

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58651; File No. SR-FINRA-2008-047)

September 25, 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 Raise the Amount in Controversy Heard by a Single Chair-Qualified Arbitrator to \$100,000

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 September 18, 2008, the 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 to amend NASD Rule 12401 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and NASD Rule 13401 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to raise the amount in controversy that will be heard by a single chair-qualified arbitrator to \$100,000. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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12401. Number of Arbitrators

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

2 17 CFR 240.19b-4.

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800.

(b) Claims of More Than \$25,000 Up To [\$50,000] \$100,000

If the amount of a claim is more than \$25,000 but not more than [\$50,000] \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any party requests a panel of three arbitrators in its initial pleading] unless the parties agree in writing to three arbitrators.

(c) Claims of More Than [\$50,000] \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than [\$50,000] \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

13401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 13800.

(b) Claims of More Than \$25,000 Up To [\$50,000] \$100,000

If the amount of a claim is more than \$25,000 but not more than [\$50,000] \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any

party requests a panel of three arbitrators in its initial pleading] unless the parties agree in writing to three arbitrators.

(c) Claims of More Than [\$50,000] \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than [\$50,000] \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

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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

FINRA is proposing to amend its Customer Code and Industry Code to raise the amount in controversy that would be heard by a single arbitrator to \$100,000, exclusive of interest and expenses.³ The arbitrator would be selected from the roster of arbitrators who are qualified to serve as chairpersons. This means that investors' claims for up to \$100,000 would be heard by a public, chair-qualified arbitrator.

³ See proposed amendments to Rules 12401(b) and 13401(b).

Under the proposal, parties would be permitted to request a panel of three arbitrators for claims of more than \$25,000, but not more than \$100,000, if all parties agreed in writing to the request.⁴ Claims of more than \$100,000 would continue to be heard by three arbitrators unless the parties agree in writing to one arbitrator.⁵

Currently, if the amount of a claim is \$25,000 or less, a single arbitrator is appointed to resolve the matter. If the amount of a claim is more than \$25,000, but not more than \$50,000, a single arbitrator is appointed, unless a party asks for three arbitrators in its initial pleading. Claims for over \$50,000 are heard by a panel of three arbitrators.⁶

FINRA is also proposing to remove the current option for one party unilaterally to require three arbitrators in cases with claims for more than \$25,000.⁷ FINRA believes this is not an efficient use of resources, as it requires other parties to incur higher hearing session costs and additional delays caused by scheduling three arbitrators instead of one. Therefore, the proposed rule would mandate a single arbitrator in all such cases unless all parties agree, in writing, to request a three person panel.

⁴ Id.

⁵ See proposed amendments to Rules 12401(c) and 13401(c).

⁶ See Rules 12401 and 13401. The current threshold for appointing one or three arbitrators has been in effect since 1998. See Securities Exchange Act Release No. 38635 (May 14, 1997), 62 FR 27819 (May 21, 1997) (SR-NASD-97-22) (approval order) and NASD Notice to Members 98-90. Customer disputes are resolved by a single, chair-qualified public arbitrator or a majority-public panel consisting of a public arbitrator, a chair-qualified public arbitrator, and a non-public arbitrator. Industry disputes are resolved by a public panel or a non-public panel depending upon the parties to the controversy and the nature of the claims asserted (see Rules 13402 and 13802).

⁷ See proposed amendments to Rules 12401(b) and 13401(b).

Raising the threshold for claims heard by a single arbitrator would increase efficiencies and decrease costs for parties and FINRA. Parties would experience reduced case processing times because of the flexibility associated with scheduling conference calls and hearing dates with one arbitrator as opposed to three. Parties would save time in the arbitrator selection process because they would receive only one list of eight names from which to choose their arbitrator, rather than three lists of eight names.⁸ This means they would only research the disclosures and histories of eight proposed arbitrators instead of 24.

Parties would also benefit from reduced hearing session fees. For claims between \$25,000.01 and \$50,000, parties would save \$150 per hearing session⁹ by reducing fees from \$600 (for a hearing with three arbitrators) to \$450 (for a hearing with one arbitrator).¹⁰ For claims between \$50,000.01 and \$100,000, the savings would be \$300 per hearing session by reducing fees from \$750 (for a hearing with three arbitrators) to

⁸ For example, for customer cases, if the panel consists of one arbitrator, the Neutral List Selection System (“the System”) generates a list of eight public arbitrators from the chairperson roster. If the panel consists of three arbitrators, the System generates a list of eight public arbitrators from the chairperson roster; a list of eight arbitrators from the public roster; and a list of eight arbitrators from the non-public roster. FINRA sends the lists to the parties along with each arbitrator’s employment history for the prior 10 years and other background information (see Rules 12403 and 13403).

⁹ The term “hearing session” means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a pre-hearing conference. (see Rules 12100(n) and 13100(n)). For full day hearings, the savings would be \$300 for claims between \$25,000.01 and \$50,000, and \$600 for claims between \$50,000.01 and \$100,000.

¹⁰ See Rules 12902 and 13902.

\$450 (for a hearing with one arbitrator). The parties' cost for photocopying pleadings and exhibits would be reduced by two-thirds. FINRA would benefit from a more efficient use of its arbitrator roster since cases for \$100,000 or less would use only one arbitrator instead of three. FINRA's photocopying costs and mailing expenses would also be reduced.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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 the proposed rule change would further the purposes of the Act because it would make arbitration more expeditious and efficient, and would decrease users' forum fees and related expenses.

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.

¹¹ 15 U.S.C. 78o-3(b)(6).

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.

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-2008-047 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2008-047. 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-2008-047 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.¹²

Florence E. Harmon
Acting Secretary

¹² 17 CFR 200.30-3(a)(12).