

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 81 SECURITIES AND EXCHANGE COMMISSION File No.* SR - 2015 - * 019
WASHINGTON, D.C. 20549
Form 19b-4 Amendment No. (req. for Amendments *)

Filing 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) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Amend FINRA Rule Series 9100, 9200, 9300, 9550, and 9800 Regarding Temporary and Permanent Cease and Desist Orders

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 action.

First Name * Michael Last Name * Garawski

Title * Associate General Counsel

E-mail * michael.garawski@finra.org

Telephone * (202) 728-8835 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.

(Title *)

Date 06/16/2015 Senior Vice President and Deputy General Counsel

By Patrice M. Gliniecki Patrice Gliniecki,

(Name *)

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 EFFF website.

Form 19b-4 Information *

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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 *

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice 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 the 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 Series 9100, 9200, 9300, 9550, and 9800 to modify the evidentiary standard that must be met to impose a temporary cease and desist order, to adopt a new expedited proceeding for repeated failures to comply with temporary or permanent cease and desist orders, to ease administrative burdens in temporary cease and desist proceedings, to harmonize the provisions governing how documents are served in temporary cease and desist proceedings and expedited proceedings, to clarify the process for issuing permanent cease and desist orders, and to make conforming changes throughout FINRA’s Code of Procedure.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on February 13, 2014, 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.

¹ 15 U.S.C. 78s(b)(1).

The effective date will be no later than 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

(i) Background

In 2003, the SEC approved rule amendments that authorized FINRA to seek and impose temporary cease and desist orders.² Temporary cease and desist orders are designed to stop serious violative conduct and maintain the status quo while an underlying disciplinary proceeding is being litigated.³ They can be imposed where the potential harm resulting from violations to investors is likely and significant. FINRA believes that lowering the evidentiary standard to obtain a temporary cease and desist order would better serve the investor protection purposes of the temporary cease and desist authority and make FINRA's temporary cease and desist authority a more viable investor-protection tool. The change in the evidentiary standard may allow FINRA to initiate and resolve temporary cease and desist proceedings sooner, in which case the

² Securities Exchange Act Release No. 47925 (May 23, 2003), 68 FR 33548 (June 4, 2003) (Order Approving File No. SR-NASD-98-80). In 2009, the SEC approved the adoption of the temporary and permanent cease and desist authority on a permanent basis. Securities Exchange Act Release No. 60306 (July 14, 2009), 74 FR 36292 (July 22, 2009) (Order Approving File No. SR-FINRA-2009-035).

³ FINRA Rule 9810(a) provides that a temporary cease and desist proceeding may be initiated with respect to alleged violations of Section 10(b) of the Act (15 U.S.C. 78j(b)) and Rule 10b-5 under the Act (17 CFR 240.10b-5); Rules 15g-1 through 15g-9 under the Act (17 CFR 240.15g-1 et seq.); FINRA Rule 2010 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a))); FINRA Rule 2020; or FINRA Rule 4330 (if the alleged violation is misuse or conversion of customer assets).

potential benefits could be substantial in instances where investors are being significantly harmed. The change would also improve FINRA's capacity to enforce compliance with applicable laws and rules by its members and persons associated with members and FINRA's capability to prevent fraudulent and manipulative acts and practices. At the same time, the proposed rule change maintains all of the meaningful existing restraints on FINRA's temporary cease and desist authority, including rule provisions that restrict who may authorize the initiation of a temporary cease and desist proceeding, narrowly define the violations that a temporary cease and desist order can address, and limit the issuance of temporary cease and desist orders to situations where the alleged violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors.

The proposed rule change also adopts a new expedited proceeding to address situations involving repeated violations of temporary or permanent cease and desist orders. Finally, the proposed rule change includes a series of rule amendments to the temporary cease and desist order rules (FINRA Rule Series 9800), the expedited proceedings rules (FINRA Rule Series 9550), and FINRA's Code of Procedure (FINRA Rule Series 9000) that harmonize service provisions in temporary cease and desist proceedings and expedited proceedings, ease administrative burdens in temporary cease and desist proceedings, and clarify the process by which permanent cease and desist orders may be imposed.

(ii) Evidentiary Standard for Imposing a Temporary Cease and Desist Order

FINRA Rule 9840(a)(1) provides, in pertinent part, that a temporary cease and desist order shall be imposed if the Hearing Panel finds "by a preponderance of the

evidence that the alleged violation specified in the notice has occurred.” FINRA believes that the “preponderance of the evidence” standard sets too high an evidentiary threshold for this critical investor-protection tool. It is the identical standard for proving a violation in the underlying disciplinary proceeding that must be pursued at the same time. Thus, to obtain a temporary cease and desist order—and thereby prevent the likely and significant dissipation or conversion of assets or other significant harm to investors—FINRA’s prosecuting department has to make an evidentiary presentation in the temporary cease and desist proceeding that is similar in extent to its evidentiary presentation in the subsequent underlying disciplinary proceeding, but in an expedited manner. This poses administrative challenges that create a strong disincentive to seeking a temporary cease and desist order.

To increase the viability of the temporary cease and desist authority and improve the capacity of that authority to protect investors facing the likelihood of significant dissipation or conversion of assets, FINRA is proposing rule amendments that modify the evidentiary standard that must be met to obtain a temporary cease and desist order. In this regard, proposed FINRA Rule 9840(a)(1) requires that a FINRA Hearing Panel find that the Department of Enforcement or Department of Market Regulation has made a showing of a likelihood of success on the merits before issuing a temporary cease and desist order. FINRA’s intent is to establish an evidentiary standard in temporary cease and desist proceedings that would require a lesser showing than what would be required during the subsequent, underlying disciplinary proceeding. Changing the evidentiary standard to require a showing of a likelihood of success on the merits may enable FINRA to initiate and resolve temporary cease and desist proceedings sooner and more

efficiently, which would better protect investors' assets and prevent other significant harm until the underlying disciplinary hearing is held.

The proposed rule change makes a corresponding amendment to FINRA Rule 9840(a)(2). Currently, FINRA Rule 9840(a)(2) provides that a temporary cease and desist order shall be imposed if the Hearing Panel finds that the violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of the underlying proceeding. The proposed rule change modifies this requirement to apply to the "alleged" violative conduct or continuation thereof, to be consistent with the proposed change to the evidentiary standard.

FINRA remains mindful that when the Commission approved FINRA's temporary cease and desist authority on a permanent basis in 2009, it noted FINRA's statement that it would use its authority "judiciously."⁴ FINRA's actions have been consistent with that statement—FINRA has sought and obtained temporary cease and desist orders on only seven occasions since 2003—and FINRA intends to continue using its authority in a similarly judicious manner. Moreover, the proposed rule change maintains all of the meaningful restraints on FINRA's temporary cease and desist authority, including that a temporary cease and desist proceeding must be authorized by FINRA's Chief Executive Officer or other designated senior officer, and that a temporary cease and desist order can be imposed only if there is a likelihood of significant dissipation or conversion of assets or significant harm to investors.

⁴ Securities Exchange Act Release No. 60306 (July 14, 2009), 74 FR 36292, 36293 (July 22, 2009) (Order Approving File No. SR-FINRA-2009-035).

In sum, FINRA's purpose in modifying the evidentiary standard for temporary cease and desist proceedings is to increase the effectiveness of this regulatory proceeding and thereby improve investor protection in the most threatening and serious cases until the underlying disciplinary hearing is held.

(iii) Failures to Comply with Temporary Cease and Desist Orders and Permanent Cease and Desist Orders (FINRA Rule 9556)

The proposed rule change includes amendments to FINRA Rule 9556, which sets forth expedited procedures for enforcing violations of FINRA-issued temporary and permanent cease and desist orders. FINRA is concerned that the existing expedited procedures may permit cease and desist orders to be circumvented without any real threat of a sanction. Under current FINRA Rule 9556, if a member or person fails to comply with a temporary or permanent cease and desist order, FINRA staff (with prior authorization from FINRA's Chief Executive Officer or other designated senior officer) may issue a notice stating that the failure to comply within seven days will result in a suspension or cancellation of membership or a suspension or bar from associating with any member and also stating what the respondent must do to avoid such action. A respondent potentially could abuse the current process by repeatedly violating a cease and desist order and curing that violation before the effective date of any FINRA Rule 9556 notice, without being subject to immediate sanctions or review by the Office of Hearing Officers for a prolonged period. While FINRA could pursue disciplinary action against a respondent that repeatedly "violates and cures" in this manner, an inability to obtain sanctions in an expedited manner could undermine any cease and desist order terms that require immediate compliance to be effective.

Proposed FINRA Rule 9556(h) permits FINRA staff (with prior authorization from FINRA's Chief Executive Officer or other designated senior officer) to institute a new kind of expedited proceeding if the subject of a temporary or permanent cease and desist order fails to comply with that order and has previously been served with a notice under FINRA Rule 9556(a) for a failure to comply with any provision of the same temporary or permanent cease and desist order. Proposed FINRA Rule 9556(h)(3) provides that, in contrast to other Rule 9556 proceedings, a respondent's compliance with the temporary or permanent cease and desist order is not a ground for dismissing the FINRA Rule 9556(h) proceeding. Thus, a respondent's compliance with a temporary or permanent cease and desist order after the FINRA Rule 9556(h) proceeding has been initiated would not prevent an adjudicator from reviewing the matter and imposing a fitting sanction for the respondent's violation.

