

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change Relating to FINRA's Regulatory Notice on the FINRA Rule 9520 Series (Eligibility Proceedings)

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Stan"/>	Last Name	<input type="text" value="Macel"/>
Title	<input type="text" value="Assistant General Counsel"/>		
E-mail	<input type="text" value="stan.macel@finra.org"/>		
Telephone	<input type="text" value="(202) 728-8056"/>	Fax	<input type="text" value="(202) 728-8264"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date	<input type="text" value="03/31/2009"/>
By	<input type="text" value="Patrice Gliniecki"/>
	(Name)
	<input type="text" value="Senior Vice President and Deputy General Counsel"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to make technical amendments to the proposed Regulatory Notice entitled “Eligibility Proceedings: Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications” (the “SD Regulatory Notice”) that details impending changes to the FINRA Rule 9520 Series. The Commission recently approved amendments to the FINRA Rule 9520 Series, which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws.² The amendments to the FINRA Rule 9520 Series will become effective on June 15, 2009.

The proposed rule change makes technical amendments to the original SD Regulatory Notice filed on September 8, 2008 in connection with the amendments to the FINRA Rule 9520 Series. The text of the proposed rule change is attached as Exhibit 2 to this filing.

(b) The proposed rule change makes technical amendments to the original SD Regulatory Notice detailing the changes to the FINRA Rule 9520 Series that will become

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (Order Approving File No. SR-FINRA-2008-045) (“SD Approval Order”).

effective on June 15, 2009.

(c) The text of the proposed SD Regulatory Notice was previously filed as part of SR-FINRA-2008-045.

2. Procedures of the Self-Regulatory Organization

At its meeting on November 21, 2006, the Board of Governors of FINRA (then known as NASD) authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

The effective date of the technical amendments to the SD Regulatory Notice pursuant to the proposed rule change will be the date of Commission approval of the proposed rule change; the effective date of the related amendments to the FINRA Rule 9520 Series, as detailed in the SD Regulatory Notice, will be June 15, 2009.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In September 2008, FINRA filed a proposed rule change to amend the FINRA Rule 9520 Series, which governs eligibility proceedings under which FINRA may allow a person subject to a statutory disqualification to enter or remain in the securities industry, to comport with the amended definition of disqualification in the FINRA By-Laws. FINRA filed the original SD Regulatory Notice as part of its original filing on September 8, 2008, and amended its filing on December 11, 2008.³ The SD Regulatory Notice describes in detail the circumstances under which persons must obtain FINRA

³ See SR-FINRA-2008-045, Exhibit 2 (filed September 8, 2008). Amendment No. 1 to SR-FINRA-2008-045 replaced and superseded the original rule filing except with regard to Exhibit 2.

approval to enter or remain in the securities industry, notwithstanding the existence of additional categories of statutory disqualification. The proposed rule change was published for comment in the Federal Register on January 13, 2009.⁴ The Commission received no comments on the proposed rule change. On March 17, 2009, the Commission approved the proposed rule change and issued the SD Approval Order.⁵

The proposed rule change makes several technical amendments to the SD Regulatory Notice to, among other things, comport with the amendments to the FINRA Rule 9520 Series and the Commission's SD Approval Order.⁶ In addition, the proposed rule change updates the status of FINRA's rule filing regarding revising the questions on Forms U4 and U5, which is referenced in a footnote of the SD Regulatory Notice.⁷

As noted in Item 2 of this filing, the effective date of the technical amendments to the SD Regulatory Notice pursuant to the proposed rule change will be the date of Commission approval of the proposed rule change. The effective date of the related

⁴ See Securities Exchange Act Release No. 59208 (January 6, 2009), 74 FR 1738 (January 13, 2009) (Notice of Filing and Amendment No. 1 to File No. SR-FINRA-2008-045).

⁵ See supra note 2.

