

Phlx Memo No. 1885-08

RC No: FINRA- 2008-51

MEMORANDUM

To: Members and Member Organizations

From: Legal Department

Date: Nov. 5, 2008

Re: FINRA Code of Arbitration
SR-FINRA-2008-51 Notice of Filing of Proposed Rule Change Relating
to Amendments to the Codes of Arbitration Procedure To Require
Arbitrators To Provide an Explained Decision Upon the Joint Request of
the Parties

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 October 14, 2008

FINRA is proposing to amend its Customer Code and Industry Code to require arbitrators to provide an explained decision upon the joint request of the parties. The explained decision would be a fact-based award stating the general reason(s) for the arbitrators' decision; it would not be required to include legal authorities and/or damage calculations. Under the proposed rule change, parties would be required to submit any joint request for an explained decision at least 20 days before the first scheduled hearing date. The chairperson would: (1) Be required to write the explained decision; and (2) receive an additional honorarium of \$ 400 for writing the decision. The panel would allocate the cost of the additional honorarium to the parties as part of the final award.

The arbitrators would not be required to provide an explained decision in cases resolved without a hearing under simplified arbitration Rules 12800 and 13800 or in default cases conducted under Rules 12801 and 13801.

FINRA is not proposing to amend Rules 12904(f) and 13904(f), which provide that an award may contain an underlying rationale. This means that arbitrators would continue to be permitted to decide, on their own, to write an explained decision. Thus, as is

currently the case, if the panel decides on its own to write an explained decision, FINRA would not pay an additional honorarium to any panel member.

Below is the text of the proposed rule change.

Proposed new language is in italics; proposed deletions are in brackets

Customer Code

12214. Payment of Arbitrators

(a)-(d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 12904(g) will receive an additional honorarium of \$ 400. The panel will allocate the cost of the honorarium under Rule 12904(g) to the parties.

(2) If the panel decides on its own to write an explained decision, then no panel member will receive the additional honorarium of \$ 400.

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12514. *Pre-hearing Exchange of Documents and Witness Lists [Before Hearing], and Explained Decision Requests*

(a)-(c) No change.

(d) Explained Decision Request

At least 20 days before the first scheduled hearing date, all parties must submit to the panel any joint request for an explained decision under Rule 12904(g).

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12904. Awards

(a)-(f) No change.

(g) Explained Decisions

(1) This paragraph (g) applies only when all parties jointly request an explained decision.

(2) An explained decision is a fact-based award stating the general reason(s) for the arbitrators' decision. Inclusion of legal authorities and damage calculations is not required.

(3) Parties must make any request for an explained decision no later than the time for the pre-hearing exchange of documents and witness lists under Rule

12514(d).

(4) The chairperson of the panel will be responsible for writing the explained decision.

(5) The chairperson will receive an additional honorarium of \$ 400 for writing the explained decision, as required by this paragraph (g). The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.

(6) This paragraph (g) will not apply to simplified cases decided without a hearing under Rule 12800 or to default cases conducted under Rule 12801.

(g)-(i) Renumbered as (h)-(j).

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Industry Code

13214. Payment of Arbitrators

(a)-(d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 13904(g) will receive an additional honorarium of \$ 400. The panel will allocate the cost of the honorarium under Rule 13904(g) to the parties.

(2) If the panel decides on its own to write an explained decision, then no panel member will receive the additional honorarium of \$ 400.

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13514. *Pre-hearing Exchange of Documents and Witness Lists [Before Hearing], and Explained Decision Requests*

(a)-(c) No change.

(d) Explained Decision Request

At least 20 days before the first scheduled hearing date, all parties must submit to the panel any joint request for an explained decision under Rule 13904(g).

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13904. Awards

(a)-(f) No change.

(g) Explained Decisions

(1) This paragraph (g) applies only when all parties jointly request an explained decision.

(2) An explained decision is a fact-based award stating the general reason(s) for the arbitrators' decision. Inclusion of legal authorities and damage calculations is not required.

(3) Parties must make any request for an explained decision no later than the time for the pre-hearing exchange of documents and witness lists under Rule 13514(d).

(4) The chairperson of the panel will be responsible for writing the explained decision.

(5) The chairperson will receive an additional honorarium of \$ 400 for writing the explained decision, as required by this paragraph (g). The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.

(6) This paragraph (g) will not apply to simplified cases decided without a hearing under Rule 13800 or to default cases conducted under Rule 13801.

(g)-(i) Renumbered as (h)-(j).

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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-2008-51** 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-2008-51**. 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-2008-51** and should be submitted on or before **November 21, 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 Fran Gelman at (215) 496-5164.