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VIA E-MAIL TO [RULE-COMMENTS@SEC.GOV](mailto:RULE-COMMENTS@SEC.GOV)

December 15, 2009

Elizabeth M. Murphy  
*Secretary*  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

**RE: Release No. 34-61026/SR-FINRA-2009-076/Proposed  
Rule Change to Amend FINRA Rule 9550 Series  
(Expedited Proceedings)**

Dear Ms. Murphy:

On behalf of the Public Investors Arbitration Bar Association ("PIABA"), I thank you for the opportunity to comment on the above-referenced rule change proposal concerning the FINRA Rule 9550 Series (Expedited Proceedings). PIABA supports the proposed rule changes as written. We believe the proposed changes will positively impact investor protections and therefore commend FINRA for submitting these amendments.

PIABA is a national, non-profit, bar association comprised of about 461 attorneys, located in 45 states, the District of Columbia and Puerto Rico. Members of PIABA devote a significant portion of their practice to the representation of public investors in securities arbitration. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums. Collectively, PIABA members have represented tens of thousands of investors in securities arbitrations throughout the country. Our members and their clients have a strong interest in FINRA rules which govern not just the arbitration process, but all rules impacting protection of the public investor.

FINRA's proposed amendments to the Rule 9550 Series (Expedited Proceedings) would operate to advance the interests of public investors. The three overarching goals of this rule change, as stated by FINRA are to: (1) modify various time requirements regarding expedited proceedings against members and associated persons; (2) add an expedited proceeding for a firm/associated person's failure to pay a FINRA order of restitution or to honor an agreement to comply

with the order of restitution; and (3) to harmonize the remedy in expedited proceedings involving associated persons with the corresponding remedy set forth in the FINRA By-laws.

The proposed rule changes are consistent with the purposes of: Sections 15 A(b)(6)<sup>1</sup> (FINRA must adopt rules to promote, among other things, just and equitable principles of trade); and 15 A(b)(7) (FINRA must implement appropriate disciplinary procedures for FINRA members and associated persons.)<sup>2</sup>

### **Shortened Time Frame For Hearings to Address Misconduct Under Rules 9551, 9552, 9553, 9554, and 9555 Will Help Protect Investors**

By providing FINRA with the ability to further expedite these proceedings, which are brought about by the alleged misconduct of a member firm or its associated person, the misconduct can be more swiftly corrected. FINRA proposes to shorten the time frame from 60 days to 30 days for a firm or associated person to have a hearing when certain regulatory violations or misconduct has occurred. With the shortened time frame for hearings, it is likely that at least some public investors will be spared additional or future wrongdoing by a member firm or its associated person. In some instances, the offending firm or associated person may be suspended or terminated after the 30 day period, an event which in some cases will protect the investing public. PIABA supports this proposed change without qualification.

The FINRA Rule 9550 Series generally governs standards and procedures for expedited proceedings in a variety of situations, ranging from Rule 5222 (failure to provide FINRA with essential information such as FOCUS reports), to Rule 9554 (deals with a firm/person's failure to pay an arbitration award or related settlement), to Rule 9555 (failure to meet qualification and eligibility standards to access services) and more.

Each of the Rules in the 9550 Series touches upon concepts of fair and honest dealings by member firms/ associated persons to public investors. The refusal of a member or an associated person to pay an arbitration award is obviously in total disregard of duties owed to the public investors. Not so obvious, but yet very important, are the other regulatory requirements encompassed within the expedited proceeding rules. For instance, a member's failure to file FOCUS reports as required can impede FINRA's ability to assess the financial stability of a member. This breakdown can shield a member's operational difficulties from regulators when time may be of the essence to a retail customer of the firm and to a regulatory investigation. The shortened time frame for expedited hearings under these Rules is a positive step toward prompt action.

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<sup>1</sup> 15 U.S.C. 78o-3(b)(6)

<sup>2</sup> 15 U.S.C. 78o-3(b)(7).

**Amendments to Proposed Rule 9554 - Procedures For Failure to Pay Restitution**

PIABA applauds the addition within Rule 9554 of provision for expedited proceedings when a member or associated person fails to pay a FINRA order of restitution or a FINRA settlement that demands restitution be made. Currently, FINRA must enforce these restitution provisions through the lengthier disciplinary scheme. This amendment will hopefully benefit investors in the near future. We note that a FINRA order of restitution, or settlement incorporating the same, can be more effective with members and associated persons than some arbitration awards, particularly against small brokerage firms and associated persons who gamble that the investor will not pursue, or know how to pursue, collection of an award.

**Conclusion**

FINRA has proposed equitable amendments and should be commended for the thoughtful treatment of the restitution issue in particular. PIABA submits that the Commission should approve the amendments without delay.

Respectfully,

/s/  
Scott R. Shewan,  
President

**Mr. Shewan's Contact Information**

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