

OMB APPROVAL

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

File No. SR - 2009 - 075

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).

The proposed rule filing amends Rules 12601 and 12902 of Customer Code and Rules 13601 and 13902 of Industry Code to clarify the applicability of the fee waiver provision of the postponement rule and to codify the hearing session fee for an unspecified damages claim heard by one arbitrator.

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.

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

Add

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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

Add

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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 Sent As Paper Document

☐

Exhibit 3 - Form, Report, or Questionnaire

Add

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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 Sent As Paper Document

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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

Add

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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

Add

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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 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 Rules 12601 and 12902 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rules 13601 and 13902 the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (together, “Codes”) to clarify the applicability of the fee waiver provision of the postponement rule and to codify the hearing session fee for an unspecified damages claim heard by one arbitrator.

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

* * * * *

12601. Postponement of Hearings

(a) No change.

(b) Postponement Fees

(1) - (2) No change.

(3) No postponement fee will be charged if a hearing is postponed:

- Because the parties agree to submit the matter to mediation [at administered through FINRA, except that the parties shall pay the additional fees described in Rule 12601(b)(2) for late postponement requests;
- By the panel in its own discretion; or
- By the Director in extraordinary circumstances.

¹ 15 U.S.C. 78s(b)(1).

(c) No change.

* * * *

12902. Hearing Session Fees, and Other Costs and Expenses

(a) Hearing Session Fees

(1) Hearing session fees will be charged for each hearing session. The total amount chargeable to the parties for each hearing session is based on the amount in dispute, as specified in the schedule below. In the award, the panel will determine the amount of each hearing session fee that each party must pay.

Hearing Session Fees

Amount of Claim	Hearing Session W/One Arbitrator	Hearing Session W/Three Arbitrators
Up to \$2,500	\$50	N/A
\$2,500.01 to \$5,000	\$125	N/A
\$5,000.01 to \$10,000	\$250	N/A
\$10,000.01 to \$25,000	\$450	N/A
\$25,000.01 to \$50,000	\$450	\$600
\$50,000.01 to \$100,000	\$450	\$750
\$100,000.01 to \$500,000	\$450	\$1,125
Over \$500,000	\$450	\$1,200
Unspecified Damages	[N/A] <u>\$450</u>	\$1,000

(2) – (4) No change.

(b) – (e) No change.

* * * *

13601. Postponement of Hearings

(a) No change.

(b) Postponement Fees

(1) - (2) No change.

(3) No postponement fee will be charged if a hearing is postponed:

- Because the parties agree to submit the matter to mediation [at] administered through FINRA, except that the parties shall pay the

additional fees described in Rule 13601(b)(2) for late postponement requests;

- By the panel in its own discretion; or
- By the Director in extraordinary circumstances.

(c) No change.

* * * *

13902. Hearing Session Fees, and Other Costs and Expenses

(a) Hearing Session Fees

(1) Hearing session fees will be charged for each hearing session. The total amount chargeable to the parties for each hearing session is based on the amount in dispute, as specified in the schedule below. In the award, the panel will determine the amount of each hearing session fee that each party must pay.

Hearing Session Fees

Amount of Claim	Hearing Session W/One Arbitrator	Hearing Session W/Three Arbitrators
Up to \$2,500	\$50	N/A
\$2,500.01 to \$5,000	\$125	N/A
\$5,000.01 to \$10,000	\$250	N/A
\$10,000.01 to \$25,000	\$450	N/A
\$25,000.01 to \$50,000	\$450	\$600
\$50,000.01 to \$100,000	\$450	\$750
\$100,000.01 to \$500,000	\$450	\$1,125
Over \$500,000	\$450	\$1,200
Unspecified Damages	[N/A] <u>\$450</u>	\$1,000

(2) – (3) No change.

