

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="31"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2015"/> - * <input type="text" value="003"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	<input type="checkbox"/> 19b-4(f)(6)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

FINRA is filing with the Commission a proposed rule change to amend the Codes of Arbitration Procedure to require that parties give more advance notice before cancelling or postponing a hearing, or be assessed a higher late cancellation fee if such notice is not provided.

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 action.

First Name * <input type="text" value="Mignon"/>	Last Name * <input type="text" value="McLemore"/>
Title * <input type="text" value="Assistant Chief Counsel, FINRA Dispute Resolution"/>	
E-mail * <input type="text" value="mignon.mclemore@finra.org"/>	
Telephone * <input type="text" value="(202) 728-8151"/>	Fax <input type="text" value="(301) 527-4752"/>

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.

(Title *)

Date <input type="text" value="02/05/2015"/>	Senior VP, Chief Counsel, FINRA Dispute Resolution
By <input type="text" value="Kenneth Andrichik"/>	Kenneth Andrichik,

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 EFFF 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 Remove View

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

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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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

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of the 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 Rules 12214 and 12601 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rules 13214 and 13601 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (together, “Codes”) to require that parties give more advance notice before cancelling or postponing a hearing, or be assessed a higher late cancellation fee if such notice is not provided.

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

* * * * *

Customer Code

12214. Payment of Arbitrators

(a) Except as provided in paragraph (b) and in Rule 12800, FINRA will pay the panel an honorarium, as follows:

- no change;
- no change;
- no change; and
- \$[100] 600 for each arbitrator if a hearing session other than a

prehearing conference is postponed within [three business] 10 days before a scheduled hearing session pursuant to Rules 12601(a)(2) and (b)(2).

¹ 15 U.S.C. § 78s (b)(1).

(b) - (e) No change.

12601. Postponement of Hearings

(a) No change.

(b) Postponement Fees

(1) No change.

(2) If a postponement request is made by one or more parties [and granted] within [three business] 10 days before a scheduled hearing session and granted, the party or parties making the request shall pay an additional fee of \$[100] 600 per arbitrator. If more than one party requests the postponement, the arbitrators shall allocate the \$[100] 600 per arbitrator fee among the requesting parties. The arbitrators may allocate all or a portion of the \$[100] 600 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the postponement. In the event that a request results in the postponement of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely postponement request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

(3) No change.

(c) No change.

* * * * *

Industry Code

13214. Payment of Arbitrators

(a) Except as provided in paragraph (b), Rule 13800, and Rule 13806(f), FINRA will pay the panel an honorarium, as follows:

- no change;
- no change;
- no change; and
- \$[100] 600 for each arbitrator if a hearing session other than a

prehearing conference is postponed within [three business] 10 days before a scheduled hearing session pursuant to Rules 13601(a)(2) and (b)(2).

(b) - (e) No change.

13601. Postponement of Hearings

(a) No change.

(b) Postponement Fees

(1) No change.

(2) If a postponement request is made by one or more parties [and granted] within [three business] 10 days before a scheduled hearing session and granted, the party or parties making the request shall pay an additional fee of \$[100] 600 per arbitrator. If more than one party requests the postponement, the arbitrators shall allocate the \$[100] 600 per arbitrator fee among the requesting parties. The arbitrators may allocate all or a portion of the \$[100] 600 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or

contributed to the need for the postponement. In the event that a request results in the postponement of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely postponement request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

(3) No change.

(c) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on December 3, 2014, 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 no later than 30 days following publication of the Regulatory Notice announcing Commission approval.

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

(a) Purpose

Introduction

Under Rules 12601(b)(2) and 13601(b)(2) of the Codes, each arbitrator selected for a case receives a \$100 honorarium when a hearing is postponed or cancelled² within three business days of the scheduled date. However, if the postponement or cancellation occurs more than three business days in advance of the scheduled hearing, the arbitrators do not receive an honorarium.³

FINRA is proposing to amend Rules 12601(b)(2) and 13601(b)(2)⁴ to require that if a postponement or cancellation request is made by one or more parties within 10 days before a scheduled hearing session and granted, the party or parties making the request would pay a fee of \$600 (“Late Cancellation Fee”). Under the proposed rule change, therefore, the Late Cancellation Fee for a three-person arbitration panel would be \$1,800,

² If the parties settle an arbitration case, hearings that were scheduled to occur after settlement are cancelled, and depending on the timing of the cancellation, could result in the assessment of a cancellation fee. See Rules 12902(d) and 13902(d). These rules would not be amended because they incorporate the fees and costs incurred under Rules 12601 and 13601, and, therefore, would incorporate the proposed change to the late cancellation fee.

