SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82829; File No. SR-FINRA-2018-012)

March 8, 2018

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Eliminate the Fee for an Explained Decision

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 21, 2018, 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 prepared by FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. 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 Rules 12214(e)(1) and 12904(g)(5) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and FINRA Rules 13214(e)(1) and 13904(g)(5) of the Code of Arbitration Procedure for Industry

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

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(ii).

4 17 CFR 240.19b-4(f)(2).

Disputes ("Industry Code") (together, "Codes") to eliminate the $400 fee for an explained decision.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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12214. Payment of Arbitrators

(a) - (d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 12904(g) will receive an additional honorarium of $400. [The panel will allocate the cost of the honorarium under Rule 12904(g) to the parties.]

(2) No change.

12904. Awards

(a) - (f) No change.

(g) Explained Decisions

(1) - (4) No change.

(5) The chairperson will receive an additional honorarium of $400 for writing the explained decision, as required by this paragraph (g). [The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.]

(6) No change.

(h) - (j) No change.

13214. Payment of Arbitrators

(a) - (d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 13904(g) will receive an additional honorarium of $400. [The panel will allocate the cost of the honorarium under Rule 13904(g) to the parties.]

(2) No change.

13904. Awards

(a) - (f) No change.

(g) Explained Decisions

(1) - (4) No change.

(5) The chairperson will receive an additional honorarium of $400 for writing the explained decision, as required by this paragraph (g). [The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.]

(6) No change.

(h) - (j) No change.

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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

In 2009, the Commission approved amendments to the Codes that required arbitrators to provide an explained decision at the parties' joint request.[5] An explained decision is a fact-based award stating the general reasons for the arbitrators' decision; it is

[5] See Securities Exchange Act Release No. 59358 (Feb. 4, 2009), 74 Fed. Reg. 6,928 (Feb. 11, 2009) (Approval Order for SR-FINRA 2008-51).

not required to include legal authorities or damage calculations.[6] The chairperson of the panel is responsible for drafting the explained decision and receives an additional $400 honorarium for doing so.[7] Under the Codes, the arbitrators allocate the $400 cost to the parties as part of the award.[8] FINRA began waiving the $400 fee for an explained decision as of January 2017.[9] In order to remove a potential obstacle to parties requesting an explained decision, FINRA is proposing to eliminate the $400 fee for an explained decision. FINRA will continue to pay the $400 honorarium to the chairperson.

The proposed rule change would amend FINRA Rules 12214(e)(1) and 13214(e)(1) (Payment of Arbitrators) and FINRA Rules 12904(g)(5) and 13904(g)(5) (Explained Decisions) to remove the provision that gives arbitrators express authority to allocate the $400 fee to the parties for an explained decision. By proposing to remove this provision, if parties jointly request an explained decision, the chairperson drafting the decision would receive $400 as currently provided in the rules;[10] the fee, however, would

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6 See FINRA Rules 12904(g)(2) and 13904(g)(2).

7 See FINRA Rules 12904(g)(4) and 12904(g)(5); see also FINRA Rules 13904(g)(4) and 13904(g)(5).

8 See FINRA Rules 12214(e)(1) and 12904(g)(5); see also FINRA Rules 13214(e)(1) and 13904(g)(5).

9 Pursuant to FINRA Rules 12408 and 13412 (Director's Discretionary Authority), FINRA began waiving the $400 fee for an explained decision beginning on January 3, 2017. From January 3, 2017 through February 14, 2018, there have been two joint requests for explained decisions.

10 Since the explained decision amendments went into effect in 2009 until the end of 2016, parties have made 40 joint requests for explained decisions. Of the 40 requests, there have been 32 explained decisions issued; explained decisions were not issued for the remaining eight requests because either the cases settled or closed by other means. Parties also made two joint requests from January 3, 2017 through February 14, 2018.

not be assessed to the parties. FINRA believes the proposed rule change would remove a potential barrier to parties making joint requests for explained decisions.[11]

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be February 21, 2018.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[12] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the elimination of the fee will decrease its revenue by a *de minimis* amount because currently there are few explained decisions: over the past year, eliminating the fee would have decreased FINRA's program revenues by $800.[13] Moreover, not charging for explained decisions removes a potential obstacle to explained decisions, promoting transparency of decisions.

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. A discussion of the economic impacts of the proposed amendments follows.

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11 See supra note 10.

12 15 U.S.C. 78o-3(b)(5).

