

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

The proposed rule change would amend the Customer and Industry Codes to insert rule language from the Code of Arbitration Procedure that was inadvertently omitted, to correct inaccurate cross-references, to codify current practices concerning the administration of existing rules, and to correct typographical errors.

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
 Title
 E-mail
 Telephone Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date
 By Vice President and Chief Counsel, FINRA Dispute Resolution
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”)² (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (collectively “Codes”) to insert rule language from the Code of Arbitration Procedure (“old Code”) that was inadvertently omitted, to correct inaccurate cross-references, to codify current practices concerning the administration of existing rules, and to correct typographical errors.

Below is the text of the proposed rule change. Proposed deletions are in brackets.

* * * *

Customer Code

Table of Contents

Parts I – III No change.

Part IV Appointment, Disqualification, and Authority of Arbitrators

Parts V – IX No change.

* * * *

12102. National Arbitration and Mediation Committee

(a) No change.

(b) Pursuant to the Delegation Plan, the NAMC shall have the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the Board. The NAMC shall also establish and maintain rosters of neutrals composed of persons from within and outside of the securities industry. All matters recommended by the NAMC to the Board must have been approved by a quorum, which shall consist of a majority of the NAMC, including at least 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of

¹ 15 U.S.C. 78s(b)(1).

² Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc.

attendance for a meeting after receiving an agenda prior to such meeting, the requirement that at least 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived. The NAMC has such other power and authority as is necessary to carry out the purposes of the Code.

* * * *

12206. Time Limits

(a)–(c) No change.

(d) Effect of Filing a Claim in Court on Time Limits for Filing in Arbitration

If a party submits a claim to a court of competent jurisdiction, the six-year time limitation will not run while the court retains jurisdiction of the claim [matter].

* * * *

12307. Deficient Claims

(a) No change.

(b) The Director will notify the claimant in writing if the claim is deficient. If all deficiencies are not corrected within 30 days from the time the claimant receives notice, the Director will close the case without serving the claim, and will [not refund any filing fees paid by the claimant] refund part of the filing fee in the amount indicated in the schedule under Rule 12900(c).

(c) No change.

* * * *

12410. Removal of Arbitrator by Director

(a) Before First Hearing Session Begins

Before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be [direct,] definite[,] and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer under this rule will be resolved in favor of the customer.

(2) No change.

(b) No change.

* * * *

Industry Code

Table of Contents

Parts I – III No change.

Part IV Appointment, Disqualification, and Authority of Arbitrators

Parts V – IX No change.

* * * *

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(b) Pursuant to the Delegation Plan, the NAMC shall have the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the Board. The NAMC shall also establish and maintain rosters of neutrals composed of persons from within and outside of the securities industry. All matters recommended by the NAMC to the Board must have been approved by a quorum, which shall consist of a majority of the NAMC, including at least 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that at least 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived. The NAMC has such other power and authority as is necessary to carry out the purposes of the Code.

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(c) No change.

* * * *

13314. Combining Claims

Before ranked arbitrator lists are due to the Director under Rule 13404[(c)](d), the Director may combine separate but related claims into one arbitration. Once a panel has been appointed, the panel may reconsider the Director’s decision upon motion of a party.

* * * *

13403. Generating and Sending Lists to the Parties

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) No change.

(b) No change.

(c) Sending Lists to Parties

(1) No change.

(2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 13404[(c)](d).

* * * *

13410. Removal of Arbitrator by Director

(a) Before First Hearing Session Begins

Before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be [direct,] definite[,] and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer under this rule will be resolved in favor of the customer.

(2) No change.

(b) No change.

* * * *

13804. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

(a) No change.

(b) Hearing on Request for Permanent Injunctive Relief

(1) – (2) No change.

(3) Selection of Arbitrators and Chairperson

(A)

(i) No change.

(ii) Each party may exercise one strike to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties' rankings, and shall appoint

arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.

(B) – (D) No change.

(4) – (6) No change.