³ For each postponement agreed to by the parties, or granted upon request of one or more parties, FINRA assesses a postponement fee to the parties, equal to the applicable hearing session fee (“Postponement Fee”). See Rules 12601(b)(1) and 13601(b)(1). This fee is paid to FINRA and not passed through to the arbitrators.

⁴ FINRA would also amend the postponement fee reference in Rules 12214 and 13214.

instead of \$300 under the current rules.⁵ The primary purpose of the proposed rule change is to encourage parties to provide more advance notice of postponements and cancellations, or, in the alternative, to compensate arbitrators more than they are currently paid for lost time and opportunities in the event of a late postponement or cancellation.

Under the proposed rule change, the Late Cancellation Fee would be assessed if a hearing is postponed or cancelled within 10 days before a scheduled hearing session. To simplify the discussion, the following explanation will use the term “cancellation” or a variation thereof to include either scenario.

Background

In FINRA arbitration, once the parties select arbitrators, they hold an initial pre-hearing conference with the parties, usually over the telephone, to discuss procedural issues, the mediation alternative, discovery, and scheduling of hearings.⁶ In many cases, the hearing dates are selected months in advance, thus requiring arbitrators to reserve these dates and forego other opportunities that would result in a conflict with the scheduled dates. FINRA has received many complaints from arbitrators concerning the current late cancellation rule,⁷ which applies when parties postpone, settle in advance of,

⁵ Pursuant to an analysis of FINRA’s data, for the period from September 1, 2013 to August 31, 2014, approximately 80 percent of arbitration cases were heard by a three-person panel. The number of arbitrators that the parties may select for a case typically depends on the amount of the claim. See Rules 12401 and 13401.

⁶ A hearing is a meeting between the parties and the arbitrators of four hours or less to determine the merits of the arbitration. See Rules 12100(m) and 13100(m); see also 12100(n) and 13100(n). A typical day in an arbitration case has two hearing sessions.

⁷ See Rules 12601(b)(2) and 13601(b)(2).

or otherwise cancel a scheduled hearing session within three days of its start date. It is the most frequent complaint Dispute Resolution staff receives from arbitrators.

In fact, when FINRA formed the Dispute Resolution Task Force (“Task Force”) in 2014 to consider possible enhancements to its arbitration and mediation forum, the majority of arbitrator responses to the Task Force’s request for comments suggested that FINRA should address the issue of late hearing cancellation requests.⁸ The current rule is inadequate because the three-day cancellation window does not provide arbitrators, who have committed the dates to hear a case, with enough time to schedule other income-generating opportunities. Moreover, the \$100 honorarium for these late cancellations does not adequately compensate arbitrators for the preparation time expended and the income that would have been earned from conducting a hearing. FINRA has learned that the lack of sufficient notice and compensation is frustrating for arbitrators and is a reason some arbitrators leave FINRA’s roster.

Proposal to Increase Late Cancellation Fees and Cancellation Timeframe

FINRA is proposing, therefore, to amend the Codes⁹ to require that parties give more advance notice before cancelling a hearing, or be assessed a higher Late Cancellation Fee if such notice is not provided. Specifically, FINRA would amend Rule

⁸ The Task Force comprises individuals from the public and industry sectors, who will work together to suggest strategies to enhance the transparency, impartiality and efficiency of FINRA's securities dispute resolution forum for all participants. See FINRA Dispute Resolution Task Force available at <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/MoreonFINRADisputeResolution/P600966>.

⁹ FINRA is proposing to amend Rules 12601 and 12214 of the Customer Code and Rules 13601 and 13214 of the Industry Code. To simplify the explanation, FINRA’s discussion of the proposed changes focuses on changes to the Customer Code rules. However, the proposed changes, and, thus, the discussion also apply to the Industry Code rules.

12601(b)(2) to require that if a cancellation request is made by one or more parties within 10 days before a scheduled hearing session and granted, the party or parties making the request shall pay a fee of \$600 per arbitrator in addition to the Postponement Fee.

