

Phlx Memo No. 0598 -08

RC No: FINRA- 2008-05

MEMORANDUM

To: Members and Member Organizations

From: Legal Department

Date: March 26, 2008

Re: FINRA Code of Arbitration
SR-FINRA-2008-05 Notice of Filing of Proposed Rule Change Relating
to Amendments to the Codes of Arbitration Procedure To Permit
Submissions to Arbitrators After a Case Has Closed Under Limited
Circumstances

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 February 7, 2008

FINRA is proposing Rule 12905 of the FINRA Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rule 13905 of the NASD Code of Arbitration Procedure for Industry Disputes ("Industry Code") to permit submissions to arbitrators after a case has closed only under the following circumstances: (1) As ordered by a court; (2) at the request of any party within 30 days of service of an award or notice that a matter has been closed, for ministerial matters; or (3) if all parties agree and submit documents within 30 days of service of an award or notice that a matter has been closed.

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

12905. Submissions After a Case Has Closed

(a) Parties may not submit documents to arbitrator(s) in cases that have been closed except under the following limited circumstances:

. As ordered by a court;

. At the request of any party within 30 days of service of an award or notice that a matter has been closed, for ministerial matters such as miscalculation of figures, mistake in the description of any person, thing or property referred to in the award, or if the award is imperfect in a matter of form that does not affect the decision on the merits; or

. If all parties agree and submit documents within 30 days of (1) service of an award or (2) notice that a matter has been closed.

(b) Parties must make requests under this rule in writing to the Director and must include the basis relied on under this rule for the request. The Director will forward the documents, along with any responses from other parties, to the arbitrators. Unless the arbitrators rule within 20 days after the Director forwards the documents to the arbitrators, the request shall be deemed denied.

13905. Submissions After a Case Has Closed

(a) Parties may not submit documents to arbitrator(s) in cases that have been closed except under the following limited circumstances:

. As ordered by a court;

. At the request of any party within 30 days of service of an award or notice that a matter has been closed, for ministerial matters such as miscalculation of figures, mistake in the description of any person, thing or property referred to in the award, or if the award is imperfect in a matter of form that does not affect the decision on the merits; or

. If all parties agree and submit documents within 30 days of (1) service of an award or (2) notice that a matter has been closed.

(b) Parties must make requests under this rule in writing to the Director and must include the basis relied on under this rule for the request. The Director will forward the documents, along with any responses from other parties, to the arbitrators. Unless the arbitrators rule within 20 days after the Director forwards the documents to the arbitrators, the request shall be deemed denied.

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-2008-005** 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-2008-005**. 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-2008-005** and should be submitted on or before **April 15, 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.