

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2008 - 047

Amendment No.

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

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐Exhibit 3 Sent As Paper Document ☐**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to amend Rule 12401 of the Customer Code and Rule 13401 of the Industry Code to raise the amount in controversy heard by a single chair-qualified arbitrator to \$100,000.

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
(Name)

Vice President and Chief Counsel, Dispute Resolution

(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 EDFS website.

Form 19b-4 Information

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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

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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

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Exhibit Sent As Paper Document

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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

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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

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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

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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

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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 the Financial Industry Regulatory Authority, Inc. (“FINRA”) (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 NASD Rule 12401 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and NASD Rule 13401 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to raise the amount in controversy that will be heard by a single chair-qualified arbitrator to \$100,000.

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

* * * * *

12401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800.

(b) Claims of More Than \$25,000 Up To [\$50,000] \$100,000

If the amount of a claim is more than \$25,000 but not more than [\$50,000] \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator

¹ 15 U.S.C. 78s(b)(1).

[unless any party requests a panel of three arbitrators in its initial pleading] unless the parties agree in writing to three arbitrators.

(c) Claims of More Than [\$50,000] \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than [\$50,000] \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

13401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 13800.

(b) Claims of More Than \$25,000 Up To [\$50,000] \$100,000

If the amount of a claim is more than \$25,000 but not more than [\$50,000] \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any party requests a panel of three arbitrators in its initial pleading] unless the parties agree in writing to three arbitrators.

(c) Claims of More Than [\$50,000] \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than [\$50,000] \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 16, 2008, the FINRA Board of Governors authorized the filing of the rule change with the SEC.

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.

Questions regarding this rule filing may be directed to Margo Hassan, Counsel, FINRA Dispute Resolution, at (212) 858-4481.

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

(a) Purpose

FINRA is proposing to amend its Customer Code and Industry Code to raise the amount in controversy that would be heard by a single arbitrator to \$100,000. The arbitrator would be selected from the roster of arbitrators who are qualified to serve as

chairpersons. This means that investors' claims for up to \$100,000 would be heard by a public, chair-qualified arbitrator.

Under the proposal, parties would be permitted to request a panel of three arbitrators for claims of more than \$25,000, but not more than \$100,000, if all parties agreed to the request.

Currently, if the amount of a claim is \$25,000 or less, a single arbitrator is appointed to resolve the matter. If the amount of a claim is more than \$25,000, but not more than \$50,000, a single arbitrator is appointed, unless a party asks for three arbitrators in its initial pleading. Claims for over \$50,000 are heard by a panel of three arbitrators.²

Raising the threshold for claims heard by a single arbitrator would increase efficiencies and decrease costs for parties and FINRA. Parties would experience reduced case processing times because of the flexibility associated with scheduling conference calls and hearing dates with one arbitrator as opposed to three. Parties would save time in the arbitrator selection process because they would receive only one list of eight names from which to choose their arbitrator, rather than three lists of eight names.³ This means

² The current threshold for appointing one or three arbitrators has been in effect since 1998 (see Securities Exchange Act Rel. No. 38635 (May 14, 1997), File No. SR-NASD-97-22 and NASD Notice to Members 98-90). Customer disputes are resolved by a single, chair-qualified public arbitrator or a majority-public panel consisting of a public arbitrator, a chair-qualified public arbitrator, and a non-public arbitrator. Industry disputes are resolved by a public panel or a non-public panel depending upon the parties to the controversy and the nature of the claims asserted (see Rules 13402 and 13802).

³ For example, for customer cases, if the panel consists of one arbitrator, the Neutral List Selection System ("the System") generates a list of eight public arbitrators from the chairperson roster. If the panel consists of three arbitrators, the System generates a list of eight public arbitrators from the chairperson roster;

they would only research the disclosures and histories of eight proposed arbitrators instead of 24.

Parties would also benefit from reduced hearing session fees. For claims between \$25,000.01 and \$50,000, parties would save \$150 per hearing session.⁴ For claims between \$50,000.01 and \$100,000, the savings would be \$300 per hearing session. The parties' cost for photocopying pleadings and exhibits would be reduced by two-thirds.

FINRA would benefit from a more efficient use of its arbitrator roster since cases for \$100,000 or less would use only one arbitrator instead of three. FINRA's photocopying costs and mailing expenses would also be reduced.

FINRA is proposing to remove the current option for one party unilaterally to require three arbitrators in cases with claims for more than \$25,000. FINRA believes this is not an efficient use of resources, as it requires other parties to incur higher hearing session costs and additional delays caused by scheduling three arbitrators instead of one. Therefore, the proposed rule would mandate a single arbitrator in all such cases unless all parties agree, in writing, to request a three person panel.

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

a list of eight arbitrators from the public roster; and a list of eight arbitrators from the non-public roster. FINRA sends the lists to the parties along with each arbitrator's employment history for the prior 10 years and other background information (see Rules 12403 and 13403).