(c) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. **Procedures of the Self-Regulatory Organization**

The proposed rule change has been approved by the Chief Counsel of FINRA Dispute Resolution (or her officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date will be the date of filing.

Questions regarding this rule filing may be directed to Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution at (202) 728-8151.

3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

a) Purpose

On January 24, 2007, the SEC approved a proposal to amend the old Code by simplifying the language, codifying current dispute resolution practices, and implementing several substantive changes to dispute resolution rules.³ The proposal reorganized the old Code into three separate procedural codes: the Customer Code, the

³ See Securities Exchange Act Release No. 55158 (Jan. 24, 2007); 72 FR 4574 (Jan. 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011).

Industry Code, and the NASD Code of Mediation Procedure (“Mediation Code”).⁴ The Customer, Industry and Mediation Codes replace the old Code in its entirety.⁵

Since the Codes became effective, FINRA has found some inaccurate cross-references, typographical errors, inadvertent omissions, and rule language that could be improved to better convey FINRA’s intent or to clarify current practice regarding those rules. FINRA is, therefore, proposing several technical, non-substantive amendments to the Customer and Industry Codes that would correct inaccurate cross-references and typographical errors, insert rule language that was inadvertently omitted, codify current practice concerning the administration of existing rules, and make certain clarifying changes. FINRA will discuss the proposed changes as they appear in the Codes, beginning with the proposed amendments to the Customer Code.

Proposed Non-Substantive Amendments to the Customer Code

Table of Contents

FINRA proposes to amend the title that introduces Part IV of the Table of Contents, by adding a comma after the word “Disqualification,” so that the title in the Table of Contents is the same as the title in the Code.

Rule 12102 - National Arbitration and Mediation Committee

Rule 10102(a) of the old Code authorized the then-NASD Dispute Resolution Board of Directors to appoint a National Arbitration and Mediation Committee (the “Committee”); and, under this rule, the Committee was authorized to establish and maintain rosters of neutrals.

⁴ The SEC approved the Mediation Code on October 31, 2005. *See* Securities Exchange Act Release No. 52705 (Oct. 31, 2005); 70 FR 67525 (Nov. 7, 2005) (File No. SR-NASD-2004-013). It became effective on January 30, 2006. *See Notice to Members* 05-85 (December 2005).

⁵ The Customer and Industry Codes became effective on April 16, 2007. *See Notice to Members* 07-07 (February 2007).

When the Customer Code was reorganized, the Committee's authorization to establish and maintain neutral rosters was inadvertently omitted from Rule 12102. Thus, FINRA proposes to amend Rule 12102(b) to insert language similar to that in old Rule 10102(a), which will authorize the Committee to establish and maintain rosters of neutrals composed of persons from within and outside of the securities industry. As the Committee currently works to establish and maintain FINRA's arbitrator rosters, the amendment would not be a change to current practice.

Rule 12206 – Time Limits

FINRA proposes to amend Rule 12206(d) to correct a proofreading oversight by removing the word “matter” from the end of the sentence. Under the Codes, the term “claim,” not “matter,” is used when referring to an allegation or request for relief.

Rule 12307 – Deficient Claims

Under the Customer Code, FINRA codified its practice regarding deficient claims because it had not been codified in the old Code. Under Rule 12307, the deficient claims rule, FINRA lists the reasons that a claim may be deficient, explains the process if a deficiency is not corrected, and sets forth procedures for handling other pleadings that may be deficient. Specifically, Rule 12307(b) provides that the Director will not refund any filing fees paid by claimants when staff closes a deficient case. FINRA proposes to amend Rule 12307(b) because it does not reflect accurately its practice concerning refunding certain fees paid by claimants when FINRA closes a deficient claim.

When claimants filed a claim under the old Code, they submitted their Statement of Claim along with two separate fees: a non-refundable filing fee and a hearing session

deposit.⁶ When FINRA staff closed a deficient case, FINRA would retain the non-refundable filing fee and refund the hearing session deposit to the claimants.

