

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72479; File No. SR-FINRA-2014-026)

June 26, 2014

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes to Increase Arbitrator Honoraria and Increase Certain Arbitration Fees

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 June 13, 2014, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (together, “Codes”) to increase arbitration filing fees, member surcharges and process fees, and hearing session fees for the primary purpose of increasing arbitrator honoraria.

Specifically, the proposed rule change would amend Rules 12214 (Payment of Arbitrators), 12800 (Simplified Arbitration), 12900 (Fees Due When a Claim is Filed), 12901 (Member Surcharge), 12902 (Hearing Session Fees, and Other Costs and Expenses), and 12903 (Process Fees Paid by Members) of the Customer Code. The proposed rule change would also amend Rules 13214 (Payment of Arbitrators), 13800 (Simplified Arbitration), 13900 (Fees Due

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

When a Claim is Filed), 13901 (Member Surcharge), 13902 (Hearing Session Fees, and Other Costs and Expenses), and 13903 (Process Fees Paid by Members) of the Industry Code.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA 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, 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

FINRA is proposing to increase arbitrator honoraria for the first time since 1999.³ FINRA believes that these increases are needed to recruit and retain a roster of high-quality arbitrators. FINRA is proposing to increase certain fees assessed in the arbitration forum to fund these increases. For example, the proposed rule change would increase the member surcharges and process fees for claims larger than \$250,000⁴ as well as filing fees for investors, associated

³ See Securities Exchange Act Rel. No. 41056 (Feb. 16, 1999), 64 FR 10041 (Mar. 1, 1999) (File No. SR-NASD-97-79).

⁴ The proposed rule change would also increase the member surcharge for the \$10,000.01 to \$25,000 tier. See *infra* note 49.

persons, or firms bringing claims of more than \$500,000 and hearing session fees for claims of more than \$500,000.⁵

Section I below provides background for the proposed rule change, which includes an assessment of the economic impact of the honoraria and fee increases, a general description of the honoraria being increased, as well as the filing fees, member surcharges, member process fees, and hearing session fees that would be increased by the proposed rule change. Section II discusses the development of the proposed rule change. Section III describes the proposed rule change, and uses an example to show the effects of the increases on a typical arbitration.

Section I – Background

A. Economic Impact Assessment

FINRA's dispute resolution forum has received numerous complaints in recent years from its arbitrators regarding the honoraria paid to them for their service. FINRA is aware that arbitrators in private arbitration forums set their own rates⁶ and charge significantly more than FINRA pays. Surveys of organizations and individuals recruited to be FINRA arbitrators, reports from arbitrators at focus groups, and other arbitrator comments indicate a heightened sensitivity to the comparatively low honoraria paid by FINRA. There are non-monetary benefits to serving as a FINRA arbitrator, such as learning the skills necessary to be an effective commercial arbitrator, serving the public, or giving back to one's community by applying

⁵ As discussed below, the proposed rule change would also increase member surcharges as well as certain member and investor fees as to non-monetary or unspecified claims.

⁶ See, e.g., American Arbitration Association, Commercial Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Commercial Disputes), R-55 (Neutral Arbitrator's Compensation), available at https://www.adr.org/aaa/faces/aoe/commercial/c_search/c_rule/c_rule_detail?doc=ADRS TG_004130 (last visited June 10, 2014).

professional knowledge gained as an arbitrator.⁷ However, the current honoraria level is a barrier to recruiting.

In addition, arbitrators have regularly cited the honoraria level when leaving the roster, particularly when they are asked to take a new training course or complete a survey or disclosure statement. These extra requests are viewed as the “last straw” that prevents good arbitrators from remaining on the roster at the current honoraria rate. The increased honoraria would help the forum recruit qualified arbitrators because there is a continuing need for new arbitrators. Moreover, FINRA staff has learned that its arbitrators may occasionally postpone FINRA commitments when they conflict with higher paying assignments.

FINRA believes that these honoraria increases are needed to help the forum retain a roster of high-quality arbitrators and attract qualified individuals who possess the skills necessary to manage arbitration cases and consider thoroughly all arbitration issues presented, which are essential elements for FINRA to meet its regulatory objective of protecting the investing public.

FINRA acknowledges that the proposed honoraria increases (discussed in Section III(F) below) would not rise to market rates. To increase the honoraria to market rates would impose a significant financial burden on firms by increasing the fees they pay if they file or are named as a party to an arbitration, and could increase consequently the cost of securities transactions for customers, if firms seek to pass their increased expenses to customers. In addition, increasing honoraria to market rates could require a greater increase in arbitration filing fees,⁸ which would increase the costs of customers, associated persons, and firms. Thus, FINRA believes the

⁷ See FINRA, Arbitration and Mediation, “Benefits of Becoming a FINRA Arbitrator,” available at <http://www.finra.org/ArbitrationAndMediation/Arbitrators/BecomeanArbitrator/Benefits/index.htm> (last visited June 10, 2014).

⁸ See *infra* Section I(C), “General Description of Fees.”

proposed rule change is the best option to narrow the gap without unduly increasing costs to forum users.

Currently, the arbitration fee structure assigns much of the cost of the forum to those members that are parties to arbitration proceedings. The proposed rule change would retain this approach. FINRA's current and proposed fee structures are designed to keep its arbitration program accessible and affordable to the parties, especially investors.

B. General Description of Honoraria

Arbitrator honoraria are the payments that FINRA makes to its arbitrators for the services they provide to FINRA's dispute resolution forum. Rules 12214 and 12800 of the Customer Code⁹ address the honoraria arbitrators receive for the services provided. Currently, under Rule 12214(a), arbitrators receive \$200 for each hearing session¹⁰ in which the arbitrator participates. A typical day has two hearing sessions.

Chairpersons are often the arbitrators on FINRA's rosters with the most experience who have completed chairperson training. In addition, to qualify as a chairperson, an arbitrator must have served on at least three arbitrations through award in which hearings were held, or be a lawyer who served on at least two arbitrations through award in which hearings were held.¹¹ In recognition of their increased experience and extra responsibilities during a hearing,¹² FINRA

⁹ For purposes of this discussion, FINRA refers to rules in the Customer Code. However, the changes and discussion would also apply to the same rules of the Industry Code.

¹⁰ The term "hearing session" means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference.

¹¹ Rules 12400(c) and 13400(c).

