

Required fields are shown with yellow backgrounds and asterisks.

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| Page 1 of * 4 | SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4 | File No.* SR - 2016 - * 015 Amendment No. (req. for Amendments *) 1 |
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Filing by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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|---------------------------------------|--|--|---|---|---|
| Initial * <input type="checkbox"/> | Amendment * <input checked="" 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"/> |
| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> | Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <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) | | |

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| 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"/> | |

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| 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 *).

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 * Margo Last Name * Hassan

Title * Associate Chief Counsel

E-mail * margo.hassan@finra.org

Telephone * (212) 858-4481 Fax (301) 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.

(Title *)

Date 07/18/2016 SVP, Chief Counsel, FINRA Office of Dispute Resolution

By Kenneth Andrichik

(Name *)

Ken Andrichik, Ken.Andrichik@Finra.Org

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 *

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

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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, 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

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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.



Margo Hassan
Associate Chief Counsel

Direct: (212) 858-4481
Fax: (301) 527-4761

July 15, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2016-015 – Proposed Rule Change Relating to Award Offsets in Arbitration; Response to Comments and Partial Amendment No. 1

Dear Mr. Fields:

The letter responds to comments submitted to the Securities and Exchange Commission (“Commission”) regarding the above-referenced filing. In this filing, FINRA is proposing to amend Rule 12904 of the Code of Arbitration Procedure for Customer Disputes and Rule 13904 of the Code of Arbitration Procedure for Industry Disputes, 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. The proposed rule change was published for comment in the Federal Register on May 23, 2016.¹

The Commission received eight comment letters in response to the publication of the proposed rule change in the Federal Register.² A majority of commenters support the proposed rule change with four commenters unequivocally in favor,³ and two opposed.⁴ Two

¹ See Securities Exchange Act Release No. 77844 (May 17, 2016), 81 FR 32359 (May 23, 2016) (Notice of Filing of File No. SR-FINRA-2016-015).

² See Letter from Leonard Steiner, Esq., Steiner & Libo, P.C., dated May 9, 2016 (“Steiner”); Letter from Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated May 18, 2016 (“Caruso”); Letter from George H. Friedman, Esq., Adjunct Professor of Law, Fordham Law School, dated May 23, 2016 (“Friedman”); Letter from James L. Komie, Esq., Schuyler, Roche and Crisham, P.C., dated June 7, 2016 (“Komie”); Letter from Kevin M. Carroll, Esq., Securities Industry and Financial Markets Association, dated June 9, 2016 (“SIFMA”); Letter from David T. Bellaire, Esq., Financial Services Institute, dated June 13, 2016 (“FSI”); Letter from Hugh D. Berkson, Esq., Public Investors Arbitration Bar Association, dated June 13, 2016 (“PIABA”); Letter from Bev Kennedy, Oakville Ontario, Canada, dated June 26, 2016 (“Kennedy”).

³ See Caruso, Friedman, Komie and FSI.

⁴ See Wall and Steiner.

commenters support the proposed rule change, but ask FINRA to address concerns specified in their letters.⁵ One commenter did not address the substance of the proposed rule change.⁶

The following are FINRA's responses, by topic, to the commenters' concerns.

Providing a Default in Favor of Award Offsets

The letters in support of providing a default in favor of award offsets when arbitrators are silent on the issue state, among other matters, that the proposed rule change makes common sense,⁷ would provide a fair, equitable and reasonable approach,⁸ promote greater fairness in the arbitration process,⁹ provide useful guidance to parties in drafting pleadings,¹⁰ and reduce legal expenses for the party assessed the greater amount.¹¹

Steiner and Wall opposed providing a default in favor of award offsets, stating that parties already request award offsets in their pleadings. Steiner contended that "attorneys for broker-dealers are highly competent and always ask panels to offset the competing claims in rendering their final awards."

As stated in the rule filing, FINRA believes that the proposed rule change will eliminate ambiguity and reduce the risk of post-award disputes. Moreover, FINRA believes that the proposed rule 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. The default is consistent with the common practice described by Steiner and Wall.

The proposed rule does not override arbitrator discretion. If the Commission approves the proposed rule change, 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.

Unpaid Arbitration Awards

While PIABA generally supported the proposal, it urged FINRA to address the issue of unpaid arbitration awards for investors by implementing a national recovery pool. The issue of unpaid awards is beyond the scope of the proposed rule change.

⁵ See SIFMA and PIABA.

⁶ See Kennedy.

⁷ See PIABA.

⁸ See Caruso.

⁹ See Komie.

¹⁰ See Friedman.

¹¹ See SIFMA.

Request to Change the term “Damages” to “Payments”

The proposed rule change provides that, absent specification to the contrary in the 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. SIFMA noted that arbitration awards are not limited to “damages,” and include also costs and fees, among other matters. SIFMA expressed its belief that FINRA did not intend to limit the proposed rule change to damages and requested that FINRA revise the proposed rule text to ensure that it is not susceptible to a narrow reading. FINRA agrees that the proposal was not intended to be strictly limited to “damages” offsets and that an award directs a party to pay a monetary amount, which may consist of, and be characterized as, damages, costs, fees, etc. Therefore, for purposes of clarity, FINRA is proposing to amend the proposed rule change as follows.

Proposed additions are underlined and deletions are bracketed:

Customer Code

Rule 12904. (Awards)

(j) All monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. Absent specification to the contrary in the award, when arbitrators order opposing parties to [pay each other damages] make payments to one another, the monetary awards shall offset, and the party [that owes] assessed the larger amount shall pay the net difference. An award shall bear interest from the date of the award:

- (1) If not paid within 30 days of receipt;
- (2) If the award is the subject of a motion to vacate which is denied; or
- (3) As specified by the panel in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

* * * * *

Industry Code

Rule 13904. (Awards)

(j) All monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. Absent specification to the contrary in the award, when arbitrators order opposing parties to [pay each other damages] make payments to one another, the monetary awards shall offset, and the party [that owes] assessed the larger amount shall pay the net difference. An award shall bear interest from the date of the award:

- (1) If not paid within 30 days of receipt;
- (2) If the award is the subject of a motion to vacate which is denied; or

Mr. Brent J. Fields
July 15, 2016
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(3) As specified by the panel in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

* * * * *

FINRA believes that the foregoing responds to the issues raised by the commenters to the rule filing. If you have any questions, please contact me at (212) 858-4481, email: margo.hassan@finra.org.

Sincerely,

/s/ Margo A. Hassan

Margo A. Hassan
Associate Chief Counsel