

FINRA Qualification Examinations

FINRA Requests Comment on a Proposed New Expedited Proceeding Rule for Failures to Comply With the FINRA Qualification Examinations Rules of Conduct and Proposed Amendments to the Registration Requirements Rule and the Eligibility Proceedings Rules

Comment Period Expires: November 23, 2020

Summary

FINRA is proposing formal procedures for bringing actions against non-associated persons who cheat or misbehave during a FINRA qualification examination. Although there are few instances of cheating, because persons who are not yet associated with a member firm may take the Securities Industry Essentials (SIE) examination or other FINRA qualification examinations, formal procedures are needed to address misconduct by non-associated persons when it occurs.

The proposed formal procedures—a new expedited proceeding rule—would also strengthen the existing processes for responding to cheating and misbehavior by associated persons during a FINRA qualification examination. FINRA also is proposing related amendments to FINRA’s registration requirements rule and eligibility proceedings rules.

The proposed rule text is available in [Attachment A](#).

Questions concerning this *Notice* should be directed to:

- ▶ Afshin Atabaki, Special Advisor and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8902; or
- ▶ Michael Garawski, Associate General Counsel, OGC, at (202) 728-8835.

Questions regarding the Economic Impact Assessment in this *Notice* should be directed to:

- ▶ Meghan Burns, Associate Principal Analyst, Office of Chief Economist, at (202) 728-8062.

September 22, 2020

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Registration

Key Topics

- ▶ Eligibility Proceedings
- ▶ Expedited Proceedings
- ▶ Qualification Examinations

Referenced Rules & Notices

- ▶ Regulatory Notice 17-30
- ▶ Rule 1210
- ▶ Rule 2010
- ▶ Rule 9520 Series
- ▶ Rule 9550 Series

Action Requested

FINRA encourages all interested parties to comment. Comments must be received by November 23, 2020.

Comments must be submitted through one of the following methods:

- ▶ Online using FINRA's comment form for this *Notice*;
- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

To help FINRA process comments more efficiently, persons should use only one method to comment.

Important Notes: Comments received in response to *Regulatory Notices* will be made available to the public on the FINRA website. In general, comments will be posted as they are received. FINRA reserves the right to redact, remove or decline to post comments that are inappropriate for publication, such as vulgar, abusive or potentially fraudulent comment letters.

Parties should submit in their comments only personally identifiable information, such as phone numbers and addresses, that they wish to make available publicly. FINRA reserves the right to redact or edit personally identifiable information from comment submissions.

Before becoming effective, the proposed rule change must be filed with the Securities and Exchange Commission (SEC or Commission) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA or Exchange Act).¹

Background & Discussion

Currently, FINRA can bring a disciplinary action against an associated person who has cheated on a FINRA qualification examination or otherwise failed to comply with the FINRA Qualification Examinations Rules of Conduct (Rules of Conduct), alleging a violation of Rule 2010, but cannot bring a disciplinary action against a person who engages in similar misconduct before associating with a firm.² To help address this problem, FINRA Rule 1210.05 (Rules of Conduct for Taking Examinations and Confidentiality of Examinations) enables FINRA to determine whether a non-associated person has cheated on the SIE examination and, if so, forfeit the examination results, prohibit retakes of the SIE

examination, or both. But this rule does not state the process for taking these actions. Nor does FINRA have a process for granting relief where appropriate after FINRA takes any such actions.

For these reasons, FINRA is proposing: (1) a new expedited proceeding rule to address failures by associated persons and non-associated persons to comply with the Rules of Conduct; (2) amendments to Rule 1210.05 to permit FINRA to take action against non-associated persons for a broader range of violations of the Rules of Conduct (not just cheating) and prohibit them from taking any FINRA qualification examination (not just the SIE examination), and to establish a qualification requirement that applies to persons who are prohibited from taking any FINRA qualification examination; and (3) amendments to the Rule 9520 Series (Eligibility Proceedings) to address requests by associated persons and non-associated persons for relief from the proposed Rule 1210.05 qualification requirements.

Proposed New Expedited Proceeding

FINRA is proposing to add new Rule 9560 (Failure to Comply with the FINRA Qualification Examinations Rules of Conduct) and make corresponding amendments to FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series) to allow FINRA to take expedited action against associated persons and non-associated persons who violate the Rules of Conduct. The new expedited proceeding would be similar to FINRA's other expedited proceedings. The following provides an overview of the primary characteristics of the proposed new expedited proceeding:

- ▶ **Written Notice.** The proposed new expedited proceeding rule would authorize FINRA staff to provide written notice to an associated person or a non-associated person of a staff determination that the person failed to comply with the Rules of Conduct and the remedies that will be imposed, including nullification of the score, a prohibition (permanent or temporary) from taking any FINRA qualification examination or both.³
- ▶ **Hearing Request.** Persons subject to a written notice would be allowed to request a hearing before a FINRA Hearing Officer.⁴
- ▶ **No-Stay Provision.** A hearing request would not stay the action imposed by the notice.⁵ This would prevent persons who are suspected of violating the Rules of Conduct from making representations about their examination score (if a score nullification is imposed) or scheduling another examination (if a prohibition from taking any FINRA qualification examination is imposed) while the expedited proceeding is pending.
- ▶ **Timing Requirements.** The proposed rules would allow a person to request a hearing within 30 days after service of the written notice, require that a hearing be held within 30 days of a hearing request, and require that the Hearing Officer prepare a proposed written decision within 60 days of the close of the hearing.⁶

- ▶ **Hearing Officer Authority.** The Hearing Officer would have different levels of authority, depending on whether the respondent was an associated person or a non-associated person at the time of the alleged misconduct:
 - ▶ In an expedited proceeding against a person who *was not an associated person* at the time of the alleged misconduct, the Hearing Officer would have the authority to approve, modify or withdraw the nullification or prohibition imposed by the notice, but would not be authorized to impose any other sanction.
 - ▶ In an expedited proceeding against a person who *was an associated person* of a member at the time of the alleged misconduct, the Hearing Officer would have the authority to approve, modify or withdraw the nullification or prohibition imposed by the notice and impose any other fitting sanction.⁷
- ▶ **Call for Review.** As in other expedited proceedings, the Review Subcommittee of the National Adjudicatory Council (NAC) would have the opportunity to call a proposed decision for review.⁸
- ▶ **Application for SEC Review.** As in all FINRA expedited proceedings, the respondent's right to SEC review would be governed by the Exchange Act.⁹

Proposed Amendments to Rule 1210.05

To align with the proposed new expedited proceeding, FINRA also is proposing five amendments to Rule 1210.05, which concerns the Rules of Conduct for taking, and the confidentiality of, FINRA qualification examinations.

First, Rule 1210.05 would be amended to clarify that individuals taking any FINRA qualification examination who are not associated persons shall agree to be subject to the Rules of Conduct. Currently, Rule 1210.05 provides that individuals "taking the SIE" who are not associated persons shall agree to be subject to the Rules of Conduct.

Second, Rule 1210.05 would be amended to make clear that FINRA can impose remedies when it determines that a non-associated person violated any provision of the Rules of Conduct. Rule 1210.05 currently provides that FINRA may impose remedies when it determines that a non-associated person has "cheated." FINRA has a regulatory interest, however, in being able to take action against any violation of the Rules of Conduct, not just cheating.

Third, Rule 1210.05 would be amended to broaden the remedies that can be imposed on non-associated persons who violate the Rules of Conduct. Currently, Rule 1210.05 provides that a non-associated person may be prohibited from "retaking the SIE." FINRA has a regulatory interest, however, in prohibiting violators from taking any FINRA qualification examination. For this reason, Rule 1210.05 would be amended to provide that a non-associated person may be prohibited, permanently or temporarily, from taking any FINRA qualification examination.

Fourth, Rule 1210.05 would be amended to allow a violation of the Rules of Conduct by an associated person or a non-associated person to be resolved in an expedited proceeding. Currently, Rule 1210.05 provides that an associated person who violates the Rules of Conduct may be subject to disciplinary action. Because the proposed expedited proceeding also would be available for use against associated persons and non-associated persons, FINRA is proposing a corresponding amendment to Rule 1210.05.

Fifth, Rule 1210.05 would be amended to establish that a person who is prohibited from taking any FINRA qualification examination, pursuant to the proposed new expedited proceeding or a disciplinary proceeding, would not be qualified to associate with a member in any registered or unregistered capacity, during the time that the prohibition is in effect. To qualify the person, a sponsoring member firm would need to apply through an eligibility proceeding.¹⁰

Proposed Amendments to the Eligibility Proceedings Rules

FINRA also proposes to create an eligibility process in the Rule 9520 Series (Eligibility Proceedings) that would be used by persons who (i) fail to meet the Rule 1210.05 qualification requirements (*i.e.*, who have been prohibited permanently or temporarily from taking any FINRA qualification examination); (ii) are not subject to a statutory disqualification; and (iii) seek to associate or continue associating in any capacity with a sponsoring member firm. This process would be similar to, but more streamlined than, a statutory disqualification proceeding. The following summarizes the primary characteristics of the proposed process:

- ▶ **Sponsoring Member.** The proposed amendments would broaden the definition of “sponsoring member” in Rule 9521(b)(4) to include firms that sponsor persons who fail to meet the Rule 1210.05 qualification requirements.
- ▶ **Written Request for Relief.** Rule 9522 currently allows firms to file a “written request for relief” from some disqualifications, and the Department of Member Supervision can approve those written requests without the firm having to file an “application.” The proposed amendments to Rule 9522 would establish a similar process for written requests for relief from the Rule 1210.05 qualification requirements. Specifically, a sponsoring member would be able to file a written request for relief on behalf of a person who fails to meet the Rule 1210.05 qualification requirements, and Member Supervision would be able to approve those requests. If relief is granted, Member Supervision also would be able to impose conditions on the sponsoring member or the individual. This is intended to create a streamlined approval process for proposed associations that may not present material risks to investors.
- ▶ **Hearing Procedures.** When Member Supervision does not approve a sponsoring firm’s written request for relief, the firm would be able to request a hearing.¹¹ The proposed rule change would amend the statutory disqualification hearing procedures in Rule 9524 to add procedures for hearings on requests for relief from the Rule 1210.05 qualification requirements.

- ▶ **Qualifications Committee.** Hearings on statutory disqualification applications are presided over by a Hearing Panel (composed of current or former members of the NAC or the Statutory Disqualification Committee or former members of the Board of Directors of FINRA Regulation or the Board of Governors of FINRA). The Hearing Panel makes a recommendation to the Statutory Disqualification Committee, which in turn makes a recommendation to the NAC.¹² The proposed amendments to Rule 9524 would establish a similar layered process for hearings on requests for relief from the Rule 1210.05 qualification requirements, but would use a “Qualifications Committee”—a proposed new NAC subcommittee—instead of the Statutory Disqualification Committee.¹³
- ▶ **NAC Decision Contents.** The proposed amendments to Rule 9524(b)(2) would require that the NAC’s decision concerning a request for relief from the Rule 1210.05 qualification requirements include a statement in support of the disposition of the request for relief, including, if granted, a description of the FINRA qualification examinations that the person must pass, if any, and any conditions imposed on the sponsoring member or the person who has failed to meet the Rule 1210.05 qualification requirements. For example, conditions could include taking and passing the required FINRA qualification examinations and requiring that the firm apply heightened supervision to the person involved.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet its regulatory objective.

Regulatory Need

On October 1, 2018, FINRA introduced the SIE examination. Individuals who are not associated with a FINRA member firm are eligible to take the SIE examination.¹⁴ Unlike how FINRA may take disciplinary action against an associated person who violates the Rules of Conduct, FINRA does not have a rule-based process to address situations in which a non-associated person violates the Rules of Conduct.

Economic Baseline

Since its launch in October 2018, approximately 105,707 individuals, including associated and non-associated persons, have taken the SIE examination. Of these, FINRA brought disciplinary actions against nine associated persons, alleging a violation of the Rules of Conduct and Rule 2010. To date, as many as 35,000 individuals not associated with a

member firm have taken the SIE examination. Of these individuals, FINRA has identified one instance of a person cheating on the SIE examination. Based on historical experience, FINRA can expect the proposed amendments to apply to 0.009 percent of all individuals who sit for the SIE examination.

Currently, if a non-associated person is caught cheating on the SIE examination, Rule 1210.05 allows FINRA recourse against the individual, including forfeiture of the person's score and prohibition from retaking the examination.

The existing process for taking action against associated individuals who violate the Rules of Conduct is a disciplinary proceeding pursuant to FINRA's procedural rules. It does not include the option of an expedited proceeding. For both associated persons and non-associated persons, if an individual has forfeited a FINRA qualification examination score and is prohibited from taking future FINRA qualification examinations, but is not subject to a disqualification, that individual is currently not prohibited from associating with a firm in an unregistered capacity.

Economic Impact

The proposal would codify a process for non-associated individuals, whereby an expedited proceeding would be initiated in the event of a violation of the Rules of Conduct. Consequences for both non-associated persons and associated persons would include forfeiture of the examination score and prohibition from taking any FINRA qualification examination. Persons who are prohibited from taking any FINRA qualification examination would not be qualified to associate with a member firm in a registered or unregistered capacity.

For associated persons, the current process does not include the option of an expedited proceeding. The proposal would make the expedited proceeding process available for taking action against associated as well as non-associated persons.

Anticipated Benefits

FINRA believes that there are benefits associated with the proposal, for member firms, individuals interested in pursuing employment in the financial services industry, associated persons and the investor community. FINRA must be able to enforce an ethical code of conduct for all of its test takers in order to safeguard the integrity of its testing processes and to ensure fairness for all individuals who sit for a FINRA qualification examination. FINRA believes that integrity in its testing process benefits both the investor community and member firms by insulating these groups from individuals with a specific history of unethical behavior (*e.g.*, Rules of Conduct violations).