¹² For example, during a typical arbitration, the chairperson decides discovery motions and conducts the initial prehearing conference(s). Rules 12503(d)(3) and 13503(d)(3) (Discovery Motions) and Rules 12500(c) and 13500(c) (Initial Prehearing Conference).

currently pays chairpersons an additional \$75 per hearing day.¹³ The chairperson receives the additional honoraria for each day the person serves as chair at a hearing, regardless of the number of hearing sessions held per day.

Arbitrators receive honoraria when they decide contested motions requesting the issuance of a subpoena without a hearing (“contested subpoena requests”).¹⁴ A contested subpoena request includes a motion requesting the issuance of a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena, and any other documents supporting a party’s position.¹⁵ FINRA assesses a \$200 fee to the parties for each arbitrator who participates in deciding the contested subpoena request to cover the cost of the honoraria. Under most circumstances, the chairperson will be the only arbitrator to decide the contested subpoena request based on the documents supplied by the parties. However, a party may request that the entire panel decide the contested subpoena request. The honoraria will be paid on a per case basis, regardless of the number of contested subpoena requests decided by an arbitrator or panel during the case. Thus, the maximum amount that the parties could pay for any one case will be \$600. If an arbitrator or the panel decides a contested subpoena request, the arbitrator or panel allocates the cost of the honoraria to the parties in the award.¹⁶

Finally, when a claimant¹⁷ files an arbitration claim in which the amount in dispute, excluding interest and expenses (“claim amount”) is \$50,000 or less, one arbitrator decides the

¹³ A “hearing” means the hearing on the merits of an arbitration. Rules 12100(m) and 13100(m).

¹⁴ Rules 12214(d) and 13214(d).

¹⁵ Rules 12214(d)(2) and 13214(d)(2).

¹⁶ Rules 12214(d)(3) and 13214(d)(3).

¹⁷ A “claimant” is a party that files the statement of claim that initiates an arbitration. Rules 12100(e) and 13100(e).

case based solely on the documents provided by the parties – no hearings are held.¹⁸ In the forum, these cases are referred to as simplified arbitration cases because they are decided “on the papers.” The arbitrator who decides this type of case currently receives \$125 per case.

C. General Description of Fees

FINRA is proposing to amend some of the fees for arbitration proceedings in the following categories: (1) the filing fee; (2) the member surcharge; (3) the member process fee; and (4) the hearing session fee. A general description of each fee follows.

(i) *Filing Fee*

Under the Codes, a customer, associated person, other non-member, or member who files a claim, counterclaim, cross claim or third party claim must pay a filing fee to initiate an arbitration.¹⁹ The filing fee consists of two parts – a non-refundable fee, which FINRA keeps when a claim is filed, and a deposit, which FINRA may return in whole or in part to the party that filed the claim in certain circumstances. For example, if a case goes to hearing, and the panel orders a respondent to pay all hearing session fees, the refundable portion of the filing fee will be refunded to the claimants, less any fees, costs, and expenses that may have been assessed against this party under the Code.²⁰ Additionally, if a claim is settled or withdrawn in excess of 10 days before the merits hearing is scheduled to begin, a party paying a filing fee will receive a refund in the amount of the refundable portion of the filing fee less any other fees or costs assessed against the party under the Code.²¹ A claimant may also request, as part of the award,

¹⁸ Rules 12800 and 13800.

¹⁹ Rules 12900(a) and 13900(a).

²⁰ Rules 12902(b) and 13902(b).

²¹ Rules 12900(c) and 13900(c).

that the panel order reimbursement of any non-refundable filing fee paid.²² For customers and associated persons, the refundable portion of the filing fee is larger than the non-refundable fee to minimize these parties' committed costs. The filing fees for claims filed by members are higher than those for customers, associated persons or other non-members.²³ The non-refundable portion of the member filing fee is larger than the refundable portion in most cases to provide the forum with a stream of revenue at the outset of a case to offset the forum's expenses.

(ii) *Member Surcharge*

Currently, the Codes provide that a surcharge will be assessed against each member that: (1) files a claim, counterclaim, cross claim, or third party claim under the Code; (2) is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Code; or (3) employed, at the time the dispute arose, an associated person who is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Code.²⁴ Member surcharges are intended to allocate the costs of administering the arbitration case to the brokerage firms that are involved in those cases. Thus, each member is assessed a member surcharge, based on the aggregate claim amount, when it is brought into the case, whether through a claim, counterclaim, cross claim or third party claim. The member surcharge is the responsibility of the member party and cannot be allocated to any other party ("non-allocable").²⁵

²² Rules 12900(d) and 13900(d).

²³ Rules 12900(b) and 13900(b).

²⁴ Rules 12901 and 13901.

²⁵ Rules 12901(a)(4) and 13901(d). See also Rules 12701(b) and 13701(b).

(iii) *Process Fee*

Currently, each member that is a party to an arbitration in which the claim amount is more than \$25,000 must pay process fees, which are assessed at specific milestones in each case.²⁶ Specifically, FINRA assesses a non-refundable prehearing process fee of \$750 at the time the parties are sent arbitrator lists and a non-refundable hearing process fee, based on the claim amount, when the parties are notified of the date and location of the hearing on the merits.²⁷ Therefore, when the parties receive the arbitrator lists or notification of the hearing, FINRA assesses each member party the applicable process fee, whether the member is a claimant or respondent in the case. Further, like the member surcharges, the process fee is also non-allocable to other parties to the arbitration.²⁸

(iv) *Hearing Session Fee*

FINRA assesses a hearing session fee for each hearing session held. Hearing session fees are fees assessed for each hearing, pre-hearing, and injunctive hearing conducted.²⁹ A hearing session is a meeting of the parties and arbitrators.³⁰ The hearing session fee is allocable to the parties and based on the highest claim amount within the case.³¹ In FINRA arbitrations, hearing sessions are classified as either a prehearing session or hearing session. One type of prehearing session is called an initial prehearing conference (“IPHC”), which FINRA schedules after the

²⁶ If a claim amount is less than \$25,000, the member would not be assessed any process fees. If a claim amount is between \$25,000 and \$50,000, FINRA would assess a non-refundable prehearing process fee, but not the non-refundable hearing process fee.

²⁷ Rule 12903(a) and 13903(a).

²⁸ Rules 12903(c) and 13903(c). See also Rules 12701(b) and 13701(b).

²⁹ Rules 12902(a) and 13902(a).

³⁰ See supra note 10.