First, the proposed rule change would move from three business days to 10 calendar days the timeframe within which parties must cancel hearings to avoid incurring a fee.¹⁰ This change would provide arbitrators with more advance notice than they currently receive, which could give them an opportunity to secure other income-generating opportunities. Further, it could help them minimize the time lost in preparing for their assigned arbitration hearings, which, depending on the number of parties involved and the complexity of the case, could involve many hours of reviewing materials. For example, parties sometimes submit detailed exhibits and legal briefs to support their positions and theories of the case for arbitrators to review in advance of the hearings. Other than the honoraria funded by the Late Cancellation Fee, FINRA does not compensate arbitrators for their preparation time in the event the hearings are cancelled.

Second, the proposed rule change would increase the honorarium for late cancellations from \$100 to \$600 per arbitrator. The amendment would make the honorarium equal to that which arbitrators would have received for one day of hearings,¹¹

¹⁰ This change would make the calculation of deadlines consistent under the Codes. Under the Codes, “day” is defined as a calendar day, not a business day. See Rules 12100(j) and 13100(j).

¹¹ An arbitrator receives an honorarium payment for each hearing session in which the person participates. If two hearing sessions are conducted in one day, an arbitrator would receive \$300 for each session or \$600. See note 6, supra. The SEC approved an increase to arbitrator honoraria in September 2014; the \$300 rate became effective on December 15, 2014 for all cases filed on or after this date. See Securities Exchange Act Release No. 73245 (Sept. 29, 2014), 79 FR

no matter how many consecutive days are cancelled.¹² The fee would be charged to the party or parties making the request.¹³ However, Rule 12601(b)(2) provides that the arbitrators may allocate all or a portion of the fee to the non-requesting party if the arbitrators determine that the non-requesting party caused or contributed to the cancellation. If an extraordinary circumstance prevents a party or parties from making a timely cancellation request, arbitrators may use their discretion to waive the fee.

FINRA notes that there are some mitigation strategies that parties could employ to avoid incurring these fees. As the objective of the proposal is to encourage parties to address issues earlier in their cases, parties can provide notice of a cancellation 10 or more days prior to the first scheduled hearing session. Further, if the parties agree to cancel the hearing inside the 10-day window, then they can negotiate which party pays this fee or a percentage thereof. In addition the rules permit the panel to waive the fees, and they may do so, if the circumstances warrant, like a sudden illness or accident.

Third, the amendment would shift the phrase “and granted” to the end of the first dependent clause in Rule 12601(b)(2) to clarify that the timing of the parties’ cancellation request controls whether the fee is assessed, not the arbitrators’ decision on such request, if a decision is required. For example, the parties may jointly request cancellation of a hearing. A joint request means that the parties to the arbitration agree to cancel the

59876 (Oct. 3, 2014) (Order Approving File No. SR-FINRA-2014-026) (“Honoraria Increase Proposal”).

¹² See Notice to Members 04-53 (Arbitrator Hearing Adjournments), July 2004, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p006140.pdf>.

¹³ If the parties cannot agree on the allocation, the arbitrators typically split the fee among the parties.

hearing and, thus, the arbitrator or panel is not required to decide the request. Under the proposed rule change, if the parties make such a request 10 days or more before a scheduled hearing, they would not be assessed a Late Cancellation Fee.¹⁴ Further, a party may make a cancellation request without the agreement of other parties to the arbitration; in such a case, the arbitrator or panel would be required to decide the party's motion. Under the proposed rule change, if the party makes such a motion 10 days or more before a scheduled hearing, the party would also not be assessed a Late Cancellation Fee, regardless of when the arbitrators act on the request.

Fourth, FINRA notes that this fee is revenue-neutral to FINRA; it is currently passed through to the arbitrators. This practice would not change under the proposed rule change.

Last, FINRA is proposing to make conforming changes to Rule 12214(a), by amending the reference to the Late Cancellation Fee in Rule 12214(a).

The proposed rule change would address further a concern raised by many FINRA arbitrators – that the forum's honoraria are too low. FINRA began the process of increasing arbitrator honoraria by filing the Honoraria Increase Proposal with the SEC in June 2014, which increased the amount that arbitrators receive for one hearing session, among other things.¹⁵ While approval of the honoraria increases was an important step, changes are also needed to the late cancellation rule to further compensate arbitrators for lost opportunity costs as well as time spent in preparing for arbitration hearings that do not take place. Given arbitrators' numerous responsibilities in preparing for, managing,

¹⁴ See Rules 12601(a)(1) and 13601(a)(1).

