

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61026; File No. SR-FINRA-2009-076)

November 18, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the FINRA Rule 9550 Series (Expedited 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 November 5, 2009, 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. On November 17, 2009, FINRA filed Amendment No. 1.<sup>3</sup> 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 (1) modify various time requirements regarding expedited proceedings, (2) add an expedited proceeding for failure to pay restitution, and (3) harmonize a remedy in an expedited procedure with a remedy in the FINRA By-Laws.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

---

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

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

<sup>3</sup> Amendment No. 1 to SR-FINRA-2009-076 supersedes and replaces in its entirety the proposed rule change as filed on November 5, 2009. FINRA filed Amendment No. 1 so that the text of Proposed FINRA Rule 9559 as set forth in this rule filing could reflect amendments adopted pursuant to proposed rule change SR-FINRA-2008-067. See Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (Order Approving File No. SR-FINRA-2008-067).

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

In March 2004, the SEC approved a rule change that created the NASD Rule 9550 Series to consolidate, clarify, and streamline most procedural rules that had an expedited proceeding component.<sup>4</sup> Having used the procedures for five years and having conducted a recent analysis of their effectiveness, FINRA is proposing a few modifications that will strengthen investor protection and improve administrative efficiency. The proposed changes are discussed separately below.

Shortening Time Periods

The Rule 9550 Series provides a procedural mechanism for FINRA to address certain types of misconduct more quickly than would be possible using the ordinary disciplinary

---

<sup>4</sup> See Securities Exchange Act Release No. 49380 (March 9, 2004), 69 FR 12386 (March 16, 2004) (Order Approving File No. SR-NASD-2003-110)); Notice to Members 04-36 (May 2004). Expedited proceedings in this context refer to fast-tracked matters that take place outside the ordinary FINRA disciplinary process. In September 2008, the SEC approved the adoption of the NASD Rule 9550 Series as the FINRA Rule 9550 Series. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File Nos. SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029); Regulatory Notice 08-57 (October 2008).

process. At the same time, the Rule 9550 Series provides firms and associated persons with numerous procedural protections, including the ability to request a hearing that often results in a stay of the action. FINRA proposes shortening the time within which a hearing must be held from the current 60 days after a hearing request to 30 days after the request in relation to the following FINRA rules:

- Rule 9551 (Failure to Comply with Public Communication Standards);
- Rule 9552 (Failure to Provide Information or Keep Information Current);
- Rule 9553 (Failure to Pay FINRA Dues, Fees and Other Charges);
- Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement); and
- Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

The proposed change<sup>5</sup> strengthens investor protection while maintaining procedural safeguards for respondents, makes the timing of the hearings more consistent with other hearings in the rule series, and reflects FINRA's experience over the past five years in resolving these matters. The change would increase investor protection by limiting the period during which a wrongdoer could continue doing business while the matter is pending. Moreover, the issues involved in these cases usually are straightforward (e.g., whether the respondent paid an arbitration award or FINRA fee or provided required information) and do not require lengthy preparation time. The change also would bring these hearing provisions more in line with the other expedited actions in the Rule 9550 Series, which require hearings to be held within 14 days or five business days of the respondent's request for a hearing depending on the type of conduct

---

<sup>5</sup> FINRA would implement the proposed change by amending Rule 9559, which contains the hearing provisions for the Rule 9550 Series. FINRA also would make conforming changes to Rule 9559 regarding the pre-hearing exchange of documents between the parties to the expedited proceeding.

at issue. Finally, five years' experience has established that hearings can be held much more quickly than the current scheme contemplates.

In addition to modifying the timing of hearings, FINRA proposes amending Rule 9552 to shorten the period before a suspension automatically turns into an expulsion or bar. Rule 9552 allows FINRA to suspend a member or associated person for failure to provide any information requested or required to be filed pursuant to the FINRA By-Laws or rules, such as FOCUS reports or annual audits. Under the rule, FINRA may provide written notice to such member or person specifying the nature of the failure and stating that failure to take corrective action within 21 days after service of the notice will result in suspension. The rule also provides that a member or person suspended under the rule who fails to request termination of the suspension within six months is automatically expelled or barred. FINRA proposes shortening that timeframe from six months to three months. Three months provides sufficient time for respondents to seek to lift the suspension while moving the process forward at a more efficient and reasonable pace.

#### Adding an Expedited Procedure for Failure to Pay Restitution

FINRA proposes amending Rule 9554, which contains expedited procedures for failure to pay FINRA arbitration awards, to also permit FINRA to take expedited action for failure to comply with a FINRA order of restitution or a FINRA settlement providing for restitution. Restitution is an equitable remedy used to restore victims to their position before the wrongful conduct occurred and to compensate them for unjust losses or injury suffered as the result of another's wrongdoing.<sup>6</sup> The SEC and FINRA have long stressed the importance of imposing

---

<sup>6</sup> See David Joseph Dambro, 51 S.E.C. 513, 518 (1993).

restitution where an “identifiable person ... has suffered a quantifiable loss as a result of a respondent’s misconduct.”<sup>7</sup>

Although FINRA can take expedited action against a member firm or associated person for failure to pay fines, dues, and fees to FINRA and for failure to pay an arbitration award to a third party, FINRA currently does not have explicit authority to take expedited action against firms or associated persons who fail to pay restitution to a third party (usually investors who have been harmed). FINRA’s only recourse is to initiate an ordinary disciplinary action, which can take several months to conclude. FINRA believes that firms and associated persons should not be permitted to continue doing business for prolonged periods when they have failed to pay restitution to third parties. The proposal would close this loophole.

#### Harmonizing Remedies

FINRA proposes harmonizing the remedy for an individual’s failure to pay an arbitration award in Rule 9554 with the remedy for the same misconduct in the FINRA By-Laws. At present, Rule 9554 states that FINRA may suspend or cancel the membership of a firm and may suspend or bar an individual for failure to pay an arbitration award. Article VI, Section 3(b) of the FINRA By-Laws, however, limits the remedy regarding an individual’s failure to pay an arbitration award to a suspension. To make the rule consistent with the By-Laws, the proposed change would limit the remedy against individuals in such cases to suspension and would eliminate any reference to barring individuals.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date

---

<sup>7</sup> FINRA Sanction Guidelines, at 4; see also Dambro, 51 S.E.C. at 518 (emphasizing importance of getting money back to investors who were harmed by broker’s misconduct).

will be 30 days following publication of the Regulatory Notice announcing Commission approval.

## 2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA's 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. The proposal also is consistent with Section 15A(b)(7) of the Act,<sup>9</sup> which provides that FINRA members and associated persons must be appropriately disciplined for violations of any provisions of the Act or FINRA rules. The proposed rule change is consistent with these purposes because it promotes a fair and efficient disciplinary process and provides a mechanism to take expedited action when a member or associated person fails to pay restitution.

### 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

Within 35 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

---

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78o-3(b)(7).

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 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-2009-076 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-2009-076. 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 Web site (<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 inspection and copying 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 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 publicly available. All submissions should refer to File Number SR-FINRA-2009-076 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>10</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>10</sup> 17 CFR 200.30-3(a)(12).