2013–92 and should be submitted on or before October 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70419; File No. SR–FINRA–2013–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Discovery Guide Used in Customer Arbitration Proceedings, as Modified by Amendment No. 1

September 16, 2013.

I. Introduction

On April 1, 2011, the Securities and Exchange Commission (''Commission'') approved a proposal filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') to update the Discovery Guide (''Guide'') used in customer arbitration proceedings.[1] According to FINRA, the Guide supplements the discovery rules contained in the FINRA Code of Arbitration Procedure for Customer Disputes (''Customer Code''). It includes an introduction describing the discovery process generally, and explains how arbitrators should apply the Guide in arbitration proceedings. The introduction is followed by two Document Production Lists (one for firms and associated persons, and one for customers) that enumerate the documents that parties should exchange without arbitrator or staff intervention (collectively, the ''Lists''). The Guide only applies to customer arbitration proceedings, and not to intra-industry cases.

As part of the rulemaking process to update the guide in April 2011, FINRA agreed to establish the Discovery Task Force (''Task Force'') under the auspices of FINRA's National Arbitration and Mediation Committee. FINRA charged the Task Force with reviewing substantive issues relating to the Guide on a periodic basis to keep the Guide current as products change and new discovery issues arise. FINRA stated that it would ask the Task Force to review issues related to electronic discovery (''e-discovery'') and product cases.

On June 3, 2013, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend the Guide to provide general guidance on electronic discovery (''e-discovery'') issues and product cases and to clarify the existing provision relating to affirmations made when a party does not produce documents specified in the Guide. FINRA believes that the proposed rule change, as described below, fulfills its commitment to review the topics of e-discovery and product cases with the Task Force that FINRA established in 2011.[4] The Task Force also reviewed concerns raised by forum users about a potential loophole created by the wording of the Guide's affirmation section describing when and how a party indicates that there are no responsive documents in the party's possession, custody, or control.

The proposed rule change was published for comment in the **Federal Register** on June 20, 2013.[5] The Commission received eighteen comment letters on the proposal.[6] On September 4, 2013, FINRA responded to the comments and filed Amendment No. 1 to the proposed rule change.[7] This order approves the proposed rule change, as modified by Amendment No. 1. The text of the proposed rule change, as modified by Amendment No. 1, is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Description of the Proposal

A. E-Discovery

1. Form of Production

FINRA is proposing to amend the Guide's introduction to state that parties are encouraged to discuss the form in which they intend to produce documents and, whenever possible, to agree to the form of production. The provision would require parties to produce electronic files in a ''reasonably usable format.'' The term ''reasonably usable format'' would refer, generally, to the format in which a party ordinarily maintains a document, or to a converted format that does not make it more difficult or burdensome for the requesting party to use during a proceeding.

The proposed guidance would also state that when arbitrators are resolving contested motions about the form of document production, they should consider the totality of the circumstances, including:

(1) For documents in a party's possession or custody, whether the chosen form of production is different from the form in which a document is ordinarily maintained;

(2) For documents that must be obtained from a third-party (because they are not in a party's possession or custody), whether the chosen form of production is different from the form in which the third-party provided it; and

(3) For documents converted from their original format, a party's reasons for choosing a particular form of production; how the documents may have been affected by the conversion to a new format; and whether the requesting party's ability to use the documents is diminished by any change in the documents' appearance,

[17] 17 CFR 200.30–3(a)(12).

[1] *See* Exchange Act Rel. No. 64166 (Apr. 1, 2011), 76 FR 19155 (Apr. 6, 2011).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See supra* note 1.

[5] *See* Exchange Act Rel. No. 69761 (June 13, 2013), 78 FR 37261 (June 20, 2013).