¹⁵ See note 11, supra.

and conducting arbitrations, FINRA believes the proposed changes to the late cancellation rule as well as the recently-implemented honoraria increases would better compensate the arbitrators for their time commitments and their service to the forum.

FINRA acknowledges that customers are likely to pay some of the increased Late Cancellation Fee under the proposed rule change. As a result, the proposed rule change might have an effect on settlement negotiations, especially if the potential settlement amount is small compared to the Late Cancellation Fee. For example, in cases where negotiations extend past the ten-day deadline, the increased cost of cancellation, under the proposed rule change, may affect the amount agreed upon in settlement or even the probability of settlement. FINRA notes that the forum's rules are designed to help parties resolve their disputes fairly and efficiently. Parties pursue settlement when they believe it is in their financial interest to do so. The proposed fee increase would be another factor that parties would weigh in determining when or whether to settle or to proceed to hearing.

FINRA believes, however, that the proposed changes would result in fewer late cancellations by the parties, as the higher Late Cancellation Fee would provide parties with an incentive to consider and begin settlement negotiations earlier in the process, if such an approach is in their interests. In addition, the proposed changes could help FINRA minimize arbitrator turnover by addressing their concerns that the current fee does not adequately compensate them for time spent and opportunities lost.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of

Section 15A(b)(6) of the Act,¹⁶ 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, and Section 15A(b)(5) of the Act,¹⁷ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change appropriately allocates the proposed fee increase among those parties that cancel hearings on short notice. The Late Cancellation Fee would be paid by the parties, and passed through to the arbitrators to provide them with more compensation for preparation time expended and lost opportunities in the event of a late cancellation. FINRA believes, therefore, that the proposed Late Cancellation Fee is an equitable allocation of a reasonable fee to use the forum. While arbitrators would typically allocate the fee to the requesting party or parties, FINRA rules permit the arbitrators to allocate all, or a portion of the fee, to the non-requesting party, if the arbitrators determine that the non-requesting party caused or contributed to the late cancellation. Moreover, the Late Cancellation Fee can be avoided altogether if the parties provide 10 or more days' advance notice of such a cancellation.

Finally, FINRA believes that proposed rule change will protect investors and the public interest by improving FINRA's ability to retain qualified arbitrators willing to devote the time and effort necessary to consider thoroughly all arbitration issues

¹⁶ 15 U.S.C. § 78o-3 (b)(6).

¹⁷ 15 U.S.C. § 78o-3(b)(5).

presented, which, FINRA believes, is an essential element for FINRA to achieve its mission of investor protection and market integrity.

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.¹⁸

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

Not applicable.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

¹⁸ 15 U.S.C. 78s(b)(2).

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

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-2015-003)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend the Codes of Arbitration Procedure to Increase the Late Cancellation Fee

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 5, 2015, 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 Rules 12214 and 12601 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rules 13214 and 13601 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (together, “Codes”) to require that parties give more advance notice before cancelling or postponing a hearing, or be assessed a higher late cancellation fee if such notice is not provided.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

* * * * *

Customer Code

12214. Payment of Arbitrators

(a) Except as provided in paragraph (b) and in Rule 12800, FINRA will pay the panel an honorarium, as follows:

- no change;
- no change;
- no change; and
- \$[100] 600 for each arbitrator if a hearing session other than a

prehearing conference is postponed within [three business] 10 days before a scheduled hearing session pursuant to Rules 12601(a)(2) and (b)(2).

(b) - (e) No change.

12601. Postponement of Hearings

(a) No change.

(b) Postponement Fees

(1) No change.

(2) If a postponement request is made by one or more parties [and granted] within [three business] 10 days before a scheduled hearing session and granted, the party or parties making the request shall pay an additional fee of \$[100] 600 per arbitrator. If more than one party requests the postponement, the arbitrators shall allocate the \$[100] 600 per arbitrator fee

among the requesting parties. The arbitrators may allocate all or a portion of the \$[100] 600 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the postponement. In the event that a request results in the postponement of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely postponement request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

(3) No change.

(c) No change.

* * * * *

Industry Code

13214. Payment of Arbitrators

(a) Except as provided in paragraph (b), Rule 13800, and Rule 13806(f),

FINRA will pay the panel an honorarium, as follows:

- no change;
- no change;
- no change; and
- \$[100] 600 for each arbitrator if a hearing session other than a

prehearing conference is postponed within [three business] 10 days before a scheduled hearing session pursuant to Rules 13601(a)(2) and (b)(2).