⁶ See Exhibit 2. For example, the proposed amendments to the SD Regulatory Notice note that, with respect to the Department of Member Regulation review of applications, disqualified persons, in addition to disqualified members or sponsoring members, as the case may be, may be providing consent to supervisory plans. In addition, they replace the term "sponsoring member firm" with "sponsoring member." Further, the proposed amendments replace the phrase "[i]f the parties cannot agree on a supervisory plan" with "[i]f a supervisory plan is rejected." The proposed amendments also replace references to "Securities Exchange Act" with "Exchange Act" for consistency. Finally, the proposed amendments add a footnote that references the SD Approval Order and the current filing.

⁷ See Exhibit 2, at note 6.

amendments to the FINRA Rule 9520 Series, as detailed in the SD Regulatory Notice, will be June 15, 2009.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,⁸ which requires, among other things, that FINRA's rules 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 is consistent with the provisions of the Exchange Act noted above in that the proposed technical amendments to the SD Regulatory Notice will conform the text to the proposed amendments to the FINRA Rule 9520 Series and the Commission's recent SD Approval Order.

4. 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 Exchange Act.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

FINRA requests the Commission to find good cause pursuant to Section 19(b)(2)

⁸ 15 U.S.C. 78o-3(b)(6).

of the Act for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. Because the amendments regarding the FINRA Rule 9520 Series will become effective on June 15, 2009, FINRA wishes to issue the updated SD Regulatory Notice as soon as possible in order to inform the FINRA membership about the upcoming amendments. Accordingly, because the proposed rule change makes technical amendments to the SD Regulatory Notice, and does not propose any substantive amendments to existing rules, FINRA requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2. Proposed FINRA SD Regulatory Notice (marked to show changes from original filing dated September 8, 2008).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-022)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA's Regulatory Notice on the FINRA Rule 9520 Series (Eligibility Proceedings)

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 _____, _____, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to make technical amendments to the proposed Regulatory Notice entitled "Eligibility Proceedings: Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications" (the "SD Regulatory Notice") that details impending changes to the FINRA Rule 9520 Series. The Commission recently approved amendments to the FINRA Rule 9520 Series, which governs the eligibility procedures for persons subject to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws.³ The amendments to the FINRA Rule 9520 Series will become effective on June 15, 2009.

The proposed rule change makes technical amendments to the original SD Regulatory Notice filed on September 8, 2008 in connection with the amendments to the FINRA Rule 9520 Series.

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.

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 September 2008, FINRA filed a proposed rule change to amend the FINRA Rule 9520 Series, which governs eligibility proceedings under which FINRA may allow a person subject to a statutory disqualification to enter or remain in the securities

³ See Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (Order Approving File No. SR-FINRA-2008-045) ("SD Approval Order").

industry, to comport with the amended definition of disqualification in the FINRA By-Laws. FINRA filed the original SD Regulatory Notice as part of its original filing on September 8, 2008, and amended its filing on December 11, 2008.⁴ The SD Regulatory Notice describes in detail the circumstances under which persons must obtain FINRA approval to enter or remain in the securities industry, notwithstanding the existence of additional categories of statutory disqualification. The proposed rule change was published for comment in the Federal Register on January 13, 2009.⁵ The Commission received no comments on the proposed rule change. On March 17, 2009, the Commission approved the proposed rule change and issued the SD Approval Order.⁶

The proposed rule change makes several technical amendments to the SD Regulatory Notice to, among other things, comport with the amendments to the FINRA Rule 9520 Series and the Commission's SD Approval Order.⁷ In addition, the proposed

⁴ See SR-FINRA-2008-045, Exhibit 2 (filed September 8, 2008). Amendment No. 1 to SR-FINRA-2008-045 replaced and superseded the original rule filing except with regard to Exhibit 2.

⁵ See Securities Exchange Act Release No. 59208 (January 6, 2009), 74 FR 1738 (January 13, 2009) (Notice of Filing and Amendment No. 1 to File No. SR-FINRA-2008-045).

⁶ See supra note 3.