[6] Comment letters were submitted by Mary Alice McLarty, President, American Association for Justice, dated July 11, 2013 (''AAJ Letter''); Katrina M. Boice, Aidikoff, Uhl and Bakhtiari, dated July 10, 2013 (''Boice Letter''); Carl J. Carlson, Tousley Brain Stephens, PLLC, dated July 11, 2013 (''Carlson Letter''); Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated June 20, 2013 (''Caruso Letter''); David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute, dated July 11, 2013 (''FSI Letter''); Glenn S. Gitomer, McCausland Keen & Buckman, dated July 11, 2013 (''Gitomer Letter''); Dale Ledbetter, Ledbetter & Associates, P.A., dated July 11, 2013 (''Ledbetter Letter''); Seth E. Lipner, Professor of Law, Zicklin School of Business, Baruch College, Member Deutsch Lipner, dated July 11, 2013 (''Lipner Letter''); Peter Mougey, Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor, P.A., dated July 11, 2013 (''Mougey Letter''); Jill I. Gross, Director, Crystal Green, Student Intern, Susan Papacostas, Student Intern, Investor Rights Clinic, Pace University School of Law, dated July 11, 2013 (''Pace Letter''); Scott C. Ilgenfritz, President, Public Investors Arbitration Bar Association, dated July 11, 2013 (''PIABA Letter''); Scott Silver, Silver Law Group, dated July 11, 2013 (''Silver Letter''); Brian N. Smiley, Smiley Bishop Porter, LLP, dated July 11, 2013 (''Smiley Letter''); John R. Snyder and Matthew C. Applebaum, Bingham McCutchen LLP, dated July 8, 2013 (''Snyder and Applebaum Letter''); Debra G. Speyer, Esq., Law Offices of Debra G. Speyer, dated July 10, 2013 (''Speyer Letter''); Victoria Mikhelashvili, Legal Intern, Nathaniel R. Torres, Legal Intern, and Christine Lazaro, Esq., Director, Securities Arbitration Clinic, St. Vincent DePaul Legal Program, Inc., St. John's University School of Law, dated July 11, 2013 (''St. John's Letter''); Leonard Steiner, Attorney, dated July 10, 2013 (''Steiner Letter''); and Matthew W. Woodrufff, Esq., Attorney at Law, dated July 10, 2013 (''Woodruff Letter'').

[7] Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, Commission, dated September 4, 2013.

searchability, metadata, or maneuverability.

Regarding the third factor, FINRA states that it intends to provide arbitrators with guidance on the terms ''appearance,'' ''searchability,'' ''metadata,'' and ''maneuverability'' in training materials to be posted on its Web site.

2. Cost or Burden of Production

In conjunction with the proposed guidance on e-discovery, FINRA also proposes to amend the Guide's discussion on cost or burden of production. Currently, the Guide states that if the arbitrators determine that the document is relevant or likely to lead to relevant evidence, they should consider whether there are alternatives that can lessen the cost or burden impact, such as narrowing the time frame or scope of an item on the Lists, or determining whether another document can provide the same information. FINRA proposes to amend this provision to advise arbitrators that they may order a different form of production if it would lessen the cost or burden impact of producing electronic documents.

FINRA believes that requiring document production in a reasonably usable format and providing general guidance on e-discovery and the costs and benefits of document production would provide arbitrators with the awareness and flexibility to tailor document production to the needs of each case and help parties to resolve an e-discovery dispute in a cost effective manner.

B. Product Cases

FINRA is proposing to amend the Guide's introduction to add guidance on product cases. The Guide would state that a ''product case'' is one in which one or more of the asserted claims centers around allegations regarding the widespread mismarketing or defective development of a specific security or specific group of securities. The Guide would enumerate some of the ways that product cases differ from other customer cases. In particular, in product cases: (1) The volume of documents tends to be much greater; (2) multiple investor claimants may seek the same documents; (3) the documents are not client specific; (4) the product at issue is more likely to be the subject of a regulatory investigation; (5) the cases are more likely to involve a class action with documents subject to a mandatory hold;[8] (6) the same documents may have been produced to multiple parties in other cases involving the same security or to regulators; and (7) documents are more likely to relate to due diligence analyses performed by persons who did not handle the claimant's account.

The Guide would explain that the Lists may not provide all of the documents parties typically request in a product case relating to, among other things, a firm's creation of a product, due diligence reviews of a product, training on or marketing of a product, or post-approval review of a product. The Guide would emphasize that, in a product case, parties are not limited to the documents enumerated in the Lists. It would also stress that the Customer Code provides a mechanism for parties to seek additional documents. Finally, the Guide would explain that parties do not always agree on whether a case is a product case, and the arbitrators may ask the parties to explain their rationale for asserting that a case is, or is not, a product case.

C. Affirmations

The Guide provides for affirmations when a party indicates that there are no responsive documents in the party's possession, custody, or control. The ''affirmation language'' provides that, upon the request of a party seeking documents, the customer, or appropriate person at the firm who has knowledge, must state that the party conducted a good faith search for the documents, describe the extent of the search, and state that based on the search there are no requested documents (the ''Affirmation Language'').