Under the Customer Code, FINRA combined the old Code filing fee and hearing session deposit into one “filing fee.”⁷ However, FINRA did not change its practice regarding refunds of a portion of the filing fee when it closes a deficient case – FINRA continues to refund the refundable part of the filing fee to claimants, while retaining the remaining portion. Thus, FINRA believes the language in Rule 12307(b) does not reflect accurately its practice and could be confusing to users of the forum.

Therefore, FINRA proposes to amend Rule 12307(b) to state that the Director will close the case without serving the claim, and will refund part of the filing fee in the amount indicated in the schedule of fees. FINRA believes the amendment will reflect accurately its practice concerning refunds when it closes a deficient case and will minimize confusion concerning its fees.

Rule 12410 – Removal of Arbitrator by Director

Rule 12410 addresses removal of an arbitrator by the Director of Arbitration. Specifically, Rule 12410(a)(1) states, in relevant part, that “the Director will grant a party’s request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.”⁸

⁶ See Rule 10332(c) of the Code of Arbitration Procedure.

⁷ See Rule 12900. A portion of the filing fee is refundable under certain circumstances, Rule 12900(c).

⁸ See Rule 12410(a)(1).

FINRA believes the word “direct” in the second sentence of the rule conflicts with the meaning of the first sentence, in which an arbitrator may be challenged for having “a direct or indirect interest in the outcome of the arbitration.” Thus, FINRA proposes to remove “direct” from the second sentence of Rule 12410(a)(1) to correct the conflict in the rule language.

Proposed Non-Substantive Amendments to the Industry Code⁹

Table of Contents

For an explanation of the proposed amendment, see the relevant section under “Proposed Non-Substantive Amendments to the Customer Code” above.

Rule 13102 - National Arbitration and Mediation Committee

For an explanation of the proposed amendment, see the relevant section under “Proposed Non-Substantive Amendments to the Customer Code” above.

Rule 13206 – Time Limits

For an explanation of the proposed amendment, see the relevant section under “Proposed Non-Substantive Amendments to the Customer Code” above.

Rule 13307 – Deficient Claims

For an explanation of the proposed amendment, see the relevant section under “Proposed Non-Substantive Amendments to the Customer Code” above.

Rule 13314 – Combining Claims

⁹ Most rules of the Customer and Industry Codes are identical, except for panel composition, references to document production lists that apply only in customer cases, and rules relating to employment discrimination and injunctive relief that apply only to industry claims. Wherever possible, the last three digits of the rule numbers in the Customer and Industry Codes are the same. Thus, the explanation for the proposed amendments in the Customer Code also apply to the proposed amendments in the Industry Code, except where indicated.

FINRA proposes to amend the erroneous cross-reference to Rule 13404(c) in the rule. Rule 13314 states, in relevant part, that before ranked arbitrator lists are due to the Director under Rule 13404(c), the Director may combine separate but related claims into one arbitration. Rule 13404(c) instructs parties on the ranking procedures in the forum. Rule 13404(d) governs when ranked lists must be returned to the Director. Thus, the reference to Rule 13404(c) in Rule 13314 is inaccurate and should be changed to Rule 13404(d).

Rule 13403 – Generating and Sending Lists to the Parties

FINRA proposes to amend the erroneous cross-reference to Rule 13404(c) in Rule 13403(c)(2). The relevant provision of Rule 13403(c)(2) states that when a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 13404(c). For the reason discussed under Rule 13314, the reference to Rule 13404(c) is inaccurate and should be changed to Rule 13404(d).

Rule 13410 – Removal of Arbitrator by Director

For an explanation of the proposed amendment, see the relevant section under “Proposed Non-Substantive Amendments to the Customer Code” above.

