

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2008 - 045

Amendment No.

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

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to amend the FINRA Rule 9520 Series regarding eligibility procedures for persons subject to certain disqualifications

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 Last Name
Title
E-mail
Telephone Fax

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 By
(Name)

(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 EDFS 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

Add Remove View

Exhibit Sent As Paper Document

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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

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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 amend the FINRA Rule 9520 Series,² which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws. In addition, FINRA is filing a proposed Regulatory Notice that details the proposed related eligibility procedures.

The text of the proposed rule change is attached as Exhibit 5. The text of the proposed Regulatory Notice is attached as Exhibit 2.³

(b) Not applicable.

(c) Not applicable.

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. The

¹ 15 U.S.C. 78s(b)(1).

² FINRA has submitted a rule filing proposing, among other things, to adopt the NASD Rule 9520 Series as the FINRA Rule 9520 Series, subject to minor changes. See SR-FINRA-2008-021 (and the related description of such proposed changes therein). The proposed rule text attached as Exhibit 5 to this rule filing is marked to show both the proposed changes discussed herein and the proposed changes to the NASD Rule 9520 Series in SR-FINRA-2008-021.

³ FINRA would issue the proposed Regulatory Notice upon the Commission’s approval of the proposed rule change; the Regulatory Notice is written in a manner that assumes such approval.

proposed rule change also has been approved by the General Counsel of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

The effective date will be 90 days following Commission approval of the proposed rule change.

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

(a) Purpose

In light of FINRA's obligation to enforce the federal securities laws, and as part of the consolidation of the member firm 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 Section 3(a)(39) of the Exchange Act also is subject to disqualification under Article III, Section 4 of the FINRA By-Laws.⁴ Consequently, as further detailed in the proposed Regulatory Notice (see Exhibit 2), 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 in the Sarbanes-Oxley Act, and associations with certain other persons subject to disqualification.

⁴ 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).

Absent the proposed rule change, all persons subject to any of the added categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. The proposed rule change would both amend the text of the FINRA Rule 9520 Series generally to reflect the amended definition of disqualification in the By-Laws, as well as include the proposed Regulatory Notice that outlines in detail the applicable eligibility procedures. The amended FINRA Rule 9520 Series would incorporate by reference the procedures set forth in the Regulatory Notice. As further detailed in the Regulatory Notice, the need for a member to file an application with FINRA for approval notwithstanding the disqualification would depend on (1) the type of the disqualification; (2) the date of the disqualification; and (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

The proposed rule change also addresses the authority of FINRA's Department of Member Regulation ("Member Regulation") to approve disqualification applications. Under the current rules, Member Regulation is responsible for evaluating applications for relief from a 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 FINRA Rule 9522 would 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 added categories of disqualification). In the event Member Regulation does not approve these applications, the disqualified member or sponsoring

member would have the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.

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, then proposed FINRA Rule 9523(b) would authorize Member Regulation to 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, the disqualified member or sponsoring member would have the right to proceed under FINRA Rule 9524.

The proposed rule change also would make several technical amendments. For example, the proposed rule change would amend FINRA Rule 9522(c) to allow a member that has filed a statutory disqualification application to withdraw that application after the start of a hearing but prior to the issuance of a decision by the NAC by filing a written notice with FINRA's Department of Registration and Disclosure ("RAD") and the Office of General Counsel. In addition, for purposes of clarity and consistency, the proposed rule change would amend FINRA Rule 9522(e) to replace references that Member Regulation "may grant" or "may approve" certain matters to "is authorized to approve" such matters.

The proposed rule change also would replace references to "Association" and "NASD" with "FINRA," to reflect NASD's change in corporate name. In addition, the proposed rule change would replace references to "Central Registration

Depository/Public Disclosure” to “Department of Registration and Disclosure” or “RAD” in those instances where the rules are referring to the Department where information must be filed.

As noted in Item 2 of this filing, the effective date will be 90 days following Commission approval of the proposed rule change.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,⁵ 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 amendments to FINRA Rule 9520 Series are necessitated by the adoption of a revised definition of statutory disqualification, so that the FINRA By-Law definition of disqualification is consistent with Section 3(a)(39) of the Exchange Act. The proposed rule change also should allow FINRA to integrate filings mandated by the revised definition of disqualification into established programs that monitor subject persons and allow FINRA and the Commission to focus resources on filings that raise important investor protection concerns.