FINRA is proposing to amend the Affirmation Language to make clear that a party may request an affirmation when an opposing party makes only a partial production. The revised language would provide that, if a party does not produce a document specified in the Lists, upon the request of the party seeking the document that was not produced, the customer or the appropriate person at the brokerage firm who has knowledge must affirm in writing that the party conducted a good faith search for the requested document. FINRA is also proposing to require a party to state the sources searched in the affirmation.

FINRA believes that the proposed revisions would clarify the Affirmation Language and reduce disputes over requests for affirmations.

D. Clarifying Amendments

FINRA is proposing to add additional sub-headings to the Guide's introduction to break the introduction into distinct sections that address specific concerns. The new headings would be: ''Flexibility in Discovery;'' ''Cost or Burden of Production;'' ''Requests for Additional Documents;'' ''Form of Production;'' and ''Product Cases.''

FINRA is also proposing to move the sentence that reads: ''[w]here additional documents are relevant in a particular case, parties can seek them in accordance with the time frames provided in the 12500 series of rules'' to the section that would be titled ''Requests for Additional Documents.'' FINRA is also proposing to add the phrase ''may be'' before ''relevant'' to reflect that relevancy is not always established at the time that a party requests additional documents. Finally, FINRA is proposing to amend the sentence in that paragraph that states that ''[a]rbitrators must use their judgment in considering requests for additional documents and may not deny document requests on the grounds that the documents are not expressly listed in the Discovery Guide'' to add the term ''solely'' before the phrase ''on the grounds.''

FINRA believes that the proposed clarifying amendments will add clarity to the Guide.

III. Summary of Comment Letters and FINRA's Response

As noted above, the Commission received eighteen comment letters on the proposed amendments to the Guide.[9] While the comment letters expressed general support for the proposed amendments, each comment letter raised concerns with particular aspects of the proposed amendments. The comment letters and FINRA's response [10] are summarized below.

A. E-Discovery

1. Form of Production

One commenter suggested that production of a document in one format (electronically) should not preclude its production in other formats.[11] This commenter also stated that a party should be permitted to seek production of a document in the format in which it was given to the customer and also in a summary format. In addition, this commenter urged FINRA to require a firm, at the request of the customer, to produce a document in any or all of the formats that the firm makes available to customers online.

FINRA responded that cooperation between parties is a ''hallmark of

[8] A mandatory hold is an act by an entity to preserve documents and electronic information relevant to a lawsuit or government investigation.

[9] *See supra* note 6.

[10] *See supra* note 7.

[11] *See* Woodruff Letter.

discovery in the FINRA forum.''[12] Accordingly, FINRA stated that its proposal amends the Guide to highlight its expectation that the parties will discuss their discovery needs and, whenever possible, agree to the format. To facilitate agreement, FINRA noted that the proposal also requires parties to produce electronic files in a ''reasonably usable format.'' FINRA believes that requiring cooperation in discovery, and requiring parties to produce documents in a reasonably usable format, are sufficient to ensure that parties are able to get the documents they need in a suitable format. Therefore, FINRA believes the commenter's suggested revisions are unnecessary.

One commenter recommended that FINRA add ''the size of the proceeding'' and ''the relative resources of the parties'' to the list of factors that arbitrators consider when they are determining whether electronic files have been produced in a reasonably usable format.[13] Similarly, another commenter suggested that FINRA advise its arbitrators to consider the potential costs to customers of producing documents in certain formats.[14] A different commenter urged FINRA to amend the Guide to state that parties are expected to discuss key words and phrases to be used to search for documents prior to production.[15]

FINRA acknowledged the concerns of these three commenters but believes they are best addressed through arbitrator training. Accordingly, FINRA stated that it will identify these concerns in its arbitrator training materials, which are published on FINRA's Web site.

One commenter suggested that FINRA revise its proposed definition of ''reasonably useable format'' by replacing the phrase ''during a proceeding'' with ''in connection with the arbitration'' to clarify that the requirement applies to all pre-hearing phrases of the arbitration and is not limited to the arbitration hearing itself.[16] FINRA responded that it intended the requirement to apply all phases of the proceeding and amended the proposal as suggested.

