

Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2011 - * 006

Amendment No. (req. for Amendments *)

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934Initial * ☒ 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, required when Initial is checked *).

This proposal amends the Customer and Industry Codes of Arbitration Procedure relating to motion practice.

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 * Margo Last Name * Hassan
Title * Assistant Chief Counsel, FINRA Dispute Resolution
E-mail * margo.hassan@finra.org
Telephone * (212) 858-4481 Fax (310) 527-4761**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 02/04/2011

By Kenneth Andrichik
(Name *)Senior Vice President and Chief Counsel, FINRA
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.

Kenneth Andrichik,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

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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 (required)

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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

☐

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”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rules 12206, 12503, and 12504 of the Code of Arbitration Procedure for Customer Disputes and Rules 13206, 13503, and 13504 of the Code of Arbitration Procedure for Industry Disputes (collectively, “Codes”), to provide moving parties with a five-day period to reply to responses to motions.

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

* * * * *

Customer Code

12206. Time Limits

(a) No Change.

(b) Dismissal under Rule

Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(1) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

¹ 15 U.S.C. 78s(b)(1).

(2) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 90 days before a scheduled hearing, and parties have 30 days to respond to the motion. Moving parties may reply to responses to motions. Any such reply must be made within 5 days of receipt of a response.

(3) – (10) No change.

(c) – (d) No change.

* * * * *

12503. Motions

(a) – (b) No change.

(c) Replying to Responses to Motions

Parties have 5 days from the receipt of a response to a motion to reply to the response unless the responding party agrees to an extension of time, or the Director or the panel decides otherwise. Replies to responses must be served directly on each other party, at the same time and in the same manner. Replies to responses must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

[c] (d) Authority to Decide Motions

(1) – (5) No change.

* * * * *

12504. Motions to Dismiss

(a) Motions to Dismiss Prior to Conclusion of Case in Chief

(1) Motions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged in arbitration.

(2) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(3) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion. Moving parties may reply to responses to motions. Any such reply must be made within 5 days of receipt of a response.

(4) - (11) No change.

(b) – (e) No change.

* * * * *

Industry Code

13206. Time Limits

(a) No change.

(b) Dismissal under Rule

Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(1) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(2) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 90 days before a scheduled hearing, and parties have 30 days to respond to the motion. Moving parties may reply to responses to motions. Any such reply must be made within 5 days of receipt of a response.

(3) – (10) No change.

(c) – (d) No change.

* * * * *

13503. Motions

(a) – (b) No change.

(c) Replying to Responses to Motions

Parties have 5 days from the receipt of a response to a motion to reply to the response unless the responding party agrees to an extension of time, or the Director or the panel decides otherwise. Replies to responses must be served directly on each other party, at the same time and in the same manner. Replies to responses must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

[c] (d) Authority to Decide Motions

(1) – (5) No change.

* * * * *

13504. Motions to Dismiss

(a) Motions to Dismiss Prior to Conclusion of Case in Chief

(1) Motions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged in arbitration.

(2) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(3) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion. Moving parties may reply to responses to motions. Any such reply must be made within 5 days of receipt of a response.

(4) – (11) No change.

(b) – (e) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on December 7, 2010, 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 Margo Hassan, Assistant Chief 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

The Codes specify time periods for a party to respond to a motion,² including a motion to dismiss.³ They do *not* provide expressly for the party that made the original motion (the “moving party”) to reply to a response. Occasionally, the party that made the original motion submits a reply to a response. FINRA’s practice has been to forward the reply to the arbitrators, even when staff already have sent the motion and response to the arbitrators. Since the Codes do not prescribe a time period for replying to responses to motions, there have been instances where arbitrators reviewed the motion papers and even ruled on a motion before receiving a reply, causing confusion and wasting time.

FINRA is proposing to amend Rules 12206 and 13206 (Time Limits), Rules 12503 and 13503 (Motions), and Rules 12504 and 13504 (Motions to Dismiss), to provide a moving party with a five-day period to reply to a response to a motion. The proposed amendments would codify FINRA’s practice relating to replies to responses to

² Rules 12503(b) and 13503(b) (Responding to Motions) provide, generally, that parties have 10 days from the receipt of a written motion to respond to the motion.

³ Rules 12206(b) and 13206(b) (Dismissal under Rule) provide that parties have 30 days to respond to motions. Rules 12504(a) and 13504(a) (Motions to Dismiss Prior to Conclusion of Case in Chief) provide that parties have 45 days to respond to motions.

motions and make it transparent. The proposal would provide parties with an opportunity to brief fully the issues in dispute, and ensure that arbitrators have all of the motion papers before issuing a final decision on the motion.

FINRA considered whether codifying a reply period might encourage additional replies to responses to motions, or cause significant delays in the arbitration proceeding. FINRA believes that a five-day period for replies gives moving parties sufficient time to react to responses to motions without causing significant delays to proceedings.

