

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57525; File No. SR-FINRA-2008-005)

March 18, 2008

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; 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

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 7, 2008, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“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 Rule 12905 of the NASD Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rule 13905 of the NASD Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to permit submissions to arbitrators after a case has closed 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. Below is the text of the proposed rule change. All the text is new.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

* * * * *

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:

- as ordered by a court;
- 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 such as miscalculation of figures, mistake 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
- if all parties agree and submit documents within 30 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 the documents, along with any responses from other parties, to the arbitrators. Unless the arbitrators rule within 20 days after the Director forwards the documents to the arbitrators, the request shall be deemed denied.

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:

- as ordered by a court;
- 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 such as miscalculation of figures,

mistake 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

- if all parties agree and submit documents within 30 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 the documents, along with any responses from other parties, to the arbitrators. Unless the arbitrators rule within 20 days after the Director forwards the documents to the arbitrators, the request shall be deemed denied.

* * * * *

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 its Customer Code and Industry Code to adopt new rules to permit submissions to arbitrators after a case has closed only under limited circumstances.

The proposed rule change would reduce attorneys' fees and other costs associated with

responding to such submissions and would support the finality of arbitration awards issued in the forum.

FINRA staff receives several requests each year from parties to submit documents to arbitrators (the panel) in cases that have been closed for long periods of time. Parties file these requests for a number of reasons, such as to obtain expungement relief that a party failed to request during the life of the case, to correct what a party perceives to be a mistake in the award, or to request that forum fee allocations be changed.

Currently, the Customer and Industry Codes do not contain deadlines for such submissions and, indeed, do not address the matter. Therefore, staff forwards to panels the requests, along with any responses from other parties, regardless of the time that has elapsed since the case was closed. The panels rarely determine to reopen a matter.

A case is deemed closed on the date FINRA serves an award or sends to the parties a letter notifying them that a case is closed (for example, by settlement). The absence of deadlines in the Customer and Industry Codes for submissions in closed cases can cause numerous problems. For example, parties might submit documents to the panel years after cases have closed. Also, arbitrators might have resigned from the roster or died by the time such submissions are made. Finally, parties might incur substantial attorneys' fees and other costs in responding to closed-case submissions.

Potential legal issues are also present. Some states empower arbitrators to correct technical or mathematical errors in their awards, but only for a short period of time following the award's issuance, and courts may remand a matter to the original arbitrators when they vacate

awards in whole or in part.³ Beyond these examples, however, the law generally provides that the arbitrators' authority ends when the arbitrators render their decisions.

To address the problems associated with submissions in closed cases, FINRA is proposing to permit submissions to arbitrators after a case has closed only under the following limited circumstances:

- as ordered by a court;
- 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 such as miscalculation of figures, mistake 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
- if all parties agree and submit documents within 30 days of (1) service of an award or (2) notice that a matter has been closed.

The 30-day limit is in line with time limits allowed under many state laws⁴ and would ensure that a majority of the arbitrators that served on the panel will be available to review the submissions. Under the second alternative, request by only one party, FINRA would follow its normal procedure of soliciting a response from the other parties before forwarding the request to the panel.

³ See N.Y. CPLR 7509, 7511 (McKinney 2008).

⁴ Id.; see also, CAL. CODE CIV. PROC. 1284 (2007); FLA. STAT. 682.10 (2007); TEX. CIV. PRAC. & REM. 171.054 (2007); VA. CODE ANN. 8.01-581.08 (2007).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ 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. The proposed rule change would reduce the costs associated with responding to submissions in closed cases and support the finality of arbitration awards issued in the forum.

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 35 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

⁵ 15 U.S.C. 78o-3(b)(6).

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-2008-005 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-005. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00

pm. 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-2008-005 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.⁶

Florence E. Harmon
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12) .