One commenter recommended that FINRA revise one of the factors arbitrators consider when determining whether documents are being produced in a reasonably useable format by replacing the word ''maneuverability'' with ''versatility.'' [17] FINRA believes that the term ''maneuverability'' was correctly defined and was the appropriate term in the context of the proposed amendments. FINRA therefore declined to amend the Guide as the commenter proposed.

One commenter suggested that allowing arbitrators to determine the relevance of documents and consider alternatives to e-discovery, as proposed, would make it more difficult for plaintiffs to discover relevant information.[18] As an alternative, that commenter recommended that FINRA rely on the subparts of Rule 26 of the Federal Rules of Civil Procedure relating to e-discovery as a guidepost.[19]

FINRA responded that it believes that arbitrators are in the best position to manage the discovery process and to determine the relevance of requested documents. FINRA also stated that the Guide currently provides arbitrators the flexibility to tailor the discovery process to the facts and circumstances of each case, including the needs of the parties. FINRA believes that the proposed rule change furthers flexibility in the discovery process by (1) directing arbitrators to consider the totality of the facts and circumstances when resolving motions related to the form of production and (2) requiring parties to produce electronic documents in a reasonably usable format. In sum, FINRA believes the proposal would improve the efficiency and cost effectiveness of the arbitration process. FINRA also believes that the proposed guidance is consistent with the principles of the Federal Rules of Civil Procedure governing discovery cited by the commenter.[20] Therefore, FINRA declined to amend the proposed rule change as suggested by the commenter.

One commenter requested that FINRA include language in the Guide requiring the producing party to state whether the documents being produced are in the format in which they are ordinarily maintained, or in the case of documents obtained from a third-party, the format in which the third party provided them. In this commenter's view, if a party produces documents in a format different than the format in which they are ordinarily maintained or were obtained from a third-party, the party should explain the differences between them in detail sufficient for the recipient to understand their significance, including whether the party omitted any information from the original format.[21]

FINRA responded that it believes that the proposal already addresses the commenter's concerns. Specifically, FINRA stated that the proposal would encourage parties to discuss and agree, if possible, to the form in which they intend to produce documents, and instruct arbitrators who are resolving disputes about the form of production to consider (1) whether the form of productions is different from the form in which the document is ordinarily maintained; (2) whether it is different from the form that was received from a third-party; and (3) the producing party's reasons for converting a document to a particular form for production and how the conversion may have affected the documents. Therefore, FINRA declined to amend the proposal as requested by the commenter.

One commenter viewed the proposal as vague and suggested that FINRA state that if parties are unable to reach an agreement regarding the form of production, the responding party should produce an electronic document in the form in which it is ordinarily maintained or in a reasonably usable format.[22] FINRA responded that the proposal would require parties to produce electronic documents in a ''reasonably usable format'' and that it believes its definition of ''reasonably usable'' is sufficiently clear. Therefore, FINRA declined to amend the proposed rule change as suggested by the commenter.

2. Cost or Burden of Production

One commenter objected to the proposal to advise arbitrators that they may order a different form of production

[12] *See* FINRA Rule 12505 of the Customer Code (Cooperation of Parties in Discovery) (requiring parties to cooperate to the fullest extent practicable in the exchange of documents to expedite the arbitration).

[13] *See* Woodruff Letter.

[14] *See* Pace Letter (stating that ''customers of limited means may have difficulty producing documents in any format other than hard copy'').

[15] *See* St. John's Letter.

[16] *See* Woodruff Letter.

[17] *See* Woodruff Letter (recommending revising the factor to read ''whether the requesting party's ability to use the documents is diminished by a change in the documents' appearance, searchability, metadata, or versatility'').

[18] *See* AAJ Letter.

[19] *See* Fed. R. Civ. P. 26(f) (Conference of the Parties; Planning for Discovery) (in relevant part, generally requiring the parties to meet and confer to develop a discovery plan); and Fed. R. Civ. P. 26(b)(2)(C) (requiring the court to limit the frequency and extent of discovery based on certain facts and circumstances, such as the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action and the importance of the discovery in resolving the issues).

[20] *Id.*

[21] *See* Carlson Letter.

