

trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange is simply eliminating the requirement that LMMs register as an OLD in the security in which they are also registered as an LMM. The Exchange is not otherwise altering the rights and obligations of LMMs.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6) of the Act<sup>10</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2009-102 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2009-102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549-1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at <http://www.nyse.com>. 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-NYSEArca-2009-102 and should be

submitted on or before December 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-28197 Filed 11-24-09; 8:45 am]

BILLING CODE 8011-01-P

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61026; File No. SR-FINRA-2009-076]

#### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the FINRA Rule 9550 Series (Expedited Proceedings)**

November 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 5, 2009, 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. On November 17, 2009, FINRA filed Amendment No. 1.<sup>3</sup> 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 (1) Modify various time requirements regarding expedited proceedings, (2) add an expedited proceeding for failure to pay restitution, and (3) harmonize a remedy in an expedited procedure with a remedy in the FINRA By-Laws.

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

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 to SR-FINRA-2009-076 supersedes and replaces in its entirety the proposed rule change as filed on November 5, 2009. FINRA filed Amendment No. 1 so that the text of Proposed FINRA Rule 9559 as set forth in this rule filing could reflect amendments adopted pursuant to proposed rule change SR-FINRA-2008-067. See Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (Order Approving File No. SR-FINRA-2008-067).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> *Id.*

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

In March 2004, the SEC approved a rule change that created the NASD Rule 9550 Series to consolidate, clarify, and streamline most procedural rules that had an expedited proceeding component.<sup>4</sup> Having used the procedures for five years and having conducted a recent analysis of their effectiveness, FINRA is proposing a few modifications that will strengthen investor protection and improve administrative efficiency. The proposed changes are discussed separately below.

#### Shortening Time Periods

The Rule 9550 Series provides a procedural mechanism for FINRA to address certain types of misconduct more quickly than would be possible using the ordinary disciplinary process. At the same time, the Rule 9550 Series provides firms and associated persons with numerous procedural protections, including the ability to request a hearing that often results in a stay of the action. FINRA proposes shortening the time within which a hearing must be held from the current 60 days after a hearing request to 30 days after the request in relation to the following FINRA rules:

- Rule 9551 (Failure To Comply With Public Communication Standards);

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

The proposed change<sup>5</sup> strengthens investor protection while maintaining procedural safeguards for respondents, makes the timing of the hearings more consistent with other hearings in the rule series, and reflects FINRA's experience over the past five years in resolving these matters. The change would increase investor protection by limiting the period during which a wrongdoer could continue doing business while the matter is pending. Moreover, the issues involved in these cases usually are straightforward (e.g., whether the respondent paid an arbitration award or FINRA fee or provided required information) and do not require lengthy preparation time. The change also would bring these hearing provisions more in line with the other expedited actions in the Rule 9550 Series, which require hearings to be held within 14 days or five business days of the respondent's request for a hearing depending on the type of conduct at issue. Finally, five years' experience has established that hearings can be held much more quickly than the current scheme contemplates.

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

months provides sufficient time for respondents to seek to lift the suspension while moving the process forward at a more efficient and reasonable pace.

#### Adding an Expedited Procedure for Failure To Pay Restitution

FINRA proposes amending Rule 9554, which contains expedited procedures for failure to pay FINRA arbitration awards, to also permit FINRA to take expedited action for failure to comply with a FINRA order of restitution or a FINRA settlement providing for restitution. Restitution is an equitable remedy used to restore victims to their position before the wrongful conduct occurred and to compensate them for unjust losses or injury suffered as the result of another's wrongdoing.<sup>6</sup> The SEC and FINRA have long stressed the importance of imposing restitution where an "identifiable person ... has suffered a quantifiable loss as a result of a respondent's misconduct."<sup>7</sup>

Although FINRA can take expedited action against a member firm or associated person for failure to pay fines, dues, and fees to FINRA and for failure to pay an arbitration award to a third party, FINRA currently does not have explicit authority to take expedited action against firms or associated persons who fail to pay restitution to a third party (usually investors who have been harmed). FINRA's only recourse is to initiate an ordinary disciplinary action, which can take several months to conclude. FINRA believes that firms and associated persons should not be permitted to continue doing business for prolonged periods when they have failed to pay restitution to third parties. The proposal would close this loophole.