► **Non-Associated Persons**

With respect to proposed changes affecting individuals seeking employment opportunities in the financial services industry, FINRA anticipates several benefits. First, the presence of a formalized process that is codified by rule ensures consistency in FINRA's dealings with individuals accused of a Rules of Conduct violation, which enhances the fairness of FINRA's testing processes. Second, in the absence of full enforcement of the Rules of Conduct, test takers may have an incentive not to comply with the Rules of Conduct. This creates a disadvantage for both associated and non-associated persons who abide by the Rules of Conduct.

► **Associated Persons**

Those associated individuals accused of a Rules of Conduct violation in an expedited proceeding will benefit from a speedier resolution of the matter. This will be especially true of those accused individuals who are found not to have engaged in misconduct.

Anticipated Costs

FINRA believes that the costs associated with the proposal are limited and will mostly be incurred by FINRA. Costs may be incurred by non-associated persons who have not cheated but are otherwise found to have violated the Rules of Conduct in the form of forfeiture of their score and a permanent or temporary prohibition from taking any FINRA qualification examination. Similar costs may be borne by individuals falsely accused of violating the Rules of Conduct. However, for both associated and non-associated persons, the expedited process should provide some relief.

Individuals, both associated persons and non-associated persons, who are prohibited from taking any FINRA qualification examination will also experience limitations in career choice since they will not be qualified to associate with a member firm in either a registered or unregistered capacity. The exact cost of this qualification requirement will vary by individual but may include loss of employment or potential employment.

Alternatives Considered

As an alternative to the proposal, FINRA considered allowing firms to seek relief on behalf of a person who has been prohibited from taking any FINRA qualification examination through the Materiality Consultation process, which is provided to member firms through the Membership Application Program. However, this process could lead to a Continuing Membership Application. FINRA determined that this is a broader process than necessary given the context and, further, that addressing requests for relief from the proposed Rule 1210.05 qualification requirements better aligns with the responsibilities of the FINRA staff members who assess statutory disqualification applications.

Request for Comment

FINRA requests comment on all aspects of the proposal. FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible. FINRA specifically requests comment concerning the following issues:

1. Are there approaches other than the proposed changes that FINRA should consider?
2. What other economic impacts, including costs and benefits, might be associated with the proposal? Who might be affected and how? Please provide estimates or estimated ranges for costs and benefits wherever possible.
3. Would the proposal impose any other competitive impacts that FINRA has not considered?

Endnotes

1. See SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the Federal Register. Certain limited types of proposed rule changes take effect upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.
2. The Rules of Conduct address the use and handling of personal items; prohibit disruptive, disrespectful, or threatening conduct and conduct that creates a disturbance or interferes with testing operations; prohibit unethical, dishonest or unfair conduct, which includes cheating or attempted cheating to gain or attempt to gain an advantage on the examination; govern the taking of unscheduled breaks during the examination; prohibit the receiving or providing of assistance during the examination; and require maintaining the confidentiality of the examination content.
3. See proposed Rule 9560(a) and (c). The staff who would issue these notices would be in the Department of Credentialing, Registration, Education and Disclosure (CRED). The prohibition that could be imposed could be a prohibition from taking one or more specific FINRA qualification examinations or a prohibition from taking all FINRA qualification examinations.
4. See proposed Rule 9560(e).
5. See proposed Rules 9559(c)(4), 9560(d).
6. See proposed Rules 9559(f)(4) and (o)(3), 9560(e).
7. See proposed Rule 9559(n)(2). Authorizing the Hearing Officer to impose any other fitting sanction on a person who was an associated person of a member would be consistent with Hearing Officers' authority in other expedited proceedings. See Rule 9559(n)(1).
8. See proposed Rule 9559(q).
9. See Rule 9559(r). Whether a finding that a person has failed to comply with the Rules of Conduct would be publicly available would be based on existing processes, including the Uniform Application for Securities Industry Registration or Transfer (Form U4) and Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information).
10. The proposed Rule 1210.05 qualification requirements would impact a person's existing registrations. Thus, a person who is prohibited from taking any FINRA qualification examination would not be qualified to associate with a member firm in any capacity, including capacities in which the person is already registered or has previously qualified. For example, if a person who is currently registered as a General Securities Representative later cheats on, and is prohibited from taking, the Series 24 (General Securities Principal examination), the person's existing member firm would need to initiate an eligibility proceeding to continue associating with the person as a General Securities Representative, even if the firm no longer seeks to associate with the person as a General Securities Principal.
11. See proposed Rule 9522(e)(4)(B).
12. See current Rule 9524(a)(10) and (b).
13. The term "Qualifications Committee" would be defined in proposed amendments to Rule 9120 (Definitions). See proposed Rule 9120(z).
14. See [Regulatory Notice 17-30](#) (October 2017).