

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66441; File No. SR-FINRA-2012-011)

February 22, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Mediator Selection

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on 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 Rule 14107 of the Code of Mediation Procedure (“Mediation Code”) to provide the Director of Mediation (“Mediation Director”) with discretion to determine whether parties to a FINRA mediation may select a mediator who is not on FINRA’s mediator roster.

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.

¹ 15 U.S.C. 78s(b)(1).

² 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 the Mediation Code to provide the Mediation Director with discretion to determine whether parties to FINRA mediation may select a mediator who is not on FINRA's mediator roster.

Currently, the Mediation Code permits parties to mediation to select a mediator either from a list of FINRA mediators supplied by the Mediation Director, or from a list or other source of their own choosing. Although parties usually select a FINRA mediator, under the current provision, parties may select a mediator who is *not* on FINRA's roster. In 1995, when FINRA implemented its mediation program, FINRA determined to permit parties to select non-FINRA mediators to ensure that parties had access to a sufficient number of mediators.

After over 15 years of administering the mediation program, FINRA's mediator roster includes many seasoned securities mediators and selection of a non-FINRA mediator raises concerns for the forum. FINRA staff carefully screens every mediator

applicant, and the National Arbitration and Mediation Committee³ (through its Mediation Subcommittee), reviews and approves each application before FINRA places an applicant on the roster. FINRA staff conducts a background check of approved applicants before placing them on the mediator roster.⁴ FINRA staff elicits evaluations of its mediators from parties and counsel and conducts periodic quality control reviews of FINRA mediators. Non-FINRA mediators are not subject to FINRA's screening process, background check, and periodic evaluation.

If a mediator expresses an interest in applying to be a FINRA mediator, and FINRA's program would benefit by adding the mediator, FINRA staff believes it would be prudent to permit a non-FINRA mediator to serve on a case.⁵ However, if a mediator has no interest in applying for FINRA's roster or FINRA believes the mediator is not appropriate for its forum, then the Mediation Director should have the discretion to deny

³ The National Arbitration and Mediation Committee (NAMC) makes recommendations to FINRA staff regarding recruitment, qualification, training, and evaluation of arbitrators and mediators. The NAMC also makes recommendations on rules, regulations, and procedures that govern the conduct of arbitration, mediation, and other dispute resolution matters before FINRA.

The NAMC members include investor representatives, securities industry professionals and FINRA arbitrators and mediators. A majority of the NAMC members and its chair are public (non-industry) representatives. This diverse composition ensures a neutral approach in the administration of Dispute Resolution's forum, promoting fairness to all parties.

⁴ Upon approval to join the roster, FINRA mediators pay an annual \$200 fee to remain active on the roster. Additionally, FINRA deducts \$150 for each FINRA mediation from the mediator's compensation (which typically ranges from \$250 to \$500 per hour).

⁵ If the SEC approves the proposed rule change, FINRA would require any non-FINRA mediator who serves on a case to pay the \$200 annual fee charged to FINRA mediators who are active on the roster prior to serving on the case, as well as the \$150 mediation case fee. Further, FINRA would require the non-FINRA mediator to complete the application process for inclusion on the mediator roster.

the parties' mediator selection. Therefore, FINRA is proposing to amend Rule 14107(a) to state that a mediator may be selected, with the Mediation Director's approval upon receipt of the parties' joint request, from a list or other source the parties choose. If the Mediation Director rejects the mediator selected, the parties would still be able to select a FINRA approved mediator or a different non-FINRA mediator subject to the same conditions as the rejected mediator, or to mediate their dispute elsewhere.

FINRA Rule 14107(c) provides that a mediator selected or assigned to mediate a matter must comply with FINRA rules relating to disclosures required of arbitrators unless, with respect to a mediator selected from a source other than a list provided by FINRA, the parties elect to waive such disclosure. FINRA is proposing to amend Rule 14107(c) to make clear that the paragraph applies to a non-FINRA mediator who is approved to serve on a FINRA mediation.

FINRA is also proposing two housekeeping amendments to Rule 14107. First, to improve user citation to Rule 14107(a), FINRA is proposing to change the bullets in Rule 14107(a) to numbers. Second, FINRA is proposing to amend Rule 14107(c) to update the citation to Rule 12408 of the Customer Code of Arbitration Procedure. Rule 12408 was re-numbered as part of another FINRA proposed rule change and is now identified as Rule 12405.⁶

⁶ See Securities Exchange Act Release No. 63799 (Jan. 31, 2011), 76 FR 6500 (Feb. 4, 2011) (Order Approving File No. SR-FINRA-2010-053).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ 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 giving the Mediation Director discretion to determine whether parties may select a mediator who is not on FINRA's mediator roster would protect the quality and integrity of the process for users of FINRA's mediation program.

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.

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

⁷ 15 U.S.C. 78o-3(b)(6).

(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. Please include File Number SR-FINRA-2012-011 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-2012-011. 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-2012-011 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.⁸

Kevin M. O'Neill
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).