SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64226; File No. SR-FINRA-2011-005)

April 7, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Promissory Note Proceedings

I. Introduction

On February 4, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Rule 13806 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to provide that FINRA will appoint a chair-qualified public arbitrator also qualified to resolve statutory discrimination cases. The proposed rule change was published for comment in the Federal Register on February 22, 2011.[3] The Commission did not receive any comments on the proposal. This order approves the proposed change.

II. Description of the Proposal

In 2009, FINRA implemented new procedures to expedite the administration of cases that solely involve a broker-dealer's claim that an associated person failed to pay money owed on a promissory note.[4] Under these procedures, FINRA appoints a single chair-qualified public

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities and Exchange Act Release No. 63909 (February 15, 2011), 76 FR 9838 (February 22, 2011) ("Notice").

4 See Securities Exchange Act Rel. No. 60132 (June 17, 2009), 74 FR 30191 (June 24, 2009) (File No. SR-FINRA-2009-015). FINRA announced implementation of New Rule 13806 (Promissory Note Proceedings) in Regulatory Notice 09-48 (August 2009). The effective date was September 14, 2009.

arbitrator from the roster of arbitrators approved to hear statutory discrimination claims (a statutory discrimination qualified arbitrator)[5] to resolve the dispute.[6] These specially qualified arbitrators are public chair-qualified arbitrators who also are attorneys familiar with employment law and have at least ten years of legal experience. In addition, they may not have represented primarily the views of employers or of employees within the last five years. FINRA proposed using statutory discrimination qualified arbitrators because of the depth of their experience and their familiarity with employment law. At the time that FINRA filed the proposed rule change, these arbitrators were underutilized at the forum.

Since implementing the new procedures, FINRA has found that promissory note cases do not require extensive experience or depth of knowledge (or the limitation on representation of employers or of employees within the last five years). In a majority of completed cases, arbitrators decided the case on the pleadings and the respondent broker did not appear.[7] Experience with the new procedures led FINRA to propose amending the Industry Code to provide that FINRA will appoint a chair-qualified public arbitrator to a panel resolving a promissory note dispute instead of appointing a statutory discrimination qualified arbitrator.

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5 See Rule 13802(c)(3).

6 Under Rule 13806, if an associated person does not file an answer, or files an answer but does not assert any counterclaims or third party claims, regardless of the amount in dispute, a single statutory discrimination qualified arbitrator decides the case. If an associated person files a counterclaim or third party claim, FINRA bases panel composition on the amount of the counterclaim or third party claim. For counterclaims and third party claims that are not more than $100,000, FINRA appoints a single statutory discrimination qualified arbitrator. For counterclaims and third party claims of more than $100,000, FINRA appoints a three-arbitrator panel comprised of a statutory discrimination qualified arbitrator, a public arbitrator, and a non-public arbitrator.

7 Of the first 175 promissory note cases completed, arbitrators decided the case on the pleadings 76 percent of the time (unless the case concluded by settlement or some other means).

Chair-qualified arbitrators have completed chair training and are attorneys who have served through award on at least two cases, or, if not attorneys, are arbitrators who have served through award on at least three cases.[8]

In addition, the number of promissory note cases has more than doubled in the past two years. As a result of this substantial increase, it is becoming more difficult to appoint panels solely with statutory discrimination qualified arbitrators to these cases. Under the proposed rule change, the number of arbitrators available for appointment in promissory note cases would increase significantly. The proposed rule change would ensure that FINRA has a sufficient number of qualified arbitrators readily available to resolve these matters.

As explained in the Notice, FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] 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 the proposed rule change is consistent with the provisions of the Act noted above because it would ensure that FINRA has a sufficient number of qualified arbitrators readily available to resolve promissory note cases.

III. Discussion of Comment Letters

The Commission did not receive any comment letters regarding the proposed rule change.

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8 See Rule 12400(c).

9 15 U.S.C. 78o–3(b)(6).

IV. Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[11] 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. More specifically, the Commission finds that the proposed rule change to allow chair-qualified arbitrators to hear promissory note cases would help to ensure that there are sufficient number of qualified arbitrators readily available to resolve such cases.

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[10] In approving this 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).

[11] 15 U.S.C. 78o–3(b)(6).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR-FINRA-2011-005), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn
Deputy Secretary

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12 15 U.S.C. 78s(b)(2).

13 17 CFR 200.30-3(a)(12).