

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>18</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.600 are intended to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## 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 organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

## 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. 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 No. SR-NYSEArca-2010-04 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2010-04. 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 Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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-NYSEArca-2010-04 and should be submitted on or before March 10, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-3464 Filed 2-22-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61517; File No. SR-FINRA-2010-006]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the Codes of Arbitration Procedure To Provide for Attorney Representation of Non-Party Witnesses in Arbitration

February 16, 2010.

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 on January 22, 2010, the 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") 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 is proposing to amend Rule 12602 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rule 13602 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") (together, "Codes") to provide that a non-party witness may be represented by an attorney at an arbitration hearing while the witness is testifying.

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

<sup>19</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.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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

FINRA is proposing to amend Rules 12602 and 13602 of the Codes to provide that a non-party witness has the right to be represented by an attorney at an arbitration proceeding held in a United States hearing location while the witness is testifying. The attorney would have to be in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless State law prohibits such representation. Under the proposed rule change, the panel would determine the extent to which the attorney could participate at the hearing.

The Codes expressly allow a party to be represented at any stage in an arbitration proceeding.<sup>3</sup> They do not address representation of a non-party witness. FINRA believes that a non-party witness should be entitled to be represented by an attorney while he or she is testifying. Currently, under the Codes, the arbitration panel determines if a non-party witness' attorney may attend a hearing.<sup>4</sup> A non-party witness may testify at a hearing: (1) Voluntarily; (2) pursuant to a subpoena;<sup>5</sup> or (3) in compliance with an arbitrator's order for an associated person to appear and give testimony.<sup>6</sup>

<sup>3</sup> Rules 12208 and 13208 (Representation of Parties) provide that parties have the right to be represented by an attorney at any stage in an arbitration proceeding. They also allow parties to be represented by a person who is not an attorney subject to certain limitations.

<sup>4</sup> Rules 12602 and 13602 (Attendance at Hearings) provide that parties and their representatives are entitled to attend all hearings and that, absent persuasive reasons to the contrary, expert witnesses should also be permitted to attend all hearings. The panel determines who else may attend any or all hearings.

<sup>5</sup> Rules 12512 and 13512 (Subpoenas) provide that arbitrators have the authority to issue subpoenas for the production of documents or the appearance of witnesses. The rules permit a party to make a written motion requesting that an arbitrator issue a subpoena to a party or a non-party.

<sup>6</sup> Rules 12513 and 13513 (Authority of Panel to Direct Appearances of Associated Person Witnesses

While the proposed rule change would apply to all non-party witnesses, in many instances when a non-party is testifying at a FINRA arbitration hearing, the non-party witness is an associated person who handled the customer claimant's account, but was not named as a respondent in the case. Under the current Codes, the arbitrators determine whether an associated person can bring an attorney to a hearing. FINRA does not believe that arbitrators have been denying requests by non-party witnesses to be represented by counsel while testifying; nevertheless, to assure due process in its dispute resolution forum, FINRA believes that the Codes should expressly provide that a non-party witness is entitled to be represented by an attorney while testifying.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</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 enhance fairness in the arbitration process by ensuring that a non-party witness may be represented by counsel during his or her testimony.

*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.

*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.

**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

and Production of Documents Without Subpoenas) provide that the panel may order the appearance of any employee or associated person of a FINRA member.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

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 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. 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-2010-006 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-2010-006. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-2010-006 and should be submitted on or before March 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-3393 Filed 2-22-10; 8:45 am]

BILLING CODE 8011-01-P

## SOCIAL SECURITY ADMINISTRATION

### Privacy Act of 1974, as Amended; Proposed System of Records and Routine Use Disclosures

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Proposed System of Records and Routine Uses.

**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records and routine uses applicable to this system of records entitled, the *Administrative Law Judge/Public Alleged Misconduct Complaints System*, 60-0356 (the *ALJ/PAMC* system of records). We will use the information covered by the system of records to manage and monitor complaints filed against Administrative Law Judges (ALJ). We discuss the system of records and routine use disclosures in the Supplementary Information section below. We invite public comments on this proposal.