Rule 13804 – Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

FINRA proposes to correct a typographical error in Rule 13804(b)(3)(A)(ii). The relevant sentence of the rule states that “the Direct shall consolidate the parties’ rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators’ availability and disqualification.” The word “Direct” should be changed to “Director.”

b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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 in the efficient administration of arbitrations by clarifying current practices and by correcting inaccurate cross-references and typographical errors. FINRA believes these technical, non-substantive amendments will enhance the Codes by making them easier to understand and apply.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act¹⁰ and paragraph (f)(6) of Rule 19b-4 thereunder,¹¹ in that the proposed rule

¹⁰ 15 U.S.C. 78s(b)(3).

¹¹ 17 CFR 240.19b-4(f)(6).

change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing.

FINRA requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),¹² so that FINRA can implement the proposed rule change on the date of filing. In accordance with Rule 19b-4,¹³ FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 17 CFR 240.19b-4.

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- _____; File No. SR-FINRA-2009-003)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Implement Technical Changes to the Code of Arbitration Procedure for Customer Disputes and Industry Disputes

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 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”) on January 8, 2009, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA Dispute Resolution. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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 the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to insert rule language from the Code of Arbitration Procedure (“old Code”) that was inadvertently omitted, to correct inaccurate cross-references, and typographical errors. Below is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Customer Code

Table of Contents

Parts I – III No change.

Part IV **Appointment, Disqualification, and Authority of Arbitrators**

Parts V – IX No change.

* * * *

12102. National Arbitration and Mediation Committee

(a) No change.

(b) Pursuant to the Delegation Plan, the NAMC shall have the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the Board. The NAMC shall also establish and maintain rosters of neutrals composed of persons from within and outside of the securities industry. All matters recommended by the NAMC to the Board must have been approved by a quorum, which shall consist of a majority of the NAMC, including at least 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that at least 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived. The NAMC has such other power and authority as is necessary to carry out the purposes of the Code.

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12206. Time Limits

(a)–(c) No change.

(d) Effect of Filing a Claim in Court on Time Limits for Filing in Arbitration

If a party submits a claim to a court of competent jurisdiction, the six-year time limitation will not run while the court retains jurisdiction of the claim [matter].

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12307. Deficient Claims

(a) No change.

(b) The Director will notify the claimant in writing if the claim is deficient. If all deficiencies are not corrected within 30 days from the time the claimant receives notice, the Director will close the case without serving the claim, and will [not refund any filing fees paid by the claimant] refund part of the filing fee in the amount indicated in the schedule under Rule 12900(c).

(c) No change.

* * * *

12410. Removal of Arbitrator by Director

(a) Before First Hearing Session Begins

Before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be [direct,] definite[,] and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer under this rule will be resolved in favor of the customer.

(2) No change.

(b) No change.

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Parts V – IX No change.

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(c) No change.

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13403. Generating and Sending Lists to the Parties

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) No change.

(b) No change.

(c) Sending Lists to Parties

(1) No change.

(2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 13404[(c)](d).

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(1) The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be [direct,] definite[,] and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer under this rule will be resolved in favor of the customer.

(2) No change.

(b) No change.

* * * *

13804. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

(a) No change.

(b) Hearing on Request for Permanent Injunctive Relief

(1) – (2) No change.

(3) Selection of Arbitrators and Chairperson

(A)

(i) No change.

(ii) Each party may exercise one strike to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.

(B) – (D) No change.

(4) – (6) No change.

(c) No change.

* * * *

(b) Not applicable.

(c) Not applicable.

* * *

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

On January 24, 2007, the SEC approved a proposal to amend the old Code by simplifying the language, codifying current dispute resolution practices, and implementing several substantive changes to dispute resolution rules.⁴ The proposal reorganized the old Code into three separate procedural codes: the Customer Code, the Industry Code, and the NASD Code of Mediation Procedure (“Mediation Code”).⁵ The Customer, Industry and Mediation Codes replace the old Code in its entirety.⁶

Since the Codes became effective, FINRA has found some inaccurate cross-references, typographical errors, inadvertent omissions, and rule language that could be improved to better convey FINRA’s intent or to clarify current practice regarding those rules. FINRA is, therefore, proposing several technical, non-substantive amendments to the Customer and Industry Codes that would correct inaccurate cross-references and typographical errors, insert rule language that was inadvertently omitted, codify current practice concerning the administration of existing rules, and make certain clarifying changes. FINRA will discuss the proposed changes as they appear in the Codes, beginning with the proposed amendments to the Customer Code.