[22] *See* Mougey Letter.

if it would lessen the cost or burden impact of producing electronic documents.[23] Three commenters requested that FINRA provide specificity on how parties would demonstrate that the cost or burden of production is disproportionate to the need for the document.[24] One commenter suggested that FINRA require firms objecting to production based on the cost or burden to submit an affidavit specifying their objection.[25] Similarly, another commenter recommended requiring a party objecting to production based on the cost or burden to submit an affirmation of the purported cost or burden.[26] One commenter urged FINRA to amend the Guide to state that arbitrators should ''highly scrutinize'' a firm's objections to production based on the cost or burden of e-discovery.[27] In addition, one commenter suggested that FINRA educate its arbitrators about the importance of making parties substantiate any objections to production based on cost and burden.[28]

FINRA responded that FINRA Rule 12508 requires a party objecting to producing documents on the Lists or pursuant to a request made under FINRA Rule 12507 (Other Discovery Requests) to explain, in writing, the basis for the party's objection. Accordingly, a party objecting to production based on cost or burden must explain the basis for the party's objection to the arbitrators. The arbitrators must then determine whether the party's demonstration is sufficient or if an affidavit or affirmation is required. Accordingly, FINRA believes the Customer Code and the Guide are sufficient to require parties to support their objections and that its arbitrator training materials are sufficient to make arbitrators aware of their obligations to require parties to substantiate objections to production based on the cost and burden. Therefore, FINRA declined to amend the proposal as suggested by the commenters.

B. Product Cases

Several commenters supported FINRA's proposal to add general guidance about the types of documents that parties typically request in product cases [29] and, in particular, FINRA's acknowledgement that parties typically request certain types of documents in product cases that may not be on the Lists.[30] Several commenters, however, suggested revisions.

Three commenters recommended that FINRA adopt a Document Production List specific to product cases.[31] One of the commenters asserted that without a list of presumptively discoverable documents, arbitrators could perceive the requested documents as less discoverable.[32] Another commenter opined that FINRA's description of the types of documents that parties typically request in product cases in the introduction to the Guide would create a new category of discoverable documents, which could confuse arbitrators and customers.[33]

FINRA responded that it considered adding an item to the firm/associated person Document Production List that would enumerate specific documents that firms/associated persons would be required to produce when a customer alleged that a claim was a product case. FINRA believes, however, that having a list of presumptively discoverable documents for parties to exchange without arbitrator or staff oversight might not be appropriate in the context of product cases. FINRA believes that such a list would have a significant economic impact on firms because the typical volume of documents associated with product cases is high, even though not every presumptively discoverable document would have probative value for every product case. Alternatively, FINRA stated that adopting general guidance would allow the parties and arbitrators to tailor document discovery to the facts and circumstances of each specific product case. Therefore, FINRA declined to amend the proposal as suggested by the commenters.

Two commenters recommended that FINRA advise arbitrators to consider the cost or burden of production when deciding whether to order the production of product specific documents at the request of a customer.[34] FINRA responded that the introduction to the Guide provides general guidance for arbitrators considering objections based on the cost or burden of production. FINRA stated that it expects arbitrators to apply this guidance, as appropriate, throughout the discovery process in all types of cases, including product cases. FINRA also stated that upon approval of the proposal it would publish in its arbitrator training materials instructions for arbitrators to consider the cost or burden of production when deciding whether to order the production of product specific documents. For those reasons, FINRA declined to amend the proposal as suggested.

One commenter urged FINRA to specify that it does not intend to sanction broad discovery requests for production made in other cases or in response to a regulatory request (*i.e.,* ''shortcut'' discovery).[35] FINRA responded that the Customer Code and the Guide require parties to cooperate in discovery. Thus, if a party objects to a request because it is overly broad and/or lacks appropriate specificity, FINRA expects the parties to discuss the issue. If the parties fail to resolve their discovery issue, FINRA believes that the party objecting to production has the responsibility for articulating the objection. Accordingly, FINRA believes that it is unnecessary to specifically state that it does not sanction ''shortcut'' discovery. Therefore, FINRA declined to amend the proposal as suggested by the commenter.