³¹ Id.

panel is appointed.³² The panel and the parties use the IPHC, among other things, to set discovery, briefing, and motions deadlines, and to schedule subsequent hearing sessions.³³

The hearing session fee is intended to offset FINRA's cost to conduct hearing sessions. The cost of conducting a hearing session includes arbitrator compensation and travel expenses, hearing conference rooms, and staff work and expenses. Arbitrators may assess the hearing session fees in the award, or by arbitrator order if the parties held hearing sessions before agreeing to settle.³⁴ The arbitrators may apportion the fees in any manner, including assessing the entire amount against one party.³⁵ FINRA applies the refundable portion of the filing fee against any hearing session fees assessed against the party that paid the filing fee.

(v) *Unspecified Claim Fee*

If a party files a claim that does not request or specify money damages, that claim is considered an unspecified claim. When a party files an unspecified claim, the party must pay the filing fee for unspecified claims.³⁶ Further, a member would be assessed a surcharge and process fee, and the parties could be assessed hearing session fees, as discussed above. Each of these fee schedules contains a fee amount for non-monetary or unspecified claims.³⁷ Moreover, the Code provides that if a claim is unspecified or does not request monetary damages, the panel would

³² Rules 12500(a) and 13500(a).

³³ Rules 12500(c) and 13500(c). The parties may agree to forego an IPHC under certain circumstances.

³⁴ The parties may agree to a different allocation in the settlement agreement.

³⁵ Rules 12902(a)(1) and 13902(a)(1).

³⁶ Rule 12900(a)(2). See also Rule 13900(a)(2).

³⁷ Rules 12900(b)(2), 12901(a)(2), 12902(a)(2), and 12903(a). See also Rules 13900(b)(2), 13901(a), 13902(a)(2) and 13903(a).

consist of three arbitrators, unless the parties agree in writing to one arbitrator.³⁸

Section II – Development of the Proposed Rule Change

In developing the proposed rule change, FINRA’s primary goal was to ensure that the proposed fee increases would match as closely as possible the proposed honoraria (or expense) increases. FINRA staff (“staff”) ran statistical models of the forum’s fees and expenses over a four year period, from 2009 to 2012. For the years studied, FINRA notes that its arbitration case volume was the highest in 2009 and decreased progressively in subsequent years. To analyze the model years, staff began by using the actual honoraria payments made to the arbitrators for each year. Then, for each payment made, staff calculated the proposed honoraria amount and totaled the difference. Once staff determined how much the honoraria payments would have increased in the aggregate for the model years, staff adjusted the following fees until the revenue matched the expense increases in the corresponding years.

Under the proposed rule change, FINRA would increase the member surcharge and process fees. These fees provide FINRA with revenue to cover some of the costs of administering its arbitration forum; these costs include arbitrator honoraria. Staff determined to increase the member surcharge and process fees for claim amounts of more than \$250,000 because, in FINRA’s experience, larger claims are more labor-intensive for arbitrators and, thus, require more resources. FINRA notes that under the proposed rule change, the member surcharge and process fees would remain non-allocable to other parties.

FINRA would also increase some of the filing fees that parties must pay to initiate an arbitration.³⁹ Specifically, filing fees would increase for claim amounts of more than \$500,000

³⁸ Rule 12401(c). See also Rule 13401(c).

³⁹ See supra Section I(C)(i), “Filing Fee.”

for all parties. Staff determined to increase the filing fee amounts for larger claims, because, as noted, they are more labor-intensive, and to minimize the impact on customers with smaller claims. To further mitigate the impact of the filing fee increases on all parties, staff added most of the increases to the refundable portion of the filing fee.

As for the hearing session fees, staff determined that the proposed fee increases should begin only at the \$500,000.01 to \$1,000,000 tier for hearing sessions with three arbitrators. This proposed increase would also allow staff to retain the current fee structure for hearing sessions with one arbitrator.⁴⁰ FINRA recognizes that the proposed increases to hearing session fees could result in additional costs for customers with larger claims. However, the increases would provide the forum with enough revenue to cover the honoraria payments for these cases, and allow the forum to offset the deficits created at the lower tier amounts.

FINRA notes that the effects of the hearing session fee increases can be minimized under the Codes. For example, the parties may settle⁴¹ the arbitration before any hearings are conducted to avoid being assessed fees for a hearing.⁴² Further, during settlement negotiations, if hearings were held, parties have the opportunity to determine how the hearing session fees could be shared.⁴³ Moreover, arbitrators have discretion to allocate hearing session fees as part of their award,⁴⁴ which allows them to consider numerous factors to determine each party's

⁴⁰ See infra Section III(D), "Hearing Session Fee Increases."

⁴¹ Rules 12701(a) and 13701(a).

⁴² See supra note 10. FINRA would assess a hearing session fee against the parties for an IPHC, if one was held. Rules 12500(c) and 13500(c).

⁴³ Rules 12701(b) and 13701(b).

⁴⁴ Rules 12902(a)(1) and 13902(a)(1).

appropriate share and assign the costs accordingly. The proposed rule change would not change the parties' ability to settle or the arbitrators' discretion to allocate these fees.

Under the proposal, FINRA would also increase the unspecified claim fees provided in each of the fee types described above (i.e., filing fee, member surcharge, process fee and hearing session fee). Staff's analysis of actual case experience during the model years found that a large percentage of arbitration cases requested a claim amount of more than \$100,000. Currently, the unspecified claim fee amount for each fee type is lower than the fee amounts for the \$100,000.01 to \$500,000 tier. For example, the current unspecified filing fee is \$1,250; however, the filing fee for the \$100,000.01 to \$500,000 tier is \$1,425. Staff believes that a practical starting point for the unspecified claim fees should fall in the middle of the claim amount tiers, where a majority of the specified claims are clustered. To accomplish this, the proposed rule change would increase the unspecified claim fees in each category.⁴⁵ FINRA believes that increasing the unspecified claim fees in each fee type will more accurately reflect the appropriate fee for the damages sought and the potential range of recovery.