Currently, FINRA Rules 12512 and 13512 (Subpoenas) provide moving parties with a 10-day period in which to reply to opposing parties' objections to motions. FINRA has not experienced any increase in replies related to subpoenas because of these rules and the 10-day reply period has not caused significant delays.

Further, on June 21, 2010, FINRA revised its practice relating to responses to motions and published a Notice to Parties on its website stating that moving parties have five calendar days from receipt of a response to a motion to submit a reply to the response.⁴ After the five-day period, FINRA forwards the motion, any response to the motion, and any reply to the panel at the same time. If FINRA receives a reply after the five-day period expires, staff forwards the reply to the panel upon its receipt. However, FINRA staff does not delay sending the motion, response to the motion, and reply to the panel after the five-day period expires, and the panel may issue a decision upon receipt of those documents.

⁴

See

<http://www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/P121652>

Based on our experience with the subpoena rules and our revised practice relating to replies to responses, FINRA does not expect the proposal to add a five-day period for replies to responses to motions to result in undue delays.

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 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. FINRA believes that the proposed rule change will assist parties in arbitrations by codifying FINRA's practice relating to replies to responses to motions. The proposed rule change would ensure that parties have an opportunity to brief fully the issues in dispute, and that arbitrators have all of the motion papers before issuing a final decision on the motion.

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 15 U.S.C. 78o-3(b)(6).

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.

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.

⁶ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2011-006)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Motions in Arbitration

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 February 4, 2011, the Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 FINRA Rules 12206, 12503, and 12504 of the Code of Arbitration Procedure for Customer Disputes and Rules 13206, 13503, and 13504 of the Code of Arbitration Procedure for Industry Disputes (collectively, “Codes”), to provide moving parties with a five-day period to reply to responses to motions.

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

The Codes specify time periods for a party to respond to a motion,³ including a motion to dismiss.⁴ They do *not* provide expressly for the party that made the original motion (the “moving party”) to reply to a response. Occasionally, the party that made the original motion submits a reply to a response. FINRA’s practice has been to forward the reply to the arbitrators, even when staff already have sent the motion and response to the arbitrators. Since the Codes do not prescribe a time period for replying to responses to motions, there have been instances where arbitrators reviewed the motion

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⁴ Rules 12206(b) and 13206(b) (Dismissal under Rule) provide that parties have 30 days to respond to motions. Rules 12504(a) and 13504(a) (Motions to Dismiss Prior to Conclusion of Case in Chief) provide that parties have 45 days to respond to motions.

papers and even ruled on a motion before receiving a reply, causing confusion and wasting time.

FINRA is proposing to amend Rules 12206 and 13206 (Time Limits), Rules 12503 and 13503 (Motions), and Rules 12504 and 13504 (Motions to Dismiss), to provide a moving party with a five-day period to reply to a response to a motion. The proposed amendments would codify FINRA's practice relating to replies to responses to motions and make it transparent. The proposal would provide parties with an opportunity to brief fully the issues in dispute, and ensure that arbitrators have all of the motion papers before issuing a final decision on the motion.

FINRA considered whether codifying a reply period might encourage additional replies to responses to motions, or cause significant delays in the arbitration proceeding. FINRA believes that a five-day period for replies gives moving parties sufficient time to react to responses to motions without causing significant delays to proceedings. Currently, FINRA Rules 12512 and 13512 (Subpoenas) provide moving parties with a 10-day period in which to reply to opposing parties' objections to motions. FINRA has not experienced any increase in replies related to subpoenas because of these rules and the 10-day reply period has not caused significant delays.

Further, on June 21, 2010, FINRA revised its practice relating to responses to motions and published a Notice to Parties on its website stating that moving parties have five calendar days from receipt of a response to a motion to submit a reply to the response.⁵ After the five-day period, FINRA forwards the motion, any response to the

⁵ See <http://www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/P121652>

motion, and any reply to the panel at the same time. If FINRA receives a reply after the five-day period expires, staff forwards the reply to the panel upon its receipt. However, FINRA staff does not delay sending the motion, response to the motion, and reply to the panel after the five-day period expires, and the panel may issue a decision upon receipt of those documents.

Based on our experience with the subpoena rules and our revised practice relating to replies to responses, FINRA does not expect the proposal to add a five-day period for replies to responses to motions to result in undue delays.

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. FINRA believes that the proposed rule change will assist parties in arbitrations by codifying FINRA's practice relating to replies to responses to motions. The proposed rule change would ensure that parties have an opportunity to brief fully the issues in dispute, and that arbitrators have all of the motion papers before issuing a final decision on the motion.

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 45 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-2011-006 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2011-006. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2011-006 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

Elizabeth M. Murphy

Secretary

⁷ 17 CFR 200.30-3(a)(12).