

OMB APPROVAL

OMB Number: 3235-0045
Expires: August 31, 2011
Estimated average burden
hours per response.....38

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

File No. SR - 2009 - 041
Amendment No. 1

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).

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)

(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.

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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

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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.

On June 5, 2009, FINRA filed SR-FINRA-2009-041 with the Securities and Exchange Commission (“SEC”) to amend Rules 12100(r), 12506(a), and 12902(a) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rule 13100(r) of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to amend the definition of “associated person,” streamline a case administration procedure, and clarify that customers could be assessed hearing session fees based on their own claims for relief in connection with an industry claim. FINRA granted three extensions for the SEC to act on the proposal on August 7, 2009, September 16, 2009, and October 10, 2009. FINRA also filed a Response to Comments on August 10, 2009.

FINRA is filing this partial Amendment No. 1 to amend the proposed changes to Rule 12902, Hearing Session Fees, and Other Costs and Expenses. FINRA is proposing to make the following changes to the rule filing and Exhibit 1.

The base rule text is that of the proposed rule change. Deleted rule language is in brackets:

1. On page 4 of the proposal, amend the following rule language:

12902. Hearing Session Fees, and Other Costs and Expenses

(a) Hearing Session Fees

(1) – (3) No change.

(4) If hearing session fees are allocated against a customer in connection with a claim filed by a member or associated person, the amount of hearing session fees the customer must pay must be based on the amount actually awarded to the member or associated person, rather than on the amount claimed by the member or associated person. No hearing session fees may be assessed against a customer in connection with a claim filed by a member that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed a filing fee under Rule 12900(a), and may be subject to hearing session fees [under Rule 12902(a)].

(b) – (e) No change.

2. On page 10 of the 19b-4 filing and page 19 of Exhibit No. 1, amend the first full paragraph on these pages, as follows:

During the Code Revision, FINRA inadvertently omitted from the corresponding Rule 12902(a)(4) in the Customer Code, the provision in old Rule 10332(c) that permitted the forum to assess fees against the customer based on the customer’s claim in an industry dispute. Thus, FINRA is proposing to amend Rule 12902(a)(4) to incorporate

the omitted language. The proposed rule change would amend the rule by adding the omitted language to the end of the rule. Specifically, the new language would state that “in cases where there is also a customer claim, the customer may be assessed a filing fee under Rule 12900(a), and may be subject to hearing session fees [under Rule 12902(a)].”