FINRA reiterates that staff designed the proposed rule change to generate enough revenue to pay for the increases in arbitrator honoraria. FINRA cannot guarantee, however, that the proposed fee increases would cover the expense increases exactly. For example, while the years staff modeled resulted in a positive net result, fluctuations in case filings could result in a negative result. By linking the fee increases to larger claim amounts, FINRA believes the proposed rule change is an appropriate and fair way to distribute the arbitrator honoraria increases among users of the forum. Moreover, the proposed rule change should provide FINRA

⁴⁵ See infra Section III, "Proposed Rule Change" (providing a description of unspecified claim fee increases in each fee category).

with a progressive fee structure that should generate enough revenue to cover the proposed increases in the honoraria. Thus, based on staff's analysis of the actual case data in the modeled years, the proposed honoraria increases would add between \$3.5 and \$4.2 million to the forum's expenses. The revenue generated by the proposed fee increases to users of the forum would be \$4.0 to \$5.6 million, which would cover the proposed increases in honoraria.

Finally, FINRA notes that in developing the proposed rule change, staff considered smaller honoraria increases, to avoid increasing fees on customers. However, FINRA opted for a larger honoraria increase and related fee increases on all parties to help the forum retain a roster of high-quality arbitrators and attract qualified individuals who possess the skills necessary to manage arbitration cases and who would consider thoroughly all arbitration issues presented. In support of this approach, FINRA notes that it has not sought an increase to customer fees since February 1999⁴⁶ or to member fees since October 2001.⁴⁷ Then, as now, staff adhered to the philosophy that the cost of arbitration should be borne by the users of the forum, without imposing a significant barrier to public customers who bring arbitration claims to the forum. Thus, under the proposed rule change, a large portion of the fee increases are covered by member surcharges and process fees imposed only on members. Conversely, a smaller portion of the fee increases are covered by filing fees and hearing session fees, which are shared by members, associated persons, and public customers. FINRA believes that claimants and respondents would benefit from the forum attracting and retaining qualified, dedicated arbitrators to decide their cases, and that they should share in the effort to sustain and improve the forum.

⁴⁶ See supra note 3.

⁴⁷ See Securities Exchange Act Rel. No. 44897 (Oct. 2, 2001), 66 FR 51711 (Oct. 10, 2001) (File No. SR-NASD-2001-62).

Section III – Proposed Rule Change

To fund increases in the arbitrator honoraria, FINRA is proposing to increase the member surcharges and process fees, filing fees, and the hearing session fees assessed under the Codes.⁴⁸

FINRA believes the proposed fee increases would generate sufficient revenue to offset the proposed increases in the arbitrator honoraria as described in Section III(F) below without placing an undue burden on the public customer.

A. Member Surcharge Increases

FINRA is proposing to amend Rule 12901 to increase the member surcharges primarily for claim amounts larger than \$250,000. Table 1 illustrates the dollar and percentage changes for each tier.

Member Surcharge Schedule — Table 1

| Amount [in Dispute] of Claim (exclusive of interest and expenses) | Current Surcharge | Proposed Fees | Change | Percentage Change |
|--|-------------------|---------------|---------|-------------------|
| \$.01 - \$2,500 | \$150 | \$150 | \$0 | 0% |
| \$2,500.01 - \$5,000 | \$200 | \$150 | \$(50) | (25)% |
| \$5,000.01 - \$10,000 | \$325 | \$325 | \$0 | 0% |
| \$10,000.01 - \$25,000 | \$425 | \$450 | \$25 | 6% |
| \$25,000.01 - \$30,000 | \$600 | \$750 | \$150 | 25% |
| \$30,000.01 - \$50,000 | \$875 | \$750 | \$(125) | (14)% |
| \$50,000.01 - \$100,000 | \$1,100 | \$1,100 | \$0 | 0% |
| \$100,000.01 - \$250,000 | \$1,700 | \$1,700 | \$0 | 0% |
| \$250,000.01 - \$500,000 | \$1,700 | \$1,900 | \$200 | 12% |
| \$500,000.01 - \$1,000,000 | \$2,250 | \$2,475 | \$225 | 10% |
| \$1,000,000.01 - \$5,000,000 | \$2,800 | \$3,025 | \$225 | 8% |
| \$5,000,000.01 - \$10,000,000 | \$3,350 | \$3,600 | \$250 | 8% |
| Over \$10,000,000 | \$3,750 | \$4,025 | \$275 | 7% |
| Non-Monetary/Not Specified | \$1,500 | \$1,900 | \$400 | 27% |

⁴⁸ For purposes of Section III, “Proposed Rule Change,” FINRA refers to rules in the Customer Code. However, the changes and discussion would also apply to the same rules of the Industry Code.

Under the proposed rule change, the member surcharge would be amended in a manner that would reduce the surcharge for some smaller claims. For example, the proposed rule change would combine the first two tiers of claim amounts, so that a claim amount up to \$5,000 would be assessed a \$150 surcharge. By combining the first two tiers, the proposed rule change would reduce the member surcharge for claims between \$2,500.01 and \$5,000.00 by \$50 or 25 percent. Similarly, the proposed rule change would combine the current \$25,000.01 to \$30,000 and \$30,000.01 to \$50,000 tiers. This change makes the proposed tiers in the surcharge schedule more consistent with other fee schedules in the Codes. For the proposed \$25,000.01 to \$50,000 tier, the surcharge would be \$750, or a reduction of 14 percent, when compared to the current surcharge of \$875. FINRA believes this change is a more practical approach for case administration purposes, and would make the surcharge schedule easier to understand for parties.

The proposed rule change would, however, increase the surcharge for larger claims.⁴⁹ FINRA is proposing to divide the current \$100,000.01 to \$500,000 tier with its surcharge of \$1,700 into two new tiers, because a large percentage of claims fall within the current tier and staff decided that there should be a greater distinction between the claims. For claim amounts between \$100,000.01 and \$250,000, the surcharge for the first new tier would remain unchanged. For claim amounts between \$250,000.01 and \$500,000, the surcharge for the second new tier would increase by \$200 or about 12 percent. The surcharges for the higher tiers would also increase. For example, the surcharge for a claim amount between \$1,000,000.01 and \$5,000,000 would increase by \$225 (an 8 percent increase).

⁴⁹ FINRA notes that the surcharge for the \$10,000.01 to \$25,000 tier would increase by \$25 or 6 percent.

The member surcharges assessed for unspecified claims would increase by \$400 or 27 percent, the largest increase under the proposed rule change. This change is consistent with comparable increases in the unspecified filing fees for customer and industry claimants, as discussed in the “Filing Fees” section below.

FINRA notes that member surcharges would remain non-allocable under the proposal, and, thus, would not result in any additional costs to customers.

