

SECURITIES AND EXCHANGE COMMISSION  
Release No. 34-61311; File No. SR-FINRA-2009-072

January 7, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Amend the Deficient Claims Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes

I. *Introduction*

On October 28, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission (the "Commission"), 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> a proposed rule change to amend Rule 12307 of the Code of Arbitration for Customer Disputes (the "Customer Code") and Rule 13307 of the Code of Arbitration for Industry Disputes (the "Industry Code") (collectively, the "Codes") to clarify the date of filing of an arbitration claim once a deficiency is corrected. The proposed Rule change was published for comment in the Federal Register on December 2, 2009.<sup>3</sup> The Commission received two comment letters, both of which supported the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

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

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

<sup>3</sup> 74 FR 63167 (Dec. 2, 2009).

<sup>4</sup> See letters from William A. Jacobson, Esq., Associate Clinical Professor of Law, Director, Cornell Securities Law Clinic and Sang Joon Kim, student, dated December 9, 2009, and Scott R. Shewan, President, Public Investors Arbitration Bar Association, dated December 17, 2009.

## **II. *Description of the Proposal***

When parties initiate arbitration claims in FINRA's arbitration forum, they must file a signed and dated submission agreement, pay all required filing fees, and provide a statement of claim explaining the facts and outlining the remedies requested.<sup>5</sup> If a party's claims do not comply with the Customer Code or Industry Code, as applicable, those claims are considered deficient.<sup>6</sup> FINRA received inquiries from constituents on how the arbitration forum determines the date of filing of a claim that was deficient when filed, but is later corrected.

To address these constituents' concerns, FINRA proposed to amend Rules 12307(b) of the Customer Code and 13307(b) of the Industry Code to clarify the date of filing of a deficient claim when the deficiency is corrected within 30 days from the time the party receives notice of the deficiency (the "Deficiency Period"). As amended, these rules would provide that if the deficiency is corrected within the Deficiency Period, the claim will be considered filed on the date the initial statement of claim was filed.

Two commenters addressed the proposed rule change and both urged the Commission to approve it.

## **III. *Discussion and Commission Findings***

The Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>7</sup> In particular, the Commission finds that the proposed rule change is

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<sup>5</sup> Rule 12302(a)(1) of the Customer Code and Rule 13302(a)(1) of the Industry Code.

<sup>6</sup> A claim may be deficient because, for example, the party failed to file a properly signed and dated submission agreement, failed to pay all required filing fees, or failed to file the correct number of copies of the submission agreement, statement of claim or other supporting documents.

<sup>7</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

consistent with Section 15A(b)(6) of the Act in that it is designed, among other things, to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes it is important to provide persons using FINRA's arbitration forum clear guidance on how to determine the date of filing of a deficient claim. The proposed rule change should eliminate confusion, provide transparency concerning forum practice, and enhance the efficiency of case administration.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-FINRA-2009-072) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).