

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2016-12 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-IEX-2016-12. This file number should be included in the subject line if email 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet Web site at www.iextrading.com. 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-IEX-2016-12 and should be submitted on or before September 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78557; File No. SR-FINRA-2016-015]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change Amending Rule 12904 (Awards) of the Code of Arbitration Procedure for Customer Disputes and Rule 13904 (Awards) of the Code of Arbitration Procedure for Industry Disputes To Permit Award Offsets in Arbitration, as Modified by Amendment No. 1

August 11, 2016.

I. Introduction

On May 3, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to provide that absent specification to the contrary in an arbitration award, when arbitrators order opposing parties to pay each other damages, the monetary awards shall offset, and the party that owes the larger amount shall pay the net difference.

The proposed rule change was published for comment in the **Federal Register** on May 23, 2016.³ The public comment period closed on June 13, 2016. On July 1, 2016, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to August 19, 2016. The Commission received nine comment letters in response to the Notice.⁴ On July 15,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 77844 (May 17, 2016), 81 FR 32359 (May 23, 2016) (File No. SR-FINRA-2016-015) ("Notice").

⁴ See Letters from Leonard Steiner, Steiner & Libo, dated May 9, 2016 ("Steiner Letter"); Steven B. Caruso, Maddox Hargett Caruso, P.C., dated May 18, 2016 ("Caruso Letter"); George H. Friedman, Adjunct Professor of Law, Fordham Law School, and immediate past FINRA Director of Arbitration, dated May 23, 2016 ("Friedman Letter"); James L. Komie, Schuyler, Roche and Crisham, P.C., dated June 7, 2016 ("Komie Letter"); Thomas E. Wall, Attorney at Law and Public Arbitrator for FINRA, dated June 11, 2016 ("Wall Letter"); Kevin Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated June 13, 2016 ("SIFMA Letter"); David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute, dated June 13, 2016 ("FSI Letter"); Hugh Berkson,

2016, FINRA responded to the comment letters received in response to the Notice and filed an amendment to the proposed rule change ("Amendment No. 1").⁵

This order provides notice of filing of Amendment No. 1 and approves the proposal, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change*Original Proposal*

FINRA Rule 12904 (Awards) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rule 13904 (Awards) of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") (together, "Codes") address awards issued by arbitrators at the FINRA Office of Dispute Resolution forum. Currently, these rules provide, among other matters, that awards must be in writing and signed by a majority of the arbitrators or as required by applicable law. The rules itemize required elements of awards, including a statement of the damages awarded, and provide that all monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed in a court of competent jurisdiction.⁶ Rules 12904 and 13904 do not, however, require arbitrators to specify whether opposing parties in a case should offset amounts awarded to each other.

Accordingly, FINRA has stated that when arbitrators order opposing parties in a case to pay each other monetary damages, but do not specify whether the party that owes the higher amount must pay the net difference, the lack of clarity has resulted in parties asking arbitrators to revise an award after a case has closed or in post-award litigation.⁷ For example, arbitrators may award damages to a firm because an associated person failed to pay money owed on a promissory note and award a lesser amount to the associated person on a counterclaim. If the arbitrators do not specify that awards should be offset, the firm may be required to pay the

President, Public Investors Arbitration Bar Association, dated June 13, 2016 ("PIABA Letter"); Bev Kennedy, Oakville, Ontario, Canada, dated June 26, 2016 ("Kennedy Letter"). Comment letters are available at www.sec.gov.

⁵ See Letter from Margo A. Hassan, Associate Chief Counsel, FINRA, to the Commission, dated July 15, 2016 ("FINRA Letter"). The FINRA Letter and the text of Amendment No. 1 are available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, at the Commission's Web site at <http://www.sec.gov/rules/sro/finra/2015/34-75655.pdf>, and at the Commission's Public Reference Room.

⁶ See Notice at 32359.

