proceedings under the FINRA Rule 9550 Series. See FINRA Rule 9559(d)(2) (referencing FINRA Rules 9231 and 9232 for panelists qualifications for serving on certain expedited proceedings).

<sup>16</sup> The proposed rule change does not change the stipulation under FINRA Rule 9231(b) that Panelists be associated with a member of FINRA or retired therefrom.

<sup>17</sup> A complete list of the FINRA Advisory Committees, and a description of their roles and the advice they provide to FINRA, are detailed at: <http://www.finra.org/AboutFINRA/Leadership/Committees/p197363>.



input, advice, and recommendations to FINRA about best practices, regulatory initiatives, rules and policies concerning broker-dealer activities, compliance programs, and regulatory issues.

Although the proposed rule change would make a conforming amendment to FINRA Rule 9232 to reflect the additional category of eligible Panelists under proposed FINRA Rule 9231, it would not alter the criteria currently contained within FINRA Rule 9232 for the selection of Panelists. The proposed rule change would not alter the Office of Hearing Officers' careful approach to identifying and preventing conflicts of interest or bias in each hearing. Panelists would remain subject to FINRA Rule 9234, which requires that a Panelist notify the Hearing Officer and withdraw from any matter where the Panelist possesses a conflict of interest or bias, or where circumstances otherwise exist where his fairness might reasonably be questioned.<sup>18</sup> To achieve the goals of this rule, the Office of Hearing Officers requires Panelists to acknowledge they are free of conflicts of interest and bias in each disciplinary proceeding for which they are selected, after considering, among other things, the parties, issues, and lawyers involved in the matter under consideration.

The effective date of the proposed rule change will be the date of Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(8) of the Act,<sup>19</sup> which requires, among other things, that FINRA rules

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<sup>18</sup> See FINRA Rule 9234(a).

<sup>19</sup> 15 U.S.C. 78o-3(b)(8).

provide a fair procedure for the disciplining of members and persons associated with members. FINRA believes that the proposed rule change, consistent with this purpose of the Act, assures that complaints filed with the Officer of Hearing Officers will continue to be heard and resolved in a timely manner by Panelists with the expertise, experience, and perspective necessary to render a fair and informed judgment and, where necessary, to impose appropriately remedial sanctions. The proposed rule change will afford the Chief Hearing Officer additional flexibility to appoint Extended Hearing Panels that are composed of Panelists capable of responding to the complex issues and time demands that are associated with Extended Hearings. Furthermore, the proposed rule change will reduce the burden on the current and former members of the District Committees that currently hear cases. By expanding the pool of eligible Panelists, the frequency with which past and present District Committee members are called upon to serve on disciplinary panels should decrease. It will also help ensure that the Chief Hearing Officer has at her disposal Panelists that are more readily available to serve and are capable of doing so without real or perceived conflicts of interest or biases that could delay the appointment of a Hearing Panel or an Extended Hearing Panel and the resolution of individual matters.

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>20</sup> 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 adding qualified persons to the pool of eligible

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<sup>20</sup> 15 U.S.C. 78o-3(b)(6).

Panelists will enhance the dispassionate application of the federal securities laws and FINRA rules in disciplinary proceedings, promote high business standards for FINRA members, and allow for the prompt adjudication of allegations of misconduct by FINRA members and their associated persons. It is in the public interest, and consistent with the Act's purpose, that FINRA disciplinary proceedings be timely resolved and that well-timed sanctions be imposed where necessary to redress customer harm and deter future misconduct.

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. The proposed rule change is intended solely to enhance the administration of FINRA's process for the disciplining of members and persons associated with members. FINRA believes the proposed rule change will allow the Chief Hearing Officer flexibility to appoint Panelists and thereby maintain the timely progress of cases to a hearing. FINRA does not believe that the proposed rule change will have any negative effect on members or impose any new costs.

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2014-036 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-2014-036. 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-2014-036 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.<sup>21</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).