(b) – (e) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on July 15, 2009, the FINRA Board of Governors authorized the filing of the rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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 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

FINRA is proposing to amend the rules of the Customer and Industry Codes that address the fee waiver provision of the postponement rule and the hearing session fee for one arbitrator in an unspecified damages claim. First, FINRA is proposing to amend Rules 12601(b)(3) and 13601(b)(3) of the Codes, hereinafter referred to as the fee waiver provision of the postponement rule, to clarify that the late postponement fee will not be waived if parties request a postponement within three business days before the scheduled hearing session. Second, the proposal would amend Rules 12902(a)(1) and 13902(a)(1) of the Codes to codify FINRA's current practice of charging \$450 per hearing session for

an unspecified damages claim heard by one arbitrator. Each proposal is discussed separately below.²

Amendment to Fee Waiver Provision of Postponement Rule

The Codes require arbitration hearings to be postponed if the parties agree.³ Hearings may also be postponed by the Director of FINRA Dispute Resolution (“Director”), by the panel in its own discretion, or by the panel on a motion of a party.⁴ If a hearing is postponed, the arbitration panel will assess a postponement fee against one or more of the parties, which is typically equivalent to the applicable hearing session fee that would have been assessed had the hearing been held.⁵

There are instances, however, in which a postponement fee is not assessed against the parties. Under Rule 12601(b)(3) of the Customer Code, for example, staff will not charge parties a postponement fee if they agree to submit the matter to mediation at FINRA.⁶ Thus, if the parties agree to mediation administered through FINRA, the Director will waive the postponement fee. This provision does not apply to late postponement fees.

Nevertheless, FINRA has received complaints from arbitrators that parties are using the fee waiver provision in connection with an agreement to mediate through FINRA to avoid paying a late postponement fee. If parties request and are granted a

² To simplify the explanation, the discussion will focus on the proposed amendments to the Customer Code. However, the explanation and rationale apply to the same rules of the Industry Code, which, in this case, are identical to the rules of the Customer Code.

³ Rule 12601(a)(1) of the Customer Code, and Rule 13601(a)(1) of the Industry Code.

⁴ Rule 12601(a)(2) of the Customer Code, and Rule 13601(a)(2) of the Industry Code.

⁵ Rule 12601(b)(1) of the Customer Code, and Rule 13601(b)(1) of the Industry Code.

⁶ See also Rule 13601(b)(3) of the Industry Code.

hearing postponement within three business days of a scheduled hearing session (i.e., a late postponement request), the Director will assess a postponement fee of \$100 per arbitrator.⁷ Parties who make this late postponement request contend that, if they agree to mediate their dispute through FINRA, they should not be assessed the \$100 late postponement fee, because Rule 12601(b)(3) waives the postponement fee if the parties agree to mediate through FINRA.

FINRA did not intend Rule 12601(b)(3) to be applied this way.⁸ Parties who make late postponement requests should be charged the \$100 late postponement fee, regardless of their intent to mediate through FINRA. FINRA is therefore proposing to amend Rule 12601(b)(3) to state that no postponement fee will be charged if a hearing is postponed because the parties agree to submit the matter to mediation administered through FINRA, except that the parties shall pay the additional fees described in Rule 12601(b)(2) for late postponement requests.⁹

FINRA believes the proposed amendment will ensure that arbitrators continue to receive some compensation in the event a scheduled hearing is postponed because of a late postponement request, and will continue to serve as an incentive to parties to settle their disputes earlier to avoid additional fees.

Amendment to the Hearing Session Fee for One Arbitrator in Unspecified Damages Claim

In FINRA's arbitration forum, if the parties and the arbitrator(s) meet to discuss the issues giving rise to the arbitration dispute, the meeting is called a "hearing

⁷ Rule 12601(b)(2) of the Customer Code, and Rule 13601(b)(2) of the Industry Code.

⁸ Note 6.

