

March 31, 2009

FINRA Proposes Rule to Streamline Cases Involving Broker Note Arbitrations

On March 24, 2009, the Financial Regulatory Industry Authority (FINRA) filed a rule proposal with the SEC to adopt Rule 13806 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to establish procedures to expedite the administration of promissory note cases and to also amend Rules 13214 and 13600 of the Industry Code to make conforming changes.

Proposed new Rule 13806 would apply to arbitrations solely involving a member's claim that an associated person failed to pay money owed on a promissory note. In order to proceed under the new rule, a claimant would not be permitted to include any additional allegations in the Statement of Claim. These new procedures will be most applicable in the event of disputes between broker dealer member firms and registered representatives involving notes issued in connection with advances against commissions or as part of new hires.

Specifically, under the proposed procedures:

- Parties would choose a single public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims, unless an associated person files a counterclaim or third party claim of more than \$100,000, or the counterclaim or third party claim is unspecified or does not request money damages;
- If the associated person does not file an answer, simplified discovery procedures would apply and, regardless of the amount in controversy, the single arbitrator would render an award based on the pleadings and other materials submitted by the parties. The arbitrator would be paid an honorarium of \$125 for each arbitration resolved in this manner;
- If the associated person files an answer (but does not seek any additional relief or assert any counterclaims or third party claims), regular discovery procedures would apply and, regardless of the amount in controversy, the single arbitrator would hold a hearing; and
- If the associated person files a counterclaim or third party claim, then regular discovery procedures would apply and panel composition would be based on the amount of the controversy. If the counterclaim and/or third party claim is not more than \$100,000, the Director would appoint a single public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims. If the counterclaim and/or third party claim is more than \$100,000, then the Director would appoint a three-arbitrator panel; and
- Regardless of whether the panel is composed of one or three arbitrators, FINRA would pay the arbitrators the honoraria provided for in the Industry Code for arbitrations resolved by a hearing.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following SEC approval. The effective date will be 30 days following publication of the Regulatory Notice announcing SEC approval.

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