13 Since 2009, there have been approximately four joint requests for explained decisions on average per year.

(a) Need for the Rule

FINRA began waiving the $400 fee for an explained decision as of January 2017. The proposal codifies and thereby makes permanent the elimination of the explained decision fee.

(b) Economic Baseline

The economic baseline for the proposal includes the current rules under the Codes that address the allocation of fees by arbitrators. The economic baseline for the proposal also includes the current practice of FINRA waiving the explained decision fee. The proposal is expected to affect parties to an arbitration including customers, member firms, and associated persons.

Parties must make a joint request for an explained decision prior to the first scheduled hearing. Parties can benefit from an explained decision through a better understanding of the arbitrators' rationale for the award decision. An explained decision, however, could increase the time to resolution by providing parties with an additional basis to file a motion to vacate.[14] An explained decision could also result in the public disclosure of information describing the potential wrongdoing of a member firm or an associated person. This may cause a negative reputational effect and could lead to additional claims against the member firm or the associated person and a loss of business.[15]

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[14] Since 2009, there were seven motions to vacate out of 32 awards that included an explained decision. Three of the motions to vacate relate to industry cases, and four of the motions to vacate relate to cases with customers as claimants.

[15] Among the 32 cases with an explained decision issued since 2009, approximately two-thirds resulted in a monetary award in favor of the claimants, and therefore could have resulted in additional negative disclosure of wrongdoing by industry parties as respondents. Explained decisions in intra-industry arbitration cases

In order for parties to agree to a joint request, both parties would need to determine that the benefits of an explained decision are greater than its costs. In general, joint requests for an explained decision have been few. Since the explained decision rule became effective in 2009 until the end of 2016, there have been 40 joint requests for explained decisions with 32 explained decisions issued. There have been two additional joint requests after FINRA began waiving the explained decision fee in January 2017.[16] Together, this evidence suggests that non-monetary costs of an explained decision are more important determinants to making a joint request. Otherwise, the waiving of the fee would have resulted in a relative increase in the number of joint requests.

FINRA began waiving the explained decision fee in January 2017. Parties, however, could again be subject to a fee if FINRA were to decide to no longer waive the fee. The potential that FINRA may no longer waive the explained decision fee could be a constraint and thereby reduce the number of parties that make a joint request.

(c) Economic Impact

The primary benefit of the proposal is the permanent removal of the fee that could be a barrier to jointly requesting an explained decision. To the extent that a potential fee is a constraint, its removal from the Codes could increase the number of joint requests made by parties. The parties that would be more likely to file a joint request are the parties for which the benefits of an explained decision are greater than its costs not

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could result in additional negative disclosure of wrongdoing by either industry party.

16 Over 7,600 cases have been filed and closed by hearing or by papers since the beginning of 2009.

including the potential fee. Other than the permanent elimination of the fee, the benefits and costs of an explained decision would remain the same.

Whether the proposed rule change would result in any additional requests for an explained decision could be dependent on whether the fee is a factor in their decision to make a joint request. As noted above, few parties jointly requested an explained decision prior to FINRA waiving the fee, and there have been only two joint requests for an explained decision since the waiver. This evidence suggests that non-monetary costs, other than the $400 fee, are more significant determinants of whether parties make a joint request. The removal of the fee from the Codes, therefore, is likely to have little effect on the frequency of requests made. The benefits and costs of the proposal are therefore also likely to be negligible.

(d) Alternatives Considered

A plausible alternative to the proposed amendments is an explained decision fee that is greater than zero but less than the $400 currently stated in the Codes. Similar to the current proposed amendments, this alternative would permanently establish the fee amount if parties jointly request an explained decision. A fee greater than zero but less than $400, however, would increase the costs to parties relative to the current proposal that seeks to eliminate the fee, thereby potentially reducing their incentives to make a joint request. As discussed above, the evidence suggests that the other potential costs of an explained decision are more significant determinants of whether parties make a joint request. This alternative, therefore, would increase the costs to parties that make a joint request but would have little effect on the frequency of requests made.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and paragraph (f)(2) of Rule 19b-4 thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2018-012 on the subject line.

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17 15 U.S.C. 78s(b)(3)(A).

18 17 CFR 240.19b-4(f)(2).

Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2018-012. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to

File Number SR-FINRA-2018-012 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.[19]

Eduardo A. Aleman
Assistant Secretary

[19] 17 CFR 200.30-3(a)(12).