⁵ 15 U.S.C. 78o-3(b)(6).

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

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Exchange Act.⁶

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

Not applicable.

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 Regulatory Notice.

Exhibit 5. Text of the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-045)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the FINRA Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

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, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend the FINRA Rule 9520 Series,³ which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws. In addition, FINRA is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ FINRA has submitted a rule filing proposing, among other things, to adopt the NASD Rule 9520 Series as the FINRA Rule 9520 Series, subject to minor changes. See SR-FINRA-2008-021 (and the related description of such proposed changes therein). The proposed rule text attached as Exhibit 5 to this rule filing is marked to show both the proposed changes discussed herein and the proposed changes to the NASD Rule 9520 Series in SR-FINRA-2008-021.

filing a proposed Regulatory Notice that details the proposed related eligibility procedures.

The text of the proposed rule change is attached as Exhibit 5. The text of the proposed Regulatory Notice is attached as Exhibit 2.⁴

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 light of FINRA's obligation to enforce the federal securities laws, and as part of the consolidation of the member firm 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 Section 3(a)(39) of the Exchange Act also is subject to disqualification under Article III, Section 4 of the FINRA By-Laws.⁵ Consequently, as further detailed in the proposed Regulatory

⁴ FINRA would issue the proposed Regulatory Notice upon the Commission's approval of the proposed rule change; the Regulatory Notice is written in a manner that assumes such approval.

⁵ 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

Notice (see Exhibit 2), 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 in the Sarbanes-Oxley Act, and associations with certain other persons subject to disqualification.

Absent the proposed rule change, all persons subject to any of the added categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. The proposed rule change would both amend the text of the FINRA Rule 9520 Series generally to reflect the amended definition of disqualification in the By-Laws, as well as include the proposed Regulatory Notice that outlines in detail the applicable eligibility procedures. The amended FINRA Rule 9520 Series would incorporate by reference the procedures set forth in the Regulatory Notice. As further detailed in the Regulatory Notice, the need for a member to file an application with FINRA for approval notwithstanding the disqualification would depend on (1) the type of the disqualification; (2) the date of the disqualification; and (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

The proposed rule change also addresses the authority of FINRA's Department of Member Regulation ("Member Regulation") to approve disqualification applications. Under the current rules, Member Regulation is responsible for evaluating applications for relief from a disqualification filed by a disqualified member or sponsoring member. In certain circumstances, Member Regulation is authorized to approve the application, while

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).

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 FINRA Rule 9522 would 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 added categories of disqualification). In the event Member Regulation does not approve these applications, the disqualified member or sponsoring member would have the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.

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, then proposed FINRA Rule 9523(b) would authorize Member Regulation to 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, the disqualified member or sponsoring member would have the right to proceed under FINRA Rule 9524.

The proposed rule change also would make several technical amendments. For example, the proposed rule change would amend FINRA Rule 9522(c) to allow a member that has filed a statutory disqualification application to withdraw that application after the start of a hearing but prior to the issuance of a decision by the NAC by filing a written notice with FINRA’s Department of Registration and Disclosure (“RAD”) and

the Office of General Counsel. In addition, for purposes of clarity and consistency, the proposed rule change would amend FINRA Rule 9522(e) to replace references that Member Regulation “may grant” or “may approve” certain matters to “is authorized to approve” such matters.

The proposed rule change also would replace references to “Association” and “NASD” with “FINRA,” to reflect NASD’s change in corporate name. In addition, the proposed rule change would replace references to “Central Registration Depository/Public Disclosure” to “Department of Registration and Disclosure” or “RAD” in those instances where the rules are referring to the Department where information must be filed.

The effective date will be 90 days following Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,⁶ 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 amendments to FINRA Rule 9520 Series are necessitated by the adoption of a revised definition of statutory disqualification, so that the FINRA By-Law definition of disqualification is consistent with Section 3(a)(39) of the Exchange Act. The proposed rule change also should allow

⁶ 15 U.S.C. 78o-3(b)(6).

