

Composition of Hearing Panels and Extended Hearing Panels

SEC Approves Amendments to FINRA Rules 9231 and 9232 to Add a Category of Persons Eligible to Serve as Panelists in Disciplinary Proceedings

Effective Date: September 26, 2014

Executive Summary

FINRA has amended FINRA Rule 9231 (Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer) to establish an additional category of persons eligible to serve as panelists on a Hearing Panel or an Extended Hearing Panel in a disciplinary proceeding to include persons currently serving, or having served previously, on a committee appointed or approved by the FINRA Board.¹ The rule change also makes a conforming amendment to Rule 9232 (Criteria for Selection of Panelists and Replacement Panelists), which establishes criteria for the appointment of eligible panelists to Hearing Panels and Extended Hearing Panels. The rule change will provide FINRA with a larger pool of individuals with experience and expertise who could serve as panelists.

The new rule text is available in the online FINRA Manual.

Questions concerning this *Notice* should be directed to Gary Dernelle, Associate General Counsel, Office of General Counsel, at (202) 728-8255.

October 2014

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal

Key Topics

- ▶ Disciplinary Proceedings

Referenced Rules & Notices

- ▶ FINRA Rule 9120(i)
- ▶ FINRA Rule 9211
- ▶ FINRA Rules 9213(b)
- ▶ FINRA Rule 9231
- ▶ FINRA Rule 9232
- ▶ FINRA Rule 9311
- ▶ FINRA Rule 9550 Series

Discussion

FINRA's disciplinary process begins with the Department of Enforcement or Department of Market Regulation filing a complaint with the Office of Hearing Officers that alleges a firm or person associated with a firm is violating or has violated any rule, regulation or statutory provision, including the federal securities laws and related regulations.² Thereafter, the chief hearing officer assigns a hearing officer to preside over the disciplinary proceeding, and appoints panelists to a Hearing Panel or, if applicable, an Extended Hearing Panel to conduct the disciplinary proceeding.³ Trial-level hearings take place before a Hearing Panel or an Extended Hearing Panel, which listens to the presentation of evidence and issues a written decision setting forth findings as to whether a respondent engaged in the alleged misconduct and describing the sanctions, if any, imposed. A Hearing Panel or an Extended Hearing Panel decision is generally appealable to, and subject to discretionary review by, the National Adjudicatory Council (NAC).⁴

Under FINRA Rule 9231, a Hearing Officer and two industry panelists, who are either currently associated with FINRA member firms or retired therefrom, compose a Hearing Panel or an Extended Hearing Panel. Prior to the approved rule change, the chief hearing officer appointed panelists from a pool of eligible persons that included persons who (1) currently serve or previously served on a District Committee; (2) previously served on the NAC; (3) previously served on a disciplinary subcommittee of the NAC or its predecessor; (4) previously served as a director or governor, but do not currently serve in any of these positions; or (5) in limited cases, currently serve or previously served on the Market Regulation Committee.

Amended FINRA Rules 9231 and 9232 add one category of persons eligible to serve on a Hearing Panel or an Extended Hearing Panel for a disciplinary proceeding.⁵ This additional category includes a person who currently serves or previously served on a committee appointed or approved by the FINRA Board who is not currently a member of the NAC or a director or governor. In effect, the rule change enlarges the number of FINRA committees from which experienced and expert panelists can be drawn to encompass industry members who serve, or have served, on the FINRA Advisory Committees, including, for example, the Compliance Advisory Committee, Corporate Financing Committee, Financial Responsibility Committee, Fixed Income Committee, Investment Dealer/Insurance Affiliate Committee, and Membership Committee.⁶ Although the amended rules make a conforming amendment to FINRA Rule 9232 to reflect the additional category of eligible panelists under proposed FINRA Rule 9231, they do not alter the criteria currently contained within FINRA Rule 9232 for the selection of panelists.

Endnotes

1. See Securities Exchange Act Release No. 73230 (September 26, 2014); 79 FR 59534 (October 2, 2014) (Order Approving SR-FINRA-2014-036).
2. See FINRA Rule 9211.
3. FINRA Rules 9213(b), 9231(a). The Chief Hearing Officer appoints an Extended Hearing Panel if, upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors, the Chief Hearing Officer determines that a matter shall be an "Extended Hearing." See FINRA Rules 9120(i), 9231(c).
4. See FINRA Rule 9311.
5. By extension, the rule change also expands the pool of persons eligible to serve as panelists on Hearing Panels for some expedited proceedings under the FINRA Rule 9550 Series. See FINRA Rule 9559(d)(2) (referencing FINRA Rules 9231 and 9232 for panelists' qualifications for serving on certain expedited proceedings).
6. A complete list of the [FINRA Advisory Committees](#), and a description of their roles and the advice they provide to FINRA, is provided on FINRA's website.