B. Member Process Fee Increases

The proposed rule change would amend Rule 12903 to increase the member process fees for claim amounts larger than \$250,000. Table 2 shows the current process fees, proposed combined fees and the changes between the two.

Member Process Fee Schedule — Table 2

| Amount of Claim (exclusive of interest and expenses) | Pre-Hearing Process Fee | Hearing Process Fee | Current Combined Process Fees | Proposed Fees | Change | Percentage Change |
|--|-------------------------|---------------------|-------------------------------|---------------|---------|-------------------|
| \$.01 - \$5,000 | N/A | N/A | N/A | N/A | N/A | N/A |
| \$2,500.01 - \$5,000 | N/A | N/A | N/A | N/A | N/A | N/A |
| \$5,000.01 - \$10,000 | N/A | N/A | N/A | N/A | N/A | N/A |
| \$10,000.01 - \$25,000 | N/A | N/A | N/A | N/A | N/A | N/A |
| \$25,000.01 - \$30,000 | \$750 | \$1,000 | \$1,750 | N/A | N/A | N/A |
| \$30,000.01 - \$50,000 | \$750 | \$1,000 | \$1,750 | N/A | N/A | N/A |
| \$50,000.01 - \$100,000 | \$750 | \$1,700 | \$2,450 | \$2,250 | \$(200) | (8)% |
| \$100,000.01 - \$250,000 | \$750 | \$2,750 | \$3,500 | \$3,250 | \$(250) | (7)% |
| \$250,000.01 - \$500,000 | \$750 | \$2,750 | \$3,500 | \$3,750 | \$250 | 7% |
| \$500,000.01 - \$1,000,000 | \$750 | \$4,000 | \$4,750 | \$5,075 | \$325 | 7% |
| \$1,000,000.01 - \$5,000,000 | \$750 | \$5,000 | \$5,750 | \$6,175 | \$425 | 7% |
| \$5,000,000.01 - \$10,000,000 | \$750 | \$5,500 | \$6,250 | \$6,800 | \$550 | 9% |
| Over \$10,000,000 | \$750 | \$5,500 | \$6,250 | \$7,000 | \$750 | 12% |
| Non-Monetary/Not Specified | \$750 | \$2,200 | \$2,950 | \$3,750 | \$800 | 27% |

The proposed rule change would combine the two process fees, the prehearing process fee and hearing process fee, into one fee, which would be due at the time the parties are sent the

arbitrator lists. FINRA recognizes that this change would result in an increase to the member process fee in many cases. However, FINRA believes this change is necessary to ensure that the forum has the resources available at the initial stages of a case to cover the proposed honoraria increases. Further, this change would make the collection process more efficient for FINRA and the members, as it would reduce the number of invoices sent and collection activities performed by FINRA's Finance Department.

Like the member surcharge increase, FINRA is proposing to spread the process fee increases among larger claim amounts, while retaining or decreasing the fees associated with the lower claim amounts. For example, for a claim amount between \$25,000.01 and \$50,000, the process fee would remain unchanged at \$1,750.⁵⁰ Further, for claim amounts between \$50,000.01 and \$100,000, the process fee would decrease by \$200 or 8 percent.

The proposed rule change would increase the fees for claim amounts, beginning with the new \$250,000.01 to \$500,000 tier. Thus, for claims that fall in this range, the proposed process fee would increase by \$250 or by 7 percent. For claim amounts that fall in the over \$10,000,000 tier, the fee would increase by 12 percent or \$750.

Under the proposed rule change, the process fees assessed for unspecified claims would increase by \$800 or 27 percent, the largest increase in the proposed process fee schedule. This change is consistent with comparable increases in the unspecified filing fees for customer and industry claimants, as discussed in the "Filing Fees" section below.

FINRA notes that the member process fee would remain non-allocable under the proposal, and, thus, would not result in any additional costs to customers.

⁵⁰ If the claim amount of a case is less than \$25,000, FINRA does not assess the process fee. This feature of the rule would remain unchanged.

C. Filing Fee Increases

FINRA is proposing to amend Rule 12900 to increase the filing fees for investors, associated persons, other non-members, or members bringing claims of more than \$500,000. Tables 3 and 4 show the current filing fee, proposed filing fee, dollar and percentage changes, and the non-refundable and partial refund breakdown of each fee.

(i) *Filing Fees Paid by Customers, Associated Persons or Other Non-Members*

Under the proposed rule change, FINRA would increase the filing fees for claim amounts beginning at the \$500,000.01 to \$1,000,000 tier, so that the fee increases impact only those claimants with larger claims.

Filing Fees for Customers, Associated Persons or Other Non-Member Claimants — Table 3

| Amount of Claim (exclusive of interest and expenses) | Current Claim Filing Fee | Proposed Claim Filing Fee | Change in Filing Fee | Percent Change | Non-Refundable Filing Fee with Proposed Changes | Partial Refund with Proposed Changes |
|--|--------------------------|---------------------------|----------------------|----------------|---|--------------------------------------|
| \$.01 - \$1000 | \$50 | \$50 | \$0 | 0% | \$25 | \$25 |
| \$1,000.01 - \$2,500 | \$75 | \$75 | \$0 | 0% | \$25 | \$50 |
| \$2500.01 - \$5,000 | \$175 | \$175 | \$0 | 0% | \$50 | \$125 |
| \$5,000.01 - \$10,000 | \$325 | \$325 | \$0 | 0% | \$75 | \$250 |
| \$10,000.01 - \$25,000 | \$425 | \$425 | \$0 | 0% | \$125 | \$300 |
| \$25,000.01 - \$50,000 | \$600 | \$600 | \$0 | 0% | \$150 | \$450 |
| \$50,000.01 - \$100,000 | \$975 | \$975 | \$0 | 0% | \$225 | \$750 |
| \$100,000.01 - \$500,000 | \$1,425 | \$1,425 | \$0 | 0% | \$300 | \$1,125 |
| \$500,000.01 - \$1,000,000 | \$1,575 | \$1,725 | \$150 | 10% | \$[375] 425 | \$[1,200] 1,300 |
| \$1,000,000.01 - \$5,000,000 | \$1,800 | \$2,000 | \$200 | 11% | \$600 | \$[1,200] 1,400 |
| Over \$5,000,000 | \$1,800 | \$2,250 | \$450 | 25% | \$[600] 750 | \$[1,200] 1,500 |
| Non-Monetary/Not Specified | \$1,250 | \$1,575 | \$325 | 26% | \$[250] 375 | \$[1,000] 1,200 |

The proposed rule change would also create two new tiers, at the upper level, to spread the cost increases among larger claims. The first new tier of \$1,000,000.01 to \$5,000,000 would have a filing fee of \$2,000. The second new tier would begin at over \$5,000,000, with a filing fee of \$2,250.