The proposed FINRA Rule 9556(h) proceeding differs from other FINRA Rule 9556 expedited proceedings in other respects that reflect the response that FINRA believes is warranted for situations involving repeated violations of temporary or permanent cease and desist orders. These differences include the following:

- a FINRA Rule 9556(h) proceeding could be initiated only if the respondent has previously been served under FINRA Rule 9556(a) with a notice for failing to comply with any provision of the same temporary or permanent cease and desist order;
- FINRA's prosecuting department would initiate a FINRA Rule 9556(h) proceeding by filing a petition with FINRA's Office of Hearing Officers (and

serving the respondent) that seeks the imposition of sanctions for the violation (rather than issuing a notice to the respondent);

- FINRA’s prosecuting department would seek the imposition of any fitting sanction at the outset of the FINRA Rule 9556(h) proceeding (in contrast to other FINRA Rule 9556 expedited proceedings, where the recipient of a notice is not subject to the imposition of any fitting sanction unless such recipient opts for a hearing);
- a hearing is required in a FINRA Rule 9556(h) proceeding;
- the hearing for a FINRA Rule 9556(h) proceeding must be held in a condensed time frame (ten business days after a respondent is served the petition, versus other Rule 9556 proceedings which require a respondent to request a hearing within seven business days after service of a notice instituting a proceeding and require hearings to be held within 14 days after a request for a hearing is filed);⁵
- a FINRA Rule 9556(h) proceeding is presided over by a Hearing Officer, rather than a Hearing Panel;⁶ and
- the Hearing Officer may issue default decisions in FINRA Rule 9556(h) proceedings.⁷

Under proposed FINRA Rule 9556(h)(4), the FINRA department that filed the petition can withdraw it without prejudice and shall be permitted to refile a petition based on allegations concerning the same facts and circumstances that are set forth in the

⁵ See proposed FINRA Rule 9559(f)(2) and (3); FINRA Rule 9556(d) and (e).

⁶ See proposed FINRA Rule 9559(d)(1) and (2).

⁷ See proposed FINRA Rule 9559(m)(2).

withdrawn petition. This provision will provide FINRA the flexibility to withdraw the petition where, for instance, the respondent evidences a good faith intent to comply with the temporary or permanent cease and desist order without the need to adjudicate the petition, while preserving FINRA's right to refile the petition if the respondent fails to do so.

Considering that these new FINRA Rule 9556(h) expedited proceedings would be limited to subsequent violations of temporary or permanent cease and desist orders, require appropriate authorization, provide an opportunity for a hearing prior to the imposition of a sanction, be resolved by a Hearing Officer, and be subject to appeal to the SEC, sufficient checks are in place to ensure that FINRA continues to use its FINRA Rule 9556 powers in a judicious and fair manner.

(iv) Service Provisions in Temporary Cease and Desist Proceedings and Expedited Proceedings

The proposed rule change makes the FINRA rules that govern service of documents in temporary cease and desist proceedings and the eight different types of expedited proceedings more consistent. Currently, some provisions explicitly address service by facsimile and on counsel, but some do not. FINRA proposes rule amendments that explicitly allow service by facsimile and on counsel across all temporary cease and desist and expedited proceedings because doing so removes unnecessary burdens and inefficiencies.

The proposed rule change also permits service by email in all temporary cease and desist proceedings and expedited proceedings. Email service will allow parties to receive information quickly, which is particularly important in these types of proceedings, considering the short time frames involved. Moreover, where the proposed

revisions permit email service, they also require duplicate service through some other means such as overnight courier or personal delivery.

(v) Clarifying FINRA's Authority to Impose Permanent Cease and Desist Orders

When FINRA obtained the authority to impose temporary cease and desist orders, it also obtained the authority to impose permanent cease and desist orders.⁸ The proposed rule change contains amendments that clarify the process for imposing permanent cease and desist orders in disciplinary proceedings. These changes are procedural in nature and do not reflect any change to FINRA's prior representations concerning the context in which it will seek permanent cease and desist orders.⁹

(vi) Administrative Changes to Temporary Cease and Desist Proceedings

The small pool of persons who currently may serve on hearing panels that preside over temporary cease and desist proceedings, coupled with the short time in which a temporary cease and desist proceeding must be processed, creates administrative burdens for FINRA's Office of Hearing Officers. Currently, FINRA Rule 9820(a) requires that the Hearing Panel appointed to preside over a temporary cease and desist proceeding include two panelists that are "current or former Governors, Directors, or National Adjudicatory Council members, and at least one Panelist shall be an associated person." This is a far more limited pool of potential panelists than is available for other FINRA adjudicatory proceedings, including the underlying disciplinary proceeding that follows a

⁸ See Securities Exchange Act Release No. 47925 (May 23, 2003), 68 FR 33548, 33549-50 (June 4, 2003) (Order Approving File No. SR-NASD-98-80).

⁹ See Securities Exchange Act Release No. 47925 (May 23, 2003), 68 FR 33548, 33550 & n.18 (June 4, 2003) (Order Approving File No. SR-NASD-98-80).

temporary cease and desist proceeding and any FINRA Rule 9556 expedited proceeding to enforce a cease and desist order.¹⁰ While FINRA's Office of Hearing Officers has presided over only a limited number of temporary cease and desist proceedings, those experiences have revealed that the narrowly circumscribed set of potential panelists can impede the recruitment of Hearing Panel members, especially considering that the expedited nature of temporary cease and desist proceedings will already preclude many from being able to serve.¹¹ FINRA also has concerns that the small pool of potential panelists will often make it difficult to recruit hearing panelists who can serve on both the temporary cease and desist proceeding and the subsequent underlying disciplinary proceeding, as well as any related expedited proceeding under FINRA Rule 9556. In such situations, FINRA is unable to realize the corresponding benefits to judicial economy that come from having the same panelists preside over all such proceedings.

To address these issues, the proposed rule change expands the pool of persons eligible to serve on hearing panels to include those who may serve on hearing panels for disciplinary matters. Specifically, under proposed FINRA Rule 9820, the potential panelists for the Hearing Panels that preside over temporary cease and desist proceedings

¹⁰ See FINRA Rule 9231(b) (providing that each panelist shall be associated with a member of FINRA or retired therefrom and that the pool of panelists for disciplinary proceedings includes current or previous members of District Committees, former members of the National Adjudicatory Council, past members of disciplinary subcommittees of the National Adjudicatory Council or the National Business Conduct Committee, past members of the Board of Directors of FINRA Regulation or past members of the Board of Governors of FINRA, and current or previous members of committees appointed or approved by the Board of Governors of FINRA); FINRA Rule 9559(d)(2) (providing for the same pool for FINRA Rule 9556 expedited proceedings).

¹¹ Hearings in temporary cease and desist proceedings are, in general, required to be held not later than 15 days after service of the notice initiating the proceeding. FINRA Rule 9830(a).

would include persons who currently serve or previously served on a District Committee; previously served on the National Adjudicatory Council; previously served on a disciplinary subcommittee of the National Adjudicatory Council or the National Business Conduct Committee; previously served as a member of the Board of Directors of FINRA Regulation or of the Board of Governors of FINRA; or currently serve or previously served on a committee appointed or approved by the Board of Governors of FINRA, but do not serve currently on the National Adjudicatory Council or as a member of the Board of Directors of FINRA Regulation or of the Board of Governors of FINRA. Likewise, the proposed rule change would require that each panelist be associated with a member of FINRA or retired therefrom.

The proposed rule change also eases other administrative burdens created by the shortened time frame of a temporary cease and desist proceeding. These proposed changes are aimed at improving Hearing Panels' and parties' ability to prepare for hearings and giving Hearing Officers some needed flexibility. For example, under current FINRA Rule 9830(a), a Hearing Officer is not able to extend a hearing date in a temporary cease and desist proceeding unless all parties consent to the extension. The requirement to obtain the parties' consent can be problematic where the Office of Hearing Officers, rather than one of the parties, has a need for an extension, such as when it encounters difficulty in quickly appointing a Hearing Panel. To address this problem, FINRA is proposing to change FINRA Rule 9830(a) to allow hearing deadlines to be extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

Likewise, the proposed rule change makes similar amendments to the process by which extensions are obtained to the deadlines for issuing decisions in temporary cease and desist proceedings and responding to requests to modify, set aside, limit or suspend a temporary cease and desist order. Under current FINRA Rule 9840(a), the Hearing Panel's deadline for issuing its written decision cannot be extended, even where there is good cause, without the consent of the parties. Likewise, under current FINRA Rule 9850, a Hearing Panel's deadline for responding to an application to have a temporary cease and desist order modified, set aside, limited, or suspended cannot be extended, even where there is a good cause, without the consent of the Parties. A Hearing Panel should be allowed some flexibility where there is a need for additional time to prepare its decision or respond to a FINRA Rule 9850 request (e.g., when a member of the Hearing Panel becomes ill, where the temporary cease and desist proceeding is highly complex). The proposed change to FINRA Rules 9840(a) and 9850 would permit the deadlines for issuing decisions and responding to FINRA Rule 9850 applications to be extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

To further address the burdens created by the short time frame of temporary cease and desist proceedings, the proposed rule change also: (i) requires FINRA's prosecuting department to file a memorandum of points and authorities with the notice initiating a temporary cease and desist proceeding; and (ii) permits the Hearing Officer to order a party to furnish to all other parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in FINRA Rule

9242(a).¹² Requiring FINRA's prosecuting department to file a memorandum of points and authorities at the initiation of the proceeding will, at the outset, provide more context to the allegations and set forth legal authorities on which the notice seeking a temporary cease and desist order is premised. This, in turn, will facilitate a more efficient process and improve the quality of the hearing through more thorough preparation, which are the same goals of the pre-hearing processes in FINRA disciplinary proceedings.¹³ Requiring the filing of a memorandum of points and authorities at the initiation of a temporary cease and desist proceeding also will enhance disclosure of the prosecuting department's allegations, which will inure to the benefit of the respondents and further increase the fairness of the proceeding. All of these objectives also will be served by authorizing Hearing Officers to order a party to furnish other pre-hearing submissions.