⁴ The term "hearing session" means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference. (see Rules 12100(n) and 13100(n)). For full day hearings, the savings would be \$300 for claims between \$25,000.01 and \$50,000, and \$600 for claims between \$50,000.01 and \$100,000.

following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ 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. The proposed rule change would make FINRA arbitration more expeditious and efficient and would decrease users' forum fees and related expenses.

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.

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.

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.⁶

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

Not applicable.

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ 15 U.S.C. 78s(b)(2).

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

Not applicable.

9. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-047)

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Codes of Arbitration Procedure to Raise the Amount in Controversy Heard by a Single Chair-Qualified Arbitrator to \$100,000

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 September 18, 2008, 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 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 NASD Rule 12401 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and NASD Rule 13401 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to raise the amount in controversy that will be heard by a single chair-qualified arbitrator to \$100,000. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

* * * * *

12401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800.

(b) Claims of More Than \$25,000 Up To [\$50,000] \$100,000

If the amount of a claim is more than \$25,000 but not more than [\$50,000] \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any party requests a panel of three arbitrators in its initial pleading] unless the parties agree in writing to three arbitrators.

(c) Claims of More Than [\$50,000] \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than [\$50,000] \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

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* * * * *

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 its Customer Code and Industry Code to raise the amount in controversy that would be heard by a single arbitrator to \$100,000. The arbitrator would be selected from the roster of arbitrators who are qualified to serve as chairpersons. This means that investors' claims for up to \$100,000 would be heard by a public, chair-qualified arbitrator.

Under the proposal, parties would be permitted to request a panel of three arbitrators for claims of more than \$25,000, but not more than \$100,000, if all parties agreed to the request.

Currently, if the amount of a claim is \$25,000 or less, a single arbitrator is appointed to resolve the matter. If the amount of a claim is more than \$25,000, but not more than \$50,000, a single arbitrator is appointed, unless a party asks for three arbitrators in its initial pleading. Claims for over \$50,000 are heard by a panel of three arbitrators.³

³ The current threshold for appointing one or three arbitrators has been in effect since 1998 (see Securities Exchange Act Rel. No. 38635 (May 14, 1997), File No. SR-NASD-97-22 and NASD Notice to Members 98-90). Customer disputes are resolved by a single, chair-qualified public arbitrator or a majority-public panel consisting of a public arbitrator, a chair-qualified public arbitrator, and a non-public arbitrator. Industry disputes are resolved by a public panel or a non-public panel depending upon the parties to the controversy and the nature of the claims asserted (see Rules 13402 and 13802).

Raising the threshold for claims heard by a single arbitrator would increase efficiencies and decrease costs for parties and FINRA. Parties would experience reduced case processing times because of the flexibility associated with scheduling conference calls and hearing dates with one arbitrator as opposed to three. Parties would save time in the arbitrator selection process because they would receive only one list of eight names from which to choose their arbitrator, rather than three lists of eight names.⁴ This means they would only research the disclosures and histories of eight proposed arbitrators instead of 24.

Parties would also benefit from reduced hearing session fees. For claims between \$25,000.01 and \$50,000, parties would save \$150 per hearing session.⁵ For claims between \$50,000.01 and \$100,000, the savings would be \$300 per hearing session. The parties' cost for photocopying pleadings and exhibits would be reduced by two-thirds.

⁴ For example, for customer cases, if the panel consists of one arbitrator, the Neutral List Selection System ("the System") generates a list of eight public arbitrators from the chairperson roster. If the panel consists of three arbitrators, the System generates a list of eight public arbitrators from the chairperson roster; a list of eight arbitrators from the public roster; and a list of eight arbitrators from the non-public roster. FINRA sends the lists to the parties along with each arbitrator's employment history for the prior 10 years and other background information (see Rules 12403 and 13403).

⁵ The term "hearing session" means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference. (see Rules 12100(n) and 13100(n)). For full day hearings, the savings would be \$300 for claims between \$25,000.01 and \$50,000, and \$600 for claims between \$50,000.01 and \$100,000.

FINRA would benefit from a more efficient use of its arbitrator roster since cases for \$100,000 or less would use only one arbitrator instead of three. FINRA's photocopying costs and mailing expenses would also be reduced.

FINRA is proposing to remove the current option for one party unilaterally to require three arbitrators in cases with claims for more than \$25,000. FINRA believes this is not an efficient use of resources, as it requires other parties to incur higher hearing session costs and additional delays caused by scheduling three arbitrators instead of one. Therefore, the proposed rule would mandate a single arbitrator in all such cases unless all parties agree, in writing, to request a three person panel.

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. The proposed rule change would make FINRA arbitration more expeditious and efficient and would decrease users' forum fees and related expenses.

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.

⁶ 15 U.S.C. 78o-3(b)(6).

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. Please include File Number SR-FINRA-2008-047 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-2008-047. 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. 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-2008-047 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.⁷

Florence Harmon
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).