⁹ The proposal would amend Rule 13601(b)(3) of the Industry Code with the same proposed language.

session.”¹⁰ The Customer Code authorizes FINRA to assess hearing session fees against the parties for each hearing session.¹¹ The total amount charged to the parties for each hearing session is based on the amount in dispute.¹² For claims that do not request or specify money damages (i.e., an unspecified damages claim), however, Rule 12902(a)(2) gives the Director the discretion to determine the amount of the hearing session fee, except that the fee cannot exceed \$1,200.¹³

Currently, under the Customer Code, the hearing session fee charged for each hearing session in an unspecified damages claim heard by three arbitrators is \$1,000.¹⁴ However, for an unspecified damages claim heard by one arbitrator, the rules list the hearing session fee as not applicable (“N/A”).¹⁵ Thus, FINRA is proposing to amend Rule 12902(a)(1) to change the current amount for an unspecified damages claim heard by one arbitrator from “N/A” to \$450.¹⁶

FINRA’s current practice is to charge parties \$450 per hearing session for an unspecified damages claim heard by one arbitrator, even though the Code gives the Director the discretion to determine the amount of the hearing session fee for an unspecified damages claim. The Director charges this amount currently because it is the same amount assessed for hearing sessions heard by one arbitrator in which parties

¹⁰ A hearing session can either be an arbitration hearing or a prehearing conference. Rule 12100(n) of the Customer Code and Rule 13100(n) of the Industry Code.

¹¹ Rule 12902(a)(1) of the Customer Code. See also Rule 13902(a)(1) of the Industry Code.

¹² Id.

¹³ See also Rule 13902(a)(2) of the Industry Code.

¹⁴ For hearing sessions involving three arbitrators in which parties request damages ranging from \$25,000.01 to over \$500,000, the amount for each hearing session can range from \$600 to \$1200. See note 11.

¹⁵ Id.

¹⁶ The proposal would amend Rule 13902(a)(1) of the Industry Code with the same proposed language.

request damages ranging from \$10,000.01 to over \$500,000, and thus provides case administration with a uniform fee structure that is easy to apply. So, for example, under current practice and the proposed rule, if the parties agree to a single arbitrator in a case involving unspecified damages,¹⁷ the Director would assess the \$450 hearing session fee.¹⁸ FINRA believes the proposal would benefit parties by notifying them of the potential costs at the outset of an unspecified damages case heard by one arbitrator, thereby providing more transparency in FINRA's fee structure. The proposal would also ensure consistent assessment of fees in its arbitration forum and would enhance the efficiency of the forum by making the rules easier to apply and understand.

Moreover, FINRA believes that codifying its current practice of charging \$450 per hearing session for an unspecified damages claim heard by one arbitrator would not represent an increase in customer fees, because the proposed single arbitrator fee is the same as the current fee for any specific claim over \$10,000. Further, FINRA notes that, even though the proposal would codify a fee for an unspecified damages claim heard by one arbitrator, the Code would continue to authorize the Director to determine whether the hearing session fee for an unspecified damages claim should be more or less than the amount specified in the fee schedule of the rule.¹⁹ Thus, the proposal would not change FINRA's practice of reducing or waiving its fees in documented cases of financial hardship.

b) Statutory Basis

¹⁷ Rule 12401(c) of the Customer Code and Rule 13401(c) of the Industry Code.

¹⁸ The proposed hearing session fee would also apply, for example, if the chairperson conducts a prehearing conference in a claim for unspecified damages.

¹⁹ See Rule 12902(a)(2) of the Customer Code and Rule 13902(a)(2) of the Industry Code.

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁰ 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 is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would preserve fairness in the arbitration process by ensuring that arbitrators receive some compensation in the event that a scheduled hearing session is postponed as a result of a late postponement request, and would enhance the efficiency of the forum by making the rules easier to apply and understand.

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)

Not applicable.

²⁰ 15 U.S.C. 78o-3(b)(6).

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.