Proposed FINRA Rule 9840(e) is a delivery requirement that would require a member firm that is the subject of a temporary cease and desist order to provide a copy of the order to its associated persons, within one business day of receiving it. Considering the significant nature of the harm that a temporary cease and desist order is aimed at stopping, FINRA believes there is a heightened need to ensure that the persons who may

¹² The pre-hearing submissions described in FINRA Rule 9242(a) include: (1) an outline or narrative summary of a party's case or defense; (2) the legal theories upon which a party shall rely; (3) a list and copies of documents that a party intends to introduce at the hearing; (4) a list of witnesses who shall testify on a party's behalf, including the witnesses' names, occupations, addresses, and a brief summary of their expected testimony; and (5) if a witness shall be called to testify as an expert, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, a list of the expert's publications, and copies of those publications that are not readily available to other parties and the Hearing Panel.

¹³ See FINRA Rule 9241(a) (setting forth purposes of pre-hearing conferences in disciplinary proceedings).

act on behalf of the member firm are made aware of the contents of a temporary cease and desist order imposed against the member firm. The delivery requirement will further that goal.¹⁴

Finally, the proposed rule change clarifies the following additional three issues:

(1) how settlements may be approved in temporary cease and desist proceedings;

(2) which Hearing Panel has jurisdiction to preside over applications filed under FINRA Rule 9850 to modify, set aside, limit or suspend temporary cease and desist orders that are filed after a Hearing Panel has already been appointed in the underlying disciplinary proceeding; and (3) whether temporary and permanent cease and desist orders imposed against a firm also apply to successors of that firm. With respect to the first issue, proposed FINRA Rule 9810(c) establishes that, if the parties agree to the terms of a proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order. On the second issue, proposed FINRA Rule 9850 provides that the Hearing Panel that presided over the temporary cease and desist order proceeding shall retain jurisdiction to review a FINRA Rule 9850 application unless at the time the application is filed a Hearing Panel has already been appointed in the underlying

¹⁴ Similarly, the proposed rule change makes related amendments to FINRA Rules 9269, 9270, and 9840 to require that the Office of Hearing Officers, the Department of Enforcement, the Department of Market Regulation, or the General Counsel, as appropriate, disseminate default decisions, orders of acceptance of settlement, and temporary cease and desist orders to each member of FINRA with which a respondent is associated. These dissemination requirements are intended to ensure that a respondent's member firm is made aware of the disciplinary history of its associated persons, regardless of the specific disciplinary procedure involved. The proposed amendments are consistent with other FINRA Rules that already require the Office of Hearing Officers, the National Adjudicatory Council, or the Board of Governors of FINRA to provide copies of a decision issued by a Hearing Panel, an Extended Hearing Panel, the National Adjudicatory Council, or the Board of Governors of FINRA to each member firm with which a respondent is associated. See FINRA Rules 9268(d), 9349(c), 9351(e).

disciplinary proceeding commenced under FINRA Rule 9211, in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction.¹⁵ As to the third issue, proposed FINRA Rules 9840(b) and 9291(a) establish that when a temporary or permanent cease and desist order is imposed against a member firm, it also applies to any successor of the member firm.

(vii) Effective Date

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 no later than 30 days following publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act,¹⁶ which requires, among other things, that FINRA has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and FINRA rules; Section 15A(b)(6) of the Act,¹⁷ 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

¹⁵ In many instances the same Hearing Panel will preside over both the temporary cease and desist proceeding and the underlying disciplinary proceeding. There may be occasions, however, where that is not possible.

¹⁶ 15 U.S.C. 78o-3(b)(2).

¹⁷ 15 U.S.C. 78o-3(b)(6).

general, to protect investors and the public interest; Section 15A(b)(7) of the Act,¹⁸ which requires, among other things, that FINRA rules provide that FINRA members and persons associated with its members shall be appropriately disciplined for violation of any provision of the Act, the rules of regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or FINRA rules by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction; and Section 15A(b)(8) of the Act,¹⁹ which requires that FINRA rules provide a fair procedure for, among other things, the disciplining of members and persons associated with members.

FINRA believes that the proposed rule change is consistent with, and furthers the objectives of, Sections 15A(b)(2) and 15A(b)(6) of the Act in that the proposed changes to the evidentiary standard required for imposing a temporary cease and desist order and the proposed adoption of a new expedited proceeding for repeated failures to comply with temporary or permanent cease and desist orders will protect investors and the public interest by improving FINRA's capacity to enforce compliance with applicable laws and rules by its members and persons associated with members and improving FINRA's capability to prevent fraudulent and manipulative acts and practices. FINRA believes that the proposed rule change is consistent with Section 15A(b)(7) of the Act because it allows FINRA to take appropriate action against members and their associated persons who are engaged in serious misconduct. Finally, FINRA believes that the proposed rule change is consistent with Section 15A(b)(8) of the Act because the rules governing

¹⁸ 15 U.S.C. 78o-3(b)(7).

¹⁹ 15 U.S.C. 78o-3(b)(8).

temporary cease and desist orders and expedited proceedings require notice and an opportunity to be heard before a neutral tribunal, in addition to the numerous other procedural safeguards described above and included in the rules.

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. FINRA expects that changing the rules that govern obtaining and enforcing temporary and permanent cease and desist orders will result in benefits to investors and the public interest, without imposing significant direct or indirect costs on members or the public. The primary purpose of these amendments is to better ensure that FINRA can protect the assets of brokerage customers in cases where it is demonstrably likely that violative conduct is taking place. These benefits would be achieved through a combination of changing the evidentiary standard for imposing temporary cease and desist orders, removing a potential gap that could allow persons to repeatedly “violate and cure” temporary or permanent cease and desist orders, and other administrative changes. Lowering the evidentiary threshold for obtaining a temporary cease and desist order would provide a more effective and efficient mechanism to combat serious misconduct and lessen the dissipation of customer funds in the presence of misconduct.

Based on FINRA's past history of initiating only a small number of temporary cease and desist actions after gaining temporary cease and desist authority, the proposed rule change is anticipated to result in only a nominal increase in temporary cease and desist actions. Nonetheless, the change in the evidentiary standard may allow FINRA to initiate and resolve temporary cease and desist proceedings sooner, in which case the

potential benefits can be substantial in just a single case where investors are being harmed.

Moreover, there are numerous controls to assure that the temporary cease and desist authority is used only in limited and appropriate cases. First, the temporary cease and desist authority is restricted to those instances where the staff can demonstrate that the dissipation or conversion of assets or harm to customers is likely and significant. Second, FINRA's prosecuting departments must still be prepared to prove the underlying disciplinary case at the higher, "preponderance of the evidence" evidentiary standard. Third, to ensure that FINRA applies its temporary cease and desist authority in a manner that is fair, a temporary cease and desist order may be imposed only if the action has been authorized by FINRA's Chief Executive Officer or such other senior officers as the Chief Executive Officer may have designated, the parties have had an opportunity for a hearing prior to the imposition of the temporary cease and desist order, and an independent Hearing Panel has made findings that the standards for imposing a temporary cease and desist order have been met. Fourth, a party subject to a temporary cease and desist order may appeal to the SEC, and thereafter to a federal court of appeals.

The benefits that arise from the remaining portions of the proposed rule change primarily accrue from added efficiency in the application of the temporary cease and desist process and related processes. The proposed service provisions and other administrative changes impose no material costs on firms and permit the staff to expedite the process to preserve customer assets and stop inappropriate activities more quickly.

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.²⁰

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

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

²⁰ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2015-019)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule Series 9100, 9200, 9300, 9550, and 9800 Regarding Temporary and Permanent Cease and Desist Orders

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 Series 9100, 9200, 9300, 9550, and 9800 to modify the evidentiary standard that must be met to impose a temporary cease and desist order, to adopt a new expedited proceeding for repeated failures to comply with temporary or permanent cease and desist orders, to ease administrative burdens in temporary cease and desist proceedings, to harmonize the provisions governing how documents are served in temporary cease and desist proceedings and expedited proceedings, to clarify the process for issuing permanent cease and desist orders, and to make conforming changes throughout FINRA’s Code of Procedure.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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

(i) Background

In 2003, the SEC approved rule amendments that authorized FINRA to seek and impose temporary cease and desist orders.³ Temporary cease and desist orders are designed to stop serious violative conduct and maintain the status quo while an underlying disciplinary proceeding is being litigated.⁴ They can be imposed where the

³ Securities Exchange Act Release No. 47925 (May 23, 2003), 68 FR 33548 (June 4, 2003) (Order Approving File No. SR-NASD-98-80). In 2009, the SEC approved the adoption of the temporary and permanent cease and desist authority on a permanent basis. Securities Exchange Act Release No. 60306 (July 14, 2009), 74 FR 36292 (July 22, 2009) (Order Approving File No. SR-FINRA-2009-035).