To further mitigate the impact of the filing fee increases, FINRA is proposing to add most of the increases to the refundable portion of the filing fee.⁵¹ For example, for a claim amount that falls within the \$500,000.01 to \$1,000,000 tier, the filing fee would increase by \$150 or 10 percent. The non-refundable portion of the filing fee, however, would increase by only \$50. The refundable portion would increase by \$100. Moreover, in the award, arbitrators have the authority to order a respondent to reimburse all or part of any filing fee paid,⁵² which should also help minimize the impact of these increases on claimants.

The proposed rule change also would increase the unspecified filing fee by \$325 or 26 percent. The non-refundable portion would increase by \$125 and the refundable portion by \$200. FINRA believes the unspecified claim fees should fall in the middle of the claim amount tiers for each fee type, where a majority of the specified claims are clustered. These increases would help fund the increases in arbitrator honoraria.

(ii) *Filing Fees Paid by Members*

The proposed rule change would also increase the filing fee for members at the higher claim amount tiers.

⁵¹ A claimant may be entitled to a partial refund of a filing fee under the circumstances described in Rules 12900(c) and 13900(c). Exhibit 5 to the proposed filing shows the proposed amended refund amounts in these rules that correspond to the proposed filing fee increases.

⁵² Rules 12900(d) and 13900(d).

Filing Fees for Member Claimant — Table 4

| Amount of Claim (exclusive of interest and expenses) | Current Claim Filing Fee | Proposed Claim Filing Fee | Change in Filing Fee | Percent Change | Non-Refundable Filing Fee | Partial Refund with Proposed Changes |
|--|--------------------------|---------------------------|----------------------|----------------|---------------------------|--------------------------------------|
| \$.01-\$1000 | \$225 | \$225 | \$0 | 0% | \$200 | \$25 |
| \$1,000.01-\$2,500 | \$350 | \$350 | \$0 | 0% | \$300 | \$50 |
| \$2500.01-\$5,000 | \$525 | \$525 | \$0 | 0% | \$400 | \$125 |
| \$5,000.01-\$10,000 | \$750 | \$750 | \$0 | 0% | \$500 | \$250 |
| \$10,000.01-\$25,000 | \$1,050 | \$1,050 | \$0 | 0% | \$750 | \$300 |
| \$25,000.01-\$50,000 | \$1,450 | \$1,450 | \$0 | 0% | \$1,000 | \$450 |
| \$50,000.01-\$100,000 | \$1,750 | \$1,750 | \$0 | 0% | \$1,000 | \$750 |
| \$100,000.01-\$500,000 | \$2,125 | \$2,125 | \$0 | 0% | \$1,000 | \$1,125 |
| \$500,000.01-\$1,000,000 | \$2,450 | \$2,550 | \$100 | 4% | \$1,250 | \$[1,200] <u>1,300</u> |
| \$1,000,000.01-\$5,000,000 | \$3,200 | \$3,400 | \$200 | 6% | \$2,000 | \$[1,200] <u>1,400</u> |
| Over \$5,000,000 | \$3,700 | \$4,000 | \$300 | 8% | \$2,500 | \$[1,200] <u>1,500</u> |
| Non-Monetary / Not Specified | \$1,500 | \$1,700 | \$200 | 13% | \$500 | \$[1,000] <u>1,200</u> |

Specifically, for the \$500,000.01 to \$1,000,000 tier, the filing fee would increase by \$100 or 4 percent. For the \$1,000,000.01 to \$5,000,000 tier, the filing fee would increase by \$200 or 6 percent. For the over \$5,000,000 tier, the filing fee would increase by \$300 or 8 percent. For each of these increases, FINRA is proposing to add the increased amount to the refundable portion of the filing fee,⁵³ as this part of the filing fee, which is linked closely to FINRA’s costs to administer arbitration cases, particularly hearing sessions, could be avoided if the parties agree to settle.⁵⁴

⁵³ See *supra* note 51.

⁵⁴ Rules 12701(a) and 13701(a).

The unspecified filing fee for members would also increase under the proposed rule change. Specifically, the filing fee would increase by \$200 or 13 percent, and the increase would be added to the refundable portion of the fee.

D. Hearing Session Fee Increases

FINRA is proposing to amend Rule 12902 to increase the hearing session fees for claims of more than \$500,000. Tables 5 and 6 illustrate the current fee for hearing sessions with either one or three arbitrators, the proposed fee, dollar and percentage changes and the arbitrator payment at each tier.

(i) *Hearings with One Arbitrator*

Under the proposed rule change, the fees for a hearing session with one arbitrator would not change.

Hearing Session Fees for Session with One Arbitrator — Table 5

| Amount of Claim (exclusive of interest and expenses) | Current Fee for session/ decision W/One Arbitrator | Proposed Fee for session/ decision W/One Arbitrator | Change | Percent Change |
|---|--|---|--------|-------------------|
| \$.01 - \$2,500 | \$50 | \$50 | \$0 | 0% |
| \$2,500.01 - \$5,000 | \$125 | \$125 | \$0 | 0% |
| \$5,000.01 - \$10,000 | \$250 | \$250 | \$0 | 0% |
| \$10,000.01 - \$25,000 | \$450 | \$450 | \$0 | 0% |
| \$25,000.01 - \$50,000 | \$450 | \$450 | \$0 | 0% |
| \$50,000.01 - \$100,000 | \$450 | \$450 | \$0 | 0% |
| \$100,000.01 - \$500,000 | \$450 | \$450 | \$0 | 0% |
| \$500,000.01 - \$1,000,000 | \$450 | \$450 | \$0 | 0% |
| \$1,000,000.01 - \$5,000,000 | \$450 | \$450 | \$0 | 0% |
| Over \$5,000,000 | \$450 | \$450 | \$0 | 0% |
| [Unspecified Damages] Non-Monetary / Not Specified | \$450 | \$450 | \$0 | 0% |

The proposed rule change would, however, make a technical change to the claim amount tiers. Specifically, FINRA is proposing to create two new tiers, beginning at \$500,000.01, so that the tiers for the fees for a hearing session with one arbitrator match the claim amount tiers for filing fees.⁵⁵ FINRA would retain the \$450 hearing session fee for each new tier.

