

**Philip Shaikun**  
Associate Vice President and  
Associate General Counsel

Direct: 202-728-8451  
Fax: 202-728-8264

September 17, 2013

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2013-033 – Response to Comments**

Dear Ms. Murphy:

This letter responds to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to the above-referenced rule filing, a proposal to amend FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)) to include additional rule violations eligible for disposition under FINRA’s Minor Rule Violation Plan (“MRVP”).<sup>1</sup>

The Commission received one comment letter on the proposal, from the Financial Services Institute (“FSI”).<sup>2</sup> FSI supports the proposed rule change “in that it expands the types of rules FINRA may consider for disposition under FINRA’s MRVP.” FSI further supports the “appropriateness of imposing a sanction or fine that is proportionate to the minor nature of the violation.”

However, FSI believes that some examples of minor rule violations cited by FINRA in the proposal as being candidates for disposition under the MRVP should not be subject to any disciplinary action. In support, FSI points to FINRA’s example of isolated violations of FINRA Rule 7430 (Synchronization of Member Business Clocks), “where certain business clocks fall out of synch due to software glitches or other technical reasons.” FSI asserts that “minor violations such as the example given, which are isolated as opposed to systematic and are neither willful nor intentional, should not qualify as rule violations.” FSI contends that under such circumstances,

---

<sup>1</sup> See Securities Exchange Act Release No. 70131 (August 7, 2013), 78 FR 49313 (August 13, 2013) (Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2))).

<sup>2</sup> See Letter from David T. Bellaire, Esq. dated September 3, 2013.

Ms. Elizabeth M. Murphy

September 17, 2013

Page 2

FINRA should inform the firm of the deficiency and only consider it a rule violation if the firm does not address the issue.

In response, FINRA notes that inclusion of a rule in the MRVP does not obligate FINRA to treat any particular violation of that rule pursuant to the MRVP. The purpose of the proposed rule change is to give FINRA additional flexibility to administer its enforcement program in the most effective and efficient manner. FINRA therefore retains the discretion to resolve minor violations as informal matters or through an Acceptance, Waiver and Consent or filing of a complaint, depending on the facts and circumstances. As noted in the proposed rule change, FINRA does not intend to develop a formula as to when a matter must be handled pursuant to the MRVP, as opposed to other alternatives, including informal action. To the commenter's example, while many such violations may appropriately be handled with a Cautionary Action Letter or other informal action, FINRA can envision circumstances where negligence or insufficient vetting or oversight of a software vendor might warrant disposition pursuant to the MRVP or, in more serious cases, through a reportable disciplinary action. Finally, FINRA notes that a member or associated person is not obligated to accept an MRV disposition and may always avail itself of the procedural rights under FINRA rules to challenge an allegation in any complaint that may be filed.

\* \* \* \* \*

FINRA believes that the foregoing responds to the issues raised by the commenter. If you have any questions, please contact me at (202) 728-8451.

Very truly yours,



Philip Shaikun  
Associate Vice President and  
Associate General Counsel