⁴ FINRA Rule 9810(a) provides that a temporary cease and desist proceeding may be initiated with respect to alleged violations of Section 10(b) of the Act (15 U.S.C. 78j(b)) and Rule 10b-5 under the Act (17 CFR 240.10b-5); Rules 15g-1 through 15g-9 under the Act (17 CFR 240.15g-1 et seq.); FINRA Rule 2010 (if the alleged violation is unauthorized trading, or misuse or conversion of customer

potential harm resulting from violations to investors is likely and significant. FINRA believes that lowering the evidentiary standard to obtain a temporary cease and desist order would better serve the investor protection purposes of the temporary cease and desist authority and make FINRA's temporary cease and desist authority a more viable investor-protection tool. The change in the evidentiary standard may allow FINRA to initiate and resolve temporary cease and desist proceedings sooner, in which case the potential benefits could be substantial in instances where investors are being significantly harmed. The change would also improve FINRA's capacity to enforce compliance with applicable laws and rules by its members and persons associated with members and FINRA's capability to prevent fraudulent and manipulative acts and practices. At the same time, the proposed rule change maintains all of the meaningful existing restraints on FINRA's temporary cease and desist authority, including rule provisions that restrict who may authorize the initiation of a temporary cease and desist proceeding, narrowly define the violations that a temporary cease and desist order can address, and limit the issuance of temporary cease and desist orders to situations where the alleged violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors.

The proposed rule change also adopts a new expedited proceeding to address situations involving repeated violations of temporary or permanent cease and desist orders. Finally, the proposed rule change includes a series of rule amendments to the temporary cease and desist order rules (FINRA Rule Series 9800), the expedited

assets, or based on violations of Section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)); FINRA Rule 2020; or FINRA Rule 4330 (if the alleged violation is misuse or conversion of customer assets).

proceedings rules (FINRA Rule Series 9550), and FINRA’s Code of Procedure (FINRA Rule Series 9000) that harmonize service provisions in temporary cease and desist proceedings and expedited proceedings, ease administrative burdens in temporary cease and desist proceedings, and clarify the process by which permanent cease and desist orders may be imposed.

(ii) Evidentiary Standard for Imposing a Temporary Cease and Desist Order

FINRA Rule 9840(a)(1) provides, in pertinent part, that a temporary cease and desist order shall be imposed if the Hearing Panel finds “by a preponderance of the evidence that the alleged violation specified in the notice has occurred.” FINRA believes that the “preponderance of the evidence” standard sets too high an evidentiary threshold for this critical investor-protection tool. It is the identical standard for proving a violation in the underlying disciplinary proceeding that must be pursued at the same time. Thus, to obtain a temporary cease and desist order—and thereby prevent the likely and significant dissipation or conversion of assets or other significant harm to investors—FINRA’s prosecuting department has to make an evidentiary presentation in the temporary cease and desist proceeding that is similar in extent to its evidentiary presentation in the subsequent underlying disciplinary proceeding, but in an expedited manner. This poses administrative challenges that create a strong disincentive to seeking a temporary cease and desist order.

To increase the viability of the temporary cease and desist authority and improve the capacity of that authority to protect investors facing the likelihood of significant dissipation or conversion of assets, FINRA is proposing rule amendments that modify the evidentiary standard that must be met to obtain a temporary cease and desist order. In

this regard, proposed FINRA Rule 9840(a)(1) requires that a FINRA Hearing Panel find that the Department of Enforcement or Department of Market Regulation has made a showing of a likelihood of success on the merits before issuing a temporary cease and desist order. FINRA's intent is to establish an evidentiary standard in temporary cease and desist proceedings that would require a lesser showing than what would be required during the subsequent, underlying disciplinary proceeding. Changing the evidentiary standard to require a showing of a likelihood of success on the merits may enable FINRA to initiate and resolve temporary cease and desist proceedings sooner and more efficiently, which would better protect investors' assets and prevent other significant harm until the underlying disciplinary hearing is held.

The proposed rule change makes a corresponding amendment to FINRA Rule 9840(a)(2). Currently, FINRA Rule 9840(a)(2) provides that a temporary cease and desist order shall be imposed if the Hearing Panel finds that the violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of the underlying proceeding. The proposed rule change modifies this requirement to apply to the "alleged" violative conduct or continuation thereof, to be consistent with the proposed change to the evidentiary standard.

FINRA remains mindful that when the Commission approved FINRA's temporary cease and desist authority on a permanent basis in 2009, it noted FINRA's statement that it would use its authority "judiciously."⁵ FINRA's actions have been consistent with that statement—FINRA has sought and obtained temporary cease and

⁵ Securities Exchange Act Release No. 60306 (July 14, 2009), 74 FR 36292, 36293 (July 22, 2009) (Order Approving File No. SR-FINRA-2009-035).

desist orders on only seven occasions since 2003—and FINRA intends to continue using its authority in a similarly judicious manner. Moreover, the proposed rule change maintains all of the meaningful restraints on FINRA’s temporary cease and desist authority, including that a temporary cease and desist proceeding must be authorized by FINRA’s Chief Executive Officer or other designated senior officer, and that a temporary cease and desist order can be imposed only if there is a likelihood of significant dissipation or conversion of assets or significant harm to investors.

In sum, FINRA’s purpose in modifying the evidentiary standard for temporary cease and desist proceedings is to increase the effectiveness of this regulatory proceeding and thereby improve investor protection in the most threatening and serious cases until the underlying disciplinary hearing is held.

(iii) Failures to Comply with Temporary Cease and Desist Orders and Permanent Cease and Desist Orders (FINRA Rule 9556)

The proposed rule change includes amendments to FINRA Rule 9556, which sets forth expedited procedures for enforcing violations of FINRA-issued temporary and permanent cease and desist orders. FINRA is concerned that the existing expedited procedures may permit cease and desist orders to be circumvented without any real threat of a sanction. Under current FINRA Rule 9556, if a member or person fails to comply with a temporary or permanent cease and desist order, FINRA staff (with prior authorization from FINRA’s Chief Executive Officer or other designated senior officer) may issue a notice stating that the failure to comply within seven days will result in a suspension or cancellation of membership or a suspension or bar from associating with any member and also stating what the respondent must do to avoid such action. A respondent potentially could abuse the current process by repeatedly violating a cease and

desist order and curing that violation before the effective date of any FINRA Rule 9556 notice, without being subject to immediate sanctions or review by the Office of Hearing Officers for a prolonged period. While FINRA could pursue disciplinary action against a respondent that repeatedly “violates and cures” in this manner, an inability to obtain sanctions in an expedited manner could undermine any cease and desist order terms that require immediate compliance to be effective.

Proposed FINRA Rule 9556(h) permits FINRA staff (with prior authorization from FINRA’s Chief Executive Officer or other designated senior officer) to institute a new kind of expedited proceeding if the subject of a temporary or permanent cease and desist order fails to comply with that order and has previously been served with a notice under FINRA Rule 9556(a) for a failure to comply with any provision of the same temporary or permanent cease and desist order. Proposed FINRA Rule 9556(h)(3) provides that, in contrast to other Rule 9556 proceedings, a respondent’s compliance with the temporary or permanent cease and desist order is not a ground for dismissing the FINRA Rule 9556(h) proceeding. Thus, a respondent’s compliance with a temporary or permanent cease and desist order after the FINRA Rule 9556(h) proceeding has been initiated would not prevent an adjudicator from reviewing the matter and imposing a fitting sanction for the respondent’s violation.

The proposed FINRA Rule 9556(h) proceeding differs from other FINRA Rule 9556 expedited proceedings in other respects that reflect the response that FINRA believes is warranted for situations involving repeated violations of temporary or permanent cease and desist orders. These differences include the following:

- a FINRA Rule 9556(h) proceeding could be initiated only if the respondent has previously been served under FINRA Rule 9556(a) with a notice for failing to comply with any provision of the same temporary or permanent cease and desist order;
- FINRA’s prosecuting department would initiate a FINRA Rule 9556(h) proceeding by filing a petition with FINRA’s Office of Hearing Officers (and serving the respondent) that seeks the imposition of sanctions for the violation (rather than issuing a notice to the respondent);
- FINRA’s prosecuting department would seek the imposition of any fitting sanction at the outset of the FINRA Rule 9556(h) proceeding (in contrast to other FINRA Rule 9556 expedited proceedings, where the recipient of a notice is not subject to the imposition of any fitting sanction unless such recipient opts for a hearing);
- a hearing is required in a FINRA Rule 9556(h) proceeding;
- the hearing for a FINRA Rule 9556(h) proceeding must be held in a condensed time frame (ten business days after a respondent is served the petition, versus other Rule 9556 proceedings which require a respondent to request a hearing within seven business days after service of a notice instituting a proceeding and require hearings to be held within 14 days after a request for a hearing is filed);⁶
- a FINRA Rule 9556(h) proceeding is presided over by a Hearing Officer, rather than a Hearing Panel;⁷ and

⁶ See proposed FINRA Rule 9559(f)(2) and (3); FINRA Rule 9556(e).

⁷ See proposed FINRA Rule 9559(d)(1) and (2).

- the Hearing Officer may issue default decisions in FINRA Rule 9556(h) proceedings.⁸

Under proposed FINRA Rule 9556(h)(4), the FINRA department that filed the petition can withdraw it without prejudice and shall be permitted to refile a petition based on allegations concerning the same facts and circumstances that are set forth in the withdrawn petition. This provision will provide FINRA the flexibility to withdraw the petition where, for instance, the respondent evidences a good faith intent to comply with the temporary or permanent cease and desist order without the need to adjudicate the petition, while preserving FINRA's right to refile the petition if the respondent fails to do so.