#### Harmonizing Remedies

FINRA proposes harmonizing the remedy for an individual's failure to pay an arbitration award in Rule 9554 with the remedy for the same misconduct in the FINRA By-Laws. At present, Rule 9554 states that FINRA may suspend or cancel the membership of a firm and may suspend or bar an individual for failure to pay an arbitration award. Article VI, Section 3(b) of the FINRA By-Laws, however, limits the remedy regarding an individual's failure to pay an arbitration award to a suspension. To make the rule consistent with the By-Laws, the proposed change would limit the remedy against individuals in such

<sup>4</sup> See Securities Exchange Act Release No. 49380 (March 9, 2004), 69 FR 12386 (March 16, 2004) (Order Approving File No. SR-NASD-2003-110); *Notice to Members* 04-36 (May 2004). Expedited proceedings in this context refer to fast-tracked matters that take place outside the ordinary FINRA disciplinary process. In September 2008, the SEC approved the adoption of the NASD Rule 9550 Series as the FINRA Rule 9550 Series. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File Nos. SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029); Regulatory Notice 08-57 (October 2008).

<sup>5</sup> FINRA would implement the proposed change by amending Rule 9559, which contains the hearing provisions for the Rule 9550 Series. FINRA also would make conforming changes to Rule 9559 regarding the pre-hearing exchange of documents between the parties to the expedited proceeding.

<sup>6</sup> See *David Joseph Dambro*, 51 S.E.C. 513, 518 (1993).

<sup>7</sup> FINRA Sanction Guidelines, at 4; see also *Dambro*, 51 S.E.C. at 518 (emphasizing importance of getting money back to investors who were harmed by broker's misconduct).

cases to suspension and would eliminate any reference to barring individuals.

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

## 2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal also is consistent with Section 15A(b)(7) of the Act,<sup>9</sup> which provides that FINRA members and associated persons must be appropriately disciplined for violations of any provisions of the Act or FINRA rules. The proposed rule change is consistent with these purposes because it promotes a fair and efficient disciplinary process and provides a mechanism to take expedited action when a member or associated person fails to pay restitution.

### B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-076 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-FINRA-2009-076. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-FINRA-2009-076 and should be submitted on or before December 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-28224 Filed 11-24-09; 8:45 am]

**BILLING CODE 8011-01-P**

## DEPARTMENT OF STATE

### [Public Notice 6807]

### Notice of Meeting of the Advisory Committee on International Law

A meeting of the Advisory Committee on International Law will take place on Friday, December 11, 2009, from 9:15 a.m. to approximately 5:30 p.m., at the George Washington University Law School (Michael K. Young Faculty Conference Center, 5th Floor), 2000 H St., NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, Harold H. Koh, and will be open to the public up to the capacity of the meeting room. It is anticipated that the agenda of the meeting will cover a range of current international legal topics, including treaty scope and enforcement issues, the relationship between human rights treaties and humanitarian law; issues relating to the International Criminal Court; options for compliance with the International Court of Justice's decision in the *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*; and the law of non-international armed conflict. Members of the public will have an opportunity to participate in the discussion.

Members of the public who wish to attend the session should, by Monday, December 7, 2009, notify the Office of the Legal Adviser (telephone: 202-776-8323) of their name, professional affiliation, address, and telephone number. A valid photo ID is required for admittance. A member of the public who needs reasonable accommodation should make his or her request by December 4, 2009; requests made after that time will be considered but might not be possible to accommodate.

Dated: November 19, 2009.

**David DeBartolo,**

*Office of Claims and Investment Disputes, Office of the Legal Adviser, Executive Director, Advisory Committee on International Law, Department of State.*

[FR Doc. E9-28274 Filed 11-24-09; 8:45 am]

**BILLING CODE 4710-08-P**

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78o-3(b)(7).