(b) - (e) No change.

13601. Postponement of Hearings

(a) No change.

(b) Postponement Fees

(1) No change.

(2) If a postponement request is made by one or more parties [and granted] within [three business] 10 days before a scheduled hearing session and granted, the party or parties making the request shall pay an additional fee of \$[100] 600 per arbitrator. If more than one party requests the postponement, the arbitrators shall allocate the \$[100] 600 per arbitrator fee among the requesting parties. The arbitrators may allocate all or a portion of the \$[100] 600 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the postponement. In the event that a request results in the postponement of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely postponement request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

(3) No change.

(c) No change.

* * * * *

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

Introduction

Under Rules 12601(b)(2) and 13601(b)(2) of the Codes, each arbitrator selected for a case receives a \$100 honorarium when a hearing is postponed or cancelled³ within three business days of the scheduled date. However, if the postponement or cancellation occurs more than three business days in advance of the scheduled hearing, the arbitrators do not receive an honorarium.⁴

³ If the parties settle an arbitration case, hearings that were scheduled to occur after settlement are cancelled, and depending on the timing of the cancellation, could result in the assessment of a cancellation fee. See Rules 12902(d) and 13902(d). These rules would not be amended because they incorporate the fees and costs incurred under Rules 12601 and 13601, and, therefore, would incorporate the proposed change to the late cancellation fee.

⁴ For each postponement agreed to by the parties, or granted upon request of one or more parties, FINRA assesses a postponement fee to the parties, equal to the applicable hearing session fee (“Postponement Fee”). See Rules 12601(b)(1) and 13601(b)(1). This fee is paid to FINRA and not passed through to the arbitrators.

FINRA is proposing to amend Rules 12601(b)(2) and 13601(b)(2)⁵ to require that if a postponement or cancellation request is made by one or more parties within 10 days before a scheduled hearing session and granted, the party or parties making the request would pay a fee of \$600 (“Late Cancellation Fee”). Under the proposed rule change, therefore, the Late Cancellation Fee for a three-person arbitration panel would be \$1,800, instead of \$300 under the current rules.⁶ The primary purpose of the proposed rule change is to encourage parties to provide more advance notice of postponements and cancellations, or, in the alternative, to compensate arbitrators more than they are currently paid for lost time and opportunities in the event of a late postponement or cancellation.

Under the proposed rule change, the Late Cancellation Fee would be assessed if a hearing is postponed or cancelled within 10 days before a scheduled hearing session. To simplify the discussion, the following explanation will use the term “cancellation” or a variation thereof to include either scenario.

Background

In FINRA arbitration, once the parties select arbitrators, they hold an initial pre-hearing conference with the parties, usually over the telephone, to discuss procedural issues, the mediation alternative, discovery, and scheduling of hearings.⁷ In many cases, the hearing dates are selected months in advance, thus requiring arbitrators to reserve

⁵ FINRA would also amend the postponement fee reference in Rules 12214 and 13214.

⁶ Pursuant to an analysis of FINRA’s data, for the period from September 1, 2013 to August 31, 2014, approximately 80 percent of arbitration cases were heard by a three-person panel. The number of arbitrators that the parties may select for a case typically depends on the amount of the claim. See Rules 12401 and 13401.

⁷ A hearing is a meeting between the parties and the arbitrators of four hours or less to determine the merits of the arbitration. See Rules 12100(m) and 13100(m); see also 12100(n) and 13100(n). A typical day in an arbitration case has two hearing sessions.

these dates and forego other opportunities that would result in a conflict with the scheduled dates. FINRA has received many complaints from arbitrators concerning the current late cancellation rule,⁸ which applies when parties postpone, settle in advance of, or otherwise cancel a scheduled hearing session within three days of its start date. It is the most frequent complaint Dispute Resolution staff receives from arbitrators.

In fact, when FINRA formed the Dispute Resolution Task Force (“Task Force”) in 2014 to consider possible enhancements to its arbitration and mediation forum, the majority of arbitrator responses to the Task Force’s request for comments suggested that FINRA should address the issue of late hearing cancellation requests.⁹ The current rule is inadequate because the three-day cancellation window does not provide arbitrators, who have committed the dates to hear a case, with enough time to schedule other income-generating opportunities. Moreover, the \$100 honorarium for these late cancellations does not adequately compensate arbitrators for the preparation time expended and the income that would have been earned from conducting a hearing. FINRA has learned that the lack of sufficient notice and compensation is frustrating for arbitrators and is a reason some arbitrators leave FINRA’s roster.

