



<b>Regulatory Information Circular</b>			
<b>Circular number:</b>	2009-294	<b>Contact:</b>	Michael J. Simon
<b>Date:</b>	December 3, 2009	<b>Telephone:</b>	212-897-0230

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## **Subject: Rule Change Notice – Changes to FINRA Arbitration Rules**

Pursuant to ISE Rule 1800, which in part states that FINRA's Code of Arbitration shall govern ISE arbitrations, this Regulatory Information Circular informs Members of proposed rule changes to the FINRA Code of Arbitration published by the Securities and Exchange Commission, attached.

In the December 2, 2009 *Federal Register*, the Commission published notice of filing of a proposed rule change (SR-FINRA-2009-072) by FINRA to amend Rule 12307 of the Code of Arbitration Procedure for Customer Disputes and Rule 13307 of the Code of Arbitration Procedure for Industry Disputes to clarify the date of filing of an arbitration claim once a deficiency is corrected.

(Securities Exchange Act Release No. 34-61060 (November 24, 2009))

procedures would be inherently harmful or detrimental to customers or have an adverse affect on the auction market. Rather, the Exchange believes the procedures will improve the opportunities for an order to be exposed to a competitive auction and represent an improvement over the current rules. The fact that the parties to such a trade end up fully hedged may contribute to the best execution of the orders,<sup>29</sup> and, in any event, participants continue to be governed by, among other things, their best execution responsibilities. The Exchange also believes that the proposed tied hedge procedures are fully consistent with the original design of Rule 1064(d) which, as discussed above, was to eliminate the unfairness that can be associated with a solicited transaction and encourage meaningful competition. The tied hedge procedures should enable in-crowd market participants to be on equal footing with solicited parties in a manner that minimizes all parties' market risk while continuing to assure that orders are exposed in a meaningful way.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>30</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>31</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by establishing rules governing tied hedge orders, which include specific requirements and procedures to be followed. Specifically, the Exchange believes the procedures will improve the opportunities for orders to be exposed to price improvement in a manner that will encourage a fair, competitive auction process and minimize all parties' market risk.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

<sup>29</sup> As market participants are better able to hedge risk associated with completing these transactions, the Exchange believes that quotes may narrow and result in increased price improvement opportunities.

<sup>30</sup> 15 U.S.C. 78f(b).

<sup>31</sup> 15 U.S.C. 78f(b)(5).

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,<sup>32</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>33</sup> and Rule 19b-4(f)(6) thereunder.<sup>34</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2009-98 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.

<sup>32</sup> The Exchange has satisfied this requirement.

<sup>33</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>34</sup> 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-Phlx-2009-98. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-Phlx-2009-98 and should be submitted on or before December 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9-28740 Filed 12-1-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61060 File No. SR-FINRA-2009-072]

### 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

November 24, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>35</sup> 17 CFR 200.30-3(a)(12).

(“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> 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.

### **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.<sup>3</sup> Parties must also pay all required filing fees at the time they file their claims.<sup>4</sup> 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 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.<sup>5</sup> 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,<sup>6</sup> 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.

##### **2. Statutory Basis**

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> 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

(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,

<sup>3</sup> Rule 12302(a)(1) of the Customer Code and Rule 13302(a)(1) of the Industry Code.

<sup>4</sup> *Id.*

<sup>5</sup> Rule 12307(b) of the Customer Code and Rule 13307(b) of the Industry Code.

<sup>6</sup> 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.

<sup>7</sup> 15 U.S.C. 78o–3(b)(6).

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

<sup>2</sup> 17 CFR 240.19b–4.

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](mailto: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 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; 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 December 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. E9-28741 Filed 12-1-09; 8:45 am]

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## DEPARTMENT OF STATE

### [Public Notice 6547]

#### U.S. Department of State Advisory Committee on Private International Law: Organization of American States (OAS) Specialized Conference on Private International Law (CIDIP) Study Group

The Working Group on Conflicts of Law previously established under the Department of State Advisory Committee on Private International Law has been renamed the OAS CIDIP Study Group to reflect a broader scope of activity including consideration of issues relating to choice of law, applicable law, jurisdiction, enforcement of judgments, and dispute resolution that may be discussed in the Organization of American States (OAS) CIDIP process. This is not a meeting of the full Advisory Committee.

In the context of the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII), the Committee on Juridical and Political Affairs (CJAP) of the Permanent Council of the OAS is carrying out work on consumer rights as part of its program on private international law. Three proposals have been put forward: A revised Brazilian draft convention on applicable law that has recently been expanded to include jurisdiction, a Canadian draft model law on applicable law and jurisdiction, and a United States proposal (with several components) for legislative guidelines/model laws/rules to promote consumer redress mechanisms such as small claims tribunals, collective procedures, on-line dispute resolution, and government actions. The U.S. is considering the possibility of expanding its existing proposal.

The United States is also considering whether to pursue ratification of the Inter-American Convention on the Law Applicable to International Contracts (known as the Mexico City Convention), which was adopted at the Fifth Inter-American Specialized Conference on Private International Law (CIDIP-V). The United States is exploring the process for obtaining official corrections to the English text of the Convention to conform to the Spanish version. Copies of proposed corrections to the English text can be obtained through the contact points listed below. Other developments which may be relevant to work at the OAS include the proposal at UNCITRAL for future work on on-line dispute resolution and the establishment by the Permanent Bureau of the Hague Conference on Private International Law of an experts group to consider

development of a non-binding instrument on choice of law in international commercial contracts.

The Advisory Committee's OAS CIDIP Study Group will hold a public meeting to obtain additional views on the three consumer protection proposals identified above (along with possible revisions) and the Mexico City Convention.

**Time and Place:** The public meeting of the Study Group will take place at the Federal Trade Commission, 600 Pennsylvania Ave., NW., Room H-481, Washington, DC on December 14, 2009, from 10 a.m. EST to 4 p.m. EST. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

**Public Participation:** Advisory Committee Study Group meetings are open to the public. Persons wishing to attend must contact Trisha Smeltzer at [smeltzertk@state.gov](mailto:smeltzertk@state.gov) or 202-776-8423 and provide their name, e-mail address, and affiliation(s) if any. Please contact Ms. Smeltzer for additional meeting information, any of the documents referenced above, or dial-in information on the conference call. A member of the public needing reasonable accommodation should advise those same contacts not later than December 9th. Requests made after that date will be considered, but might not be able to be fulfilled. Persons who cannot attend or participate by conference call but who wish to comment on any of the topics referred to above are welcome to do so by e-mail to Michael Dennis at [DennisMJ@state.gov](mailto:DennisMJ@state.gov) or Hugh Stevenson at [hstevenson@ftc.gov](mailto:hstevenson@ftc.gov).

Dated: November 25, 2009.

**Michael Dennis,**

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. E9-28837 Filed 12-1-09; 8:45 am]

**BILLING CODE 4710-08-P**

## TRADE AND DEVELOPMENT AGENCY

### Notice of Public Information Collection Requirements Submitted to OMB for Review

**AGENCY:** United States Trade and Development Agency.

**ACTION:** Request for Comments.

**SUMMARY:** U.S. Trade and Development Agency (USTDA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. USTDA published its first **Federal**

<sup>8</sup> 17 CFR 200.30-3(a)(12).