

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59885; File No. SR-FINRA-2009-015]

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

May 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 17, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 adopt Rule 13806 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code"), to establish procedures to expedite the administration of arbitrations in which a member's only claim is that an associated person failed to pay money owed on a promissory note; and to amend Rules 13214 and 13600 of the Industry Code to make conforming changes. 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

FINRA is proposing to amend the Industry Code to establish new procedures to expedite the administration of promissory note cases. Proposed new Rule 13806 would apply to arbitrations solely involving a member's claim that an associated person failed to pay money owed on a promissory note. In order to proceed under the new rule, a claimant would not be permitted to include any additional allegations in the Statement of Claim. FINRA is also proposing to amend Rules 13214 and 13600 of the Industry Code to make conforming changes.

In the absence of additional allegations by members or associated persons, promissory note cases involve straightforward contracts with few documents being entered into evidence. The new procedures would streamline the process for promissory note cases and reduce expenses for the parties while maintaining the procedural safeguards in the Industry Code for the associated person against whom a member asserts a claim.

Specifically, under the proposed procedures:

- Parties would choose a single public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims,<sup>3</sup> unless an associated person files a counterclaim or third party claim of more than \$100,000, exclusive of interest or expenses, or the counterclaim or third party claim is unspecified or does not request money damages.<sup>4</sup> FINRA believes that the

arbitrators on this roster would be especially suited to resolve these disputes because of the depth of their experience and their familiarity with employment law;

- If the associated person does not file an answer, simplified discovery procedures would apply<sup>5</sup> and, regardless of the amount in controversy, the single arbitrator would render an award based on the pleadings and other materials submitted by the parties. The arbitrator would be paid an honorarium of \$125 for each arbitration resolved in this manner;<sup>6</sup>

- If the associated person files an answer (but does not seek any additional relief or assert any counterclaims or third party claims), regular discovery procedures would apply<sup>7</sup> and, regardless of the amount in controversy, the single arbitrator would hold a hearing; and

- If the associated person files a counterclaim or third party claim, then regular discovery procedures would apply and panel composition would be based on the amount of the counterclaim or third party claim. If the counterclaim and/or third party claim is not more than \$100,000, exclusive of interest and expenses, the Director<sup>8</sup> would appoint a single public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims. If the counterclaim and/or third party claim is more than \$100,000, exclusive of interest and expenses, then the Director would appoint a three-arbitrator panel. The Director would appoint one public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims who would serve as chairperson, one arbitrator from the public roster, and one arbitrator from the non-public roster. If the counterclaim or third party claim is filed after a single arbitrator is appointed, and a three-arbitrator panel is required, the Director would retain

request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator. See Exchange Act Release No. 59340 (February 2, 2009), 74 FR 6335 (February 6, 2009) (SR-FINRA-2008-047).

<sup>5</sup> Rule 13800(d) (Simplified Arbitration—Discovery and Additional Evidence) provides for limited discovery in arbitrations involving \$25,000 or less, exclusive of interest and expenses.

<sup>6</sup> In simplified arbitration proceedings administered under Rules 12800 and 13800 (Simplified Arbitration), the arbitrator honorarium is \$125. The honorarium under proposed Rule 13806 is intended to be consistent with these rules.

<sup>7</sup> The 13500 series of rules would provide for prehearing procedures and discovery in these cases.

<sup>8</sup> Rule 13100(k) defines the term "Director" to mean the "Director of FINRA Dispute Resolution. Unless the Code provides that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority."

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Rule 13802(c)(3). These specially qualified arbitrators are attorneys familiar with employment law who have at least ten years of legal experience. In addition, a chair or single arbitrator may not have represented primarily the views of employers or of employees within the last five years. Primarily means 50 percent or more of the arbitrator's business or professional activities within the last five years.

<sup>4</sup> The \$100,000 threshold was chosen because FINRA recently raised the threshold for a single chair-qualified arbitrator in all cases to \$100,000. Under the rule change, if the amount of a claim is more than \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not

the appointed arbitrator as chair and appoint two additional arbitrators (one public and one non-public arbitrator). Regardless of whether the panel is composed of one or three arbitrators, FINRA would pay the arbitrators the honoraria provided for in the Industry Code for arbitrations resolved by a hearing.

FINRA is proposing to amend Rule 13214 (Payment of Arbitrators) to reflect that the rule applies to arbitrator honoraria except as specified in new Rule 13806(f) or as specifically excluded in Rule 13214. Under the proposal, FINRA would pay an arbitrator an honorarium of \$125 for each arbitration in which the associated person does not file an answer and the award is based on the arbitrator's review of the pleadings and other materials submitted by the parties. As these are expedited proceedings, FINRA would not pay an honorarium for resolving a discovery-related motion without a hearing session or for resolving a contested motion concerning issuance of a subpoena without a hearing session. In instances where full discovery would be conducted under the 13500 series of rules, FINRA would pay the honorarium prescribed in Rule 13214 for discovery-related motions without a hearing session and for contested motions concerning issuance of a subpoena without a hearing session.

FINRA is also proposing to amend Rule 13600 (Required Hearings) to reflect that a hearing will be held unless new Rule 13806(e)(1) provides otherwise. Under the proposal, if the associated person does not file an answer, no initial prehearing conference or hearing would be held. Generally, in the absence of additional allegations by members or associated persons, promissory note cases involve straight forward contracts with few documents entered into evidence. FINRA believes that, in these situations, promissory note cases would be processed more quickly and efficiently and expenses would be reduced for the parties and the forum if the arbitrator were to render the award on the pleadings and other materials submitted by the parties.<sup>9</sup>

As noted in Item 2 of this filing, FINRA will 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,<sup>10</sup> 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. Generally, in the absence of additional allegations by members or associated persons, promissory note cases involve straight forward contracts with few documents entered into evidence. FINRA believes that, under the proposal, these promissory note cases would be processed more quickly and efficiently and expenses would be reduced for the parties and the forum. FINRA does not believe that the new procedures would negatively impact its administration of other cases filed with the forum.

### 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-015 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-2009-015. 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. 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-2009-015 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>9</sup> The rationale for the proposed rule change was confirmed in a phone conversation with Margo Hassan and Ken Andrichik of FINRA, on May 6, 2009.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>11</sup> 17 CFR 200.30-3(a)(12).