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-_____; File No. SR-FINRA-2009-075

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the Postponement Fee and Hearing Session Fee Rules of the Code of Arbitration Procedure for Customer 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 November 4, 2009, 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 Dispute Resolution is proposing to amend Rules 12601(b) and 12902(a) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rules 13601(b) and 13902(a) of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to clarify the applicability of the fee waiver provision of the postponement rule and to codify the hearing session fee for an unspecified damages claim heard by one arbitrator.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

* * * * *

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

FINRA is proposing to amend the rules of the Customer and Industry Codes that address the fee waiver provision of the postponement rule and the hearing session fee for one arbitrator in an unspecified damages claim. First, FINRA is proposing to amend Rules 12601(b)(3) and 13601(b)(3) of the Codes, hereinafter referred to as the fee waiver provision of the postponement rule, to clarify that the late postponement fee will not be waived if parties request a postponement within three business days before the scheduled hearing session. Second, the proposal would amend Rules 12902(a)(1) and 13902(a)(1) of the Codes to codify FINRA's current practice of charging \$450 per hearing session for an unspecified damages claim heard by one arbitrator. Each proposal is discussed separately below.³

Amendment to Fee Waiver Provision of Postponement Rule

³ To simplify the explanation, the discussion will focus on the proposed amendments to the Customer Code. However, the explanation and rationale apply to the same rules of the Industry Code, which, in this case, are identical to the rules of the Customer Code.

The Codes require arbitration hearings to be postponed if the parties agree.⁴ Hearings may also be postponed by the Director of FINRA Dispute Resolution (“Director”), by the panel in its own discretion, or by the panel on a motion of a party.⁵ If a hearing is postponed, the arbitration panel will assess a postponement fee against one or more of the parties, which is typically equivalent to the applicable hearing session fee that would have been assessed had the hearing been held.⁶

There are instances, however, in which a postponement fee is not assessed against the parties. Under Rule 12601(b)(3) of the Customer Code, for example, staff will not charge parties a postponement fee if they agree to submit the matter to mediation at FINRA.⁷ Thus, if the parties agree to mediation administered through FINRA, the Director will waive the postponement fee. This provision does not apply to late postponement fees.

Nevertheless, FINRA has received complaints from arbitrators that parties are using the fee waiver provision in connection with an agreement to mediate through FINRA to avoid paying a late postponement fee. If parties request and are granted a hearing postponement within three business days of a scheduled hearing session (i.e., a late postponement request), the Director will assess a postponement fee of \$100 per arbitrator.⁸ Parties who make this late postponement request contend that, if they agree to mediate their dispute through FINRA, they should not be assessed the \$100 late postponement fee, because Rule 12601(b)(3) waives the postponement fee if the parties agree to mediate through FINRA.

⁴ Rule 12601(a)(1) of the Customer Code, and Rule 13601(a)(1) of the Industry Code.

⁵ Rule 12601(a)(2) of the Customer Code, and Rule 13601(a)(2) of the Industry Code.

⁶ Rule 12601(b)(1) of the Customer Code, and Rule 13601(b)(1) of the Industry Code.

⁷ See also Rule 13601(b)(3) of the Industry Code.

⁸ Rule 12601(b)(2) of the Customer Code, and Rule 13601(b)(2) of the Industry Code.

FINRA did not intend Rule 12601(b)(3) to be applied this way.⁹ Parties who make late postponement requests should be charged the \$100 late postponement fee, regardless of their intent to mediate through FINRA. FINRA is therefore proposing to amend Rule 12601(b)(3) to state that no postponement fee will be charged if a hearing is postponed because the parties agree to submit the matter to mediation administered through FINRA, except that the parties shall pay the additional fees described in Rule 12601(b)(2) for late postponement requests.¹⁰

FINRA believes the proposed amendment will ensure that arbitrators continue to receive some compensation in the event a scheduled hearing is postponed because of a late postponement request, and will continue to serve as an incentive to parties to settle their disputes earlier to avoid additional fees.

Amendment to the Hearing Session Fee for One Arbitrator in Unspecified Damages Claim

In FINRA's arbitration forum, if the parties and the arbitrator(s) meet to discuss the issues giving rise to the arbitration dispute, the meeting is called a "hearing session."¹¹ The Customer Code authorizes FINRA to assess hearing session fees against the parties for each hearing session.¹² The total amount charged to the parties for each hearing session is based on the amount in dispute.¹³ For claims that do not request or specify money damages (i.e., an

⁹ Note 6.