Considering that these new FINRA Rule 9556(h) expedited proceedings would be limited to subsequent violations of temporary or permanent cease and desist orders, require appropriate authorization, provide an opportunity for a hearing prior to the imposition of a sanction, be resolved by a Hearing Officer, and be subject to appeal to the SEC, sufficient checks are in place to ensure that FINRA continues to use its FINRA Rule 9556 powers in a judicious and fair manner.

(iv) Service Provisions in Temporary Cease and Desist Proceedings and Expedited Proceedings

The proposed rule change makes the FINRA rules that govern service of documents in temporary cease and desist proceedings and the eight different types of expedited proceedings more consistent. Currently, some provisions explicitly address service by facsimile and on counsel, but some do not. FINRA proposes rule amendments that explicitly allow service by facsimile and on counsel across all temporary cease and

⁸ See proposed FINRA Rule 9559(m)(2).

desist and expedited proceedings because doing so removes unnecessary burdens and inefficiencies.

The proposed rule change also permits service by email in all temporary cease and desist proceedings and expedited proceedings. Email service will allow parties to receive information quickly, which is particularly important in these types of proceedings, considering the short time frames involved. Moreover, where the proposed revisions permit email service, they also require duplicate service through some other means such as overnight courier or personal delivery.

(v) Clarifying FINRA's Authority to Impose Permanent Cease and Desist Orders

When FINRA obtained the authority to impose temporary cease and desist orders, it also obtained the authority to impose permanent cease and desist orders.⁹ The proposed rule change contains amendments that clarify the process for imposing permanent cease and desist orders in disciplinary proceedings. These changes are procedural in nature and do not reflect any change to FINRA's prior representations concerning the context in which it will seek permanent cease and desist orders.¹⁰

(vi) Administrative Changes to Temporary Cease and Desist Proceedings

The small pool of persons who currently may serve on hearing panels that preside over temporary cease and desist proceedings, coupled with the short time in which a temporary cease and desist proceeding must be processed, creates administrative burdens

⁹ See Securities Exchange Act Release No. 47925 (May 23, 2003), 68 FR 33548, 33549-50 (June 4, 2003) (Order Approving File No. SR-NASD-98-80).

¹⁰ See Securities Exchange Act Release No. 47925 (May 23, 2003), 68 FR 33548, 33550 & n.18 (June 4, 2003) (Order Approving File No. SR-NASD-98-80).

for FINRA's Office of Hearing Officers. Currently, FINRA Rule 9820(a) requires that the Hearing Panel appointed to preside over a temporary cease and desist proceeding include two panelists that are "current or former Governors, Directors, or National Adjudicatory Council members, and at least one Panelist shall be an associated person." This is a far more limited pool of potential panelists than is available for other FINRA adjudicatory proceedings, including the underlying disciplinary proceeding that follows a temporary cease and desist proceeding and any FINRA Rule 9556 expedited proceeding to enforce a cease and desist order.¹¹ While FINRA's Office of Hearing Officers has presided over only a limited number of temporary cease and desist proceedings, those experiences have revealed that the narrowly circumscribed set of potential panelists can impede the recruitment of Hearing Panel members, especially considering that the expedited nature of temporary cease and desist proceedings will already preclude many from being able to serve.¹² FINRA also has concerns that the small pool of potential panelists will often make it difficult to recruit hearing panelists who can serve on both the temporary cease and desist proceeding and the subsequent underlying disciplinary proceeding, as well as any related expedited proceeding under FINRA Rule 9556. In

¹¹ See FINRA Rule 9231(b) (providing that each panelist shall be associated with a member of FINRA or retired therefrom and that the pool of panelists for disciplinary proceedings includes current or previous members of District Committees, former members of the National Adjudicatory Council, past members of disciplinary subcommittees of the National Adjudicatory Council or the National Business Conduct Committee, past members of the Board of Directors of FINRA Regulation or past members of the Board of Governors of FINRA, and current or previous members of committees appointed or approved by the Board of Governors of FINRA); FINRA Rule 9559(d)(2) (providing for the same pool for FINRA Rule 9556 expedited proceedings).

¹² Hearings in temporary cease and desist proceedings are, in general, required to be held not later than 15 days after service of the notice initiating the proceeding. FINRA Rule 9830(a).

such situations, FINRA is unable to realize the corresponding benefits to judicial economy that come from having the same panelists preside over all such proceedings.

To address these issues, the proposed rule change expands the pool of persons eligible to serve on hearing panels to include those who may serve on hearing panels for disciplinary matters. Specifically, under proposed FINRA Rule 9820, the potential panelists for the Hearing Panels that preside over temporary cease and desist proceedings would include persons who currently serve or previously served on a District Committee; previously served on the National Adjudicatory Council; previously served on a disciplinary subcommittee of the National Adjudicatory Council or the National Business Conduct Committee; previously served as a member of the Board of Directors of FINRA Regulation or of the Board of Governors of FINRA; or currently serve or previously served on a committee appointed or approved by the Board of Governors of FINRA, but do not serve currently on the National Adjudicatory Council or as a member of the Board of Directors of FINRA Regulation or of the Board of Governors of FINRA. Likewise, the proposed rule change would require that each panelist be associated with a member of FINRA or retired therefrom.

The proposed rule change also eases other administrative burdens created by the shortened time frame of a temporary cease and desist proceeding. These proposed changes are aimed at improving Hearing Panels' and parties' ability to prepare for hearings and giving Hearing Officers some needed flexibility. For example, under current FINRA Rule 9830(a), a Hearing Officer is not able to extend a hearing date in a temporary cease and desist proceeding unless all parties consent to the extension. The requirement to obtain the parties' consent can be problematic where the Office of

Hearing Officers, rather than one of the parties, has a need for an extension, such as when it encounters difficulty in quickly appointing a Hearing Panel. To address this problem, FINRA is proposing to change FINRA Rule 9830(a) to allow hearing deadlines to be extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

Likewise, the proposed rule change makes similar amendments to the process by which extensions are obtained to the deadlines for issuing decisions in temporary cease and desist proceedings and responding to requests to modify, set aside, limit or suspend a temporary cease and desist order. Under current FINRA Rule 9840(a), the Hearing Panel's deadline for issuing its written decision cannot be extended, even where there is good cause, without the consent of the parties. Likewise, under current FINRA Rule 9850, a Hearing Panel's deadline for responding to an application to have a temporary cease and desist order modified, set aside, limited, or suspended cannot be extended, even where there is a good cause, without the consent of the Parties. A Hearing Panel should be allowed some flexibility where there is a need for additional time to prepare its decision or respond to a FINRA Rule 9850 request (e.g., when a member of the Hearing Panel becomes ill, where the temporary cease and desist proceeding is highly complex). The proposed change to FINRA Rules 9840(a) and 9850 would permit the deadlines for issuing decisions and responding to FINRA Rule 9850 applications to be extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

To further address the burdens created by the short time frame of temporary cease and desist proceedings, the proposed rule change also: (i) requires FINRA's prosecuting department to file a memorandum of points and authorities with the notice initiating a

temporary cease and desist proceeding; and (ii) permits the Hearing Officer to order a party to furnish to all other parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in FINRA Rule 9242(a).¹³ Requiring FINRA's prosecuting department to file a memorandum of points and authorities at the initiation of the proceeding will, at the outset, provide more context to the allegations and set forth legal authorities on which the notice seeking a temporary cease and desist order is premised. This, in turn, will facilitate a more efficient process and improve the quality of the hearing through more thorough preparation, which are the same goals of the pre-hearing processes in FINRA disciplinary proceedings.¹⁴ Requiring the filing of a memorandum of points and authorities at the initiation of a temporary cease and desist proceeding also will enhance disclosure of the prosecuting department's allegations, which will inure to the benefit of the respondents and further increase the fairness of the proceeding. All of these objectives also will be served by authorizing Hearing Officers to order a party to furnish other pre-hearing submissions.

Proposed FINRA Rule 9840(e) is a delivery requirement that would require a member firm that is the subject of a temporary cease and desist order to provide a copy of

¹³ The pre-hearing submissions described in FINRA Rule 9242(a) include: (1) an outline or narrative summary of a party's case or defense; (2) the legal theories upon which a party shall rely; (3) a list and copies of documents that a party intends to introduce at the hearing; (4) a list of witnesses who shall testify on a party's behalf, including the witnesses' names, occupations, addresses, and a brief summary of their expected testimony; and (5) if a witness shall be called to testify as an expert, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, a list of the expert's publications, and copies of those publications that are not readily available to other parties and the Hearing Panel.

