

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66442; File No. SR-FINRA-2012-012)

February 22, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Raising the Limit for Simplified Arbitration

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 February 9, 2012, 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 substantially 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’s Customer and Industry Codes of Arbitration Procedure to raise the limit for simplified arbitration from \$25,000 to \$50,000.

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.

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

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

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

FINRA is proposing to amend FINRA Rules 12401 (Number of Arbitrators) and 12800 (Simplified Arbitration) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”), and FINRA Rules 13401 (Number of Arbitrators) and 13800 (Simplified Arbitration) of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”), to raise the limit for simplified arbitration from \$25,000 to \$50,000.

Currently, FINRA offers streamlined arbitration procedures for claimants seeking damages of \$25,000 or less. Under the simplified arbitration rules, one chair-qualified arbitrator decides a claim and issues an award based on the written submissions of the parties, unless, in a customer case, the customer requests a hearing, or, in an industry case, the claimant requests a hearing. FINRA also streamlines discovery for these cases.

The \$25,000 threshold has been in place since 1998<sup>3</sup> and, at that time, captured 21 percent of all cases filed with the forum. Currently, the \$25,000 threshold captures ten percent of FINRA's caseload. Statistics for 2011 indicate that raising the threshold to \$50,000 would increase the percentage of claims administered under simplified arbitration to 17 percent of the claims filed with the forum. FINRA staff believes that raising the threshold for simplified arbitration to \$50,000 would benefit forum users in a number of ways.

First, forum fees for simplified arbitration claims would be reduced. Under FINRA Rules 12800 and 13800, no hearing is held unless the customer or claimant requests one.<sup>4</sup> Under the current fee schedule, FINRA charges \$450 per hearing session for claims between \$25,000 and \$50,000. Under the proposed rule change, parties who choose to have their dispute resolved "on the papers" (*i.e.*, based on the pleadings and other materials submitted by the parties) would save the \$450 hearing session fee.<sup>5</sup> In the event that a case would have required two hearing sessions (one full day), the fee savings

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<sup>3</sup> In 1998, FINRA raised the amount in dispute for simplified arbitration from \$10,000 to \$25,000. See NASD, Notice to Members 98-90 (New Arbitrator List Selection Rules And Monetary Thresholds For Simplified And Single Arbitrator Cases Take Effect).

<sup>4</sup> Under the simplified procedures for customer cases, only the customer may request a hearing (regardless of whether the customer or the firm initiated the arbitration). Under the simplified procedures in the Industry Code, only the claimant may request a hearing.

<sup>5</sup> Under Rules 12100(n) and 13100(n), a hearing session means any meeting between the parties and arbitrators of four hours or less, including a prehearing conference.

would be \$900.<sup>6</sup> Further, under Rules 12903 and 13903 (Process Fees Paid by Members), members are assessed a non-refundable hearing process fee of \$1,000 for claims between \$25,000.01 and \$50,000 when a hearing date and location are set. Under the proposal, if the dispute is resolved on the papers, members would not have to pay this fee.

Second, parties would save the time and expense of preparing for, scheduling, and traveling to the hearing.

Third, customers who are not able to retain an attorney to handle their case because of the small amount in dispute, and who are not comfortable appearing at an evidentiary hearing without representation, would have the flexibility to choose whether to request a hearing.

Finally, raising the limit for cases decided on the papers would reduce the time to process the cases because the arbitrator and parties would not need to coordinate their calendars to schedule a hearing.

For the reasons stated above, FINRA is proposing to amend Rules 12401(a) and 13401(a) to provide that if the amount of a claim is \$50,000 or less, exclusive of interest and expenses, the panel would consist of one arbitrator and the claim would be subject to the simplified arbitration rules. FINRA would amend Rules 12401(c) and 13401(c) to state that if the amount of a claim is more than \$50,000, but not more than \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator unless the

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<sup>6</sup> Since the arbitrator assesses the hearing session fees, either the claimant or the respondent could realize the savings.

parties agree in writing to three arbitrators. The provisions relating to claims of more than \$100,000 would remain the same.

FINRA is proposing to amend Rules 12800(a) and 13800(a) to provide that the simplified arbitration rules apply to claims involving \$50,000 or less, exclusive of interest and expenses. FINRA would amend Rules 12800(e) and 13800(e) to state that if any pleading increased the amount in dispute to more than \$50,000, FINRA would no longer administer the claim under the simplified arbitration rules.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> 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. FINRA believes that raising the threshold for simplified arbitration would, as referenced above, improve efficiency and reduce fees for claims up to \$50,000, enhancing the forum for its users.

### 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.

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<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2012-012 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-2012-012. 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-2012-012 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.<sup>8</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).