

June 19, 2008

Florence Harmon
Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File No. SR-FINRA-2008-005 – Proposed Rule Change to Adopt Rule 12905 of the Code of Arbitration Procedure for Customer Disputes and Rule 13905 of the Code of Arbitration Procedure for Industry Disputes to Permit Submissions to Arbitrators After a Case Has Closed Under Limited Circumstances; Response to Comments and Partial Amendment No. 1

Dear Ms. Harmon:

The Financial Industry Regulatory Authority, Inc. (“FINRA”) hereby responds to the comment letters received by the Securities and Exchange Commission (“SEC”) with respect to the above rule filing. In this rule filing, FINRA is proposing to adopt Rule 12905 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rule 13905 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (collectively, the “Codes”) to permit submissions to arbitrators after a case has closed under limited circumstances.¹ Specifically, the proposal, as filed, would permit parties to submit documents to arbitrators in closed cases only under the following circumstances: (1) as ordered by a court; (2) at the request of any party within 30 days of service of an award or notice that a matter has been closed, for ministerial matters; or (3) if all parties agree and submit documents within 30 days of service of an award or notice that a matter has been closed.

The SEC received 13 letters,² 12 in opposition and one in support of the proposal.³

¹ See Securities Exchange Act Rel. No. 57525 (March 18, 2008), 73 FR 15815 (March 25, 2008) (File No. SR-FINRA-2009-005 Notice of Filing of Proposed Rule Change Relating to Amendments to the Codes of Arbitration Procedure to Permit Submissions to Arbitrators After a Case Has Closed Under Limited Circumstances).

² Comment letters were submitted by Steven B. Caruso, Maddox Hargett & Caruso, P.C., dated March 21, 2008 (“Caruso letter”); Jeff Sonn, Sonn, Erez, PLC, dated March 26, 2008 (“Sonn letter”); Seth E. Lipner, Professor of Law, Zicklin School of Business, Baruch College, CUNY, Member, Deutsch Lipner, dated March 28, 2008 (“Lipner letter”); Steve Buchwalter, Attorney, dated March 29, 2008 and May 15, 2008 (“Buchwalter letters”); William A. Jacobson, Associate Clinical Professor, Director, Cornell Securities Law Clinic, dated March 31, 2008 (“Jacobson letter”); Scott R. Shewan, Born, Pape & Shewan, LLP, dated April 1, 2008 (“Shewan letter”); Barry D. Estell, Attorney At Law, dated April 9, 2008 (“Estell letter”); Joseph Fogel, Fogel Associates, dated April 11, 2008 (“Fogel letter”); David P. Neuman, Stoltmann Law Offices, P.C., dated April 14, 2008 (“Neuman letter”); Debra B. Hayes, Attorney, dated April 15, 2008 (“Hayes letter”); Karen Tyler, President, North American Securities Administrators Association (NASAA), Inc., and North Dakota Securities Commissioner, dated April 17, 2008

Four commenters question whether there is sufficient need for the rules given the number of instances that occur each year.⁴ While FINRA staff does not maintain statistics on the number of requests staff receives each year to reopen closed cases, FINRA estimates that it receives over 150 such requests per year. FINRA believes that the number of requests made is significant and that the proposal would add transparency to the forum's process for considering such requests.

Eight commenters assert that the term "ministerial matters" lacks specificity.⁵ Several commenters raise concerns that permitting unilateral motions relating to ministerial matters may increase motions practice and legal expenses for parties⁶ and may delay award payments for investors prevailing in their cases.⁷ In response to these concerns, FINRA is filing this Partial Amendment No. 1 to eliminate any ambiguity in the rule language and to strictly limit the circumstances under which a party may make a request under the rule. FINRA is proposing to shorten the time limit for requests made by the parties from 30 to 10 days to expedite requests under the rules and to avoid delays in award payments.⁸ FINRA also proposes an amendment to clarify that a request would not extend the time period for paying an award. FINRA is proposing to strictly limit the grounds for unilateral requests to typographical or computational errors, such as an addition mistake when computing forum fees, or mistakes in the description of a person or property, such as an incorrect reference to the title of an account in an award.

Six commenters raise issues relating to late requests for expungement at the forum.⁹ Under the rules as proposed to be amended, requests to reopen closed cases for expungement relief would not be permitted.

("NASAA letter"); and Laurence S. Schultz, President, Public Investors Arbitration Bar Association (PIABA), dated April 18, 2008 ("PIABA letter").