FINRA to integrate filings mandated by the revised definition of disqualification into established programs that monitor subject persons and allow FINRA and the Commission to focus resources on filings that raise important investor protection concerns.

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

Written comments were neither solicited nor received.

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

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:

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-2008-045 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2008-045. 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-2008-045 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.⁷

Florence Harmon

Acting Secretary

⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 2

Regulatory Notice 08-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]

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. 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 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 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

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

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

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 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] a member of, or an associated person of a member of, FINRA or another SRO⁷ and was, as of [insert date of the SEC's approval of the proposed rule change], 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 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] a member of, or an associated person of a member of, FINRA or another SRO⁹ and was, as of [insert date of the SEC's approval of the proposed rule change], 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] a member of, or an associated person of a member of, FINRA or another SRO¹⁰ and was, as of [insert date of the SEC's approval of the proposed rule change], subject to a bar as described in Exchange Act Section 15(b)(4)(H)(i), and the bar is still in effect¹¹ (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 person¹² 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] a member of, or an

associated person of a member of, FINRA or another SRO¹³ and was, as of [insert date of the SEC's approval of the proposed rule change], 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

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, 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, the disqualified member or sponsoring member may still request NAC consideration of the matter under FINRA Rule 9524.

¹ 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 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 See Exchange Act Section 3(a)(21) for the definition of person associated with a member.

4 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 Firm 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 FINRA expects to file a 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.

7 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], 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].

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

9 *See supra* note 7.

10 *See supra* note 7.

11 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 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 *See supra* note 7.

- ¹⁴ 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.

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	If sanction is no longer in effect, then no application required. If sanction is still in effect, then application required.	Application required. 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.	Application required unless (1) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions) and the sanctions are no longer in effect; or (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.	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. 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). 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.
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 [insert date of SEC’s approval of the proposed rule change].

³ New SDs refers to statutory disqualifications that arise after [insert date of SEC’s approval of the proposed rule change].

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	If sanction is no longer in effect, then no application required. If sanction is still in effect, then application is required only upon a triggering event.⁴	If bar is no longer in effect and is not related to Fraudulent, Manipulative or Deceptive (FMD) conduct, then no application required. If bar is still in effect and is not related to FMD conduct, then no application required unless there is a triggering event.⁵ If bar is still in effect and is related to FMD conduct, then application is required.	Application required, unless (1) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect; (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 (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	No application required.

¹ This encompasses a person associated with a member within 45 days prior to [insert date of SEC’s approval of the proposed rule change], provided that the person is associated with another member firm within 45 days after [insert date of SEC’s approval of the proposed rule change].

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 [insert date of SEC’s approval of the proposed rule change].

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	If sanction is no longer in effect, then no application required. If sanction is still in effect, then application required.	Application required. 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.	Application required unless (1) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions) and the sanctions are no longer in effect; or (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.	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. 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.e., application for the associated person would satisfy the application 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.

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.*

⁸ New SDs refers to statutory disqualifications that arise after [insert date of SEC’s approval of the proposed rule change].

EXHIBIT 5

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

* * * * *

9500. OTHER PROCEEDINGS

* * * * *

9520. Eligibility Proceedings

9521. Purpose and Definitions

(a) Purpose

The Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of a statutory disqualification as defined in Article III, Section 4 of the [NASD]FINRA By-Laws and for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements of the [NASD]FINRA By-Laws and [the]FINRA [R]rules[of the Association]. Such actions hereinafter are referred to as "eligibility proceedings."

(b) Definitions

(1) The term "Application" means [NASD Regulation]FINRA's Form MC-400 for individuals or Form MC-400A for members, filed with the [Central Registration Depository/Public Disclosure]Department of Registration and Disclosure ("RAD").

(2) The term "disqualified member" means a broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member that is or becomes subject to a disqualification or is otherwise ineligible for membership under Article III, Section 3 of the [NASD]FINRA By-Laws.

(3) The term “disqualified person” means an associated person or person seeking to become an associated person who is or becomes subject to a disqualification or is otherwise ineligible for association under Article III, Section 3 of the [NASD]FINRA By-Laws.

(4) The term “sponsoring member” means the member or applicant for membership pursuant to NASD Rule 1013 that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) Initiation by [Association]FINRA

(1) Issuance of Notice of Disqualification or Ineligibility

If [Association]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 [the Association]FINRA, [Association] 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 (the “SD Regulatory Notice”).

