V. Conclusion

It is therefore ordered, pursuant to 19(b)(2) of the Act,[9] that the proposed rule change (SR–ICC–2012–08) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–11132 Filed 5–8–12; 8:45 am]

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efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66913; File No. SR–FINRA–2012–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Amending FINRA Rules 12401 (Number of Arbitrators) and 12800 (Simplified Arbitration) of the Code of Arbitration Procedure for Customer Disputes, and FINRA Rules 13401 (Number of Arbitrators) and 13800 (Simplified Arbitration) of the Code of Arbitration Procedure for Industry Disputes, To Raise the Limit for Simplified Arbitration From $25,000 to $50,000

May 3, 2012.

I. Introduction

On February 9, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 amend FINRA's Customer and Industry Codes of Arbitration Procedure to raise the limit for simplified arbitration. Specifically, the proposed rule change would amend FINRA Rules 12401 (Number of Arbitrators) and 12800 (Simplified Arbitration) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code''), and FINRA Rules 13401 (Number of Arbitrators) and 13800 (Simplified Arbitration) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code''), to raise the limit for simplified arbitration from $25,000 to $50,000. The proposed rule change was published for comment in the **Federal Register** on February 28, 2011.[3] The Commission received five comment letters on the proposed rule change,[4] and a response to comments from FINRA.[5] This order approves the proposed rule change.

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

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

As stated in the Notice, FINRA currently offers streamlined arbitration procedures for claimants seeking damages of $25,000 or less. Under FINRA's simplified arbitration rules, one chair-qualified arbitrator decides the claim and issues an award based on the written submissions of the parties, unless the customer requests a hearing (if it is a customer case), or the claimant requests a hearing (if it is an industry case). FINRA also expedites discovery in these cases.[6] The proposed rule change would raise the dollar limit for damages sought in order to offer simplified arbitration to claimants seeking damages of $50,000 or less.

Specifically, the proposed rule change would amend FINRA Rules 12401(a) and 13401(a) to provide that if the amount of a claim is $50,000 or less, exclusive of interest and expenses, the panel would consist of one arbitrator and the claim would be subject to the simplified arbitration procedures under FINRA Rules 12800 and 13800 respectively. The proposed rule change also would amend FINRA Rules 12401(b) and 13401(b) to state that if the amount of a claim is more than $50,000, but not more than $100,000, exclusive of interest and expenses, the panel would consist of one arbitrator unless the parties agree in writing to three arbitrators. The proposed rule change would not amend FINRA Rules 12401(c) and 13401(c), relating to claims of more than $100,000.

The proposed rule change would also amend FINRA Rules 12800(a) and 13800(a) to provide that the simplified arbitration rules would apply to claims involving $50,000 or less, exclusive of interest and expenses. In addition, the proposed rule change would amend FINRA Rules 12800(e) and 13800(e) to state that if any pleading increases the amount in dispute to more than $50,000, FINRA would no longer administer the claim under the simplified arbitration rules and the regular provisions of the Customer Code and Industry Code, respectively, would apply.

In the Notice, FINRA represented that allowing parties disputing claims between $25,000 and $50,000 to resolve their disputes based on the pleadings and other materials submitted by the parties, without a hearing, would benefit users of FINRA's arbitration forum in many ways, for example: (1) It would reduce forum fees because more parties could avoid hearing session fees and hearing process fees; [7] (2) it would save parties the time and expense of preparing for, scheduling, and traveling to hearings; (3) it would provide an alternative for customers who are unable to retain an attorney and uncomfortable appearing at a hearing without representation; and (4) it would expedite cases because the arbitrator and parties would not need to schedule a hearing.

FINRA has indicated that it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, and that the effective date would be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

III. Discussion of Comment Letters

As stated above, the Commission received five comment letters on the proposed rule change in response to the Notice. All five comment letters supported one or more aspects of the proposal.[8] One commenter suggested an

[3] *See* Exchange Act Release No. 66442 (Feb. 22, 2012), 77 FR 12092 (Feb. 28, 2012) (''Notice''). The comment period closed on March 20, 2012.

[4] *See* Letter from Steven B. Caruso, Maddox Hargett & Caruso, P.C., dated March 2, 2012 (''Caruso Letter''); letter from Ryan K. Bakhtiari, President, Public Investors Arbitration Bar Association, dated March 16, 2012 (''PIABA Letter''); letter from William A. Jacobson, Associate Clinical Professor of Law, Cornell University Law School, and Director, Cornell Securities Law Clinic, and Brenda Beauchamp, Cornell Law School '13, dated March 20, 2012 (''Cornell Letter''); letter from Lisa A. Catalano, Director, Christine Lazaro, Supervising Attorney, and Anna Andreescu, Julia Iodice and Ashley Morris, Legal Interns, St. John's School of Law Securities Arbitration Clinic, dated March 20, 2012 (''St. John's Letter''); and letter from Jill I. Gross, Director, Edward Pekarek, Assistant Director, and Genavieve Shingle, Student Intern, Investor Rights Clinic at Pace Law School, dated March 20, 2012 (''PIRC Letter''). Comment letters are available at *http://www.sec.gov.*

[5] *See* Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, Commission, dated April 19, 2012 (''Response Letter''). The text of the proposed rule change and FINRA's Response Letter are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room. The text of the Response Letter is also available on the Commission's Web site at *http://www.sec.gov.*

[6] *See* FINRA Rule 12800(d).

