

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64934; File No. SR-FINRA-2011-031)

July 20, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 9251 to Explicitly Protect from Discovery those Documents that Federal Law Prohibits FINRA from Disclosing

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 8, 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. 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 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Rule 9251 delineates the types of documents that FINRA's Department of Enforcement ("Enforcement") and Department of Market Regulation ("Market Regulation") must produce to respondents during the discovery phase of a disciplinary proceeding. The rule also explicitly shields certain types of documents from production. For example, Enforcement and Market Regulation may withhold documents that are protected by attorney-client privilege or constitute attorney work product.³ The rule allows additional types of documents to be withheld where a hearing officer determines that they are irrelevant to the proceeding or for other good cause.⁴ The rule, moreover, contains procedural safeguards. For example, a hearing officer may privately review and determine the appropriate status of a withheld document.⁵ The rule does not, however, explicitly shield from discovery documents that federal law prohibits FINRA from disclosing. To help ensure both an efficient discovery process and compliance with federal law, the proposed rule change clarifies that Enforcement and Market Regulation shall withhold such documents from respondents during a disciplinary proceeding.

³ FINRA Rule 9251(b)(1)(A).

⁴ FINRA Rule 9251(b)(1)(D).

⁵ FINRA Rule 9251(c).

Further, the proposed rule change precludes a hearing officer from requiring Enforcement or Market Regulation to either produce or reveal information about the existence of a document if federal law prohibits such disclosure.

The proposed rule change would amend FINRA Rule 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing. Currently, when Enforcement and Market Regulation possess a document that federal law prohibits them from disclosing, they must affirmatively seek a hearing officer determination that they can withhold it on the grounds of a lack of relevancy or for other good cause. The proposed rule change would increase efficiency by avoiding the need for the parties to brief, and hearing officers to resolve, unnecessary “good cause” motions regarding documents that FINRA cannot legally produce during disciplinary proceedings. The procedural safeguard discussed above would apply to this category of withheld documents.

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

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with 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.

⁶ 15 U.S.C. 78o-3(b)(6).

FINRA believes that the proposal also is consistent with Section 15A(b)(7) of the Act,⁷ which provides that FINRA members and associated persons must be appropriately disciplined for violations of any provisions of the Act or FINRA rules. FINRA believes that the proposed rule change is consistent with these purposes because it promotes a fair and efficient disciplinary process by avoiding the need for unnecessary “good cause” motions regarding documents that federal law prohibits FINRA from producing.

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 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

⁷ 15 U.S.C. 78o-3(b)(7).

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-2011-031 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-2011-031. 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-2011-031 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.⁸

Elizabeth M. Murphy
Secretary

⁸ 17 CFR 200.30-3(a)(12).