

OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2011 - * 031

Amendment No. (req. for Amendments *)

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, required when Initial is checked *).

Proposed Rule Change to Amend FINRA Rule 9251 to Explicitly Protect from Discovery those Documents that
 Federal Law Prohibits FINRA from Disclosing

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 * Matthew Last Name * Vitek
 Title * Counsel
 E-mail * matthew.vitek@finra.org
 Telephone * (202) 728-8156 Fax (202) 728-8264

Signature

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

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

Date 07/08/2011

By Patrice Gliniecki
 (Name *)

Senior Vice President and Deputy General Counsel

(Title *)

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

Patrice Gliniecki,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

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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 (required)

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

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

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Exhibit Sent As Paper Document

☐

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

☐

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

Exhibit 4 - Marked Copies

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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

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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

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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 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing.

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

* * * * *

9251. Inspection and Copying of Documents in Possession of Staff

(a) No Change.

(b) Withheld Documents [That May Be Withheld]

(1) No Change.

(2) The Department of Enforcement or the Department of Market Regulation shall withhold a Document if the Document is prohibited from disclosure by federal law.

(3) Nothing in paragraph (b)(1) authorizes the Department of Enforcement or the Department of Market Regulation to withhold a Document, or a part thereof, that contains material exculpatory evidence.

(c) Withheld Document List

The Hearing Officer may require the Department of Enforcement or the Department of Market Regulation to submit to the Hearing Officer a list of Documents

¹ 15 U.S.C. 78s(b)(1).

withheld pursuant to paragraph[s] (b)[(1)(A) through (D)] or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order the Department of Enforcement or the Department of Market Regulation to make the list or any Document withheld available to the other Parties for inspection and copying unless federal law prohibits disclosure of the Document or its existence. A motion to require the Department of Enforcement or the Department of Market Regulation to produce a list of Documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a Document is being withheld in violation of the Code.

(d) through (g) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 24, 2009, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

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

(a) Purpose

FINRA Rule 9251 delineates the types of documents that FINRA’s Department of Enforcement (“Enforcement”) and Department of Market Regulation (“Market Regulation”) must produce to respondents during the discovery phase of a disciplinary proceeding. The rule also explicitly shields certain types of documents from production. For example, Enforcement and Market Regulation may withhold documents that are protected by attorney-client privilege or constitute attorney work product.² The rule allows additional types of documents to be withheld where a hearing officer determines that they are irrelevant to the proceeding or for other good cause.³ The rule, moreover, contains procedural safeguards. For example, a hearing officer may privately review and determine the appropriate status of a withheld document.⁴ The rule does not, however, explicitly shield from discovery documents that federal law prohibits FINRA from disclosing. To help ensure both an efficient discovery process and compliance with federal law, the proposed rule change clarifies that Enforcement and Market Regulation shall withhold such documents from respondents during a disciplinary proceeding. Further, the proposed rule change precludes a hearing officer from requiring Enforcement or Market Regulation to either produce or reveal information about the existence of a document if federal law prohibits such disclosure.

² FINRA Rule 9251(b)(1)(A).

³ FINRA Rule 9251(b)(1)(D).

⁴ FINRA Rule 9251(c).

The proposed rule change would amend FINRA Rule 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing. Currently, when Enforcement and Market Regulation possess a document that federal law prohibits them from disclosing, they must affirmatively seek a hearing officer determination that they can withhold it on the grounds of a lack of relevancy or for other good cause. The proposed rule change would increase efficiency by avoiding the need for the parties to brief and hearing officers to resolve unnecessary “good cause” motions regarding documents that FINRA cannot legally produce during disciplinary proceedings. The procedural safeguard discussed above would apply to this category of withheld documents.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁵ which requires, among other things, that FINRA rules must 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. The proposal also is consistent with Section 15A(b)(7) of the Act,⁶ which provides that FINRA members and associated persons must be appropriately disciplined for violations

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ 15 U.S.C. 78o-3(b)(7).

of any provisions of the Act or FINRA rules. The proposed rule change is consistent with these purposes because it promotes a fair and efficient disciplinary process by avoiding the need for unnecessary “good cause” motions regarding documents that federal law prohibits FINRA from producing.

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 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 Act.⁷

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.

⁷ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2011-031)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 9251 to Explicitly Protect from Discovery those Documents that Federal Law Prohibits FINRA from Disclosing

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”) 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 FINRA Rule 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-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

FINRA Rule 9251 delineates the types of documents that FINRA's Department of Enforcement ("Enforcement") and Department of Market Regulation ("Market Regulation") must produce to respondents during the discovery phase of a disciplinary proceeding. The rule also explicitly shields certain types of documents from production. For example, Enforcement and Market Regulation may withhold documents that are protected by attorney-client privilege or constitute attorney work product.³ The rule allows additional types of documents to be withheld where a hearing officer determines that they are irrelevant to the proceeding or for other good cause.⁴ The rule, moreover, contains procedural safeguards. For example, a hearing officer may privately review and determine the appropriate status of a withheld document.⁵ The rule does not, however, explicitly shield from discovery documents that federal law prohibits FINRA from

³ FINRA Rule 9251(b)(1)(A).

⁴ FINRA Rule 9251(b)(1)(D).

⁵ FINRA Rule 9251(c).

disclosing. To help ensure both an efficient discovery process and compliance with federal law, the proposed rule change clarifies that Enforcement and Market Regulation shall withhold such documents from respondents during a disciplinary proceeding. Further, the proposed rule change precludes a hearing officer from requiring Enforcement or Market Regulation to either produce or reveal information about the existence of a document if federal law prohibits such disclosure.

The proposed rule change would amend FINRA Rule 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing. Currently, when Enforcement and Market Regulation possess a document that federal law prohibits them from disclosing, they must affirmatively seek a hearing officer determination that they can withhold it on the grounds of a lack of relevancy or for other good cause. The proposed rule change would increase efficiency by avoiding the need for the parties to brief and hearing officers to resolve unnecessary “good cause” motions regarding documents that FINRA cannot legally produce during disciplinary proceedings. The procedural safeguard discussed above would apply to this category of withheld documents.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁶ which requires, among other things, that FINRA rules must 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. The proposal also is consistent with Section 15A(b)(7) of the Act,⁷ which provides that FINRA members and associated persons must be appropriately disciplined for violations of any provisions of the Act or FINRA rules. The proposed rule change is consistent with these purposes because it promotes a fair and efficient disciplinary process by avoiding the need for unnecessary “good cause” motions regarding documents that federal law prohibits FINRA from producing.

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 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 45 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

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78o-3(b)(7).

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 or disapprove 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-2011-031 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2011-031. 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 website (<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 website viewing and printing 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-2011-031 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.⁸

Elizabeth M. Murphy

Secretary

⁸ 17 CFR 200.30-3(a)(12).