[7] FINRA represented that the $25,000 threshold captured twenty-one percent of all cases filed with FINRA's arbitration forum in 1998, but currently captures only ten percent of FINRA's caseload. FINRA stated that, based on 2011 statistics, raising the threshold to $50,000 would increase the percentage of claims administered under simplified arbitration to seventeen percent of the claims filed with the forum.

[8] *Supra* note 4.

amendment to the proposal. None of the commenters opposed the proposal.

The Caruso Letter stated that the proposed rule change would benefit public investors and should be approved.

The PIABA Letter stated that raising the threshold for simplified arbitration would benefit investors and other participants by increasing the efficiency of FINRA's arbitration forum, increasing flexibility to resolve claims through simplified arbitration, and reducing costs for forum users.

The Cornell Letter took no position on the proposed amendments to the Industry Code. But the Cornell Letter stated that raising the limit for simplified arbitration would benefit customers with claims generally considered ''small'' and make it more likely that they could obtain legal representation.

The St. John's Letter stated that raising the threshold for simplified arbitration would benefit investors by removing economic impediments to bringing claims in arbitration. Specifically, the St. John's Letter stated that the proposed rule would reduce arbitration-related expenses, such as hearing fees, legal fees (by facilitating claims brought on a pro se basis), and travel expenses (associated with attending arbitration hearings). The St. John's Letter also stated that brokerage firms would also find the proposed rule change beneficial because it would reduce their expenses related to preparing for and appearing at arbitration hearings.[9] In addition, the St. John's Letter stated that the proposed rule change would raise the percentage of cases eligible for simplified arbitration, which the letter represented has dropped due, in part, to inflation and market conditions after 1998, when the limit on the amount of damages claimed in simplified arbitration was last increased.

The PIRC Letter stated that the proposed rule change would benefit investors by enhancing the efficiency and expediency with which claims could be resolved in FINRA's arbitration forum, and by improving the environment for pro bono legal services organizations to help more investors due to the reduced time and resources involved in simplified arbitration. The PIRC Letter expressed concern, however, about an arbitrator's ability to resolve a customer dispute solely based on paper submissions. In particular, the PIRC Letter stated that disputes involving certain types of issues (e.g., fraud and suitability) require arbitrators to decide issues of witness credibility. The PIRC Letter expressed concern that arbitrators might find it difficult to resolve questions of credibility based solely on written submissions. Accordingly, the PIRC Letter recommended FINRA amend the proposed rule to provide customer claimants the option of electing a telephonic hearing.

In its Response Letter, FINRA stated that it would consider the feasibility of a telephonic hearing option. But because the availability of telephonic hearings is not directly related to the substance of the proposed rule, and parties to an arbitration proceeding currently can jointly request a telephonic hearing, FINRA stated that its consideration of telephonic hearings should not delay the Commission's consideration of the proposed rule change. Therefore, FINRA declined to amend the proposed rule change to grant customer claimants the sole option to elect a telephonic hearing.

IV. Commission's Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's Response Letter. Based on its review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

More specifically, the Commission finds that the proposed rule change to raise the limit for simplified arbitration in FINRA's arbitration forum from $25,000 to $50,000 would benefit investors and other participants in the forum by providing increased flexibility to use simplified arbitration and reducing costs for forum users. While the Commission appreciates the suggestion regarding telephonic hearings expressed in the PIRC Letter, we believe that FINRA has responded adequately to the suggestion and agree with the Response Letter's position that consideration of a telephonic hearing option should not delay our consideration of the proposed rule change, particularly given the Response Letter's representation that FINRA would separately consider the feasibility of granting customer claimants a telephonic hearing option.

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–FINRA–2012–012) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

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[9] The St. John's Letter cited a firm's willingness to consent to simplified arbitration to resolve a dispute with an investor claiming damages greater than $50,000.

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

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Computer Matching Between the Selective Service System and the Department of Education

AGENCY: Selective Service System.

ACTION: Notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, the following information is provided:

1. Name of Participating Agencies

The Selective Service System (SSS) and the Department of Education (ED).

2. Purpose of the Match

The purpose of this matching program is to ensure that the requirements of Section 12(f) of the Military Selective Service Act [50 U.S.C. App. 462 (f)] are met. This program has been in effect since December 6, 1985.

3. Authority for Conducting the Matching Computerized Access to the Selective Service Registrant

Registration Records (SSS–9) enables ED to confirm the registration status of