

Regulatory Notice

10-13

Expedited Proceedings

SEC Approves Amendments to the FINRA Rule 9550 Series Governing Expedited Proceedings

Effective Date: March 25, 2010

Executive Summary

The FINRA Rule 9550 Series provides a procedural mechanism for FINRA to address certain types of misconduct more quickly than would be possible using the ordinary FINRA disciplinary process. The SEC recently approved amendments that make the following changes to the rule series:

- Modify various time requirements regarding expedited proceedings;
- Add an expedited proceeding for failure to pay restitution; and
- Harmonize a remedy in an expedited procedure with a remedy in the FINRA By-Laws.¹

The amended rule text is set forth in Attachment A and is effective March 25, 2010.

Questions regarding this *Notice* should be directed to James S. Wrona, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8270.

Background & Discussion

On December 28, 2009, the SEC approved amendments to the Rule 9550 Series governing expedited proceedings.² The changes are discussed on the following pages.

February 2010

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- Expedited Proceedings
- Hearings
- Restitution
- Sanctions

Referenced Rules & Notices

- FINRA Rule 9550 Series
- Article VI, Section 3(b) of the FINRA By-Laws

Shortening Time Periods

The Rule 9550 Series provides a procedural mechanism for FINRA to address certain types of misconduct in an accelerated timeframe. However, the rule series allows firms and associated persons to request a hearing that often results in a stay of the action. The amendments shorten the time within which a hearing must be held from 60 days after a hearing request to 30 days after the request in relation to the following FINRA rules:

- Rule 9551 (Failure to Comply with Public Communication Standards);
- Rule 9552 (Failure to Provide Information or Keep Information Current);
- Rule 9553 (Failure to Pay FINRA Dues, Fees and Other Charges);
- Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement); and
- Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).³

In addition to modifying the timing of hearings, the amendments shorten the period before a suspension automatically turns into an expulsion or bar under Rule 9552. That rule generally allows FINRA to suspend a firm or associated person for failure to provide any information requested or required to be filed pursuant to the FINRA By-Laws or rules. Under Rule 9552, FINRA may provide written notice to such firm or person specifying the nature of the failure and stating that failure to take corrective action within 21 days after service of the notice will result in suspension. The rule previously provided that a firm or person suspended under the rule who fails to request termination of the suspension within six months is automatically expelled or barred. The recently approved amendments shorten that timeframe from six months to three months.

Adding an Expedited Procedure for Failure to Pay Restitution

The amendments modify Rule 9554, which contains expedited procedures for failures to comply with FINRA arbitration awards, to also explicitly permit FINRA to take expedited action for failures to comply with FINRA orders of restitution or FINRA settlements providing for restitution. In general, restitution is a remedy used to restore victims to their position before the wrongful conduct occurred and to compensate them for unjust losses or injury suffered as the result of another's wrongdoing.⁴ The SEC and FINRA have long stressed the significance of imposing restitution where an "identifiable person... has suffered a quantifiable loss as a result of a respondent's misconduct."⁵

Harmonizing Remedies

The amendments also harmonize the remedy for an *individual's* failure to comply with an arbitration award in Rule 9554 with the remedy for the same misconduct in Article VI, Section 3(b) of the FINRA By-Laws. Specifically, the amendments limit the remedy available in such actions to suspensions.

Endnotes

- 1 See Exchange Act Release No. 61242 (December 28, 2009), 75 FR 167 (January 4, 2010) (Order Approving File No. SR-FINRA-2009-076).
- 2 *Id.*
- 3 FINRA implemented the changes regarding the timing of the hearings by amending Rule 9559, which contains the hearing provisions for the Rule 9550 Series. FINRA also made conforming changes to Rule 9559 regarding the pre-hearing exchange of documents between the parties to the expedited proceeding.
- 4 See *David Joseph Dambro*, 51 S.E.C. 513, 518 (1993).
- 5 FINRA Sanction Guidelines, at 4; see also *Dambro*, 51 S.E.C. at 518.

ATTACHMENT A

Text of Amended Rules

New language is underlined; deletions are in brackets.

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9550. Expedited Proceedings

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9552. Failure to Provide Information or Keep Information Current

(a) through (g) No Change.

(h) Defaults

A member or person who is suspended under this Rule and fails to request termination of the suspension within three [six] months of issuance of the original notice of suspension will automatically be expelled or barred.

(i) No Change.

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9554. Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution

(a) Notice of Suspension or[,] Cancellation [or Bar]

If a member, person associated with a member or person subject to FINRA's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article VI, Section 3 of the FINRA By-Laws or a FINRA order of restitution or FINRA settlement agreement providing for restitution, FINRA staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension [or bar] from associating with any member.

(b) Service of Notice of Suspension[,], or Cancellation [or Bar]

FINRA staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) No Change.

(d) Effective Date of Suspension[,], or Cancellation [or Bar]

The suspension[,], or cancellation [or bar] referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) No Change.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension[,], or cancellation [or bar] specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final FINRA action.

(g) through (h) No Change.

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9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) through (e) No Change.

(f) Time of Hearing

(1) through (2) No Change.

(3) A hearing shall be held within 30 [60] days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(4) No Change.

(g) No Change.

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than seven days before the hearing in an action brought under Rules 9556 and 9558, and not less than 14 [40] days before the hearing in an action brought under Rules 9551 through 9555, FINRA staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were

considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by FINRA until the date upon which FINRA serves a final decision or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556 and 9558, and not less than seven [14] days before the hearing in an action brought under Rules 9551 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.

(i) through (s) No Change.

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