¹⁴ See FINRA Rule 9241(a) (setting forth purposes of pre-hearing conferences in disciplinary proceedings).

the order to its associated persons, within one business day of receiving it. Considering the significant nature of the harm that a temporary cease and desist order is aimed at stopping, FINRA believes there is a heightened need to ensure that the persons who may act on behalf of the member firm are made aware of the contents of a temporary cease and desist order imposed against the member firm. The delivery requirement will further that goal.¹⁵

Finally, the proposed rule change clarifies the following additional three issues:

(1) how settlements may be approved in temporary cease and desist proceedings; (2) which Hearing Panel has jurisdiction to preside over applications filed under FINRA Rule 9850 to modify, set aside, limit or suspend temporary cease and desist orders that are filed after a Hearing Panel has already been appointed in the underlying disciplinary proceeding; and (3) whether temporary and permanent cease and desist orders imposed against a firm also apply to successors of that firm. With respect to the first issue, proposed FINRA Rule 9810(c) establishes that, if the parties agree to the terms of a proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order. On the second issue, proposed FINRA Rule 9850 provides

¹⁵ Similarly, the proposed rule change makes related amendments to FINRA Rules 9269, 9270, and 9840 to require that the Office of Hearing Officers, the Department of Enforcement, the Department of Market Regulation, or the General Counsel, as appropriate, disseminate default decisions, orders of acceptance of settlement, and temporary cease and desist orders to each member of FINRA with which a respondent is associated. These dissemination requirements are intended to ensure that a respondent's member firm is made aware of the disciplinary history of its associated persons, regardless of the specific disciplinary procedure involved. The proposed amendments are consistent with other FINRA Rules that already require the Office of Hearing Officers, the National Adjudicatory Council, or the Board of Governors of FINRA to provide copies of a decision issued by a Hearing Panel, an Extended Hearing Panel, the National Adjudicatory Council, or the Board of Governors of FINRA to each member firm with which a respondent is associated. See FINRA Rules 9268(d), 9349(c), 9351(e).

that the Hearing Panel that presided over the temporary cease and desist order proceeding shall retain jurisdiction to review a FINRA Rule 9850 application unless at the time the application is filed a Hearing Panel has already been appointed in the underlying disciplinary proceeding commenced under FINRA Rule 9211, in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction.¹⁶ As to the third issue, proposed FINRA Rules 9840(b) and 9291(a) establish that when a temporary or permanent cease and desist order is imposed against a member firm, it also applies to any successor of the member firm.

(vii) Effective Date

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 no later than 30 days following publication of the Regulatory Notice announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act,¹⁷ which requires, among other things, that FINRA has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, the rules of the Municipal Securities

¹⁶ In many instances the same Hearing Panel will preside over both the temporary cease and desist proceeding and the underlying disciplinary proceeding. There may be occasions, however, where that is not possible.

¹⁷ 15 U.S.C. 78q-3(b)(2).

Rulemaking Board, and FINRA rules; Section 15A(b)(6) of the Act,¹⁸ 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; Section 15A(b)(7) of the Act,¹⁹ which requires, among other things, that FINRA rules provide that FINRA members and persons associated with its members shall be appropriately disciplined for violation of any provision of the Act, the rules of regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or FINRA rules by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction; and Section 15A(b)(8) of the Act,²⁰ which requires that FINRA rules provide a fair procedure for, among other things, the disciplining of members and persons associated with members.

FINRA believes that the proposed rule change is consistent with, and furthers the objectives of, Sections 15A(b)(2) and 15A(b)(6) of the Act in that the proposed changes to the evidentiary standard required for imposing a temporary cease and desist order and the proposed adoption of a new expedited proceeding for repeated failures to comply with temporary or permanent cease and desist orders will protect investors and the public interest by improving FINRA's capacity to enforce compliance with applicable laws and rules by its members and persons associated with members and improving FINRA's capability to prevent fraudulent and manipulative acts and practices. FINRA believes

¹⁸ 15 U.S.C. 78o-3(b)(6).

¹⁹ 15 U.S.C. 78o-3(b)(7).

²⁰ 15 U.S.C. 78o-3(b)(8).

that the proposed rule change is consistent with Section 15A(b)(7) of the Act because it allows FINRA to take appropriate action against members and their associated persons who are engaged in serious misconduct. Finally, FINRA believes that the proposed rule change is consistent with Section 15A(b)(8) of the Act because the rules governing temporary cease and desist orders and expedited proceedings require notice and an opportunity to be heard before a neutral tribunal, in addition to the numerous other procedural safeguards described above and included in the rules.

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. FINRA expects that changing the rules that govern obtaining and enforcing temporary and permanent cease and desist orders will result in benefits to investors and the public interest, without imposing significant direct or indirect costs on members or the public. The primary purpose of these amendments is to better ensure that FINRA can protect the assets of brokerage customers in cases where it is demonstrably likely that violative conduct is taking place. These benefits would be achieved through a combination of changing the evidentiary standard for imposing temporary cease and desist orders, removing a potential gap that could allow persons to repeatedly “violate and cure” temporary or permanent cease and desist orders, and other administrative changes. Lowering the evidentiary threshold for obtaining a temporary cease and desist order would provide a more effective and efficient mechanism to combat serious misconduct and lessen the dissipation of customer funds in the presence of misconduct.

Based on FINRA's past history of initiating only a small number of temporary cease and desist actions after gaining temporary cease and desist authority, the proposed rule change is anticipated to result in only a nominal increase in temporary cease and desist actions. Nonetheless, the change in the evidentiary standard may allow FINRA to initiate and resolve temporary cease and desist proceedings sooner, in which case the potential benefits can be substantial in just a single case where investors are being harmed.

Moreover, there are numerous controls to assure that the temporary cease and desist authority is used only in limited and appropriate cases. First, the temporary cease and desist authority is restricted to those instances where the staff can demonstrate that the dissipation or conversion of assets or harm to customers is likely and significant. Second, FINRA's prosecuting departments must still be prepared to prove the underlying disciplinary case at the higher, "preponderance of the evidence" evidentiary standard. Third, to ensure that FINRA applies its temporary cease and desist authority in a manner that is fair, a temporary cease and desist order may be imposed only if the action has been authorized by FINRA's Chief Executive Officer or such other senior officers as the Chief Executive Officer may have designated, the parties have had an opportunity for a hearing prior to the imposition of the temporary cease and desist order, and an independent Hearing Panel has made findings that the standards for imposing a temporary cease and desist order have been met. Fourth, a party subject to a temporary cease and desist order may appeal to the SEC, and thereafter to a federal court of appeals.

The benefits that arise from the remaining portions of the proposed rule change primarily accrue from added efficiency in the application of the temporary cease and

desist process and related processes. The proposed service provisions and other administrative changes impose no material costs on firms and permit the staff to expedite the process to preserve customer assets and stop inappropriate activities more quickly.

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 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-2015-019 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-019. 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-2015-019 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.²¹

Robert W. Errett
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

* * * * *

9000. CODE OF PROCEDURE

9100. APPLICATION AND PURPOSE

* * * * *

9120. Definitions

(a) through (r) No Change.

(s) “Hearing Panel”

The term “Hearing Panel” means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series, [or] that is constituted under the Rule 9520 Series or the Rule 9550 Series to conduct a proceeding, or that is constituted under the Rule 9800 Series to conduct a temporary cease and desist proceeding.

(t) “Interested FINRA Staff”

The term “Interested FINRA Staff” means, in the context of:

(1) No Change.

(2) a proceeding under the Rule 9520 Series or Rule 9550 Series:

(A) the head of the department or office that issues the notice or petition or is designated as a Party;

(B) through (C) No Change.

(D) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific

proceeding, and a district director or department head to whom such employee reports; [or]

(3) a proceeding under the Rule 9600 Series:

(A) through (C) No Change.

(D) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a district director or department head to whom such employee reports[.]; or

(4) a proceeding under the Rule 9800 Series:

(A) the Head of Enforcement;

(B) an employee of the Department of Enforcement who reports, directly or indirectly, to the Head of Enforcement;

(C) a FINRA employee who directly participated in the authorization of the notice that initiates a temporary cease and desist proceeding;

(D) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific temporary cease and desist proceeding, and a district director or department head to whom such employee reports;

(E) the Head of the Department of Market Regulation; or

(F) an employee of the Department of Market Regulation who reports, directly or indirectly, to the Head of the Department of Market Regulation.

(u) through (v) No Change.

(w) “Panelist”

The term “Panelist,” as used in the Rule 9200 Series, the Rule 9550 Series, and the Rule 9800 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current or former member of the National Adjudicatory Council or a former Director or a former Governor who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

(x) through (y) No Change.

(z) “Respondent”

The term “Respondent” means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, a FINRA member or associated person against whom a complaint is issued. In a proceeding governed by the Rule 9800 Series, the term “Respondent” means a FINRA member or associated person that has been served a notice initiating a cease and desist proceeding.

(aa) through (cc) No Change.

* * * * *

9200. DISCIPLINARY PROCEEDINGS

* * * * *

9260. Hearing and Decision

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9268. Decision of Hearing Panel or Extended Hearing Panel

(a) No Change.

(b) Contents of Decision

The decision shall include:

(1) through (4) No Change.

(5) a statement of the Hearing Panel, or the Extended Hearing Panel, in support of the disposition of the principal issues raised in the proceeding; [and]

(6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective. Unless otherwise provided in the decision, the sanction(s) shall become effective pursuant to paragraph (f) of this Rule[.]; and

(7) a statement, when the sanctions include a permanent cease and desist order, that is consistent with the requirements of Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order.

(c) through (f) No Change.

9269. Default Decisions

(a) Issuance of Default Decisions

(1) through (3) No Change.

(4) The Office of Hearing Officers shall provide a copy of the default decision to each FINRA member with which a Respondent is associated.

(b) through (d) No Change.

9270. Settlement Procedure

(a) through (b) No Change.

(c) Content and Signature Requirements

An offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. The offer of settlement shall contain in reasonable detail:

(1) through (4) No Change.

(5) a proposed sanction to be imposed that is consistent with FINRA's then current sanction guidelines or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction; [and,]

(6) if applicable, a proposed permanent cease and desist order to be imposed that is consistent with the requirements of Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order; and

[(6)7] the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by FINRA staff.

(d) No Change.

(e) Uncontested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement or the Department of Market Regulation does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Department of Enforcement or the Department of Market Regulation before a hearing on the merits has begun, the Department of Enforcement or the Department of Market Regulation shall transmit the uncontested offer of settlement and a proposed order of acceptance to the National Adjudicatory Council with its recommendation. If an offer of settlement is determined to be uncontested by the Department of Enforcement or the Department of

Market Regulation after a hearing on the merits has begun, the Department of Enforcement or the Department of Market Regulation shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the National Adjudicatory Council to accept or reject.

