

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64841; File No. SR-FINRA-2011-032)

July 8, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Implement Revolving Door Restrictions on Former Officers of FINRA

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 1, 2011, 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. FINRA has designated the proposed rule change as concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(3) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. 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 (i) FINRA Rule 9141 (Appearance and Practice; Notice of Appearance) to prohibit a former officer of FINRA, for a period of one year after termination of employment with FINRA, from making an appearance before an adjudicator on behalf of any other person under the FINRA Rule 9000 Series; and (ii) FINRA Rule 9242 (Pre-hearing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

Submission) to prohibit a former officer of FINRA, for a period of one year after termination of employment with FINRA, from providing expert testimony on behalf of any other person under the FINRA Rule 9000 Series.

The text of the proposed rule change is available on FINRA's website 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 seeks to diligently uphold a high degree of fairness in disciplinary and similar proceedings that take place before FINRA hearing panels and other FINRA adjudicators. To further this goal, FINRA is amending two procedural rules that will prevent former FINRA officers—for one year—from appearing on behalf of a client before a FINRA adjudicator or testifying as an expert witness in a FINRA forum.

The FINRA Rule 9000 Series is FINRA's Code of Procedure (the "Code") and provides detailed procedures for initiating and adjudicating various types of actions, including disciplinary, eligibility, expedited, and cease and desist proceedings. FINRA is imposing a

temporal forum appearance prohibition under the Code on FINRA officers that restricts former officers from acting in two different capacities in a FINRA forum (“Revolving Door Restrictions”). The proposed rule change maintains the perception of fairness and safeguards against former FINRA officers potentially exerting undue influence in FINRA proceedings. Although FINRA is not aware of any instances of former officers exerting undue influence in FINRA’s disciplinary and similar forums, FINRA seeks to prevent such an incident by implementing the Revolving Door Restrictions under the Code.

First, the proposed rule change addresses a former officer appearing as a lawyer in FINRA’s forum. FINRA Rule 9141 governs, among other things, the appearance and practice of lawyers before an adjudicator under the Code.⁵ The proposed rule change amends FINRA Rule 9141 to prohibit a former FINRA officer, for a period of one year after termination of employment with FINRA, from making an appearance before an adjudicator on behalf of any other person under the FINRA Rule 9000 Series. The proposed rule change accordingly restricts former FINRA officers who are attorneys from appearing on behalf of clients before Hearing Officers, Hearing Panels, the National Adjudicatory Council, and the FINRA Board of Governors.⁶ While the most common impact of the proposed rule change will be to prohibit a former FINRA officer from appearing on behalf of a respondent, the prohibition also applies to a

⁵ See FINRA Rule 9141(b) (requiring attorneys that seek to represent a party in a FINRA proceeding to be licensed to practice law before the highest court of any state).

⁶ FINRA Rule 9120(a) defines the term “Adjudicator.” For purposes of the proposed rule change, “adjudicator” includes the FINRA Board of Governors, when it is calling a case for review, see FINRA Rule 9351, a Subcommittee, Review Subcommittee or Extended Proceeding Committee of the National Adjudicatory Council, see FINRA Rule 9331 and FINRA Regulation By-Law Article V, Sec. 5.13, a Hearing Officer, see FINRA Rule 9120(r), a Hearing Panel, see FINRA Rule 9120(s), a Hearing Panel in an eligibility proceeding or the Statutory Disqualification Committee, see FINRA Rule 9524(a)(1) and (10), and the Waiver Subcommittee, see FINRA Rule 9630.

former FINRA officer appearing on behalf of a witness who is not a respondent but is testifying before a Hearing Panel, Hearing Officer, or other adjudicator.

Second, the Revolving Door Restrictions amend FINRA Rule 9242 to prohibit a former officer of FINRA, for a period of one year after termination of employment with FINRA, from providing expert testimony on behalf of a respondent under the FINRA Rule 9000 Series. The proposed rule change makes clear, however, that nothing in the rule prohibits a former officer of FINRA from testifying as either a fact witness or as an expert witness on behalf of FINRA.

The Revolving Door Restrictions are designed to provide clear boundaries that limit specific activities of former FINRA officers in a manner that is consistent with restrictions currently imposed on other regulators in the securities industry.⁷ One aspect of the restrictions focuses on a former FINRA officer's appearance before a FINRA adjudicator because that event is recorded in a written notice that is currently required under the Code.⁸ Moreover, once a matter is pending before an adjudicator, both the prohibitions on appearing before an adjudicator and testifying as an expert witness can be enforced quickly in the context of a pending FINRA proceeding either directly by the adjudicator or through a motion to disqualify the former FINRA officer, which is filed with the adjudicator.⁹ In sum, the proposed rule change is designed to create restrictions that are precisely defined and straightforward to enforce.

Although FINRA's proposed rule change will serve as one safeguard against unfairness in its proceedings, it is not the only safeguard. Former FINRA employees, whether officers or

⁷ FINRA officers include Vice Presidents, Senior Vice Presidents, and higher ranking FINRA executives.

⁸ See FINRA Rule 9141(b).

⁹ FINRA Rule 9150 authorizes an adjudicator to exclude an attorney from acting as counsel in FINRA disciplinary and similar proceedings.

not, who are attorneys that seek to represent a client in a FINRA proceeding must, as noted earlier, be licensed to practice law before the highest court of any state.¹⁰ The vast majority of state jurisdictions have adopted rules of professional conduct that are based on the American Bar Association's Model Rules of Professional Conduct.¹¹ Model Rule 1.9(a) addresses a lawyer's conflict of interest regarding a former client and prohibits a lawyer who has represented a client in a matter from subsequently representing any other person in that matter or a substantially related matter when that person's interests are materially adverse to the interests of the former client.¹² For example, in a FINRA disciplinary case, this means that FINRA Department of Enforcement attorneys who have litigated for FINRA and have ended their FINRA employment may not subsequently represent any respondent in appeals in that case, any other continuing litigation in that case, or a substantially related matter in which the respondent's interests are materially adverse to FINRA's interests.¹³ By augmenting the protections imposed by state bar ethical rules with the Revolving Door Restrictions, FINRA believes that it will further insulate its proceedings from the appearance of any undue influence.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be July 2, 2012.

¹⁰ See FINRA Rule 9141(b).

¹¹ Richard Acello, New York Makes Itself a 'Model' State: California Now the Only Holdout on Adopting ABA Model Rules, 95 ABA J., Sept. 2009, at 22.

¹² The ABA Model Rules of Professional Conduct (2010), available at <http://www.americanbar.org>.

¹³ A conflict of interest may be waived by a former client who gives informed consent. Model Rule 1.9(a) and comment 9 (2010). FINRA, as the former client with the option to waive, does not anticipate waiving any such conflicts.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ 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 will maintain the perception of fairness in its disciplinary and similar proceedings and will safeguard against former FINRA officers potentially exerting undue influence in FINRA proceedings.

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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f)(3) of Rule 19b-4 thereunder.¹⁶ 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

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(3).

the 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-2011-032 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2011-032. 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 10:00 a.m.

and 3:00 p.m. Copies of the 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-2011-032 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.¹⁷

Cathy H. Ahn
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).