⁷ See *id.*

³¹ 17 CFR 200.30-3(a)(12).

counterclaim even if the associated person refuses or is unable to pay the larger amount.⁸ FINRA states that the offset issue could also arise in customer cases, such as those involving margin account disputes.⁹

FINRA is proposing to amend Rules 12904(j) and 13904(j) to provide that, absent specification to the contrary in an award, when arbitrators order opposing parties to pay each other damages, the monetary awards shall offset, and the party that owes the larger amount shall pay the net difference.¹⁰

FINRA is also proposing to replace the bullets in Rules 12904 and 13904 with numbers in order to make it easier to identify and cite subparts of the rule.¹¹

Proposal as Modified by Amendment No. 1

In response to comments¹² (discussed below), FINRA is proposing to amend proposed Rules 12904(j) and 13904(j), to provide that, absent specification to the contrary in an award, when arbitrators order opposing parties to make payments to one another, the monetary awards shall offset, and the party assessed the larger amount shall pay the net difference. The proposed amendment would effectively replace the word “damages” with “payments” in order to capture those portions of awards attributable to amounts other than damages (e.g., costs and fees).

III. Comment Summary and FINRA’s Response

As noted above, the Commission received nine comment letters on the proposed rule change¹³ and a response letter from FINRA.¹⁴ As discussed in more detail below, six of the nine commenters expressed support for the proposal;¹⁵ two of the nine commenters expressed opposition to the proposed rule change;¹⁶ and, one commenter did not address the subject matter of the proposal.¹⁷

Default Favoring Award Offsets

Six commenters supported a default in favor of award offsets,¹⁸ stating,

among other things, that the proposal “is a fair, equitable and reasonable approach,”¹⁹ “would . . . provide useful guidance to parties in . . . drafting their pleading,”²⁰ “would promote the finality of arbitration awards by reducing the need for post-award court litigation seeking to modify awards to provide for offset,”²¹ “is a positive step forward in enhancing and improving the FINRA Dispute Resolution Process,”²² “is fair and appropriate and offers an important clarification,”²³ and “makes common sense.”²⁴

Two commenters opposed providing a default in favor of award offsets on the basis that parties already have the ability to request, and do request, that panels “offset the competing claims in rendering their final awards.”²⁵ In addition, one of these commenters stated that “[i]f the panel decides not to do an offset, it is not for FINRA to mandate one.”²⁶

In its response, FINRA stated its belief “that the proposed rule change will eliminate ambiguity and reduce the risk of post-award disputes.”²⁷ FINRA further responded that the proposed change “would likely reduce legal expenses to the party owed greater damages by eliminating the need to apply for the reopening of the case or going to court to seek award offsets, or seek other redress.”²⁸ Finally, FINRA noted that the “proposed rule does not override arbitrator discretion” and stated that if the proposal is approved, “FINRA will alert arbitrators to the amendment and will revise the Award Information Sheet to inform arbitrators of the offset default when arbitrators are silent on the issue.”²⁹

Amendment Requests

Two of the six commenters supporting FINRA’s proposal suggested that FINRA also address additional related concerns.³⁰ One commenter generally in support of the proposal urged FINRA to also address the issue of unpaid arbitration awards for investors by implementing a national recovery pool.³¹ In response to this suggestion, FINRA stated that the “issue

of unpaid awards is beyond the scope of the proposed rule change.”³² Another commenter “strongly supported” the proposal, but noted that the proposal as drafted would have the effect of limiting the default in favor of offset to only those awards specifically characterized by arbitrators as “damages.”³³ The commenter noted that arbitration awards, in addition to damages, may “consist of, and be characterized as, damages, costs, fees, etc.”³⁴ The commenter expressed its belief that the “[p]roposal was never intended to be strictly limited to ‘damages’ offsets,” and therefore requested that FINRA revise the proposal “so that it is not susceptible to such a narrow reading” by: (i) Replacing the phrase “pay each other damages” in the proposal with “make payments to one another,” and (ii) replacing the phrase “that owes” with “assessed.”³⁵ In its response, FINRA agreed “that the proposal was not intended to be strictly limited to ‘damages’ offsets” and proposed to amend the proposed rule change “for purposes of clarity” as set forth in the previous sentence.³⁶

IV. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment No. 1, the comment letters, and FINRA’s response to the comments, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.³⁷ Specifically, the Commission finds that the rule change is consistent with section 15A(b)(6) of the Exchange Act,³⁸ which requires, among other things, that FINRA rules 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.