(1) A proposed order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions (including, if applicable, a permanent cease and desist order) consistent with the terms of the offer of settlement.

(2) No Change.

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council, the Review Subcommittee, or the Office of Disciplinary Affairs, they shall become final, and the Director of the Office of Disciplinary Affairs shall issue the order and notify the Office of Hearing Officers. The Department of Enforcement or the Department of Market Regulation shall provide a copy of an issued order of acceptance to each FINRA member with which a Respondent is associated.

(f) Contested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement or the Department of Market Regulation opposes it, the offer of settlement is contested. When the Department of Enforcement or the Department of Market Regulation opposes an offer of settlement, the Respondent's written offer and the Department of

Enforcement's or the Department of Market Regulation's written opposition shall be submitted to a Hearing Panel or, if applicable, an Extended Hearing Panel. The Hearing Panel or, if applicable, the Extended Hearing Panel, may order the Department of Enforcement or the Department of Market Regulation and the Respondent to attend a settlement conference.

(1) If a contested offer of settlement is approved by the Hearing Panel or, if applicable, Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement. The order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions (including, if applicable, a permanent cease and desist order) consistent with the terms of the offer of settlement. The offer of settlement, any written opposition thereto, and the order of acceptance shall be forwarded to the National Adjudicatory Council to accept or reject.

(2) No Change.

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council or the Review Subcommittee, the General Counsel shall issue the order, [and] notify the Office of Hearing Officers, and provide a copy of an issued order of acceptance to each FINRA member with which a Respondent is associated.

(g) through (j) No Change.

* * * * *

9291. Permanent Cease and Desist Orders

(a) Content, Scope and Form Requirements

When a decision issued under Rule 9268 or Rule 9269 or an order of acceptance issued under Rule 9270 imposes a permanent cease and desist order, it shall:

(1) order a Respondent (and any successor of a Respondent, where the Respondent is a member firm) to cease and desist permanently from violating a specific rule or statutory provision;

(2) set forth the violation; and

(3) describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a member firm) shall take or refrain from taking.

(b) Delivery Requirement

Where a Respondent is a member firm, Respondent shall deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its associated persons.

**9300. REVIEW OF DISCIPLINARY PROCEEDING BY NATIONAL
ADJUDICATORY COUNCIL AND FINRA BOARD; APPLICATION FOR SEC
REVIEW**

* * * * *

9340. Proceedings

* * * * *

9348. Powers of the National Adjudicatory Council on Review

In any appeal or review proceeding pursuant to the Rule 9300 Series, the National Adjudicatory Council may affirm, dismiss, modify, or reverse with respect to each

finding, or remand the disciplinary proceeding with instructions. The National Adjudicatory Council may affirm, modify, reverse, increase, or reduce any sanction (including the terms of any permanent cease and desist order), or impose any other fitting sanction.

* * * * *

9351. Discretionary Review by FINRA Board

(a) through (c) No Change.

(d) Decision of FINRA Board, Including Remand

After review, the FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. The FINRA Board may affirm, modify, reverse, increase, or reduce any sanction (including the terms of any permanent cease and desist order), or impose any other fitting sanction. Alternatively, the FINRA Board may remand the disciplinary proceeding with instructions. The FINRA Board shall prepare a written decision that includes all of the elements described in Rule 9349(b)(1) through (6).

(e) No Change.

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9500. OTHER PROCEEDINGS

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9550. Expedited Proceedings

9551. Failure to Comply with Public Communication Standards

(a) No Change.

(b) Service of Notice of Pre-Use Filing Requirement

Except as provided below, FINRA staff shall serve the member with such notice (or upon counsel representing the member, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member) in accordance with Rule 9134 or by facsimile or email. [When counsel for the member or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then FINRA staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.] Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws, except that, if FINRA staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or

email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) through (g) No Change.

9552. Failure to Provide Information or Keep Information Current

(a) No Change.

(b) Service of Notice of Suspension

Except as provided below, FINRA staff shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. [When counsel for the member or person, or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then FINRA staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.] Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws, except that, if FINRA staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers

served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) through (h) No Change.

9553. Failure to Pay FINRA Dues, Fees and Other Charges

(a) No Change.

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

Except as provided below, FINRA staff shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized

to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. [When counsel for the member or person, or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then FINRA staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.] Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws, except that, if FINRA staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs

(a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) through (g) No Change.

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

(a) No Change.

(b) Service of Notice of Suspension or Cancellation

Except as provided below, FINRA staff shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. [When counsel for the member or person, or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then FINRA staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.] Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws, except that, if FINRA staff has actual knowledge that a member's FINRA Contact System facsimile number is out of

date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) through (g) No Change.

9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services

(a) No Change.

(b) **Service of Notice**

Except as provided below, FINRA staff shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. [When counsel for the member or person, or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then FINRA staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.] Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws, except that, if FINRA staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141, by

facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) through (g) No Change.

9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders

(a) No Change.

(b) Service of Notice

FINRA staff shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) by facsimile, email, overnight courier or personal delivery. Papers served on a member, person or counsel for such member or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the [member's contact questionnaire] FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws, except that, if FINRA staff has

actual knowledge that a[n] [entity's] member's [contact questionnaire] FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the [entity] member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Service is complete upon sending the notice by facsimile or email, sending [mailing] the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) through (f) No Change.

(g) Request for Termination of the Suspension

A member or person subject to a suspension imposed after the process described in paragraphs (a) through (f) of [under] this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Subsequent Proceedings

If a member, person associated with a member or person subject to FINRA's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300, or 9800 Series, and has previously been served under paragraph (a) of this Rule with a notice for a failure to comply with any provision of the same temporary or permanent cease and desist order, FINRA staff, after receiving written authorization from FINRA's Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate, may file a petition with the Office of Hearing Officers seeking a hearing pursuant to Rule 9559 and the imposition of any fitting sanctions for such member's or person's failure to comply with the temporary or permanent cease and desist order.

(1) The petition shall be served in accordance with paragraph (b) of this Rule, and it shall be filed with the Office of Hearing Officers.

(2) The petition shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, contain a

statement of facts specifying the alleged violation, describe with particularity the sanctions that FINRA staff seeks to have imposed, and note that a hearing under Rule 9559 is requested. FINRA staff may seek the imposition of any fitting sanction.

(3) Upon the filing of the petition, Rule 9559 shall govern the proceeding. Respondent's full compliance with the temporary or permanent cease and desist order is not a ground for dismissing a proceeding brought pursuant to this paragraph (h).

(4) The FINRA Department that filed the petition can withdraw it without prejudice and shall be permitted to refile a petition based on allegations concerning the same facts and circumstances that are set forth in the withdrawn petition.

9557. Procedures for Regulating Activities Under Rules 4110, 4120 and 4130

Regarding a Member Experiencing Financial or Operational Difficulties

(a) No Change.

(b) Service of Notice

FINRA staff shall serve the member subject to a notice issued under this Rule (or upon counsel representing the member, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member) by facsimile, email, overnight courier or personal delivery. Papers served on a member, counsel for such member, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member, (b)(2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile

number listed in the [member's contact questionnaire] FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws, except that, if FINRA staff has actual knowledge that a[n] [entity's] member's [contact questionnaire] FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the [entity] member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending [mailing] the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) through (h) No Change.

9558. Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Exchange Act

(a) No Change.

(b) Service of Notice

FINRA staff shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to

represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person by facsimile, email, overnight courier or personal delivery. Papers served on a member, [or] person or counsel for such member or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the [member's contact questionnaire] FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws, except that, if FINRA staff has actual knowledge that a[n] [entity's] member's [contact questionnaire] FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the [entity] member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address

that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile[,] or email, sending [mailing] the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) through (g) No Change.

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

(a) Applicability

The hearing procedures under this Rule shall apply to a member, person associated with a member, person subject to FINRA's jurisdiction or other person who is served with a notice issued under the Rule 9550 Series and who timely requests a hearing or who is served with a petition instituting an expedited proceeding under Rule 9556(h).

For purposes of this Rule, such members or persons shall be referred to as respondents.

(b) No Change.

(c) Stays

(1) Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 9551 through 9556, except that: (A) the effectiveness of a notice of a limitation or prohibition on access to services offered by FINRA or a member thereof under Rule 9555 with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing; and (B) this paragraph has no applicability to a petition instituting an expedited proceeding under Rule 9556(h).

(2) through (3) No Change.

(d) Appointment and Authority of Hearing Officer and/or Hearing Panel

(1) For proceedings initiated under Rules 9553, [and] 9554, and 9556(h), the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 9551, 9552, 9555, 9556 (except Rule 9556(h)), 9557 and 9558, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. For proceedings initiated under Rules 9551, 9552, 9555, 9556 (except Rule 9556(h)) and 9558, the Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 9231 and 9232. For proceedings initiated under Rule 9557, the Chief Hearing Officer shall select as Panelists current or former members of the FINRA Financial Responsibility Committee.

(3) through (6) No Change.

(e) No Change.

(f) Time of Hearing

(1) No Change.

(2) A hearing shall be held within ten days after a respondent is served a petition seeking an expedited proceeding issued under Rule 9556(h).

([2]3) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 (except Rule 9556(h)) and 9558 files a written request for a hearing with the Office of Hearing Officers.

([3]4) A hearing shall be held within 30 days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

([4]5) The timelines established by paragraphs (f)(1) through (f)([3]4) confer no substantive rights on the parties.

