

SECURITIES AND EXCHANGE COMMISSION  
Release No. 34-61497; File No. SR-FINRA-2009-073

February 4, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Amend the Hearing Location Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes

I. Introduction

On October 28, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”), 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> a proposed rule change to amend Rules 12213(a) and 13313(a) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”), respectively, to expand the criteria for selecting a hearing location for an arbitration proceeding. The proposed rule change was published for comment in the Federal Register on December 30, 2009.<sup>3</sup> The Commission received three comment letters, all of which supported the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

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

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

<sup>3</sup> 74 FR 69184 (Dec. 30, 2009).

<sup>4</sup> See letters from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated December 29, 2009; Scott R. Shewan, President, Public Investors Arbitration Bar Association (“PIABA”), dated January 19, 2010; and Jill I. Gross, Director, The Investors Rights Clinic at Pace University Law School, dated January 20, 2010.

## II. Description of the Proposed Rule Change

### Hearing Location Selection under the Customer Code

Currently, Rule 12213(a) of the Customer Code states that generally, the Director of FINRA Dispute Resolution (“Director”) will select the hearing location closest to the customer’s residence at the time of the events giving rise to the dispute. FINRA has determined that its policy concerning selection of a hearing location under the Customer Code may be broader than the rule describes.

Under the current rule in the Customer Code, for example, if a customer in an arbitration proceeding lives in Hoboken, New Jersey, the Director will select the New York City hearing location, because this hearing location is closer to the customer’s residence, Hoboken,<sup>5</sup> than FINRA’s Newark, New Jersey hearing location.

There have been instances, however, in which the Director has granted customers’ requests to select a hearing location in their state of residence at the time of the events giving rise to the dispute, even though the in-state hearing location may not be the closest hearing location. Thus, in the example above, if the customer requests the Newark, New Jersey hearing location, the Director generally will grant the request, even though the closest hearing location is the New York City location. The Director typically attempts to honor such requests as a convenience to public customers.

FINRA is proposing, therefore, to amend Rule 12213(a) of the Customer Code to add this criterion for selecting a hearing location. The proposed amendment to the rule

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<sup>5</sup> Hoboken, New Jersey is less than a mile by ferry across the Hudson River from FINRA’s New York City hearing location.

would state that the Director will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute, unless the hearing location closest to the customer's residence is in a different state. In that case, the customer may request a hearing location in the customer's state of residence at the time of the events giving rise to the dispute.

Under the proposal, the Director would continue to select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute. However, the Director would honor a customer's request for a different hearing location in the customer's state of residence.<sup>6</sup> FINRA believes the proposal is customer-friendly because it gives customers more control over the arbitration process, by providing them with a choice of hearing locations.

#### Hearing Location Selection under the Industry Code

Rule 13213(a) of the Industry Code states, in relevant part, that in cases involving an associated person, the Director will generally select the hearing location closest to where the associated person was employed at the time of the events giving rise to the dispute. FINRA has not received requests from associated persons for different hearing locations, other than the closest hearing location under the current rule. However, FINRA believes that associated persons also should have the option to select a hearing

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<sup>6</sup> If the customer requests a different hearing location other than the location closest to the customer's residence at the time of the events giving rise to the dispute and makes the request before the arbitrator or arbitrators are selected, the Director will grant the request. If the customer requests a different hearing location other than the location closest to the customer's residence at the time of the events giving rise to the dispute and makes the request after the arbitrator or arbitrators are selected, the customer must submit the request to the arbitrator or panel.

location in their state of employment at the time of the events giving rise to the dispute, if the closest hearing location to their employment is in a different state.

Thus, FINRA is proposing to amend Rule 13213(a) of the Industry Code in two ways. First, FINRA would broaden the criteria for selecting the appropriate hearing location by referring to the time of the events giving rise to the dispute. FINRA notes that this amendment clarifies current practice and makes the rule language under the Industry Code consistent with the comparable rule under the Customer Code. The second change to Rule 13213(a) would allow an associated person to request a different hearing location, other than the closest hearing location. Specifically, the proposal would state that the Director will select the hearing location closest to where the associated person was employed at the time of the events giving rise to the dispute, unless the hearing location closest to the associated person's employment is in a different state. In that case, the associated person may request a hearing location in his or her state of employment at the time of the events giving rise to the dispute.

Under the proposal, the Director would continue to select the hearing location closest to where the associated person was employed at the time of the events giving rise to the dispute. However, the Director would honor an associated person's request for a different hearing location in the associated person's state of employment.<sup>7</sup> FINRA

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<sup>7</sup> If the associated person requests a different hearing location other than the location closest to where the associated person was employed at the time of the of the events giving rise to dispute and makes the request before the arbitrator or arbitrators are selected, the Director will grant the request. If the associated person requests a different hearing location other than the location closest to where the associated person was employed at the time of the of the events giving rise to dispute and makes the request after the arbitrator or arbitrators are selected, the associated person must submit the request to the arbitrator or panel.

believes the proposal would benefit associated persons by providing them with a choice of hearing locations.

Three commenters addressed the proposed rule change and all three urged the Commission to approve it.<sup>8</sup>

### III. Discussion and Commission Findings

The Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</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. The Commission believes that the proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would assist in the efficient administration of the arbitration process by further clarifying the procedures of selecting hearing locations.

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<sup>8</sup> In its comment, PIABA also recommended that FINRA consider additional changes in a future rule filing. Those suggestions are outside the scope of the current proposed rule change.

<sup>9</sup> In approving the 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).

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-FINRA-2009-073) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 15 U.S.C. 78s(b)(2).

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