(2) No Change.

(3) Notice Regarding an Associated Person

A notice issued regarding a disqualified person to a member or applicant for membership under NASD Rule 1013 shall state that such member or applicant for membership may file an application on behalf of itself and such person or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the registration of the disqualified person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

(4) Service

A notice issued under this [section] paragraph (a) shall be served by facsimile or pursuant to Rules 9131 and 9134.

(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 [the Central Registration Depository/Public Disclosure]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 [the Central Registration Depository/Public Disclosure]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) Ex Parte Communications

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule 9520 Series when [Association]FINRA staff has initiated the eligibility proceeding and [Association]FINRA staff has knowledge that a member intends to file an application or written request for relief pursuant to the Rule 9520 Series.

(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 (B) No Change.

(C) a disqualified member or sponsoring member is a member of both [the Association]FINRA and another self-regulatory organization; and:

(i) the other self-regulatory organization intends to file a Notice under SE[C]A Rule 19h-1 approving the membership continuance of the disqualified member or, in the case of a sponsoring member, the proposed association or continued association of the disqualified person; and

(ii) the Department of Member Regulation concurs with that determination.

(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 [sub]paragraph (e)(1)):

(A) The disqualified person is already a participant in, a member of, or a person associated with a member of, a self-regulatory organization (other than [the Association]FINRA), and the terms and conditions of the proposed admission to [the Association]FINRA are the same in all material respects as those imposed or not disapproved in connection with such person's prior admission or continuance pursuant to an order of the [Commission]SEC under SE[C]A Rule 19h-1 or other substantially equivalent written communication;

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the [Commission] SEC under SE[C]A Rule 19h-1 or other substantially equivalent written communication, and that there is no

intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors;

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the [Commission]SEC in determining a sanction against such disqualified person in the proceeding; and the [Commission]SEC concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed; [or]

(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 [Commission] 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) Rights of Disqualified Member, Sponsoring Member, Disqualified Person, and Department of Member Regulation

(A) In the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to [sub]paragraph (e)(1), the disqualified member or sponsoring member may file an application, and such member shall have the right to proceed under Rule 9523 or 9524, as applicable. The Department of Member Regulation may require a disqualified member or sponsoring member to file an application with [the Central Registration Depository/Public Disclosure]RAD, notwithstanding the provisions of [sub]paragraph (e)(1).

(B) In the event the Department of Member Regulation does not approve an application pursuant to [sub]paragraph (e)(2), the disqualified member or sponsoring member shall have the right to proceed under Rule 9523 or 9524, as applicable.

9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SE[C]A 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) the right to a hearing before a Hearing Panel and any right of appeal to the National Adjudicatory Council, the [Commission] SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted.

(B) 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 [sub]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 SE[C]A Rule 19h-1, where required. The Office of General Counsel shall forward the supervisory plan and proposed Notice under SE[C]A 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 SE[C]A Rule 19h-1 will be filed by [the Association]FINRA. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee or the National Adjudicatory Council, [NASD Regulation]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

[sub]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) Hearing Panel Consideration

(1) through (2) No Change.

(3) Transmission of Documents

(A) Upon receipt of an application, [the Central Registration Depository]RAD shall gather all of the information necessary to process the application, including (i) [the Central Registration Depository]RAD records for the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the proposed supervisor; and (ii) all of the information submitted by the disqualified member or sponsoring member in support of the application. [The Central Registration Depository]RAD will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member or sponsoring member, as the case may be, the Office of the General Counsel, and the Department of Member Regulation. Such documents shall be served on the disqualified member or sponsoring member, as the case may be, by mail, facsimile, or overnight courier as soon as practicable. The Department of Member Regulation shall serve its recommendation and its supporting documents on the Office of General Counsel and the disqualified member or sponsoring member, as the case may be, within ten business days of the hearing, unless the Parties agree otherwise. The disqualified member or sponsoring member, as the case may be, shall serve its documents on the Office of General Counsel and

the Department of Member Regulation within ten business days of the hearing, unless the Parties agree otherwise. The Office of General Counsel shall forward all documents transmitted to it pursuant to this [sub]paragraph (a)(3) to the Hearing Panel.