Proposed Non-Substantive Amendments to the Customer Code

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FINRA proposes to amend the title that introduces Part IV of the Table of Contents, by

⁴ See Securities Exchange Act Release No. 55158 (Jan. 24, 2007); 72 FR 4574 (Jan. 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011).

⁵ The SEC approved the Mediation Code on October 31, 2005. See Securities Exchange Act Release No. 52705 (Oct. 31, 2005); 70 FR 67525 (Nov. 7, 2005) (File No. SR-NASD-2004-013). It became effective on January 30, 2006. See *Notice to Members* 05-85 (December 2005).

⁶ The Customer and Industry Codes became effective on April 16, 2007. See *Notice to Members* 07-07 (February 2007).

adding a comma after the word “Disqualification,” so that the title in the Table of Contents is the same as the title in the Code.

Rule 12102 - National Arbitration and Mediation Committee

Rule 10102(a) of the old Code authorized the then-NASD Dispute Resolution Board of Directors to appoint a National Arbitration and Mediation Committee (the “Committee”); and, under this rule, the Committee was authorized to establish and maintain rosters of neutrals.

When the Customer Code was reorganized, the Committee’s authorization to establish and maintain neutral rosters was inadvertently omitted from Rule 12102. Thus, FINRA proposes to amend Rule 12102(b) to insert language similar to that in old Rule 10102(a), which will authorize the Committee to establish and maintain rosters of neutrals composed of persons from within and outside of the securities industry. As the Committee currently works to establish and maintain FINRA’s arbitrator rosters, the amendment would not be a change to current practice.

Rule 12206 – Time Limits

FINRA proposes to amend Rule 12206(d) to correct a proofreading oversight by removing the word “matter” from the end of the sentence. Under the Codes, the term “claim,” not “matter,” is used when referring to an allegation or request for relief.

Rule 12307 – Deficient Claims

Under the Customer Code, FINRA codified its practice regarding deficient claims because it had not been codified in the old Code. Under Rule 12307, the deficient claims rule, FINRA lists the reasons that a claim may be deficient, explains the process if a deficiency is not corrected, and sets forth procedures for handling other pleadings that may be deficient. Specifically, Rule 12307(b) provides that the Director will not refund any filing fees paid by claimants when staff closes a deficient case. FINRA proposes to amend Rule 12307(b) because

it does not reflect accurately its practice concerning refunding certain fees paid by claimants when FINRA closes a deficient claim.

When claimants filed a claim under the old Code, they submitted their Statement of Claim along with two separate fees: a non-refundable filing fee and a hearing session deposit.⁷ When FINRA staff closed a deficient case, FINRA would retain the non-refundable filing fee and refund the hearing session deposit to the claimants.

Under the Customer Code, FINRA combined the old Code filing fee and hearing session deposit into one “filing fee.”⁸ However, FINRA did not change its practice regarding refunds of a portion of the filing fee when it closes a deficient case – FINRA continues to refund the refundable part of the filing fee to claimants, while retaining the remaining portion. Thus, FINRA believes the language in Rule 12307(b) does not reflect accurately its practice and could be confusing to users of the forum.

Therefore, FINRA proposes to amend Rule 12307(b) to state that the Director will close the case without serving the claim, and will refund part of the filing fee in the amount indicated in the schedule of fees. FINRA believes the amendment will reflect accurately its practice concerning refunds when it closes a deficient case and will minimize confusion concerning its fees.

Rule 12410 – Removal of Arbitrator by Director

Rule 12410 addresses removal of an arbitrator by the Director of Arbitration. Specifically, Rule 12410(a)(1) states, in relevant part, that “the Director will grant a party’s request to remove an arbitrator if it is reasonable to infer, based on information known at the

⁷ See Rule 10332(c) of the Code of Arbitration Procedure.