⁷ See Exhibit 2. For example, the proposed amendments to the SD Regulatory Notice note that, with respect to the Department of Member Regulation review of applications, disqualified persons, in addition to disqualified members or sponsoring members, as the case may be, may be providing consent to supervisory plans. In addition, they replace the term "sponsoring member firm" with "sponsoring member." Further, the proposed amendments replace the phrase "[i]f the parties cannot agree on a supervisory plan" with "[i]f a supervisory plan is rejected." The proposed amendments also replace references to "Securities Exchange Act" with "Exchange Act" for consistency. Finally, the proposed amendments add a footnote that references the SD Approval Order and the current filing.

rule change updates the status of FINRA's rule filing regarding revising the questions on Forms U4 and U5, which is referenced in a footnote of the SD Regulatory Notice.⁸

The effective date of the technical amendments to the SD Regulatory Notice pursuant to the proposed rule change will be the date of Commission approval of the proposed rule change. The effective date of the related amendments to the FINRA Rule 9520 Series, as detailed in the SD Regulatory Notice, will be June 15, 2009.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,⁹ which requires, among other things, that FINRA's rules 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 is consistent with the provisions of the Exchange Act noted above in that the proposed technical amendments to the SD Regulatory Notice will conform the text to the proposed amendments to the FINRA Rule 9520 Series and the Commission's recent SD Approval Order.

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

⁸ See Exhibit 2, at note 6.

⁹ 15 U.S.C. 78o-3(b)(6).

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

FINRA has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act¹⁰ for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will allow FINRA to inform its members of the amendments to the FINRA Rule 9520 Series that will become effective on June 15, 2009.

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 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:

¹⁰ 15 U.S.C. 78s(b)(2).

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-2009-022 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-022. 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 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-2009-022 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.¹¹

Florence E. Harmon

Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 2

Exhibit 2 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

**Text of Regulatory Notice
(Marked to Show Changes from draft Regulatory Notice Filed as Exhibit 2 to SR-FINRA-2008-045 on September 8, 2008)**

* * * * *

Regulatory Notice 0[8]9-XX

Rule Amendment

Eligibility Proceedings

Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications

Effective Date: [[90 days following Commission approval of the proposed rule change]]June 15, 2009

Suggested Routing

Compliance
Executive Representatives
Legal
Operations
Registration
Senior Management

Key Topics

Eligibility Proceedings
Statutory Disqualification
Sarbanes-Oxley Act
Willful Violations

Referenced Rules & Notices

Exchange Act Section 3(a)(39)
FINRA By-Laws
FINRA Rule 9520 Series

Executive Summary

The FINRA Rule 9520 Series sets forth eligibility proceedings under which FINRA may allow a person subject to a statutory disqualification to enter or remain in the securities industry. In connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. and the formation of FINRA, FINRA adopted a revised definition of disqualification to conform to the definition of statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934 (Exchange Act or SEA). Consequently, FINRA's revised definition of disqualification incorporates three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted by the Sarbanes-Oxley Act, and associations with certain other persons subject to statutory disqualification. FINRA will be required to approve a firm's continued membership, or, in the case of individuals, association or continued association with a member firm, in certain instances.

As further detailed in this *Notice*, the SEC recently approved amendments to FINRA's rules to address the circumstances under which persons must obtain FINRA approval to enter or remain in the securities industry, notwithstanding the existence of one of these additional categories of disqualification.¹ FINRA is reviewing its records to identify persons that meet any of the additional conditions that require the filing of an application with FINRA to obtain such approval and will notify firms if FINRA identifies any such persons. However, firms also are required to review their records and communicate with their associated persons as needed to determine whether they must file an application with FINRA.

The FINRA Rule 9520 Series, as amended, is set forth in Attachment A of this *Notice*. In addition, two charts summarizing the circumstances under which persons must file an application to seek FINRA's approval as a result of the expanded definition of disqualification are set forth in Attachment B.

Questions concerning this *Notice* should be directed to:

- Lorraine Lee, Statutory Disqualification Administrator, Department of Member Regulation, at (202) 728-8442.
- M. Catherine Cottam, Assistant Chief Counsel, Department of Registration and Disclosure, at (240) 386-5115.
- Stan Macel, Assistant General Counsel, Office of General Counsel, at (202) 728-8056.