Proposal to Increase Late Cancellation Fees and Cancellation Timeframe

⁸ See Rules 12601(b)(2) and 13601(b)(2).

⁹ The Task Force comprises individuals from the public and industry sectors, who will work together to suggest strategies to enhance the transparency, impartiality and efficiency of FINRA's securities dispute resolution forum for all participants. See FINRA Dispute Resolution Task Force available at <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/MoreonFINRADisputeResolution/P600966>.

FINRA is proposing, therefore, to amend the Codes¹⁰ to require that parties give more advance notice before cancelling a hearing, or be assessed a higher Late Cancellation Fee if such notice is not provided. Specifically, FINRA would amend Rule 12601(b)(2) to require that if a cancellation request is made by one or more parties within 10 days before a scheduled hearing session and granted, the party or parties making the request shall pay a fee of \$600 per arbitrator in addition to the Postponement Fee.

First, the proposed rule change would move from three business days to 10 calendar days the timeframe within which parties must cancel hearings to avoid incurring a fee.¹¹ This change would provide arbitrators with more advance notice than they currently receive, which could give them an opportunity to secure other income-generating opportunities. Further, it could help them minimize the time lost in preparing for their assigned arbitration hearings, which, depending on the number of parties involved and the complexity of the case, could involve many hours of reviewing materials. For example, parties sometimes submit detailed exhibits and legal briefs to support their positions and theories of the case for arbitrators to review in advance of the hearings. Other than the honoraria funded by the Late Cancellation Fee, FINRA does not compensate arbitrators for their preparation time in the event the hearings are cancelled.

Second, the proposed rule change would increase the honorarium for late cancellations from \$100 to \$600 per arbitrator. The amendment would make the

¹⁰ FINRA is proposing to amend Rules 12601 and 12214 of the Customer Code and Rules 13601 and 13214 of the Industry Code. To simplify the explanation, FINRA's discussion of the proposed changes focuses on changes to the Customer Code rules. However, the proposed changes, and, thus, the discussion also apply to the Industry Code rules.

¹¹ This change would make the calculation of deadlines consistent under the Codes. Under the Codes, "day" is defined as a calendar day, not a business day. See Rules 12100(j) and 13100(j).

honorarium equal to that which arbitrators would have received for one day of hearings,¹² no matter how many consecutive days are cancelled.¹³ The fee would be charged to the party or parties making the request.¹⁴ However, Rule 12601(b)(2) provides that the arbitrators may allocate all or a portion of the fee to the non-requesting party if the arbitrators determine that the non-requesting party caused or contributed to the cancellation. If an extraordinary circumstance prevents a party or parties from making a timely cancellation request, arbitrators may use their discretion to waive the fee.

FINRA notes that there are some mitigation strategies that parties could employ to avoid incurring these fees. As the objective of the proposal is to encourage parties to address issues earlier in their cases, parties can provide notice of a cancellation 10 or more days prior to the first scheduled hearing session. Further, if the parties agree to cancel the hearing inside the 10-day window, then they can negotiate which party pays this fee or a percentage thereof. In addition the rules permit the panel to waive the fees, and they may do so, if the circumstances warrant, like a sudden illness or accident.

Third, the amendment would shift the phrase “and granted” to the end of the first dependent clause in Rule 12601(b)(2) to clarify that the timing of the parties’ cancellation

¹² An arbitrator receives an honorarium payment for each hearing session in which the person participates. If two hearing sessions are conducted in one day, an arbitrator would receive \$300 for each session or \$600. See note 6, supra. The SEC approved an increase to arbitrator honoraria in September 2014; the \$300 rate became effective on December 15, 2014 for all cases filed on or after this date. See Securities Exchange Act Release No. 73245 (Sept. 29, 2014), 79 FR 59876 (Oct. 3, 2014) (Order Approving File No. SR-FINRA-2014-026) (“Honoraria Increase Proposal”).

¹³ See *Notice to Members* 04-53 (Arbitrator Hearing Adjournments), July 2004, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p006140.pdf>.