In assessing the hearing session fees for cases heard by one arbitrator, FINRA determined to retain the current fee structure for a hearing session with one arbitrator, even though the current fees would not cover the proposed increased honoraria payments for claims in the \$.01 - \$10,000 tiers. Nevertheless, FINRA would retain the current fees for these lower claim amounts, so that the forum remains accessible and affordable to claimants with smaller claims.

Further, under the current fee structure, as the claim amount increases for claims heard by one arbitrator, the hearing session fee increases to \$450 and is capped at this figure. The proposed rule change will not change this fee structure.

(ii) *Hearings with Three Arbitrators*

FINRA is proposing to increase the fees only for hearing sessions with three arbitrators, and only for claim amounts starting at \$500,000.01.

⁵⁵ See supra Section III(C), “Filing Fee Increases.”

Hearing Session Fees for Session with Three Arbitrators – Table 6

| Amount of Claim (exclusive of interest and expenses) | Current Fee for session W/ Three Arbitrators | Proposed Fee for session W/ Three Arbitrators | Change | Percent Change |
|--|--|---|--------|-------------------|
| Up - \$2,500 | N/A | N/A | N/A | N/A |
| \$2,500.01 - \$5,000 | N/A | N/A | N/A | N/A |
| \$5,000.01 - \$10,000 | N/A | N/A | N/A | N/A |
| \$10,000.01 - \$25,000 | N/A | N/A | N/A | N/A |
| \$25,000.01 - \$50,000 | \$600 | \$600 | \$0 | 0% |
| \$50,000.01 - \$100,000 | \$750 | \$750 | \$0 | 0% |
| \$100,000.01 - \$500,000 | \$1,125 | \$1,125 | \$0 | 0% |
| \$500,000.01 - \$1,000,000 | \$1,200 | \$1,300 | \$100 | 8% |
| \$1,000,000.01 - \$5,000,000 | \$1,200 | \$1,400 | \$200 | 17% |
| Over \$5,000,000 | \$1,200 | \$1,500 | \$300 | 25% |
| [Unspecified Damages] <u>Non-Monetary/Not Specified</u> | \$1,000 | \$1,125 | \$125 | 13% |

The proposed rule change would create new tier amounts starting at \$500,000.01 and would increase the fees over the current top rate of \$1,200. For example, for claim amounts between the new \$500,000.01 to \$1,000,000 tier heard by three arbitrators, the hearing session fee would increase by \$100 or 8 percent. For a claim amount between the new \$1,000,000.01 to \$5,000,000 tier heard by three arbitrators, the hearing session fee would increase by \$200 or 17 percent. For a claim amount over \$5,000,000 heard by three arbitrators, the hearing session fee would increase by \$300 or 25 percent. The proposed rule change would also increase the hearing session fee for unspecified claims by \$125 or 13 percent.

For claims heard by three arbitrators, the hearing session fees do not cover the forum’s actual costs for smaller claims. Nevertheless, FINRA is proposing to retain the current fees for lower claim amounts, so that the forum remains accessible and affordable for claimants with smaller claims. The proposed rule change would instead distribute the increases to hearing

session fees among the higher claim amounts. The increases would provide the forum with enough revenue to cover its honoraria payments for these cases as well as offset the deficits created at the lower tier amounts.

Finally, FINRA is proposing three technical changes to the Hearing Session Fee chart in the Codes. The first would change the title of the tiers in the Member Surcharge charts from “Amount in Dispute” to “Amount of Claim,” so that the title describing the claim amounts in all of the fee charts would be consistent. The second technical change would add “exclusive of interest and expenses” to the title of the claim amount tiers in the Hearing Session fee charts for consistency and to clarify that hearing session fees are based on the claim amount and do not include interest or expenses. FINRA notes that the modifications would codify current practice. Finally, FINRA would change the title of “Unspecified” to “Non-Monetary/Not Specified” so that the title is the same as those in the other fee schedules in the Codes.

E. Example

FINRA believes the following example should help illustrate how the proposed increases would effect a typical arbitration. FINRA notes that the fees associated with an arbitration claim depend on multiple factors including, but not limited to: the claim amount, the number of arbitrators, the number of hearing sessions conducted, how the arbitrators decide to assess the fees between the parties, and whether the case is settled or withdrawn. In the following example, a customer files a claim for \$600,000. The parties select three arbitrators who conduct an IPHC and four hearing sessions, after which the arbitrators issue an award.

For a claim between \$500,000.01 and \$1 million, the customer would pay \$1,725, an increase of \$150 or 10 percent. The \$1,725 fee consists of a \$425 non-refundable filing fee and a \$1,300 potential refund amount. The member surcharge to the firm, assessed when FINRA

serves the claim, would be \$2,475, an increase of \$225 or 10 percent. The combined process fees, assessed when FINRA sends the arbitrator lists to the parties, would be \$5,075, for an increase of \$325 or 7 percent. The \$5,075 process fee would consist of a \$750 prehearing process fee and a \$4,325 hearing process fee. Member fees on these cases currently total \$7,000 (member surcharge of \$2,250 and a combined process fee of \$4,750), so the increase to \$7,550 (member surcharge of \$2,475 and combined process fee of \$5,075) would be an increase of approximately 8 percent.

For a claim between \$500,000.01 and \$1 million and heard by three arbitrators, the hearing session fee would increase from \$1,200 to \$1,300 or 8 percent. Thus, under the example, FINRA would assess hearing session fees of \$6,500 – the cost of five hearing sessions (one IPHC and four hearing sessions) at \$1,300 each. The arbitrators have the discretion to allocate these fees evenly between the parties, or apportion them in any other manner, including assessing the entire amount against one party.

F. Proposed Arbitrator Honoraria Increases

Under the proposed rule change, FINRA would amend Rules 12214 and 12800 of the Customer Code to increase the arbitrator honoraria. Table 7 illustrates the proposed increases and the percentage changes from the current rates.

Proposed Arbitrator Honoraria Increases – Table 7

| Arbitrator Honoraria | Current | Proposed | Percentage Change |
|--|----------------|-----------------|--------------------------|
| Per arbitrator, per hearing session | \$200 | \$300 | 50% |
| Chairpersons (per day of hearing) | \$75 | \$125 | 67% |
| Contested Subpoena Requests | \$200 | \$250 | 25% |
| Simplified Arbitration Cases (flat rate) | \$125 | \$350 | 180% |

FINRA is proposing to amend Rule 12214(a) to increase the payment to each arbitrator for each hearing session in which the arbitrator participates from \$200 to \$300 per hearing

session. The rule would also be amended to increase the additional amount that chairpersons receive from \$75 to \$125 per day of hearings.

