SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60132; File No. SR-FINRA-2009-015)

June 17, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Expedited Administration of Promissory Note Cases

On April 7, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to the Code of Arbitration Procedure for Industry Disputes ("Industry Code"). The proposed rule change was published for comment in the Federal Register on May 14, 2009.[3] The Commission received no comments on the proposed rule change.

I. Description of the Proposal

FINRA proposed to adopt Rule 13806 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code"), to establish procedures to expedite the administration of arbitrations in which a member's only claim is that an associated person failed to pay money owed on a promissory note; and to amend Rules 13214 and 13600 of the Industry Code to make conforming changes.

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Exchange Act Release No. 59885 (May 7, 2009); 74 FR 22788 (May 14, 2009).

In order to proceed under proposed new Rule 13806, a claimant would not be permitted to include any additional allegations in the Statement of Claim. FINRA stated that, in the absence of additional allegations by members or associated persons, promissory note cases involve straightforward contracts with few documents being entered into evidence. The new procedures would streamline the process for promissory note cases and reduce expenses for the parties while maintaining the procedural safeguards in the Industry Code for the associated person against whom a member asserts a claim.

Specifically, under the proposed procedures:

- Parties would choose a single public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims,[4] unless an associated person files a counterclaim or third party claim of more than $100,000, exclusive of interest or expenses, or the counterclaim or third party claim is unspecified or does not request money damages.[5] In FINRA's view, the arbitrators on this

---

[4] See Rule 13802(c)(3). These specially qualified arbitrators are attorneys familiar with employment law who have at least ten years of legal experience. In addition, a chair or single arbitrator may not have represented primarily the views of employers or of employees within the last five years. Primarily means 50 percent or more of the arbitrator's business or professional activities within the last five years.

[5] The $100,000 threshold was chosen because FINRA recently raised the threshold for a single chair-qualified arbitrator in all cases to $100,000. Under the rule change, if the amount of a claim is more than $100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator. See Exchange Act Release No. 59340 (February 2, 2009), 74 FR 6335 (February 6, 2009) (SR-FINRA-2008-047).

roster would be especially suited to resolve these disputes because of the depth of their experience and their familiarity with employment law;

- If the associated person does not file an answer, simplified discovery procedures would apply[6] and, regardless of the amount in controversy, the single arbitrator would render an award based on the pleadings and other materials submitted by the parties. The arbitrator would be paid an honorarium of $125 for each arbitration resolved in this manner;[7]
- If the associated person files an answer (but does not seek any additional relief or assert any counterclaims or third party claims), regular discovery procedures would apply[8] and, regardless of the amount in controversy, the single arbitrator would hold a hearing; and
- If the associated person files a counterclaim or third party claim, then regular discovery procedures would apply and panel composition would be based on the amount of the counterclaim or third party claim. If the counterclaim and/or third party claim is not more than $100,000, exclusive of interest and expenses, the

---

6 Rule 13800(d) (Simplified Arbitration – Discovery and Additional Evidence) provides for limited discovery in arbitrations involving $25,000 or less, exclusive of interest and expenses.

7 In simplified arbitration proceedings administered under Rules 12800 and 13800 (Simplified Arbitration), the arbitrator honorarium is $125. The honorarium under proposed Rule 13806 is intended to be consistent with these rules.

8 The 13500 series of rules would provide for prehearing procedures and discovery in these cases.

Director[9] would appoint a single public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims. If the counterclaim and/or third party claim is more than $100,000, exclusive of interest and expenses, then the Director would appoint a three-arbitrator panel. The Director would appoint one public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims who would serve as chairperson, one arbitrator from the public roster, and one arbitrator from the non-public roster. If the counterclaim or third party claim is filed after a single arbitrator is appointed, and a three-arbitrator panel is required, the Director would retain the appointed arbitrator as chair and appoint two additional arbitrators (one public and one non-public arbitrator). Regardless of whether the panel is composed of one or three arbitrators, FINRA would pay the arbitrators the honoraria provided for in the Industry Code for arbitrations resolved by a hearing.

FINRA has proposed to amend Rule 13214 (Payment of Arbitrators) to reflect that the rule applies to arbitrator honoraria except as specified in new Rule 13806(f) or as specifically excluded in Rule 13214. Under the proposal, FINRA would pay an arbitrator an honorarium of $125 for each arbitration in which the associated person does not file an answer and the award is based on the arbitrator's review of the pleadings and other materials submitted by the parties. As these are expedited proceedings, FINRA would

---

[9] Rule 13100(k) defines the term "Director" to mean the "Director of FINRA Dispute Resolution. Unless the Code provides that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority."

not pay an honorarium for resolving a discovery-related motion without a hearing session or for resolving a contested motion concerning issuance of a subpoena without a hearing session. In instances where full discovery would be conducted under the 13500 series of rules, FINRA would pay the honorarium prescribed in Rule 13214 for discovery-related motions without a hearing session and for contested motions concerning issuance of a subpoena without a hearing session.

FINRA, in addition, proposed to amend Rule 13600 (Required Hearings) to reflect that a hearing will be held unless new Rule 13806(e)(1) provides otherwise. Under the proposal, if the associated person does not file an answer, no initial prehearing conference or hearing would be held. Generally, in the absence of additional allegations by members or associated persons, promissory note cases involve straightforward contracts with few documents entered into evidence. FINRA believes that, in these situations, promissory note cases would be processed more quickly and efficiently and expenses would be reduced for the parties and the forum if the arbitrator were to render the award on the pleadings and other materials submitted by the parties.[10] In FINRA's view, the new procedures would not negatively impact its administration of other cases filed in the forum.

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

[10] The rationale for the proposed rule change was confirmed in a phone conversation with Margo Hassan and Ken Andrichik of FINRA, on May 6, 2009.

applicable to a national securities association.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act, [12] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will protect the public interest by helping to ensure that promissory note cases are processed quickly and efficiently, and by helping to reduce expenses for the parties and the forum without adversely affecting the administration of other cases filed with the forum.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

---

11 In approving the proposed rule change, the Commission has considered the rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

12 15 U.S.C. 78o-3(b)(6).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR-FINRA-2007-015) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [14]

Florence E. Harmon
Deputy Secretary

---

13 15 U.S.C. 78s(b)(2).

14 17 CFR 200.30-3(a)(12).