In its proposal, FINRA listed several ways that product cases differ from other customer cases and described the types of documents that parties typically request in products cases. One commenter suggested that FINRA state that (1) the presence of the enumerated differences may not justify a threshold finding that a claim is a product case, and (2) the list of documents that parties typically request should not be the ''touchstone for what is relevant'' and/or discoverable in a product case.[36] FINRA responded that it designed the proposed guidance to educate parties and arbitrators about product cases, and when the parties disagree about whether a claim centers around a product, to provide a mechanism for arbitrators to make a threshold determination that a claim is, or is not, a product case. Furthermore, it describes the types of documents that parties typically request in product cases as a signal to the arbitrators that discovery in product cases might reasonably go beyond the documents enumerated in the Lists. For these reasons, FINRA declined to amend the proposal as suggested.

Another commenter suggested that FINRA provide specific guidance to arbitrators regarding the scope of discovery in product cases to prevent firms from limiting product discovery to

[23] *See* AAJ Letter.

[24] *See* Pace Letter, Speyer Letter, and St. John's Letter.

[25] *See* PIABA Letter.

[26] *See* Caruso Letter.

[27] *See* Mougey Letter.

[28] *See* Smiley Letter.

[29] *See* Boice Letter, Caruso Letter, FSI Letter, Gitomer Letter, Pace Letter, PIABA Letter, Silver Letter, Smiley Letter, and Speyer Letter.

[30] *See* Boice Letter, Caruso Letter, Gitomer Letter, PIABA Letter, and Speyer Letter.

[31] *See* Mougey Letter, Pace Letter, and St. John's Letter.

[32] *See* Pace Letter.

[33] *See* St. John's Letter.

[34] *See* FSI Letter and Snyder and Applebaum Letter.

[35] *See* Snyder and Applebaum Letter.

[36] *Id.*

information given to the claimant or communications regarding the claimant, rather than to information or communications relating to the product.[37] FINRA responded that the proposal already addresses the commenter's concern because it (1) explains how product cases differ from other customer cases and (2) instructs arbitrators that the standard for discovery in the forum is whether a document is relevant or likely to lead to relevant evidence.[38] Therefore, FINRA declined to amend the proposed rule change as suggested by the commenter.

C. Affirmations

Four commenters opined that the Affirmation Language in the Guide should not distinguish between documents on the Lists and additional documents requested.[39] Accordingly, they urged FINRA to replace the provision allowing arbitrators to order an affirmation regarding additional documents not on the Lists with a requirement for parties to submit an affirmation at the request of a party seeking additional documents not on the Lists. One commenter supported maintaining the distinction between documents on the Lists and additional documents.[40] This commenter noted that the documents enumerated on the Lists were subject to Commission review and a public comment period, while any additional documents requested would not have been subject to the same process.

FINRA responded that it believes that the commenters' concerns require additional analysis and consideration. FINRA also stated that the proposed rule change is an important step toward improving the Guide language on affirmations and should be approved by the Commission at this time. Therefore, while FINRA declined to amend the proposal as suggested by the commenters, it stated that it will discuss their comments with the Task Force and monitor the impact of amending the Affirmation Language as proposed. FINRA stated that its staff would then consider whether to seek FINRA Board approval of future amendments to the Affirmation Language.

One commenter suggested that FINRA clarify that it did not intend to require affirmations in virtually all cases.[41] FINRA responded that it believes that the obligations and guidance regarding cooperation in discovery as detailed in the Customer Code and Guide are sufficient to ensure that parties do not routinely require affirmations. Therefore, FINRA declined to amend the proposal as suggested by the commenter.

Another commenter recommended that FINRA amend the Guide to require a producing party to identify the words used in an electronic search for documents so that the requesting party could determine if the search was appropriately comprehensive.[42] FINRA responded by reiterating its belief that pursuant to the Customer Code and Guide parties should discuss their search terms. Furthermore, FINRA believes that the topic should be addressed in arbitrator training, rather than in the Guide. Therefore, while FINRA declined to amend the Affirmation Language, it stated that it will include a discussion on search terms in the arbitrator training materials on e-discovery if the Commission approves the proposal.

D. Training Materials

One commenter suggested that FINRA published text related to the proposal in its arbitrator training material prior to Commission approval of the proposed rule change.[43] FINRA responded that it drafted the training materials at issue independent of the proposed rule change. FINRA also stated that it published the training materials at the recommendation of the Task Force to prepare arbitrators to address the issues unique to product cases that could come before them. In addition, FINRA stated that it drafted arbitrator training materials consistent with the proposed guidance on product cases and will publish them if the Commission approves the proposal.