Rule 12214(d) would be amended to increase the honoraria that arbitrators receive when they decide contested subpoena requests. Currently, for each arbitrator who decides a contested subpoena request, FINRA assesses a \$200 fee to the parties to cover the cost of the honoraria. The proposed rule change would increase the honoraria from \$200 to \$250. In most cases, the chairperson would decide the contested subpoena request; however, a party may request that the entire panel decide such motion. These honoraria are paid on a per case basis, regardless of the number of contested subpoena requests decided by an arbitrator or panel. Thus, under the proposed rule change, if a three-person panel decided a contested subpoena request, the maximum fee that the parties could be assessed, collectively, would increase from \$600 to \$750. If an arbitrator or the panel decides such a motion, the panel would allocate the cost of the honoraria to the parties in the award.⁵⁶

Finally, the proposed rule change would increase the honoraria for simplified cases. FINRA recently raised the claim amount limit for simplified arbitration from \$25,000 to \$50,000.⁵⁷ Typically, as the claim amount increases, arbitrators encounter issues that are more complicated to resolve, and, thus, require more of their time. Although no hearings are conducted in simplified arbitrations, these cases can be time-consuming, and, in FINRA's view, the current honoraria level does not reflect fairly the arbitrator's time and effort to render a

⁵⁶ Rules 12214(d)(3) and 13214(d)(3).

⁵⁷ See Securities Exchange Act Rel. No. 66913 (May 3, 2012), 77 FR 27262 (May 9, 2012) (File No. SR-FINRA-2012-012) (Approval Order). FINRA last raised the claim amount for simplified arbitration from \$10,000 to \$25,000 in 1998. See Securities Exchange Act Rel. No. 38635 (May 14, 1997), 62 FR 27819 (May 21, 1997) (File No. SR-NASD-97-22) (Approval Order).

decision. Thus, Rule 12800(f) would be amended to increase the simplified arbitration honoraria, which is a flat per case payment, from \$125 to \$350. FINRA notes that the proposed simplified honoraria increase would be the first since 1999,⁵⁸ when FINRA (then NASD) increased the amount from \$75 to \$125, the current honoraria level for this service.

G. Conclusion

The proposed rule change would permit FINRA to cover the proposed increases to arbitrator honoraria by increasing selected arbitration fees. FINRA believes the proposed rule change would help the forum retain a roster of high-quality arbitrators and attract qualified individuals who possess the skills necessary to manage arbitration cases and would consider thoroughly all arbitration issues presented, which are essential elements for FINRA to meet its regulatory objective of protecting the investing public. To achieve this goal, FINRA believes it is incumbent on all users of the forum to contribute to the goal of enhancing the effectiveness of the arbitration forum.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the Regulatory Notice announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵⁹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

⁵⁸ See supra note 3.

⁵⁹ 15 U.S.C. 78o-3 (b)(6).

principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁶⁰ 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 increases among users of the forum by spreading them through the higher claim amounts. In particular, the filing fee and hearing session fee increases for customers begin at the \$500,000 claim amount, which would minimize the impact of the increases on smaller claims and keep the arbitration forum accessible for the small investor. In general, FINRA believes that proposed rule change would protect investors and the public interest by improving FINRA's ability to retain and attract 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 would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would permit FINRA to cover the proposed increases to arbitrator honoraria by increasing selected arbitration fees. Under the proposed rule change, all members would be subject to the same fee increases. In developing the proposed rule change, FINRA considered that fee increases could have a greater impact on smaller firms than on larger firms. To mitigate this impact, FINRA linked the fee increases to larger claim amounts, so that the

⁶⁰ 15 U.S.C. 78o-3(b)(5).

largest increases would be linked to the larger claim amounts. As proposed, the member fee increases would primarily apply to claim amounts of \$250,000 and above.

FINRA also focused on minimizing the exposure of public customers to the fee increases. As a result, the proposed fee increases would become effective at the top tiers of the claim amounts in the fee schedules. Thus, on the fees that customers pay, for example filing fees and hearing session fees, the proposed increases would apply only to claim amounts of more than \$500,000. To further mitigate the impact of the filing fee increases, the proposed rule change would add most of the increases to the refundable portion of the filing fee. Moreover, in the award, arbitrators have the authority to order a respondent to reimburse all or part of any filing fee paid.

For the hearing session fees, FINRA acknowledges that the proposed increases could result in additional costs for customers. However, the effects of the hearing session fee increases could be minimized under the Codes. For example, the parties may settle⁶¹ the arbitration before any hearings are conducted to avoid being assessed fees for a hearing.⁶² Further, during settlement negotiations, if hearings were held, parties have the opportunity to determine how to share any hearing session fees.⁶³ Moreover, arbitrators have discretion to allocate hearing session fees as part of their award,⁶⁴ which allows them to consider numerous factors to determine each party's appropriate share and assign the costs accordingly. The proposed rule change would not change parties' ability to settle or arbitrators' discretion to allocate these fees.

⁶¹ Rules 12701(a) and 13701(a).

⁶² See supra note 10. FINRA would assess a hearing session fee against the parties for an IPHC, if one was held. Rules 12500(c) and 13500(c).

⁶³ Rules 12701(b) and 13701(b).

⁶⁴ Rules 12902(a)(1) and 13902(a)(1).

Further, FINRA believes that modifying the unspecified claim fees in each fee type would more accurately reflect the appropriate fee for the damages sought and the potential range of recovery.

Finally, FINRA believes that the proposed rule change adheres to the philosophy that the cost of arbitration should be borne by the users of the forum, without imposing significant burdens on public customers who bring the arbitration claims to the forum. Thus, a large portion of the fee increases would be covered by member surcharges and process fees imposed only on members. Conversely, a smaller portion of the fee increases would be covered by filing fees and hearing session fees, which are shared by members, associated persons, and public customers.

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>);
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2014-026 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-2014-026. 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 10:00 a.m. and 3:00 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-2014-026 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.⁶⁵

Kevin M. O'Neill
Deputy Secretary

⁶⁵ 17 CFR 200.30-3(a)(12).