

Eligibility Proceedings

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

Effective Date: June 15, 2009

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.

April 2009

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Executive Representatives
- Legal
- Operations
- Registration
- Senior Management

Key Topic(s)

- Eligibility Proceedings
- Sarbanes-Oxley Act
- Statutory Disqualification
- Willful Violations

Referenced Rules & Notices

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

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.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).³ 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.⁴

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.⁵

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.⁶

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.⁷ 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 March 17, 2009, a member of, or an associated person of a member of, FINRA or another SRO⁸ and was, as of 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),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 March 17, 2009, a member of, or an associated person of a member of, FINRA or another SRO¹⁰ and was, as of 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 March 17, 2009, a member of, or an associated person of a member of, FINRA or another SRO¹¹ and was, as of March 17, 2009, subject to a bar as described in Exchange Act Section 15(b)(4)(H)(i), and the bar is still in effect¹² (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 person¹³ 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 March 17, 2009, a member of, or an associated person of a member of, FINRA or another SRO¹⁴ and was, as of 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. 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 has the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.¹⁵

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, sponsoring member 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 a supervisory plan is rejected, the disqualified member, sponsoring member and/or disqualified person may still request NAC consideration of the matter under FINRA Rule 9524.

Endnotes

- 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. 59722 (April 7, 2009) (SEC Order Approving SR-FINRA-2009-022).
- 2 See Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023). See also Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (SEC Order Approving SR-NASD-2007-023), as amended by 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*).
- 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;

Endnotes (continued)

- (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.
- 4 See Exchange Act Section 3(a)(21) for the definition of person associated with a member.
 - 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.
 - 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.
 - 7 FINRA 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).
 - 8 For purposes of the amendments, an associated person would include a person that was associated with a member firm within 45 days prior to March 17, 2009, provided that the person is associated with another member within 45 days after March 17, 2009.
 - 9 This would include a finding of aiding and abetting a violation of such laws.
 - 10 See *supra* note 8.
 - 11 See *supra* note 8.

Endnotes (continued)

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).

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.

14 *See supra* note 8.

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.

Attachment A

Below is the text of the approved rule change. New language is underlined; deletions are in brackets.

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9500. OTHER PROCEEDINGS

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9520. Eligibility Proceedings

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9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) Initiation by FINRA

(1) Issuance of Notice of Disqualification or Ineligibility

If FINRA staff has reason to believe that a disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of FINRA, FINRA staff shall issue a written notice to the member or applicant for membership under NASD Rule 1013. The notice shall specify the grounds for such disqualification or ineligibility. FINRA staff shall not issue such written notice to members or applicants for membership under NASD Rule 1013 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, unless the member or applicant for membership under NASD Rule 1013 is required to file an application pursuant to a 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").

(2) through (4) No Change.

(b) Obligation of Member to Initiate Proceeding

(1) A member shall file an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, with RAD, if the member determines prior to receiving a notice under paragraph (a) that:

[(1)](A) it has become a disqualified member;

[(2)](B) a person associated with such member or whose association is proposed by an applicant for membership under NASD Rule 1013 has become a disqualified person; or

[(3)](C) the member or applicant for membership under NASD Rule 1013 wishes to sponsor the association of a person who is a disqualified person.

(2) For any disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, a member shall not file an application unless instructed to do so by the SD Regulatory Notice.

(c) Withdrawal of Application

A member may withdraw its application or written request for relief prior to a hearing by filing a written notice with RAD pursuant to Rules 9135, 9136, and 9137. A member may withdraw its application after the start of a hearing but prior to the issuance of a decision by the National Adjudicatory Council [with prior written consent of the National Adjudicatory Council] by filing a written notice with RAD and the Office of General Counsel pursuant to Rules 9135, 9136, and 9137.

(d) No Change.

(e) Member Regulation Consideration

(1) Matters that may be Approved by the Department of Member Regulation without the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, [may grant] is authorized to approve a written request for relief from the eligibility requirements by a disqualified member or a sponsoring member without the filing of an application by such disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification:

(A) through (C) No Change.

(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, [may] is authorized to approve an application filed by a disqualified member or sponsoring member if [a] the disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in paragraph (e)(1)):

(A) through (C) No Change.