As stated in the Notice, FINRA believes that “providing a default in favor of offset when arbitrators fail to address the issue in an award would benefit forum users by eliminating ambiguity and reducing the risk of post-

⁸ See *id.* See also, e.g., *UBS Financial Services, Inc. (UBS) v. Thomas A. Mann (Mann)*, No. 2:2014cv10621, 2014 WL 1746249 (E.D. Mich. Apr. 30, 2014).

⁹ See Notice at 32359.

¹⁰ See *id.*

¹¹ See *id.*

¹² See SIFMA Letter at 2.

¹³ See *supra* note 4.

¹⁴ See *supra* note 5.

¹⁵ See Caruso Letter, Friedman Letter, Komie

Letter, SIFMA Letter, FSI Letter, and PIABA Letter.

¹⁶ See Steiner Letter and Wall Letter.

¹⁷ See Kennedy Letter.

¹⁸ See *supra* note 15.

¹⁹ Caruso Letter.

²⁰ Friedman Letter.

²¹ Komie Letter.

²² FSI Letter.

²³ SIFMA Letter.

²⁴ PIABA Letter.

²⁵ See Steiner Letter; see also Wall Letter.

²⁶ Steiner Letter.

²⁷ See FINRA Letter at 2.

²⁸ See *id.*

²⁹ See *id.*

³⁰ See PIABA Letter and SIFMA Letter.

³¹ See PIABA Letter at 3.

³² See FINRA Letter at 2.

³³ See SIFMA Letter at 2.

³⁴ See *id.*

³⁵ See *id.*

³⁶ See FINRA Letter at 3–4.

³⁷ In approving this rule change, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁸ 15 U.S.C. 78o–3(b)(6).

award disputes.”³⁹ More specifically, FINRA believes that the proposed rule change will “mitigate the risk of failure to pay by an opposing party that may arise when multiple parties in a dispute are found to owe non-equivalent awards simultaneously.”⁴⁰ Consequently, FINRA believes that the proposal would “likely reduce legal expenses to the party owed greater damages by eliminating the need to apply for the reopening of the case or going to court to seek award offsets, or seek other redress.”⁴¹

The Commission notes that six commenters were generally supportive of the proposal. One of those commenters recommended FINRA amend the proposal to clarify the intent of the proposal—that it was meant to address all payments ordered made to opposing parties in an arbitration and not just damages⁴²—and FINRA agreed.⁴³ The Commission further notes that one of the commenters that generally supported the proposal also recommended that FINRA implement a national recovery pool for unpaid arbitration awards,⁴⁴ which the Commission believes is outside the scope of the current proposal.

The Commission recognizes two commenters’ objections to the proposal on the basis that a default in favor of award offsets is not necessary because the parties may already request offsets.⁴⁵ The Commission also recognizes, however, FINRA’s belief that the proposal will “eliminate ambiguity,” “reduce the risk of post-award disputes,” and “likely reduce legal expenses to the party owed greater damages by eliminating the need to apply for the reopening of the case or going to court to seek award offsets, or seek other redress.”⁴⁶ The Commission further recognizes, as FINRA pointed out in its response, that the proposal “does not override arbitrator discretion.”⁴⁷ Arbitrators are thus still free to decline to offset awards if they deem it inappropriate.