(g) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

(1) No Change.

(2) At least six days prior to the hearing in the case of an action brought pursuant to Rule 9556(h);

([2]3) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 (except Rule 9556(h)) and 9558; and

([3]4) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9551 through 9555.

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than six days before the hearing in an action brought under Rule 9556(h), not less than seven days before the hearing in an action brought under Rules 9556 (except Rule 9556(h)) and 9558, and not less than 14 days before the hearing in an action brought under Rules 9551 through 9555, FINRA staff shall provide to the respondent who requested the hearing or the respondent who has received a petition pursuant to Rule 9556(h), by facsimile,

email, [or] overnight courier or personal delivery, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B), (C) or (b)(2). Documents served by facsimile or email shall also be served by either overnight courier or personal delivery. A document that meets [such] the criteria in this paragraph shall not constitute part of the record, but shall be retained by FINRA until the date upon which FINRA serves a final decision or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

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

(i) through (l) No Change.

(m) Failure to Appear at a Pre-Hearing Conference or Hearing or to Comply with a Hearing Officer Order Requiring the Production of Information

Failure of any respondent to appear before the Hearing Officer or, if applicable, the Hearing Panel at any status conference, pre-hearing conference or hearing, or to comply with any order of the Hearing Officer or, if applicable, Hearing Panel requiring production of information to support any defense to the notice or petition that respondent

has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided by the Rule 9550 Series. In such cases[,]:

(1) [t]The notice issued under the Rule 9550 Series shall be deemed to be final FINRA action. The Hearing Officer or, if applicable, the Hearing Panel may permit the hearing to go forward as to those parties who appear and otherwise comply with this Rule.

(2) The Hearing Officer may issue a default decision against a respondent who is the subject of a petition filed pursuant to Rule 9556(h) and may deem the allegations against that respondent admitted. The contents of a default decision shall conform to the content requirements of Rule 9559(p). A respondent may, for good cause shown, file a motion to set aside a default. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. If the Hearing Officer is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion. If a default decision is not called for review pursuant to Rule 9559(q), the default decision shall become the final FINRA action.

(n) Sanctions, Costs and Remands

(1) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h) or Rule 9557, the Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and, pursuant to Rule 8310(a), may also impose any other fitting sanction.

(2) In an action brought under Rule 9556(h), the Hearing Officer may impose any fitting sanction.

([2]3) In an action brought under Rule 9557, the Hearing Panel shall approve or withdraw the requirements and/or restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds that the respondent has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless FINRA staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 9557(g)(2).

([3]4) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330 regarding all actions brought under the Rule 9550 Series.

([4]5) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h) or Rule 9557, the Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

(o) through (r) No Change.

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9800. TEMPORARY CEASE AND DESIST ORDERS

9810. Initiation of Proceeding

(a) Department of Enforcement or Department of Market Regulation

With the prior written authorization of FINRA's Chief Executive Officer or such other senior officers as the Chief Executive Officer may designate, the Department of Enforcement or the Department of Market Regulation may initiate a temporary cease and

desist proceeding with respect to alleged violations of Section 10(b) of the Exchange Act and SEA Rule 10b-5 thereunder; SEA Rules 15g-1 through 15g-9; FINRA Rule 2010 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); FINRA Rule 2020; or FINRA Rule 4330 (if the alleged violation is misuse or conversion of customer assets). The Department of Enforcement or the Department of Market Regulation shall initiate the proceeding by serving a notice on a member or associated person (hereinafter “Respondent”) (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) and filing a copy thereof with the Office of Hearing Officers. The Department of Enforcement or the Department of Market Regulation shall serve the notice by personal service, overnight commercial courier, [or] facsimile, or email. If service is made by facsimile or email, the Department of Enforcement or the Department of Market Regulation shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective [upon service] when service is complete.

(b) Contents of Notice

The notice shall set forth the rule or statutory provision that the Respondent is alleged to have violated and that the Department of Enforcement or the Department of Market Regulation is seeking to have the Respondent ordered to cease violating. The

notice also shall state whether the Department of Enforcement or the Department of Market Regulation is requesting the Respondent to be required to take action, [or to] refrain from taking action or both. The notice shall be accompanied by:

(1) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts or omissions that constitute the alleged violation; [and]

(2) a memorandum of points and authorities setting forth the legal theories upon which the Department of Enforcement or the Department of Market Regulation relies; and

~~(2)~~3) a proposed order that contains the required elements of a temporary cease and desist order (except the date and hour of the order's issuance), which are set forth in Rule 9840(b).

(c) Authority to Approve Settlements

If the Parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order.

(c)d) Filing of Underlying Complaint

If the Department of Enforcement or the Department of Market Regulation has not issued a complaint under Rule 9211 against the Respondent relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in paragraph (b), the Department of Enforcement or the Department of Market Regulation shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in accordance with the service provisions in paragraph (a).

9820. Appointment of Hearing Officer and Hearing Panel

(a) As soon as practicable after the Department of Enforcement or the Department of Market Regulation files a copy of the notice initiating a temporary cease and desist proceeding with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the temporary cease and desist proceeding. The Chief Hearing Officer shall appoint two Panelists to serve on a Hearing Panel with the Hearing Officer. [The Panelists shall be current or former Governors, Directors, or National Adjudicatory Council members, and at least one Panelist shall be an associated person.] Each Panelist shall be associated with a member of FINRA or retired therefrom. The Chief Hearing Officer shall select as a Panelist a person who:

(1) currently serves or previously served on a District Committee;

(2) previously served on the National Adjudicatory Council;

(3) previously served on a disciplinary subcommittee of the National Adjudicatory Council or the National Business Conduct Committee, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees;

(4) previously served as a Director or a Governor, but does not currently serve in any of these positions; or

(5) currently serves or previously served on a committee appointed or approved by the FINRA Board, but does not serve currently on the National Adjudicatory Council or as a Director or a Governor.

(b) No Change.

9830. Hearing

(a) When Held

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer [with the consent of the Parties] for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed.

(b) Service of Notice of Hearing

The Office of Hearing Officers shall serve a notice of date, time, and place of the hearing on the Department of Enforcement or the Department of Market Regulation and the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service, overnight commercial courier, [or] facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective [upon service] when service is complete.

(c) through (d) No Change.

(e) Additional Information

Prior to the hearing, the Hearing Officer may order a Party to furnish to all other Parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in Rule 9242(a). The documentary evidence submitted by the Parties pursuant to this paragraph shall not become part of the record, unless the Hearing Officer or Hearing Panel orders some or all of such evidence included pursuant to Rule 9830(g). At any time during [its] the Hearing Panel's consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

(f) through (h) No Change.

9840. Issuance of Temporary Cease and Desist Order by Hearing Panel

(a) Basis for Issuance

The Hearing Panel shall issue a written decision stating whether a temporary cease and desist order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer [with the consent of the Parties] for good cause shown. A temporary cease and desist order shall be imposed if the Hearing Panel finds:

(1) [by a preponderance of the evidence that the alleged violation specified in the notice has occurred] that the Department of Enforcement or Department of Market Regulation has made a showing of a likelihood of success on the merits; and

(2) that the alleged violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of the underlying disciplinary proceeding under the Rule 9200 and 9300 Series.

(b) Content, Scope, and Form of Order

A temporary cease and desist order shall:

(1) be limited to ordering a Respondent (and any successor of a Respondent, where the Respondent is a member firm) to cease and desist from violating a specific rule or statutory provision, and, where applicable, to ordering a Respondent (and any successor of a Respondent, where the Respondent is a member firm) to cease and desist from dissipating or converting assets or causing other harm to investors;

(2) No Change.

(3) describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a member firm) shall [is to] take, [or] refrain from taking, or both; and

(4) No Change.

(c) Duration of Order

A temporary cease and desist order shall remain effective and enforceable until the issuance of a decision under Rule 9268 or Rule 9269, or until a settlement offer is accepted pursuant to Rule 9270.

(d) Service and Dissemination Requirements

The Office of Hearing Officers shall serve the Hearing Panel's decision and any temporary cease and desist order on the Department of Enforcement or the Department of Market Regulation and the Respondent (or upon counsel representing the Respondent or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) by personal service, overnight commercial courier, [or] facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the Hearing Panel's decision and any temporary cease and desist order by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The temporary cease and desist order shall be effective [upon service] when service is complete. The Office of Hearing Officers shall provide a copy of the temporary cease and desist order to each FINRA member with which a Respondent is associated.

(e) Delivery Requirement

Where a Respondent is a member firm, Respondent shall deliver a copy of a temporary cease and desist order, within one business day of receiving it, to its associated persons.

9850. Review by Hearing Panel

At any time after the Office of Hearing Officers serves the Respondent (or counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141

agrees to accept service for the Respondent) with a temporary cease and desist order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request. The Hearing Panel that presided over the temporary cease and desist order proceeding shall retain jurisdiction to modify, set aside, limit, or suspend the temporary cease and desist order, unless at the time the application is filed a Hearing Panel has already been appointed in the underlying disciplinary proceeding commenced under FINRA Rule 9211 in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer [with the consent of the Parties] for good cause shown. The Hearing Panel's response shall be served on the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) via personal service, overnight commercial courier, [or] facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the temporary cease and desist order by personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the temporary cease and desist order.

9860. Violation of Temporary Cease and Desist Orders

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled or be subject

to any fitting sanction under Rule 9556. FINRA's Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate must authorize the initiation of any such proceeding in writing.

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