Background and Discussion

The Additional Categories of Disqualification

In light of FINRA's obligation to enforce the federal securities laws, and as part of the consolidation of the member regulatory functions of NASD and NYSE Regulation, Inc. and the formation of FINRA, FINRA adopted by Board and membership vote a revised By-Law definition of disqualification that is consistent with the federal securities laws, such that any person subject to a statutory disqualification under Exchange Act Section 3(a)(39) also is subject to disqualification under the FINRA By-Laws.^{[1]2} Prior to the amendments, the By-Laws listed some, but not all, of the grounds for statutory disqualification contained in Exchange Act Section 3(a)(39).

As a result of these amendments, FINRA has adopted the following three additional categories of disqualification.

1. Willful Violations or Failure to Supervise

Exchange Act Section 3(a)(39) incorporates by reference Exchange Act Sections 15(b)(4)(D) and (E), which subject a person to statutory disqualification if such person:

- has willfully violated any provision of the Exchange Act, the Securities Act of 1933 (Securities Act), the Investment Advisers Act of 1940, the Investment Company Act of 1940 or the rules or regulations thereunder (including the rules of the Municipal Securities Rulemaking Board (MSRB)) (collectively referred to as the federal securities laws), or of the Commodity Exchange Act (CEA) or the rules or regulations thereunder;
- has willfully aided or abetted violations of the federal securities laws or the CEA or the rules and regulations thereunder; or
- has failed reasonably to supervise, with a view towards preventing violations of the federal securities laws or of the CEA or the rules or regulations thereunder, another person who committed a violation, if such other person is subject to his supervision.

2. Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act)

Section 604 of the Sarbanes-Oxley Act expanded the definition of statutory disqualification in Exchange Act Section 3(a)(39) by creating and incorporating Exchange Act Section 15(b)(4)(H) so as to include persons that are:

subject to any final order of a state securities commission (or any agency or officer performing like functions), state authority that supervises or examines banks, savings associations, or credit unions, state insurance commission (or any agency or office performing like functions), an appropriate federal banking agency (as defined in Section 3 of the Federal Deposit Insurance Act), or the National Credit Union Administration, that

- bars such person from association with an entity regulated by such commission, authority, agency or officer, or from engaging in the business of securities, insurance, banking, savings association activities or credit

union activities; or

- constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative or deceptive conduct.

3. Exchange Act Section 3(a)(39)(E) -- Certain Affiliated Relationships

Exchange Act Section 3(a)(39)(E) subjects a person to statutory disqualification if the person is associated with any person who is known, or in the exercise of reasonable care should be known, by him to be a person described in Exchange Act Sections 3(a)(39)(A) through (D).^{[2]13} Firms must bear in mind that, for purposes of identifying whether they are subject to disqualification under this provision, they must apply the definition of “associated person” set forth in the Exchange Act, which includes non-natural persons.^{[3]14}

Eligibility Proceedings: Filing of an Application for Approval

Absent the relief further discussed below, all persons subject to any of the additional categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. A firm seeking to continue in membership, notwithstanding the existence of such a disqualification, would make an application by filing an MC-400A with FINRA’s Department of Registration and Disclosure (RAD). Similarly, a firm seeking to sponsor (*i.e.*, employ or associate with) a disqualified person would make an application by filing an MC-400 with RAD. If it approves the firm’s application, FINRA then submits the appropriate filing to the SEC.^{[4]15}

The SEC recently approved amendments to the FINRA Rule 9520 Series governing the circumstances under which firms or individuals subject to one of the additional categories of disqualification will be required to seek FINRA’s approval to enter or remain in the securities industry and that generally will require FINRA to submit a notice filing with the SEC.

As outlined in items (1) through (3) below, the need for a member to file an application with FINRA for approval notwithstanding the disqualification depends on:

- the type of the disqualification;
- the date of the disqualification; and
- whether the firm or individual is seeking admission, readmission or continuance in the securities industry.^{[5]16}

FINRA is reviewing its records to identify persons that meet any of the additional conditions that require the filing of an application with FINRA to obtain such approval and will notify firms if FINRA identifies any such persons.^{[6]17} However, firms also are required to review their records and communicate with their associated persons as needed to determine whether they must file an application with FINRA.