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the SEC will not institute a proceeding against such person pursuant to Section 15(b) or 15B of the Exchange Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed; [or]

(E) The disqualified person's functions are purely clerical and/or ministerial in nature[.]; or

(F) The disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arises under Section 3(a)(39)(E) of the Exchange Act.

(3) No Change.

9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEA Rule 19h-1

(a) With respect to all disqualifications, except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, [A]after an application is filed, the Department of Member Regulation may recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan.

[(b)](1) If a disqualified member, sponsoring member, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waive:

(A) through (C) No Change.

(2) If a recommendation or supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the waivers made under paragraph [(b)](a)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under this rule and Rule 9524, as applicable.

[(c)](3) If the disqualified member, sponsoring member, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the Office of General Counsel by the Department of Member Regulation with a proposed Notice under SEA Rule 19h-1, where required. The Office of General Counsel shall forward the supervisory plan and proposed Notice under SEA Rule 19h-1, if any, to the Chairman of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council. The Chairman of the Statutory Disqualification Committee may accept or reject the recommendation of the Department of Member Regulation and the supervisory plan or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

~~[(d)](4)~~ If the recommendation and supervisory plan is accepted by the National Adjudicatory Council or the Chairman of the Statutory Disqualification Committee, it shall be deemed final and, where required, the proposed Notice under SEA Rule 19h-1 will be filed by FINRA. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee or the National Adjudicatory Council, FINRA may take any other appropriate action with respect to the disqualified member, sponsoring member, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member, sponsoring member, and/or disqualified person shall not be prejudiced by the execution of the letter consenting to the supervisory plan under this paragraph (a) and the letter may not be introduced into evidence in any proceeding.

(b) With respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, in approving an application under Rule 9522(e)(2)(F), the Department of Member Regulation is authorized to accept the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified persons, as the case may be, consent to the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan. The Department of Member Regulation shall prepare a proposed Notice under SEA Rule 19h-1, where required, and FINRA shall file such Notice.

(1) If a disqualified member, sponsoring member, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waive:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the National Adjudicatory Council, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;

(B) any right of the disqualified member, sponsoring member, and/or disqualified person to claim bias or prejudice by the Department of Member Regulation or the General Counsel in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified member, sponsoring member, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan.

(2) If the supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the waivers made under paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under Rule 9524.

9524. National Adjudicatory Council Consideration

(a) No Change.

(b) **Decision**

(1) Decision of the National Adjudicatory Council

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the National Adjudicatory Council may grant or deny the request for relief, and, if relief is granted, impose conditions on the disqualified member, sponsoring member, and/or disqualified person, as the case may be. At any time prior to the issuance of its recommendation, the National Adjudicatory Council may order the Parties to supplement the record with any additional information that the National Adjudicatory Council deems necessary. Alternatively, the National Adjudicatory Council may remand the eligibility proceeding. The National Adjudicatory Council shall prepare a proposed written decision pursuant to [sub]paragraph (b)(2).

(2) through (3) No Change.

Attachment B Statutory Disqualifications Arising from Amended Definition of Disqualification – Persons Seeking Admission or Re-Admission to Industry

Person Subject to Statutory Disqualification (SD) – New Admissions and Re-Admissions	Willful Violations ¹ Exchange Act Sections 15(b)(4)(D)&(E)	Sarbanes-Oxley Act (SOX) Section 15(b)(4)(H)		Certain Affiliated Relationships Exchange Act Section 3(a)(39)(E)
		SOX Bars Exchange Act Section 15(b)(4)(H)(i)	SOX Final Orders Exchange Act Section 15(b)(4)(H)(ii)	
Existing SDs ²	<p>If sanction is no longer in effect, then no application required.</p> <p>If sanction is still in effect, then application required.</p>	<p>Application required.</p> <p>That said, if bar is time-limited, and the time period has expired, then bar is no longer a SD and no application would be required unless related Fraudulent, Manipulative or Deceptive (FMD) final order, in which case refer to “SOX Final Orders” column.</p>	<p>Application required unless</p> <p>(1) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions) and the sanctions are no longer in effect; or</p> <p>(2) 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.</p>	<p>Application, as specified below, required for the member firm/subject person if an associated person that is subject to a specified SD, in summary, (1) controls the member; (2) is a general partner or officer of the member; (3) is an employee engaged in certain specified activities; or (4) is an unregistered broker-dealer, controls such an unregistered broker-dealer or is a general partner or officer of such an unregistered broker-dealer.</p> <p>If the associated person is already subject to FINRA jurisdiction (and therefore is being processed) because he or she falls within the By-Law definition of “associated person,” then there is no need for a separate filing (<i>i.e.</i>, application for the associated person would satisfy the filing requirement for the member firm/subject person).</p> <p>If the associated person is not subject to FINRA jurisdiction (<i>e.g.</i>, an entity such as a holding company), then a separate application would have to be made for the member firm/subject person.</p>
New SDs ³	Same as above.	Same as above.	Same as above.	Same as above.

