



NASAA

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April 17, 2008

Ms. Nancy M. Morris, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

VIA EMAIL TO: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: Release No. 34-57525; File No. SR-FINRA-2008-005  
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

Dear Secretary Morris:

The following comments are hereby submitted on behalf of the North American Securities Administrators Association, Inc. ("NASAA")<sup>1</sup> regarding the above-referenced rule proposal and our comments apply to both the customer and intra-industry dispute provisions. These comments are submitted in addition to NASAA's general objections to the mandatory arbitration system as administered by FINRA.

In summary, NASAA does not believe that FINRA has demonstrated that a sufficient need exists to promulgate the proposed rules. In light of FINRA's statement that dispute resolution staff, receive only "several requests each year from parties to submit documents to arbitrators (the panel) in cases that have been closed for long periods of time"<sup>2</sup> we question the justification for two new rules. In addition to this objection, NASAA is concerned that the rules as proposed may open up a new avenue through which registered representatives can seek expungement of customer complaints from their Central Registration Depository ("CRD") records.<sup>3</sup>

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<sup>1</sup> NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for state regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

<sup>2</sup> 73 Fed. Reg. 15,815 at 15,816 (March 25, 2008).

<sup>3</sup> FINRA operates the CRD system in accordance with an agreement with NASAA. According to this agreement, information filed with the CRD is jointly owned by FINRA and that states in which a person is registered or seeking registration. Further, CRD policy is jointly established by FINRA and NASAA. The information on CRD includes disclosures relating to any disciplinary history of stockbrokers and is available to members of the public through public records requests to state securities regulators.

NASAA is concerned that, whether intended or not, this rule proposal gives respondents an indirect and unfair route to expungement. For example, the rule, as written, allows a party to submit documents after a case has been closed if the documents are submitted to address “ministerial matters.” The term “ministerial matters” is not defined in the rule and could, therefore, be interpreted to include either a panel’s failure to adjudicate an expungement request or the omission of such a request by the respondent. This lack of specificity in the rule proposal as to what is or is not a “ministerial matter” creates a potential for abuse unless there is further clarification that includes specific exclusion of expungement relief.

NASAA has further concerns as to that part of the proposed rule that allows the submission of documents upon agreement of the parties. This prong of the rule does not limit such a submission to “ministerial matters.” Parties could, after a case has been settled and the award issued, come to a further agreement, for additional consideration, that expungement should have been considered by the panel, that expungement is appropriate, and agree to submit documents reflecting this agreement and asking the panel to grant expungement.<sup>4</sup>

For the foregoing reasons, NASAA urges FINRA to abandon this rule making proposal. In the alternative, FINRA should amend its rule proposal and include language which explicitly states that parties may not submit post-award documents which request expungement. A clear and unequivocal prohibition will serve to bring an additional measure of finality to the arbitration process and ensure that the minimal procedural requirements currently in place are not by-passed.

Thank you for your attention to this matter and should you have any questions about our comments please contact Melanie Senter Lubin, Maryland Securities Commissioner and Chair of NASAA’s CRD/IARD Steering Committee, or Robert Terry, Georgia Assistant Securities Commissioner and Vice-chair of NASAA’s Steering Committee. Ms. Lubin can be reached at 410-576-6365 and Mr. Terry can be reached at 404-656-9721.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Tyler', with a stylized flourish at the end.

Karen Tyler,  
NASAA President and  
North Dakota Securities Commissioner

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<sup>4</sup>NASAA is aware that FINRA has filed a rule proposal with the Commission that would establish certain procedures panels must follow in considering expungement requests. Included in this proposal is a provision that would require panels to conduct a hearing on expungement requests. However, the rule proposal has yet to be acted on by the Commission and may very well either not be adopted or adopted in a form that is considerably different than as proposed.