Members also should refer to Attachment B for two charts that summarize the procedures outlined below. One chart addresses the application requirements for persons seeking admission or readmission to the securities industry; the second chart addresses

application requirements for persons currently working in the securities industry and seeking to continue such employment, notwithstanding the existence of the statutory disqualification.

1. Statutory Disqualifications Arising from Willful Violations or Failure to Supervise (Exchange Act Section 15(b)(4)(D) or (E))

With respect to disqualifications arising solely from findings specified in Exchange Act Section 15(b)(4)(D) or (E) by the SEC, CFTC or an SRO as defined in the Uniform Forms (*i.e.*, Form U4, Form U5 and Form BD), a member shall file an application with RAD if the sanction is still in effect and:

- the disqualified member or person is seeking admission or readmission to the securities industry; or
- the disqualified member or person is seeking to continue in membership or association with a member, unless:
 - such member or person is as of [[insert date of the SEC's approval of the proposed rule change]]March 17, 2009 a member of, or an associated person of a member of, FINRA or another SRO^{[7]8} and was, as of [[insert date of the SEC's approval of the proposed rule change]]March 17, 2009, subject to the disqualification, in which event the member shall file an application with RAD only if there is a change in employer or if the member makes an application for the registration of the person as a principal pursuant to FINRA rules.

2. Statutory Disqualifications Arising from Sarbanes-Oxley Act (Exchange Act Section 15(b)(4)(H))

With respect to disqualifications arising solely from orders specified in Exchange Act Section 15(b)(4)(H)(i) and (ii), a member shall file an application with RAD if:

- the disqualified member or person is seeking admission or readmission to, or continuance in, the securities industry; unless:
 - such member or person is subject to a final order as described in Section 15(b)(4)(H)(ii),^{[8]9} and
 - the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect, in which event an application need not be filed; or
 - the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), the sanctions are no longer in effect, and the order was entered 10 or more years ago, in which event an application need not be filed.

However, if the disqualified member or person is, as of [[insert date of the SEC's approval of the proposed rule change]]March 17, 2009 a member of, or an associated person of a member of, FINRA or another SRO^{[9]10} and was, as of [[insert date of the SEC's approval of the proposed rule change]]March 17, 2009, subject to a final order as described in Section 15(b)(4)(H)(ii) and:

- the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are still in effect, the member shall file an application with RAD only if there is a change in employer, or if the member makes an application for the registration of the person as a principal pursuant to FINRA rules; or
- the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect, and the order was entered within the prior 10 years, the member shall file an application with RAD only if there is a change in employer, or if the member makes an application for the registration of the person as a principal pursuant to FINRA rules.

Moreover, where such member or person is, as of [[insert date of the SEC's approval of the proposed rule change]]March 17, 2009 a member of, or an associated person of a member of, FINRA or another SRO^{[10]11} and was, as of [[insert date of the SEC's approval of the proposed rule change]]March 17, 2009, subject to a bar as described in Exchange Act Section 15(b)(4)(H)(i), and the bar is still in effect^{[11]12} (and is not related to fraudulent, manipulative, or deceptive conduct), the member shall file an application with RAD only if there is a change in employer or if the member makes an application for the registration of the person as a principal pursuant to FINRA rules.

3. Statutory Disqualifications under Exchange Act Section 3(a)(39)(E) – Certain Affiliated Relationships

With respect to disqualifications arising solely under Section 3(a)(39)(E) of the Exchange Act, a member shall file an application with RAD if:

- the disqualified member or person is seeking admission or readmission to, or continuance in, the securities industry and the disqualified member or person is subject to a statutory disqualification under Exchange Act Section 3(a)(39)(E), solely because such member or person has associated with him any person^{[12]13} who is known, or in the exercise of reasonable care should be known, to the disqualified member or person to be a person described by Exchange Act Section 3(a)(39)(A), (B), (C) or (D), and the associated person:
 - controls such disqualified member or person, is a general partner or officer (or person occupying a similar status or performing similar functions) of such disqualified member, is an employee, who, on behalf of such disqualified member, is engaged in securities advertising, public relations,

research, sales, trading, or training or supervision of other employees who engage or propose to engage in such activities, except clerical and ministerial persons engaged in such activities, or is an employee with access to funds, securities or books and records, or

- is a broker or dealer not registered with the SEC, or controls such (unregistered) broker or dealer, or is a general partner or officer (or person occupying a similar status or performing similar functions) of such broker or dealer.

