

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2007-07 and should be submitted on or before August 6, 2008.

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

**Florence E. Harmon,**  
Acting Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58124; File No. SR-FINRA-2008-031]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the Arbitration Uniform Submission Agreement and Related Rules

July 9, 2008.

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 Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") on June 19, 2008, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA Dispute Resolution. 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 Dispute Resolution is proposing to amend the Uniform Submission Agreement ("USA"), which parties must sign prior to entering into arbitration, and certain rules of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code") that contain references to the agreement. The proposed revisions to the USA would: (1) Clarify what the parties are attesting to when they execute the USA; (2) require parties to indicate in what capacity they are signing the agreement; (3) convert the USA to a FINRA-specific

agreement; and (4) use plain English to make the agreement easier to read.

The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and [http://www.finra.org/web/groups/rules\\_regs/documents/rule\\_filing/p038800.pdf](http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p038800.pdf). The text of the proposed Submission Agreement is available at FINRA, the Commission's Public Reference Room, and [http://www.finra.org/web/groups/rules\\_regs/documents/rule\\_filing/p038817.pdf](http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p038817.pdf).

#### 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

###### (a) Purpose

The USA is an agreement that claimants and respondents (hereinafter, collectively referred to as "parties") must sign prior to entering into arbitration. Rule 12302(a) of the Customer Code and Rule 13302(a) of the Industry Code require a claimant to file a signed and dated USA and a statement of claim to initiate an arbitration. Similarly, Rule 12303(a) of the Customer Code and Rule 13303(a) of the Industry Code require a respondent to directly serve each other party with a signed and dated USA and an answer within 45 days of receipt of the statement of claim. By signing the USA, the parties agree to submit to the arbitration process, and to be bound by the determination that may be rendered by the arbitrator(s).

FINRA proposes to amend the USA to: (1) Clarify what the parties are attesting to when they execute the agreement; (2) require parties to indicate in what capacity they are signing the agreement; (3) convert it to a FINRA-specific agreement; and (4) use plain English to make the agreement easier to read. FINRA also proposes to amend the rules of the Customer Code and the Industry Code that refer to the USA.

First, FINRA proposes to amend paragraph 2 of the USA to clarify what

the parties are attesting to when they execute the agreement. Currently, this section states that the parties have read the procedures and rules relating to arbitration. FINRA understands that few investors who are represented by counsel actually read the relevant self-regulatory organization (SRO) rules (such as the Customer Code). Rather, in most cases, these investors are relying on their attorneys or other representatives to know the rules. Thus, some investors have been reluctant to sign a statement that they have read all the relevant rules. In light of these concerns, FINRA is proposing to amend paragraph 2 to permit parties to certify that they or their representatives read the relevant procedures and rules and that the parties agree to be bound by them. FINRA believes that the provision as proposed to be amended would reflect more accurately what the parties are attesting to when they execute the USA. The new language would make clear that the parties themselves are bound by the procedures and rules, whether or not they read them personally.

Second, FINRA proposes to require that parties indicate in what capacity they are signing the agreement. Because the USA is a contract between the parties and FINRA's dispute resolution forum, FINRA must ensure that the parties entering the agreement have the authority or standing to sign the agreement. In those cases in which the signatory is not an individually named party, the signatory must state the capacity in which he or she is acting if other than an individual and sign in that capacity, so that FINRA can determine from the statement of claim and other supporting information whether he or she is authorized to enter the agreement. For example, a person signing as the trustee of a family trust would sign his or her name exactly as shown on the trust documents and then write "Trustee" on the line below the instruction "State Capacity if other than individual (example: Executor, Trustee, Corporate Officer)." This change would simply formalize an existing practice. Currently, if a party fails to sign the USA in the capacity in which he or she is submitting the claim, FINRA classifies the claim as deficient, which can delay the arbitration and increase the party's costs. FINRA believes that the proposed change would clarify how the agreement must be signed, and should help expedite the processing of claims, thereby minimizing unnecessary delays and expenses that parties could incur.

Third, FINRA proposes to convert the USA into a FINRA-specific agreement.

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

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

The USA was designed by the Securities Industry Conference on Arbitration (SICA)<sup>3</sup> a number of years ago and was intended to be used by the ten SROs that offered an arbitration forum at that time. Thus, the language is generic and references to rules or procedures include broad terms to encompass the rules from the various SROs. Over the years, most SROs have closed their arbitration forums and contracted with FINRA to handle their arbitrations. In addition, on August 6, 2007, FINRA consolidated its dispute resolution program with that of the New York Stock Exchange, Inc.<sup>4</sup> As a result, FINRA now handles over 99 percent of all arbitrations filed with SROs. In light of these changes, FINRA proposes to convert the USA to a FINRA-specific agreement by removing references to "sponsoring organization" and replacing them with references to FINRA; expressly referencing the FINRA Code of Arbitration Procedure;<sup>5</sup> and removing the term "Uniform" from the title of the agreement. FINRA believes these changes would minimize confusion for parties concerning the applicability of the form and would clarify which FINRA rules apply in the arbitration context.

Fourth, FINRA proposes to make minor stylistic changes to the document, such as defining "undersigned parties" as "parties" after the first usage, moving the reference to cross-claims and dividing a long sentence in paragraph 4 into two sentences.<sup>6</sup> FINRA believes these changes will make the agreement easier to read.

Finally, FINRA proposes to amend Rules 12100(x), 12100(y), 12302(a)(1),

<sup>3</sup> SICA was formed in 1977 to develop and maintain a Uniform Code of Arbitration and to provide a forum for the discussion of new developments in securities arbitration among SRO arbitration forums and participants in those forums. The membership currently includes representatives of each securities SRO that currently runs an arbitration forum, three "public" members, and representatives from the Securities Industry and Financial Markets Association (SIFMA) and the North American Securities Administrators Association (NASAA).

<sup>4</sup> See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (SR-NASD-2007-023) (approval order).

<sup>5</sup> The Submission Agreement's use of the term "FINRA Code of Arbitration Procedure" means the Customer Code or the Industry Code, as applicable.

<sup>6</sup> In the proposed definition of "Submission Agreement" (proposed NASD Rules 12100 (x) and 13100 (z)), FINRA is not proposing to replace references to "NASD Submission Agreement" with "FINRA Submission Agreement" at this time, because those changes have been proposed as part of a separate rule filing (FINRA's Proposed Rule Change to Adopt NASD Rules 4000 Through 1000 Series and the 12000 Through 14000 Series as FINRA Rules in the New Consolidated FINRA Rulebook (SR-FINRA-2008-021) (See Exhibit 5 at pp. 530 and 550-551).

(b), and (d), 12303(a) and (c), 12306(a) and (c), and 12307(a) of the Customer Code to conform the references to the USA to the proposed changes to the agreement. FINRA proposes to amend Rules 13100(z)—(bb), 13302(a)(1), (b), and (d), 13303(a) and (c), 13306(a) and (c), and 13307(a) of the Industry Code for the same reason.

(b) 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 requires, among other things, that the Association's 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 enhance the efficiency of the forum in processing claims, by clarifying the terms of the agreement and improving its readability. Moreover, the proposed rule change is consistent with FINRA's statutory obligations under the Act to prevent fraudulent and manipulative practices by requiring that signers of the agreement indicate in what capacity they are signing, so that FINRA can ensure that signers of the agreement are authorized to do so.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would 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.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

**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-2008-031 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-2008-031. 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 the File Number SR-FINRA-2008-031 and should be submitted on or before August 6, 2008.

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

**Florence Harmon,**  
*Acting Secretary.*

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