

Phlx Memo No. 0655-08

RC No: FINRA- 2008-10

MEMORANDUM

To: Members and Member Organizations

From: Legal Department

Date: April 3, 2008

Re: FINRA Code of Arbitration
SR-FINRA-2008-10 Notice of Filing of Proposed Rule Change Relating
to Amendments to the Codes of Arbitration Procedure To Establish New
Procedures for Arbitrators To Follow When Considering Requests for
Expungement Relief

Pursuant to Phlx Rule 950, Section 44, the Exchange has outsourced its arbitration and mediation program to FINRA Dispute Resolution. The purpose of this memo is to update you as to proposed amendments to the FINRA Code of Arbitration Procedure.

Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission") on March 13, 2008

FINRA is proposing to amend its Customer Code and Industry Code to establish new procedures that arbitrators must follow when considering requests for expungement relief under Rule 2130. The procedures are designed to: (1) Make sure that arbitrators have the opportunity to consider the facts that support or weigh against a decision to grant expungement; and (2) ensure that expungement occurs only when the arbitrators find and document one of the narrow grounds specified in Rule 2130.

Proposed Rules 12805 and 13805 would require arbitrators considering an expungement request to hold a recorded hearing session by telephone or in person, provide a brief written explanation of the reasons for ordering expungement, and, in cases involving a settlement, review the settlement documents to examine the amount paid to any party and any other terms and conditions of the settlement that might raise concerns about the associated person's involvement in the alleged misconduct before awarding expungement. The proposed rule change would provide that the panel must assess forum fees for hearing sessions held solely for the purpose of considering expungement against the parties requesting the relief.

The proposed rule change would not affect FINRA's current practice of permitting expungement, without judicial intervention, of information from the Central Registration Depository ("CRD") system as directed by arbitrators in intra-industry arbitration awards that involve associated persons and firms based on the defamatory nature of the information ordered expunged.

Below is the text of the proposed rule change. All the text is new

12805. Expungement of Customer Dispute Information Under Rule 2130

In order to grant expungement of customer dispute information under Rule 2130, the panel must:

(a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under Rule 12800 even if a customer did not request a hearing on the merits.

(b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.

(c) Indicate in the arbitration award which of the Rule 2130 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2130 grounds for expungement applies to the facts of the case.

(d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.

13805. Expungement of Customer Dispute Information under Rule 2130

In order to grant expungement of customer dispute information under Rule 2130, the panel must:

(a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under Rule 13800 even if a claimant did not request a hearing on the merits.

(b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.

(c) Indicate in the arbitration award which of the Rule 2130 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2130

grounds for expungement applies to the facts of the case.

(d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.

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The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. The text of the proposed rule change is available on FINRA's Web site (<http://www.finra.org>), at FINRA's principal office, and at the Commission's Public Reference Room.

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>); or
- . Send an e-mail to rule-comments@sec.gov. Please include File Number **SR-FINRA-2008-10** on the subject line.

Paper Comments

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

All submissions should refer to File Number **SR-FINRA-2008-10**. 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. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2008-10** and should be submitted on or before **April 24, 2008**.

If you have any questions regarding this proposed rule change, or would like a complete copy of this proposed filing, or further questions regarding the FINRA Dispute Resolution Process, please click on the FINRA Dispute Resolution website at www.finra.org . If you need additional help, please contact Scott Donnini at (215) 496-5358.