³ See Lipner letter in support of the proposal. Lipner asserts that the rule proposal conforms the Codes to the law. Lipner requests that FINRA make clear that the time period to pay an award would not be extended by the proposed rule change. Partial Amendment No. 1 to the filing addresses this request.

⁴ See Jacobson, Shewan, NASAA, and PIABA letters.

⁵ See Caruso, Sonn, Jacobson, Shewan, Estell, Hayes, NASAA, and PIABA letters.

⁶ See Buchwalter, Jacobson, Shewan, Estell, Fogel, Neuman, Hayes, and PIABA letters.

⁷ See Caruso, Jacobson, Shewan, Hayes, and PIABA letters.

⁸ FINRA is not proposing a time limit for submissions made by court order because such orders are complied with as written.

⁹ See Jacobson, Shewan, Estell, Fogel, NASAA, and PIABA letters.

The proposed rule change is amended as follows. Proposed new language is underlined; proposed deletions are in brackets.

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12905. Submissions After a Case Has Closed

(a) Parties may not submit documents to arbitrator(s) in cases that have been closed except under the following limited circumstances:

[•] (1) as ordered by a court;

[•] (2) at the request of any party within [30] 10 days of service of an award or notice that a matter has been closed, for [ministerial matters such as miscalculation of figures,] typographical or computational errors, or mistakes in the description of any person[, thing] or property referred to in the award[, or if the award is imperfect in a matter of form that does not affect the decision on the merits]; or

[•] (3) if all parties agree and submit documents within [30] 10 days of (1) service of an award or (2) notice that a matter has been closed.

(b) Parties must make requests under this rule in writing to the Director and must include the basis relied on under this rule for the request. The Director will forward documents submitted pursuant to paragraph (a)(1), along with any responses from other parties, to the arbitrators. The Director will determine if submissions made pursuant to paragraphs (a)(2) and (a)(3) comply with the grounds enumerated in the rule. If the Director determines that the request complies with paragraphs (a)(2) and (a)(3), the Director will forward the documents, along with any responses from other parties, to the

arbitrators. The arbitrators may decline to consider requests that the Director forwards to them under paragraphs (a)(2) and (a)(3).

(c) Unless the arbitrators rule within [20] 10 days after the Director forwards the documents to the arbitrators pursuant to a request made under paragraphs (a)(2) and (a)(3), the request shall be deemed considered and denied.

(d) Requests under this rule do not extend the time period for payment of any award pursuant to Rule 12904.

13905. Submissions After a Case Has Closed

(a) Parties may not submit documents to arbitrator(s) in cases that have been closed except under the following limited circumstances:

[•] (1) as ordered by a court;

[•] (2) at the request of any party within [30] 10 days of service of an award or notice that a matter has been closed, for [ministerial matters such as miscalculation of figures,] typographical or computational errors, or mistakes in the description of any person[, thing] or property referred to in the award[, or if the award is imperfect in a matter of form that does not affect the decision on the merits]; or

[•] (3) if all parties agree and submit documents within [30] 10 days of (1) service of an award or (2) notice that a matter has been closed.

(b) Parties must make requests under this rule in writing to the Director and must include the basis relied on under this rule for the request. The Director will forward documents submitted pursuant to paragraph (a)(1), along with any responses from other parties, to the arbitrators. The Director will determine if submissions made pursuant to

paragraphs (a)(2) and (a)(3) comply with the grounds enumerated in the rule. If the Director determines that the request complies with paragraphs (a)(2) and (a)(3), the Director will forward the documents, along with any responses from other parties, to the arbitrators. The arbitrators may decline to consider requests that the Director forwards to them under paragraphs (a)(2) and (a)(3).

(c) Unless the arbitrators rule within [20] 10 days after the Director forwards the documents to the arbitrators pursuant to a request made under paragraphs (a)(2) and (a)(3), the request shall be deemed considered and denied.

(d) Requests under this rule do not extend the time period for payment of any award pursuant to Rule 13904.

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In conclusion, FINRA believes that the proposed rule change would strictly limit the circumstances under which a party would be permitted to submit documents to arbitrators in closed cases, would add transparency to the process for considering such requests, and should be approved.

Thank you for the opportunity to respond to the comment letters. If you have any questions, please contact me by telephone at (212) 858-4481 or by email at margo.hassan@finra.org. You may also direct any questions to Jean Feeney, Vice President and Chief Counsel, Dispute Resolution by telephone at (202) 728-6959 or by email at jean.feeney@finra.org.

Very truly yours,

Margo A. Hassan
Counsel