Taking into consideration the comments and FINRA’s response and proposed amendment, the Commission believes that the proposal is consistent with the Exchange Act. The Commission believes that the proposal will help protect investors and the public interest by streamlining the

payment of arbitration awards in instances where parties are ordered to make payments to one another, without overriding arbitrator discretion. The Commission further believes that FINRA’s response, as discussed in more detail above, appropriately addressed commenters’ concerns and adequately explained its reasons for modifying its proposal to clarify that the default in favor of award offsets would apply to all awards however characterized by the arbitrator. The Commission believes that the approach proposed by FINRA is appropriate and designed to protect investors and the public interest, consistent with section 15A(b)(6) of the Exchange Act. For these reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

V. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as modified by Amendment No. 1, is consistent with the Exchange 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 email to rule-comments@sec.gov. Please include File Number SR–FINRA–2016–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–FINRA–2016–015. This file number should be included on the subject line if email 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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–2016–015 and should be submitted on or before September 7, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. The revisions made to the proposal in Amendment No. 1 changed how amounts ordered by arbitrators to be paid to opposing parties would be calculated for purposes of offsetting payments to one another. In particular, the proposed amendment would effectively replace the word “damages” with “payments” in order to capture those portions of awards attributable to amounts other than damages (*e.g.*, costs and fees).⁴⁸ The Commission believes that this modification responds to one of the primary concerns raised by commenters on the proposal that the proposal was never intended to be strictly limited to offsetting “damages.”⁴⁹ Therefore, the Commission believes that the proposed amendment clarifies the intent of the proposal.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Exchange Act,⁵⁰ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VII. Conclusion

IT IS THEREFORE ORDERED pursuant to section 19(b)(2)⁵¹ of the Exchange Act that the proposal (SR–FINRA–2016–015), as modified by Amendment No. 1, be and hereby is approved on an accelerated basis.

⁴⁸ See FINRA Letter; see also proposed FINRA Rules 12904(j) and 13904(j).

⁴⁹ See SIFMA Letter; see all FINRA Letters.

⁵⁰ 15 U.S.C. 78s(b)(2).

⁵¹ *Id.*

³⁹ Notice at 32360.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See SIFMA Letter.

⁴³ See FINRA Letter.

⁴⁴ See PIABA Letter.

⁴⁵ See Steiner Letter; see also Wall Letter.

⁴⁶ See FINRA Letter at 2.

⁴⁷ See *id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵²

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-19587 Filed 8-16-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78543; File No. SR-BatsBZX-2016-45]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Logical Port Fees

August 11, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 29, 2016, Bats BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange’s Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend its fee schedule to modify the billing policy for the logical port fees. The Exchange currently charges for logical ports (including Multicast PITCH Spin Server and GRP ports) \$500 per port per month. A logical port represents a port established by the Exchange within the Exchange’s system for trading and billing purposes. Each logical port established is specific to a Member or non-Member and grants that Member or non-Member the ability to operate a specific application, such as FIX order entry or PITCH data receipt. The Exchange’s Multicast PITCH data feed is available from two primary feeds, identified as the “A feed” and the “C feed”, which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant feeds, identified as the “B feed” and the “D feed”. Logical port fees are limited to logical ports in the Exchange’s primary data center and no logical port fees are assessed for redundant secondary data center ports. The Exchange assesses the monthly per logical port fees to all Member’s and non-Member’s logical ports.

The Exchange proposes to clarify within its fee schedule how monthly fees for logical ports may be pro-rated. As proposed, new requests will be pro-rated for the first month of service. Cancellation requests are billed in full month increments as firms are required to pay for the service for the remainder of the month, unless the session is terminated within the first month of service.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on August 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.⁶ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The proposed rule change seeks to provide clarity to subscribers regarding the Exchange’s pro-rata billing policy for logical ports by describing how logical port fees may be pro-rated for a new request and upon cancellation. The Exchange believes that the proposed pro-rata billing of fees for logical ports is reasonable in that it is similar to how port fees are pro-rated by the Nasdaq Stock Market LLC (“Nasdaq”).⁸

The Exchange operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of Members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected Members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange’s data indirectly. Accordingly, an exchange charging excessive fees would stand to lose not only connectivity revenues, but also revenues associated with the execution of orders routed to it by affected members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic

⁵² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ See Nasdaq Price List—Trade Connectivity available at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#connectivity>. The Exchange notes that, unlike as proposed by the Exchange, Nasdaq does not pro-rate where the session is terminated within the first month of service.