1. References to “willful violations” also include willfully aiding and abetting an enumerated violation and failure to supervise an enumerated violation.

2. Existing SDs refer to statutory disqualifications that are in existence as of March 17, 2009.

3. New SDs refers to statutory disqualifications that arise after March 17, 2009.

Statutory Disqualifications Arising from Amended Definition of Disqualification — Persons Seeking to Continue in the Industry

Person Subject to Statutory Disqualification (SD) — Continuances ¹	Willful Violations ² Exchange Act Sections 15(b)(4)(D)&(E)	Sarbanes-Oxley Act (SOX) Section 15(b)(4)(H)		Certain Affiliated Relationships Exchange Act Section 3(a)(39)(E)
		SOX Bars Exchange Act Section 15(b)(4)(H)(i)	SOX Final Orders Exchange Act Section 15(b)(4)(H)(ii)	
Existing SDs ³	<p>If sanction is no longer in effect, then no application required.</p> <p>If sanction is still in effect, then application is required only upon a triggering event.⁴</p>	<p>If bar is no longer in effect and is not related to Fraudulent, Manipulative or Deceptive (FMD) conduct, then no application required.</p> <p>If bar is still in effect and is not related to FMD conduct, then no application required unless there is a triggering event.⁵</p> <p>If bar is still in effect and is related to FMD conduct, then application is required.</p>	<p>Application required, unless</p> <p>(1) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect;</p> <p>(2) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are still in effect, in which event application is required if there is a triggering event;⁶</p> <p>(3) the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect, and order was entered 10 or more years ago (if the order was issued less than 10 years ago, then application is required if there is a triggering event).⁷</p>	No application required.

1 This encompasses a person associated with a member within 45 days prior to March 17, 2009, provided that the person is associated with another member firm within 45 days after March 17, 2009.

2 References to “willful violations” also include willfully aiding and abetting an enumerated violation and failure to supervise an enumerated violation.

3 Existing SDs refer to statutory disqualifications that are in existence as of March 17, 2009.

4 A triggering event occurs when the person subject to the statutory disqualification either changes employers or the member firm makes an application for the registration of such person as a principal pursuant to FINRA rules.

5 See *id.*

6 *Id.*

7 *Id.*

Statutory Disqualifications Arising from Amended Definition of Disqualification — Persons Seeking to Continue in the Industry

Person Subject to Statutory Disqualification (SD) – Continuances	Willful Violations Exchange Act Sections 15(b)(4)(D)&(E)	Sarbanes-Oxley Act (SOX) Section 15(b)(4)(H)	Certain Affiliated Relationships Exchange Act Section 3(a)(39)(E)
New SDs ⁸	<p>If sanction is no longer in effect, then no application required.</p> <p>If sanction is still in effect, then application required.</p>	<p>Application required.</p> <p>That said, if bar is time-limited, and the time period has expired, then bar is no longer SD, and no application would be required unless related FMD final order, in which case refer to “SOX Final Orders” column.</p>	<p>Application, as specified below, required for the member firm/subject person if an associated person that is subject to a specified SD, in summary, (1) controls the member; (2) is a general partner or officer of the member; (3) is an employee engaged in certain specified activities; or (4) is an unregistered broker-dealer, controls such an unregistered broker-dealer or is a general partner or officer of such an unregistered broker-dealer.</p> <p>If the associated person is already subject to FINRA jurisdiction (and therefore is being processed) because he or she falls within the By-Law definition of “associated person,” then there is no need for a separate filing (<i>i.e.</i>, application for the associated person would satisfy the application requirement for the member firm/subject person).</p> <p>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.</p>

8 New SDs refers to statutory disqualifications that arise after March 17, 2009.