



<b>Regulatory Information Circular</b>			
<b>Circular number:</b>	2009-319	<b>Contact:</b>	Michael J. Simon
<b>Date:</b>	December 31, 2009	<b>Telephone:</b>	212-897-0230

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## **Subject: Rule Change Notice – Changes to FINRA Arbitration Rules**

Pursuant to ISE Rule 1800, which in part states that FINRA's Code of Arbitration shall govern ISE arbitrations, this Regulatory Information Circular informs Members of proposed rule changes to the FINRA Code of Arbitration published by the Securities and Exchange Commission, attached.

In the December 30, 2009 *Federal Register*, the Commission published notice of filing of a proposed rule change (SR-FINRA-2009-073) by FINRA to amend Rules 12213(a) of the Code of Arbitration Procedure for Customer Disputes and Rule 13313(a) of the Code of Arbitration Procedure for Industry Disputes to expand the criteria to select a hearing location for an arbitration proceeding.

(Securities Exchange Act Release No. 34-61217 (December 22, 2009))

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61217; File No. SR-FINRA-2009-073]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the Hearing Location Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes December 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) on October 28, 2009, 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 Dispute Resolution is proposing to amend Rules 12213(a) and 13313(a) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”), respectively, to expand the criteria for selecting a hearing location for an arbitration proceeding.

The text of the proposed rule change is 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.

#### 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

##### *Hearing Location Selection under the Customer Code:*

Currently, Rule 12213(a) of the Customer Code states that generally, the Director of FINRA Dispute Resolution (“Director”) will select the hearing location closest to the customer’s residence at the time of the events giving rise to the dispute. FINRA has determined that its policy concerning selection of a hearing location under the Customer Code may be broader than the rule describes.

Under the current rule in the Customer Code, for example, if a customer in an arbitration proceeding lives in Hoboken, New Jersey, the Director will select the New York City hearing location, because this hearing location is closer to the customer’s residence, Hoboken,<sup>3</sup> than FINRA’s Newark, New Jersey hearing location.

There have been instances, however, in which the Director has granted customers’ requests to select a hearing location in their state of residence at the time of the events giving rise to the dispute, even though the in-state hearing location may not be the closest hearing location. Thus, in the example above, if the customer requests the Newark, New Jersey hearing location, the Director generally will grant the request, even though the closest hearing location is the New York City location. The Director typically attempts to honor such requests as a convenience to public customers.

FINRA is proposing, therefore, to amend Rule 12213(a) of the Customer Code to add this criterion for selecting a hearing location. The proposed amendment to the rule would state that the Director will select the hearing location closest to the customer’s residence at the time of the events giving rise to the dispute, unless the hearing location closest to the customer’s residence is in a different state. In that case, the customer may request a hearing location in the customer’s state of residence at the time of the events giving rise to the dispute.

Under the proposal, the Director would continue to select the hearing location closest to the customer’s residence at the time of the events giving rise to the dispute. However, the Director would honor a customer’s

request for a different hearing location in the customer’s state of residence.<sup>4</sup> FINRA believes the proposal is customer-friendly because it gives customers more control over the arbitration process, by providing them with a choice of hearing locations.

##### *Hearing Location Selection under the Industry Code:*

Rule 13213(a) of the Industry Code states, in relevant part, that in cases involving an associated person, the Director will generally select the hearing location closest to where the associated person was employed at the time of the events giving rise to the dispute. FINRA has not received requests from associated persons for different hearing locations, other than the closest hearing location under the current rule. However, FINRA believes that associated persons also should have the option to select a hearing location in their state of employment at the time of the events giving rise to the dispute, if the closest hearing location to their employment is in a different state.

Thus, FINRA is proposing to amend Rule 13213(a) of the Industry Code in two ways. First, FINRA would broaden the criteria for selecting the appropriate hearing location by referring to the time of the events giving rise to the dispute. FINRA notes that this amendment clarifies current practice and makes the rule language under the Industry Code consistent with the comparable rule under the Customer Code. The second change to Rule 13213(a) would allow an associated person to request a different hearing location, other than the closest hearing location. Specifically, the proposal would state that the Director will select the hearing location closest to where the associated person was employed at the time of the events giving rise to the dispute, unless the hearing location closest to the associated person’s employment is in a different state. In that case, the associated person may request a hearing location in his or her state of employment at the time of the events giving rise to the dispute.

Under the proposal, the Director would continue to select the hearing location closest to where the associated person was employed at the time of the

<sup>4</sup> If the customer requests a different hearing location other than the location closest to the customer’s residence at the time of the events giving rise to the dispute and makes the request before the arbitrator or arbitrators are selected, the Director will grant the request. If the customer requests a different hearing location other than the location closest to the customer’s residence at the time of the events giving rise to the dispute and makes the request after the arbitrator or arbitrators are selected, the customer must submit the request to the arbitrator or panel.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Hoboken, New Jersey is less than a mile by ferry across the Hudson River from FINRA’s New York City hearing location.

events giving rise to the dispute. However, the Director would honor an associated person's request for a different hearing location in the associated person's state of employment.<sup>5</sup> FINRA believes the proposal would benefit associated persons by providing them with a choice of hearing locations.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> 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. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would assist in the efficient administration of the arbitration process by giving customers and associated persons more control over where the arbitration would be held.

### B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### 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 by FINRA.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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

<sup>5</sup> If the associated person requests a different hearing location other than the location closest to where the associated person was employed at the time of the events giving rise to dispute and makes the request before the arbitrator or arbitrators are selected, the Director will grant the request. If the associated person requests a different hearing location other than the location closest to where the associated person was employed at the time of the events giving rise to dispute and makes the request after the arbitrator or arbitrators are selected, the associated person must submit the request to the arbitrator or panel.

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

organization consents, the Commission will:

(A) By order approve 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. The Commission in particular requests comment on the effect of allowing customers or associated persons to request a different hearing location after the arbitrator or arbitrators have been selected. 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>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-073 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-073. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington DC 20549-1090. 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 the File Number SR-FINRA-2009-073 and should be submitted on or before January 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61207; File No. SR-Phlx-2009-84]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Rules Relating to Conduct of Business on the Exchange

December 18, 2009.

On October 29, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change that would: (i) Create an expedited hearing process for members posing an immediate threat to the safety of persons or property, seriously disrupting Exchange operations, or who are in possession of a firearm on the Exchange trading floor; (ii) increase the time period a member may be physically excluded from the trading floor; (iii) increase the maximum amount a member may be fined pursuant to Rule 60; (iv) amend language applicable to contesting citations and create a forum fee of \$100 for contesting citations; (v) add language to explicitly prohibit alcohol and illegal controlled substances on the trading floor; (vi) increase fines for various regulations; (vii) require non-member visitors who are performing contract work at the Exchange on behalf of members to provide a certificate of insurance and add fines for failure to provide proof of insurance; (viii) add a rule to limit exchange liability and require reimbursement of certain expenses; (ix) amend the disciplinary rules to allow Enforcement Staff to request a hearing; and (x) increase the

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.