E. Monitoring Implementation

One commenter recommended that the Task Force monitor the implementation of the proposed guidance, including by polling arbitrators and claimants' counsel, and suggested possible follow-up action if FINRA's general guidance proves insufficient.[44] Similarly, another commenter encouraged FINRA and the Commission to monitor the extent to which the proposed amendments satisfy parties' discovery needs.[45] FINRA responded that it will monitor implementation of the proposed rule change and work with the Task Force to design a survey for parties and arbitrators that would gauge the success of the new guidance. FINRA stated that, depending on its findings, it would then consider next steps.

IV. Discussion and Commission Findings

After carefully considering the proposal, the comments submitted, and FINRA's response to the comments, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and rules and regulations thereunder applicable to a national securities association.[46] In particular, the Commission finds that the proposed rule change is consistent with Exchange Act Section 15A(b)(6),[47] which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 amendments to the Guide would improve the arbitration process for the benefit of public investors, broker-dealer firms, and associated persons who use the FINRA Forum. Specifically, the Commission believes that the proposed amendments would, among other things, help reduce the number and limit the scope of disputes involving document production and other matters, particularly with regard to e-discovery and product cases.

The Commission has considered the commenters' views on the proposed rule change and believes that FINRA responded appropriately to the concerns raised. The Commission believes that, as FINRA noted in its response letter, many of the comments have been addressed by the proposed amendments or will be addressed through arbitrator training. The Commission notes that FINRA stated that it consulted with the Task Force in developing its responses to commenters. Moreover, FINRA stated that it has committed to consult with the Task Force on its arbitrator training

[37] *See* Mougey Letter.

[38] *See* the Arbitrator's Guide (at page 34) and the ''Discovery Abuses & Sanctions'' Training. Both documents are available on FINRA's Web site at *http://www.finra.org.*

[39] *See* Caruso Letter, Pace Letter, Speyer Letter, and St. John's Letter.

[40] *See* Snyder and Applebaum Letter.

[41] *Id.*

[42] *See* St. John's Letter.

[43] *See* Snyder and Applebaum Letter.

[44] *See* PIABA Letter.

[45] *See* Smiley Letter.

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

[47] 15 U.S.C. 78*o*–3(b)(6).

materials, and will continue to work with the Task Force to monitor implementation of the proposed amendments. In addition, FINRA stated that it will share the results of its survey with the Task Force and consider any recommendations that Task Force makes for further improvements to the Guide.

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

V. Conclusion

It is therefore ordered, pursuant to Exchange Act Section 19(b)(2)[48] that the proposed rule change (SR–FINRA–2013–024), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–22883 Filed 9–19–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Patch International, Inc., QuadTech International, Inc., Strategic Resources, Ltd., and Virtual Medical Centre, Inc.; Order of Suspension of Trading

September 18, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Patch International, Inc. because it has not filed any periodic reports since the period ended May 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of QuadTech International, Inc. because it has not filed any periodic reports since the period ended April 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Strategic Resources, Ltd. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Virtual Medical Centre, Inc. because it has not filed any periodic reports since the period ended March 31, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 18, 2013, through 11:59 p.m. EDT on October 1, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–23043 Filed 9–18–13; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

A.G. Volney Center, Inc. (f/k/a Buddha Steel, Inc.), China Green Material Technologies, Inc., China Tractor Holdings, Inc., and Franklin Towers Enterprises, Inc.; Order of Suspension of Trading

September 18, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of A.G. Volney Center, Inc. (f/k/a Buddha Steel, Inc.) because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Green Material Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Tractor Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Franklin Towers Enterprises, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 18, 2013, through 11:59 p.m. EDT on October 1, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–23041 Filed 9–18–13; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Municipal Mortgage & Equity LLC, Prolink Holdings Corp., RPM Technologies, Inc., SARS Corp., Secured Digital Storage Corp., Siboney Corp., SiriCOMM, Inc., and Standard Management Corp.; Order of Suspension of Trading

September 18, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Municipal Mortgage & Equity LLC because it has not filed any Forms 10–Q for the period ended June 30, 2006 through the period ended September 30, 2010, and it filed materially deficient Forms 10–K for the period ended December 31, 2006 through the period ended December 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Prolink Holdings Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RPM Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SARS Corp. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Secured Digital Storage Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

[48] 15 U.S.C. 78s(b)(2).

[49] 17 CFR 200.30–3(a)(12).