⁸ See Rule 12900. A portion of the filing fee is refundable under certain circumstances, Rule 12900(c).

time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.”⁹

FINRA believes the word “direct” in the second sentence of the rule conflicts with the meaning of the first sentence, in which an arbitrator may be challenged for having “a direct or indirect interest in the outcome of the arbitration.” Thus, FINRA proposes to remove “direct” from the second sentence of Rule 12410(a)(1) to correct the conflict in the rule language.

Proposed Non-Substantive Amendments to the Industry Code¹⁰

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For an explanation of the proposed amendment, see the relevant section under “Proposed Non-Substantive Amendments to the Customer Code” above.

Rule 13102 - National Arbitration and Mediation Committee

For an explanation of the proposed amendment, see the relevant section under “Proposed Non-Substantive Amendments to the Customer Code” above.

Rule 13206 – Time Limits

For an explanation of the proposed amendment, see the relevant section under “Proposed Non-Substantive Amendments to the Customer Code” above.

Rule 13307 – Deficient Claims

For an explanation of the proposed amendment, see the relevant section under “Proposed Non-Substantive Amendments to the Customer Code” above.

⁹ See Rule 12410(a)(1).

¹⁰ Most rules of the Customer and Industry Codes are identical, except for panel composition, references to document production lists that apply only in customer cases, and rules relating to employment discrimination and injunctive relief that apply only to industry claims. Wherever possible, the last three digits of the rule numbers in the Customer and Industry Codes are the same. Thus, the explanation for the proposed amendments in the Customer Code also apply to the proposed amendments in the Industry Code, except where indicated.

Rule 13314 – Combining Claims

FINRA proposes to amend the erroneous cross-reference to Rule 13404(c) in the rule. Rule 13314 states, in relevant part, that before ranked arbitrator lists are due to the Director under Rule 13404(c), the Director may combine separate but related claims into one arbitration. Rule 13404(c) instructs parties on the ranking procedures in the forum. Rule 13404(d) governs when ranked lists must be returned to the Director. Thus, the reference to Rule 13404(c) in Rule 13314 is inaccurate and should be changed to Rule 13404(d).

Rule 13403 – Generating and Sending Lists to the Parties

FINRA proposes to amend the erroneous cross-reference to Rule 13404(c) in Rule 13403(c)(2). The relevant provision of Rule 13403(c)(2) states that when a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 13404(c). For the reason discussed under Rule 13314, the reference to Rule 13404(c) is inaccurate and should be changed to Rule 13404(d).

Rule 13410 – Removal of Arbitrator by Director

For an explanation of the proposed amendment, see the relevant section under “Proposed Non-Substantive Amendments to the Customer Code” above.

Rule 13804 – Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

FINRA proposes to correct a typographical error in Rule 13804(b)(3)(A)(ii). The relevant sentence of the rule states that “the Direct shall consolidate the parties’ rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators’ availability and disqualification.” The word “Direct” should be changed to “Director.”

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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 in the efficient administration of arbitrations by clarifying current practices and by correcting inaccurate cross-references and typographical errors. FINRA believes these technical, non-substantive amendments will enhance the Codes by making them easier to understand and apply.

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

Because the foregoing proposed rule change 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

¹¹ 15 U.S.C. 78s(b)(3)(A).

At any time within 60 days of the filing of the 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. Please include File Number **SR-FINRA-2009-003** on the subject line.

Paper Comments:

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

All submissions should refer to File Number **SR-FINRA-2009-003**. 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,

¹² 17 CFR 240.19b-4(f)(6).

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. 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 the File Number **SR-FINRA-2009-003** 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.¹³

Elizabeth M. Murphy
Secretary

Action as set forth or recommended herein
APPROVED pursuant to authority delegated by
the Commission under Public Law 87-592.

For the Division of Trading and Markets

by: _____

(DATE)

¹³ 17 CFR 200.30-3(a)(12).