



Regulatory Information Circular			
Circular number:	2011-03	Contact:	Katherine Simmons, Deputy General Counsel
Date:	February 22, 2011	Telephone:	212-897-0233

Subject: Rule Change Notice – Changes to FINRA Arbitration Rules

Pursuant to ISE Rule 1800, which in part states that Financial Industry Regulatory Authority, Inc.'s ("FINRA") Code of Arbitration shall govern ISE arbitrations, this Regulatory Information Circular informs Members of a proposed rule change to the FINRA Code of Arbitration published by the Securities and Exchange Commission ("SEC"), attached.

In the February 15, 2011 *Federal Register*, the SEC published a notice of filing of a proposed rule change (SR-FINRA-2011-005) by FINRA to amend Rule 13806 of the Code of Arbitration Procedure for Industry Disputes to provide that FINRA will appoint a chair-qualified public arbitrator to a panel resolving a promissory note dispute instead of appointing a statutory discrimination qualified arbitrator.

(Securities Exchange Act Release No. 34-63909 (February 22, 2011))

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF HOMELAND SECURITY.	Centers for Medicare and Medicaid Services.	Confidential Assistant, Centers for Medicare and Medicaid Services.	DH110013	12/10/2010
	Office of the Executive Secretary for Operations and Administration.	Secretary Briefing Book Coordinator.	DM110023	12/13/2010
	Office of the Assistant Secretary for Public Affairs.	Press Assistant	DM110026	12/13/2010
	Office of the General Counsel	Special Assistant	DM110028	12/13/2010
	Immediate Office of the Deputy Secretary. Department of Homeland Security	Special Assistant	DM110030	12/29/2010
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Deputy Assistant Secretary for Strategic Communications.	Deputy Assistant Secretary for Strategic Communications.	DM110031	12/22/2010
	Office of the Chief Human Capital Officer.	Staff Assistant	DU110010	12/10/2010
	Office of Sustainable Housing and Communities.	Senior Advisor	DU110004	12/10/2010
DEPARTMENT OF THE INTERIOR	Office of Policy Development and Research.	Special Assistant	DU110011	12/21/2010
	Office of the Deputy Secretary	Special Assistant	DI110013	12/22/2010
DEPARTMENT OF JUSTICE	Office of Public Affairs	Press Assistant	DJ110023	12/29/2010
	Office of the Deputy Attorney General.	Counsel	DJ110025	12/30/2010
DEPARTMENT OF LABOR	Office of the Deputy Attorney General.	Senior Counsel	DJ100172	12/21/2010
	Office of Legal Policy	Counsel	DJ110027	12/30/2010
	Office of Congressional and Intergovernmental Affairs.	Senior Legislative Officer ...	DL110008	12/17/2010
SMALL BUSINESS ADMINISTRATION.	Office of Communications and Public Liaison.	Senior Communications Assistant.	SB110005	12/08/2010
	Office of Field Operations	Regional Administrator, Region III, Philadelphia, PA.	SB110006	12/10/2010
DEPARTMENT OF STATE	Foreign Policy Planning Staff	Speechwriter	DS110013	12/03/2010
DEPARTMENT OF THE TREASURY.	Secretary of the Treasury	Special Assistant	DY110023	12/20/2010

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.
 U.S. Office of Personnel Management.
John Berry,
Director.
 [FR Doc. 2011–3794 Filed 2–18–11; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63909; File No. SR–FINRA–2011–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Promissory Note Proceedings

February 15, 2011.

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 4, 2011, the 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 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 Rule 13806 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to provide that FINRA will appoint a chair-qualified public arbitrator to a panel resolving a promissory note dispute instead of appointing a chair-qualified public arbitrator also qualified to resolve a statutory discrimination claim.

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. 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, FINRA implemented new procedures to expedite the administration of cases that solely involve a broker-dealer’s claim that an associated person failed to pay money owed on a promissory note.³ Under

³ See Securities Exchange Act Rel. No. 60132 (June 17, 2009), 74 FR 30191 (June 24, 2009) (File No. SR–FINRA–2009–015). FINRA announced implementation of New Rule 13806 (Promissory

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

these procedures, FINRA appoints a single chair-qualified public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims (a statutory discrimination qualified arbitrator)⁴ to resolve the dispute.⁵ These specially qualified arbitrators are public chair-qualified arbitrators who also are attorneys familiar with employment law and have at least ten years of legal experience. In addition, they may not have represented primarily the views of employers or of employees within the last five years. FINRA proposed using statutory discrimination qualified arbitrators because of the depth of their experience and their familiarity with employment law. At the time that FINRA filed the proposed rule change, these arbitrators were underutilized at the forum.

Since implementing the new procedures, FINRA has found that promissory note cases do not require extensive experience or depth of knowledge (or the limitation on representation of employers or of employees within the last five years). In a majority of completed cases, arbitrators decided the case on the pleadings and the respondent broker did not appear.⁶ Experience with the new procedures leads FINRA to propose amending the Industry Code to provide that FINRA will appoint a chair-qualified public arbitrator to a panel resolving a promissory note dispute instead of appointing a statutory discrimination qualified arbitrator. Chair-qualified arbitrators have completed chair training and are attorneys who have served through award on at least two cases, or, if not attorneys, are arbitrators who have served through award on at least three cases.⁷

In addition, the number of promissory note cases has more than doubled in the

Note Proceedings) in Regulatory Notice 09-48. The effective date was September 14, 2009.