¹⁴ If the parties cannot agree on the allocation, the arbitrators typically split the fee among the parties.

request controls whether the fee is assessed, not the arbitrators' decision on such request, if a decision is required. For example, the parties may jointly request cancellation of a hearing. A joint request means that the parties to the arbitration agree to cancel the hearing and, thus, the arbitrator or panel is not required to decide the request. Under the proposed rule change, if the parties make such a request 10 days or more before a scheduled hearing, they would not be assessed a Late Cancellation Fee.¹⁵ Further, a party may make a cancellation request without the agreement of other parties to the arbitration; in such a case, the arbitrator or panel would be required to decide the party's motion. Under the proposed rule change, if the party makes such a motion 10 days or more before a scheduled hearing, the party would also not be assessed a Late Cancellation Fee, regardless of when the arbitrators act on the request.

Fourth, FINRA notes that this fee is revenue-neutral to FINRA; it is currently passed through to the arbitrators. This practice would not change under the proposed rule change.

Last, FINRA is proposing to make conforming changes to Rule 12214(a), by amending the reference to the Late Cancellation Fee in Rule 12214(a).

The proposed rule change would address further a concern raised by many FINRA arbitrators – that the forum's honoraria are too low. FINRA began the process of increasing arbitrator honoraria by filing the Honoraria Increase Proposal with the SEC in June 2014, which increased the amount that arbitrators receive for one hearing session, among other things.¹⁶ While approval of the honoraria increases was an important step, changes are also needed to the late cancellation rule to further compensate arbitrators for

¹⁵ See Rules 12601(a)(1) and 13601(a)(1).

¹⁶ See note 12, *supra*.

lost opportunity costs as well as time spent in preparing for arbitration hearings that do not take place. Given arbitrators' numerous responsibilities in preparing for, managing, and conducting arbitrations, FINRA believes the proposed changes to the late cancellation rule as well as the recently-implemented honoraria increases would better compensate the arbitrators for their time commitments and their service to the forum.

FINRA acknowledges that customers are likely to pay some of the increased Late Cancellation Fee under the proposed rule change. As a result, the proposed rule change might have an effect on settlement negotiations, especially if the potential settlement amount is small compared to the Late Cancellation Fee. For example, in cases where negotiations extend past the ten-day deadline, the increased cost of cancellation, under the proposed rule change, may affect the amount agreed upon in settlement or even the probability of settlement. FINRA notes that the forum's rules are designed to help parties resolve their disputes fairly and efficiently. Parties pursue settlement when they believe it is in their financial interest to do so. The proposed fee increase would be another factor that parties would weigh in determining when or whether to settle or to proceed to hearing.

FINRA believes, however, that the proposed changes would result in fewer late cancellations by the parties, as the higher Late Cancellation Fee would provide parties with an incentive to consider and begin settlement negotiations earlier in the process, if such an approach is in their interests. In addition, the proposed changes could help FINRA minimize arbitrator turnover by addressing their concerns that the current fee does not adequately compensate them for time spent and opportunities lost.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁷ 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, and Section 15A(b)(5) of the Act,¹⁸ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change appropriately allocates the proposed fee increase among those parties that cancel hearings on short notice. The Late Cancellation Fee would be paid by the parties, and passed through to the arbitrators to provide them with more compensation for preparation time expended and lost opportunities in the event of a late cancellation. FINRA believes, therefore, that the proposed Late Cancellation Fee is an equitable allocation of a reasonable fee to use the forum. While arbitrators would typically allocate the fee to the requesting party or parties, FINRA rules permit the arbitrators to allocate all, or a portion of the fee, to the non-requesting party, if the arbitrators determine that the non-requesting party caused or contributed to the late cancellation. Moreover, the Late Cancellation Fee can be avoided altogether if the parties provide 10 or more days' advance notice of such a cancellation.

¹⁷ 15 U.S.C. § 78o-3 (b)(6).

¹⁸ 15 U.S.C. § 78o-3(b)(5).

Finally, FINRA believes that proposed rule change will protect investors and the public interest by improving FINRA's ability to retain qualified arbitrators willing to devote the time and effort necessary to consider thoroughly all arbitration issues presented, which, FINRA believes, is an essential element for FINRA to achieve its mission of investor protection and market integrity.

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.

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 or disapprove 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-2015-003 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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-2015-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Brent J. Fields
Secretary

¹⁹ 17 CFR 200.30-3(a)(12).