However, the disqualified member or person seeking to continue in the securities industry is not required to file an application where such member or person is, as of [[insert date of the SEC's approval of the proposed rule change]] March 17, 2009 a member of, or an associated person of a member of, FINRA or another SRO^{[13]14} and was, as of [[insert date of the SEC's approval of the proposed rule change]] March 17, 2009, subject to the disqualification.

Department of Member Regulation Review

Under the current eligibility rules, FINRA's Department of Member Regulation (Member Regulation) is responsible for evaluating applications for relief from a statutory disqualification filed by a disqualified member or sponsoring member[firm]. In certain circumstances, Member Regulation is authorized to approve the application, while in other cases, Member Regulation must make a recommendation to either approve or deny the applications to the National Adjudicatory Council (NAC).

The amendments to the FINRA Rule 9520 Series authorize Member Regulation to approve applications where the disqualification arises from findings or orders specified in Exchange Act Section 15(b)(4)(D), (E) or (H) or arises under Exchange Act Section 3(a)(39)(E) (*i.e.*, the additional categories of disqualification addressed in this *Notice*). In the event Member Regulation does not approve these applications, the disqualified member or sponsoring member[firm] has the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.^{[14]15}

In addition, if Member Regulation determines that an application relating to a disqualification that arises from findings or orders specified in Exchange Act Section 15(b)(4)(D), (E) or (H) or arises under Exchange Act Section 3(a)(39)(E) should be approved, but with specific supervisory requirements that have the consent of the disqualified member, [or] sponsoring member[firm] and/or disqualified person, then Member Regulation may approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NAC. If [the parties cannot agree on]a supervisory plan is rejected, the disqualified member, [or] sponsoring member and/or disqualified person may still request NAC consideration of the matter under FINRA Rule 9524.

¹ See Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (SEC Order Approving SR-FINRA-2008-045); Exchange Act Release No. [] (April [], 2009) (SEC Order Approving SR-FINRA-2009-022).

^{[1]2} See [Securities]Exchange Act Release No. 55495 (March 20, 2007)[;], 72 FR 14149 (March 26, 2007) (SR[-]-NASD[-]-2007[-]-023). See also [Securities]Exchange Act Release No. 56145 (July 26, 2007)[;], 72 FR 42169 (August 1, 2007) (SEC Order Approving SR-NASD-2007-023), as amended by [Securities]Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008). See also NASD, SEC No-Action Letter, 2007 SEC No-Act. LEXIS 540 (July 27, 2007) (Letter from Catherine McGuire, SEC, regarding eligibility proceedings for persons subject to the categories of disqualification discussed in this *Notice*).

^{[2]3} Exchange Act Sections 3(a)(39)(A) through (D) provide that a person is subject to a statutory disqualification if such person:

(A) has been and is expelled or suspended from membership or participating in, or barred or suspended from being associated with a member of, any self-regulatory organization (SRO), foreign equivalent of an SRO, foreign or international securities exchange, contract market designated pursuant to Section 5 of the CEA, or any substantially equivalent foreign statute or regulation or futures association registered under Section 17 of such Act, or any substantially equivalent foreign statute or regulation or has been and is denied trading privileges on any such contract market;

(B) Is subject to:

(i) An order of the SEC, other appropriate regulatory agency, or foreign financial regulatory authority:

(I) Denying, suspending for a period not exceeding 12 months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or

(II) Barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer or foreign person performing a function substantially equivalent to any of the above; or