**DATES:** We filed a report of the *ALJ/PAMC* system of records and routine use disclosures with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Oversight and Government Reform, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on February 12, 2010. The *ALJ/PAMC* system of records and routine uses will become effective on March 14, 2010, unless we receive comments before that date that would result in a contrary determination.

**ADDRESSES:** Interested persons may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3-A-6

Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401. All comments we receive will be available for public inspection at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Earlene Whitworth Hill, Social Insurance Specialist, Disclosure Policy Development and Services Division I, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, telephone: (410) 965-1817, e-mail: earlene.whitworth.hill@ssa.gov.

#### SUPPLEMENTARY INFORMATION:

### I. Background and Purpose of the ALJ/PAMC System of Records

#### A. General Background

Our Office of Disability Adjudication and Review (ODAR) includes a nationwide field organization staffed with ALJs who conduct impartial hearings and make decisions on appeals filed by claimants and their advocates or representatives on their behalf. Claimants and their advocates or representatives may file a complaint against an ALJ if they believe the ALJ was biased or engaged in improper conduct. Persons may make complaints in writing to our Office of the Chief Administrative Law Judge and to our regional and hearing offices. We also receive complaints through our Appeals Council, agents at our National 800 Telephone Number Network, our Office of the Inspector General Hotline, and congressional offices on behalf of their constituents. We review, investigate, and respond to such complaints.

At present, we do not have a good mechanism to track complaints about ALJs from initiation to resolution. This weakness makes it difficult for us to identify and resolve service delivery issues, and also impairs customer service. This system of records will help us improve service to the public by creating a centrally managed, electronic method to collect, monitor, and retrieve information concerning complaints about ALJs.

The *ALJ/PAMC* system of records will:

- Provide us with information to manage and respond to complaints, which in turn will help us monitor and improve customer service and reduce manual work;
- Provide us with information to process, review, or investigate complaints filed;
- Provide us with information related to the complaint, including the name of the claimant and other identifying information, the name of the claimant's

advocate or representative, if any, and information about the ALJ who allegedly committed misconduct; and

- Provide us with management information to document, monitor, and track complaints about ALJs, to identify patterns of improper ALJ behavior that may require further review and action, and to assist us in deterring recurring incidences of ALJ bias or misconduct.

#### B. Collection and Maintenance of the Data for the ALJ/PAMC System of Records

We will collect and maintain information from complaints filed against ALJs in an electronic system covered by the *ALJ/PAMC* system of records. We will collect information relating to the complaint, case analyses, results of the review or investigation, location of the hearing or regional office, ALJ duty station, Federal court if the complaint is raised at the Federal court level, and copies of relevant correspondence.

We will collect information about the claimant (or claimant's advocate or representative) filing the complaint such as name, Social Security number (SSN), date of birth, address, gender, race or ethnic background (if readily available), and relevant claims-related information. We will also collect information about the ALJ named in the complaint, such as name, ALJ assigned number, and tracking and control log numbers.

Since we will retrieve information from this system using names and other personal identifiers, the *ALJ/PAMC* information collection is a system of records, as defined by the Privacy Act.

### II. Routine Use Disclosures of Data Covered by the ALJ/PAMC System of Records

#### A. Routine Use Disclosures

We propose to establish the following routine uses of information that will be covered by the *ALJ/PAMC* system of records.

1. To the Office of the President in response to an inquiry from that office made at the request of the subject of the record or a third party on that person's behalf.

We will disclose information under this routine use only when the Office of the President makes an inquiry relating to information contained in this system of records and indicates that it is acting on behalf of the person whose record is requested (e.g., ALJ, claimant, claimant's advocate or representative, if any).

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a

<sup>8</sup> 17 CFR 200.30-3(a)(12).