⁴ See Rule 13802(c)(3).

⁵ Under Rule 13806, if an associated person does not file an answer, or files an answer but does not assert any counterclaims or third party claims, regardless of the amount in dispute, a single statutory discrimination qualified arbitrator decides the case. If an associated person files a counterclaim or third party claim, FINRA bases panel composition on the amount of the counterclaim or third party claim. For counterclaims and third party claims that are not more than \$100,000, FINRA appoints a single statutory discrimination qualified arbitrator. For counterclaims and third party claims of more than \$100,000, FINRA appoints a three-arbitrator panel comprised of a statutory discrimination qualified arbitrator, a public arbitrator, and a non-public arbitrator.

⁶ Of the first 175 promissory note cases completed, arbitrators decided the case on the pleadings 76 percent of the time (unless the case concluded by settlement or some other means).

⁷ See Rule 12400(c).

past two years. As a result of this substantial increase, it is becoming more difficult to appoint panels solely with statutory discrimination qualified arbitrators to these cases. Under the proposed rule change, the number of arbitrators available for appointment in promissory note cases would increase significantly. The proposed rule change would ensure that FINRA has a sufficient number of qualified arbitrators readily available to resolve these matters.

FINRA proposes to announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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 is consistent with the provisions of the Act noted above because it would ensure that FINRA has a sufficient number of qualified arbitrators readily available to resolve promissory note cases.

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.

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

Within 45 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 shall:

(A) By order approve or disapprove 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-2011-005 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-2011-005. 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 Web site 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; 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-2011-005 and

⁸ 15 U.S.C. 78o-3(b)(6).

should be submitted on or before March 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-3799 Filed 2-18-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63910; File No. SR-FINRA-2011-006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Motions in Arbitration

February 15, 2011.

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 4, 2011, the 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 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 FINRA Rules 12206, 12503, and 12504 of the Code of Arbitration Procedure for Customer Disputes, and Rules 13206, 13503, and 13504 of the Code of Arbitration Procedure for Industry Disputes (collectively, “Codes”), to provide moving parties with a five-day period to reply to responses to motions.

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. 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

The Codes specify time periods for a party to respond to a motion,³ including a motion to dismiss.⁴ They do not expressly provide time periods for the party that made the original motion (the “moving party”) to reply to a response, which happens on occasion. FINRA’s practice has been to forward the reply to the arbitrators, even when staff already have sent the motion and response to the arbitrators. Since the Codes do not prescribe a time period for replying to responses to motions, there have been instances where arbitrators reviewed the motion papers and even ruled on a motion before receiving a reply, causing confusion and wasting time.

FINRA is proposing to amend Rules 12206 and 13206 (Time Limits), Rules 12503 and 13503 (Motions), and Rules 12504 and 13504 (Motions to Dismiss), to provide a moving party with a five-day period to reply to a response to a motion. The proposed amendments would codify FINRA’s practice relating to replies to responses to motions and make it transparent. The proposal would provide parties with an opportunity to brief fully the issues in dispute, and ensure that arbitrators have all of the motion papers before issuing a final decision on the motion.

FINRA considered whether codifying a reply period might encourage additional replies to responses to motions, or cause significant delays in the arbitration proceeding. FINRA believes that a five-day period for replies gives moving parties sufficient time to react to responses to motions without causing significant delays to proceedings. Currently, FINRA Rules 12512 and 13512 (Subpoenas) provide moving parties with a 10-day period in which to reply to opposing parties’ objections to motions. FINRA has not

³ Rules 12503(b) and 13503(b) (Responding to Motions) provide, generally, that parties have 10 days from the receipt of a written motion to respond to the motion.

⁴ Rules 12206(b) and 13206(b) (Dismissal under Rule) provide that parties have 30 days to respond to motions. Rules 12504(a) and 13504(a) (Motions to Dismiss Prior to Conclusion of Case in Chief) provide that parties have 45 days to respond to motions.

experienced any increase in replies related to subpoenas because of these rules and the 10-day reply period has not caused significant delays.

Further, on June 21, 2010, FINRA revised its practice relating to responses to motions and published a Notice to Parties on its Web site stating that moving parties have five calendar days from receipt of a response to a motion to submit a reply to the response.⁵ After the five-day period, FINRA forwards the motion, any response to the motion, and any reply to the panel at the same time. If FINRA receives a reply after the five-day period expires, staff forwards the reply to the panel upon its receipt. However, FINRA staff does not delay sending the motion, response to the motion, and reply to the panel after the five-day period expires, and the panel may issue a decision upon receipt of those documents.

Based on our experience with the subpoena rules and our revised practice relating to replies to responses, FINRA does not expect the proposal to add a five-day period for replies to responses to motions to result in undue delays.

FINRA proposes to announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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 will assist parties in arbitrations by codifying FINRA’s practice relating to replies to responses to motions. The proposed rule change would ensure that parties have an opportunity to brief fully the issues in dispute, and that arbitrators have all of the motion papers before issuing a final decision on the motion.

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

⁵ See <http://www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/P121652>.

⁶ 15 U.S.C. 78o-3(b)(6).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.