¹⁰ The proposal would amend Rule 13601(b)(3) of the Industry Code with the same proposed language.

¹¹ A hearing session can either be an arbitration hearing or a prehearing conference. Rule 12100(n) of the Customer Code and Rule 13100(n) of the Industry Code.

¹² Rule 12902(a)(1) of the Customer Code. See also Rule 13902(a)(1) of the Industry Code.

¹³ Id.

unspecified damages claim), however, Rule 12902(a)(2) gives the Director the discretion to determine the amount of the hearing session fee, except that the fee cannot exceed \$1,200.¹⁴

Currently, under the Customer Code, the hearing session fee charged for each hearing session in an unspecified damages claim heard by three arbitrators is \$1,000.¹⁵ However, for an unspecified damages claim heard by one arbitrator, the rules list the hearing session fee as not applicable (“N/A”).¹⁶ Thus, FINRA is proposing to amend Rule 12902(a)(1) to change the current amount for an unspecified damages claim heard by one arbitrator from “N/A” to \$450.¹⁷

FINRA’s current practice is to charge parties \$450 per hearing session for an unspecified damages claim heard by one arbitrator, even though the Code gives the Director the discretion to determine the amount of the hearing session fee for an unspecified damages claim. The Director charges this amount currently because it is the same amount assessed for hearing sessions heard by one arbitrator in which parties request damages ranging from \$10,000.01 to over \$500,000, and thus provides case administration with a uniform fee structure that is easy to apply. So, for example, under current practice and the proposed rule, if the parties agree to a single arbitrator in a case involving unspecified damages,¹⁸ the Director would assess the \$450 hearing session fee.¹⁹ FINRA believes the proposal would

¹⁴ See also Rule 13902(a)(2) of the Industry Code.

¹⁵ For hearing sessions involving three arbitrators in which parties request damages ranging from \$25,000.01 to over \$500,000, the amount for each hearing session can range from \$600 to \$1200. See note 11.

¹⁶ Id.

¹⁷ The proposal would amend Rule 13902(a)(1) of the Industry Code with the same proposed language.

¹⁸ Rule 12401(c) of the Customer Code and Rule 13401(c) of the Industry Code.

¹⁹ The proposed hearing session fee would also apply, for example, if the chairperson conducts a prehearing conference in a claim for unspecified damages.

benefit parties by notifying them of the potential costs at the outset of an unspecified damages case heard by one arbitrator, thereby providing more transparency in FINRA's fee structure. The proposal would also ensure consistent assessment of fees in its arbitration forum and would enhance the efficiency of the forum by making the rules easier to apply and understand.

Moreover, FINRA believes that codifying its current practice of charging \$450 per hearing session for an unspecified damages claim heard by one arbitrator would not represent an increase in customer fees, because the proposed single arbitrator fee is the same as the current fee for any specific claim over \$10,000. Further, FINRA notes that, even though the proposal would codify a fee for an unspecified damages claim heard by one arbitrator, the Code would continue to authorize the Director to determine whether the hearing session fee for an unspecified damages claim should be more or less than the amount specified in the fee schedule of the rule.²⁰ Thus, the proposal would not change FINRA's practice of reducing or waiving its fees in documented cases of financial hardship.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²¹ 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. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would preserve fairness in the arbitration process by ensuring that arbitrators receive some compensation in

²⁰ See Rule 12902(a)(2) of the Customer Code and Rule 13902(a)(2) of the Industry Code.

²¹ 15 U.S.C. 78o-3(b)(6).

the event that a scheduled hearing session is postponed as a result of a late postponement request, and would enhance the efficiency of the forum by making the rules easier to apply and understand.

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

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-2009-075 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2009-075. 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. 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-2009-075 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.²²

Florence E. Harmon
Deputy Secretary

²²

17 CFR 200.30-3(a)(12).