(B) through (C) No Change.

(4) through (7) No Change.

(8) Custodian of the Record

The custodian of the record shall be the Office of General Counsel of [NASD Regulation]FINRA.

(9) Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when [the Association's]FINRA's decision becomes final or, if applicable, upon the conclusion of any review by the [Commission]SEC or the federal courts.

(10) 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) Contents of Decision

The decision shall include:

(A) through (B) No Change.

(C) a statement in support of the disposition of the request for relief, which, if granted, includes any of the applicable elements under SE[C]A Rule 19h-1(e) and a description of any conditions that are imposed on the disqualified member, sponsoring member, or disqualified person, as the case may be.

(3) Issuance of Decision After Expiration of Call for Review Period

The National Adjudicatory Council shall provide its proposed written decision to the [NASD]FINRA Board. The [NASD]FINRA Board may call the eligibility proceeding for review pursuant to Rule 9525. If the [NASD]FINRA Board does not call the eligibility proceeding for review, the proposed written decision of the National Adjudicatory Council shall become final, and the National Adjudicatory Council shall serve its written decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute final action of [the Association]FINRA, unless the

National Adjudicatory Council remands the eligibility proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the [Commission]SEC issues an acknowledgment letter or, in cases involving [Commission]SEC ordered sanctions, an order.

9525. Discretionary Review by the [NASD] FINRA Board

(a) Call for Review by Governor

A Governor may call an eligibility proceeding for review by the [NASD] FINRA Board if the call for review is made within the period prescribed in paragraph (b).

(b) 15 Day Period; Waiver

A Governor shall make his or her call for review not later than the next meeting of the [NASD]FINRA Board that is at least 15 days after the date on which the [NASD] FINRA Board receives the proposed written decision of the National Adjudicatory Council. By a unanimous vote of the [NASD]FINRA Board, the [NASD]FINRA Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the [NASD]FINRA Board then in office, the [NASD]FINRA Board may, during the 15 day period, vote to extend the period to more than 15 days.

(c) Review at Next Meeting

If a Governor calls an eligibility proceeding for review within the period prescribed in paragraph (b), the [NASD]FINRA Board shall review the eligibility proceeding not later than the next meeting of the [NASD]FINRA Board. The [NASD] FINRA Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of [NASD]FINRA Board, Including Remand

After review, the [NASD]FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. Alternatively, the [NASD]FINRA Board may remand the eligibility proceeding with instructions. The [NASD]FINRA Board shall prepare a written decision that includes all of the elements described in Rule 9524(b)(2).

(e) Issuance of Decision

The [NASD]FINRA Board shall issue and serve its written decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute the final action of [the Association]FINRA, unless the [NASD]FINRA Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the [Commission] SEC issues an acknowledgment letter or, in cases involving [Commission] SEC-ordered sanctions, an order.

9526. Expedited Review

(a) Direction by Executive Committee

Notwithstanding Rules 9524 and 9525, the [NASD]FINRA Board Executive Committee, upon request of the Statutory Disqualification Committee, may direct an expedited review of a recommended written decision of the Statutory Disqualification Committee if the [NASD]FINRA Board Executive Committee determines that expedited review is necessary for the protection of investors.

(b) No Change.

(c) No Call for Review

If no Governor calls the proceeding for review within the time prescribed, the decision shall become final, and the Statutory Disqualification Committee shall serve the decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute final action of [the Association]FINRA. The decision shall be effective upon approval by the [Commission]SEC.

(d) Call for Review

If a Governor calls the eligibility proceeding for review within the prescribed time, a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the [NASD]FINRA Board Executive Committee, except that the Governor who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Industry[, Non-Industry,] or Public) as such Governor. The review panel may affirm, modify, or reverse the recommended written decision of the Statutory Disqualification Committee or remand the eligibility proceeding with instructions. The review panel shall prepare, issue, and serve its decision pursuant to Rule 9525(d) and (e).

9527. Application to [Commission]SEC for Review

The right to have any action taken pursuant to this Rule Series reviewed by the [Commission]SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of final action by [the Association]FINRA, unless the [Commission]SEC otherwise orders.