

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-61060 File No. SR-FINRA-2009-072

November 24, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the Deficient Claims Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes

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 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 (the “Commission”) a proposed rule change to amend Rule 12307 of the Code of Arbitration for Customer Disputes (the "Customer Code") and Rule 13307 of the Code of Arbitration for Industry Disputes (the "Industry Code") (collectively, "the Codes") to clarify the date of filing of an arbitration claim once a deficiency is corrected, 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 Rules 12307(b) and 13307(b) of the Customer Code and for the Industry Code, respectively, to clarify the date of filing of an arbitration claim once a deficiency is corrected.

The text of the proposed rule change is available on FINRA’s Web site 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

When parties initiate arbitration claims in FINRA's arbitration forum, they must file a signed and dated submission agreement and a statement of claim explaining the facts and outlining the remedies requested.³ Parties must also pay all required filing fees at the time they file their claims.⁴ If a party's claims do not meet the criteria for filing a claim under the Codes or otherwise do not comply with the Codes, the claims are considered deficient. A claim may be deficient because, for example, the party failed to file a properly signed and dated submission agreement, failed to pay all required filing fees, or failed to file the correct number of copies of the submission agreement, statement of claim or other supporting documents.

Currently, Rule 12307 of the Customer Code and Rule 13307 of the Industry Code, which address deficient claims (hereinafter, "deficient claims rules"), state that the Director of FINRA Dispute Resolution ("Director") will not serve a claim that is deficient. The deficient claims rules permit a party to correct all deficiencies. Under the current rules, if all

³ Rule 12302(a)(1) of the Customer Code and Rule 13302(a)(1) of the Industry Code.

⁴ *Id.*

deficiencies are not corrected within 30 days from the time a party receives notice of a deficiency, the Director will close the case without serving the claim and refund part of the filing fee.⁵ However, the rules are silent on the date that the Director will use as the date of filing if a party corrects a deficient claim within 30 days of receiving notice of a deficiency.

FINRA has received inquiries from constituents on how the arbitration forum determines the date of filing of a claim that was deficient when filed, but is later corrected. Thus, FINRA is proposing to amend Rules 12307(b) and 13307(b) of the Codes to clarify the arbitration forum's procedure concerning the date of filing of a deficient claim when the deficiency is corrected within the 30-day deficiency period. So amended, the rules would provide that if the deficiency is corrected within 30 days from the time the party receives notice of a deficiency, the claim will be considered filed on the date the initial statement of claim was filed.

FINRA believes the proposal would clarify the date that the forum uses to determine the filing date of the claim, which should help resolve issues concerning whether a claim is eligible for submission to arbitration under the Codes,⁶ and whether statutes of limitation, if applicable, should apply. Moreover, FINRA believes that adding this existing policy to the rules will eliminate confusion for parties concerning deficient claims, provide transparency concerning forum practice, and enhance the efficiency of case administration.

⁵ Rule 12307(b) of the Customer Code and Rule 13307(b) of the Industry Code.

⁶ Under the Codes, no claim shall be eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the claim. *See* Rule 12206(a) of the Customer Code and Rule 13206(a) of the Industry Code.

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 require, 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 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 eliminate confusion for parties concerning deficient claims, provide transparency concerning forum practice, and enhance the efficiency of case administration.

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, as amended.

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 by FINRA.

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

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-2009-072 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-2009-072. 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 10:00am and 3:00pm. 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-2009-072 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

Elizabeth M. Murphy
Secretary

⁸ 17 CFR 200.30-3(a)(12).