(ii) An order of the Commodity Futures Trading Commission denying, suspending or revoking his registration under the CEA; or

(iii) An order by a foreign financial regulatory authority denying, suspending or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on

or subject to the rules of a contract market, board of trade or foreign equivalent thereof;

(C) By his conduct while associated with a broker, dealer, municipal securities dealer, government securities broker or government securities dealer, or while associated with an entity or person required to be registered under the CEA, has been found to be a cause of any effective suspension, expulsion or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion or order, the SEC, an appropriate regulatory agency, or any such SRO shall have jurisdiction to find whether or not any person was a cause thereof;

(D) By his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (A) or (B) of this paragraph.

^{[3]4} See Exchange Act Section 3(a)(21) for the definition of person associated with a member.

^{[4]5} Under the regulatory scheme established by Exchange Act Section 15A(g)(2) and SEA Rule 19h-1, FINRA generally is required to file a notice with the SEC for any disqualified person that FINRA is proposing to admit to or continue in membership or association with a member. SEA Rule 19h-1 provides for SEC review of notices filed by SROs, including FINRA, proposing conditionally or unconditionally, to admit to, or continue any person in, membership or participation or association with a member, notwithstanding a statutory disqualification.

^{[5]6} Firms that are members of both FINRA and of the New York Stock Exchange (NYSE) (Dual Members) that previously have filed an application with, and obtained approval from the NYSE with respect to a disqualification arising under Exchange Act Sections 15(b)(4)(D), (E) or (H) or Exchange Act Section 3(a)(39)(E) generally would not be required to seek further approval from FINRA, unless the disqualified member or person meets one of the triggering events or otherwise must comply with the FINRA Rule 9520 Series due, for example, to a change in status addressed by the rules. Dual Members may contact RAD if they have questions regarding whether an application to FINRA is required.

^{[6]7} FINRA [expects to] recently filed a proposed rule change to revise the questions on Forms U4 and U5 to enable FINRA and other regulators to identify more

readily persons subject to statutory disqualification based on willful violations. See Exchange Act Release No. 59616 (March 20, 2009), 74 FR 13491 (March 27, 2009) (Notice of Filing of SR-FINRA-2009-008).

[7]8 For purposes of the amendments, an associated person would include a person that was associated with a member within 45 days prior to [[insert date of the SEC's approval of the proposed rule change]]March 17, 2009, provided that the person is associated with another member within 45 days after [[insert date of the SEC's approval of the proposed rule change]]March 17, 2009.

[8]9 This would include a finding of aiding and abetting a violation of such laws.

[9]10 *See supra* note [7]8.

[10]11 *See supra* note [7]8.

[11]12 A person would no longer be subject to a statutory disqualification when the time limitation of a bar or license revocation has expired, provided that (1) application for reentry is not required or has been granted; (2) the bar or revocation has no continuing effect; and (3) the bar was not issued in connection with a final order based on violations of laws or regulations prohibiting fraudulent, manipulative or deceptive conduct, as described in Exchange Act Section 15(b)(4)(H)(ii).

As an example, a person subject to a statutory disqualification based on a three-month bar (or three-year bar) that ends automatically and has no continuing effect would no longer be subject to a statutory disqualification at the end of the three months (or three years) under Exchange Act Section 15(b)(4)(H)(i) unless the bar was issued in connection with a final order based on violations of laws or regulations prohibiting fraudulent, manipulative or deceptive conduct, as described in Exchange Act Section 15(b)(4)(H)(ii).

[12]13 If the associated person is already subject to FINRA jurisdiction (and therefore is being processed) because he or she meets the By-Law definition of "associated person," then there is no need for a separate filing (*i.e.*, application for the associated person would satisfy the filing requirement for the member firm/subject person).

If the associated person is not subject to FINRA jurisdiction (*e.g.*, an entity such as a holding company), then a separate application would have to be made for the member firm/subject person.

[13]14 *See supra* note [7]8.

^[14]¹⁵ A technical change to FINRA Rule 9522 allows a member that has filed a statutory disqualification application to withdraw that application without receiving the NAC's approval to do so.