III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2010–23 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than February 19, 2010.

3. Pursuant to 39 U.S.C. 505, Paul Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–3061 Filed 2–17–10; 8:45 am]

BILLING CODE 7710–FW–S

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 18, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, February 18, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

An adjudicatory matter;

Amicus consideration; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: February 12, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3138 Filed 2–16–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold an Open Meeting on Monday, February 22, 2010, in the Multipurpose Room, L–006. The meeting will begin at 9 a.m. and will be open to the public, with seating on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks.

On February 2, 2010, the Commission published notice of the Committee meeting (Release No. 33–9104), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes consideration of a Committee recusal policy, a report from the Education Subcommittee, including a presentation on the National Financial Capability Survey, a report from the Investor as Purchaser Subcommittee, including a discussion of fiduciary duty and mandatory arbitration, a report from the Investor as Owner Subcommittee, including recommendations for the Committee on Regulation FD and proxy voting transparency, as well as reports on a work plan for environmental, social, and governance disclosure and on financial reform legislation, and discussion of next steps and closing comments.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: February 12, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–3196 Filed 2–16–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61505; File No. SR–FINRA–2009–075]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Postponement Fee and Hearing Session Fee Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes

February 4, 2010.

I. Introduction

On November 4, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 12601(b) and 12902(a) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rules 13601(b) and 13902(a) of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") (together, the "Codes") to clarify the applicability of the fee waiver provision of the postponement rule and to codify the hearing session fee for an unspecified damages claim heard by one arbitrator. The proposed rule change was published for comment in the **Federal Register** on December 1, 2009.[3] The Commission received two comment letters on the proposal.[4] FINRA submitted a response to these comments on January 29, 2010.[5] This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61057 (Nov. 24, 2009), 74 FR 62855 ("Notice").

[4] *See* letter from William A. Jacobson, Esq. and Kelly Cardin, Cornell Law School, to Elizabeth M. Murphy, Secretary, Commission, dated December 16, 2009 ("Cornell Letter"); letter from Scott R. Shewan, President, Public Investors Arbitration Bar Association, to Elizabeth M. Murphy, Secretary, Commission, dated December 21, 2009 ("PIABA Letter").

[5] *See* letter from Mignon McLemore, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, Commission, dated January 29, 2010 ("FINRA Response").

II. Description of the Proposal

Proposed Amendment to Rules 12601(b)(3) and 13601(b)(3)

The rules of the Codes require arbitration hearings to be postponed if the parties agree.[6] Hearings may also be postponed by the Director of FINRA Dispute Resolution ("Director"), by the arbitration panel in its own discretion, or by the panel on a motion of a party.[7] If a hearing is postponed, the panel will assess a postponement fee against one or more of the parties, which is typically equivalent to the applicable hearing session fee that would have been assessed had the hearing been held.[8] If parties request and are granted a hearing postponement within three business days of a scheduled hearing session (*i.e.,* a late postponement request), the Director will assess a late postponement fee of $100 per arbitrator.[9]

While the Codes provide for instances in which a postponement fee is not assessed against the parties, such as if the parties agree to submit a matter to mediation at FINRA,[10] such provisions do not apply to late postponement fees. Nevertheless, FINRA has received complaints from arbitrators that parties are misusing the fee waiver provisions. Specifically, parties who have made late postponement requests contend that, if they agree to mediate their dispute through FINRA, they should not be assessed a late postponement fee because Rules 12601(b)(3) and 12601(b)(3) waive the postponement fee if the parties agree to mediate through FINRA.

The proposed rule change amends Rules 12601(b)(3) and 13601(b)(3) of the Codes to provide that no postponement fee will be charged if a hearing is postponed because the parties agree to submit the matter to mediation administered through FINRA, except that the parties shall pay the additional fees described in Rule 12601(b)(2) or 13601(b)(2), respectively, for late postponement requests.

Proposed Amendment to Rules 12902(a)(1) and 13902(a)(1)

In FINRA's arbitration forum, if the parties and the arbitrator(s) meet to discuss the issues giving rise to the arbitration dispute, the meeting is called a "hearing session."[11] The Codes authorize FINRA to assess hearing session fees against the parties for each hearing session.[12] The total amount charged for each hearing session is based on the amount in dispute.[13] For claims that do not request or specify money damages (*i.e.,* an unspecified damages claim), however, the Codes give the Director the discretion to determine the amount of the hearing session fee, not to exceed $1,200.[14]

Currently, the hearing session fee charged for each hearing session in an unspecified damages claim heard by three arbitrators is $1,000.[15] However, for an unspecified damages claim heard by one arbitrator, the rules list the hearing session fee as not applicable ("N/A").[16] While the Codes give the Director the discretion to determine the amount of the hearing session fee for an unspecified damages claim, FINRA's current practice is to charge parties $450 per hearing session for an unspecified damages claim heard by one arbitrator.

The proposed rule change amends Rules 12902(a)(1) and 13902(a)(1) of the Codes to codify FINRA's current practice of charging $450 per hearing session for an unspecified damages claim heard by one arbitrator by changing the current amount for an unspecified damages claim heard by one arbitrator from N/A to $450. However, while the proposal would codify a fee for an unspecified damages claim heard by one arbitrator, the Codes would continue to authorize the Director to determine whether the hearing session fee should be more or less than the amount specified in the fee schedule of the rule.[17]

III. Summary of Comments

The Commission received two comments on the proposed rule change.[18] The comments, as well as FINRA's response, are discussed below.

The Cornell Letter supported the proposed amendments to Rules 12601(b)(3) and 12902(a)(1) of the Customer Code. With respect to the proposed amendments to Rule 12601(b)(3), the Cornell Letter stated that the fee would compensate arbitrators for their time and any inconvenience resulting from a late hearing postponement, and could also provide an incentive for parties to resolve or settle their claims earlier in the process.[19] With respect to the proposed amendment to Rule 12902(a)(1), the Cornell Letter stated that codifying the hearing session fee for unspecified damage claims heard by one arbitrator will assist customers in understanding the fee structure prior to filing a claim.[20]

In contrast, the PIABA Letter generally opposed both of the proposed amendments to the Codes. Specifically, the PIABA Letter argued that the amendments to the fee waiver provisions of the postponement rules (Rules 12601(b)(3) and 13601(b)(3)) would improperly link the amounts arbitrators are paid with whether the litigants comply with FINRA timelines.[21] The PIABA Letter further contended that the amendments would create an impediment to settlement, stating that if late postponement fees are imposed at all, they should be assessed against the industry respondent.[22] Additionally, the PIABA Letter maintained that postponement fees in general impose an unfair burden on the parties to a proceeding and should be abolished altogether.[23]

In response, FINRA noted that the fee waiver provision amendments are necessary to achieve the purposes of the late postponement fee rule, which are to both provide arbitrators with compensation in the event that a scheduled hearing is postponed at the last minute, and to curtail delays in arbitration proceedings by minimizing late postponement requests through the imposition of additional fees for such requests.[24] With respect to assessing the fees against the industry respondent, FINRA explained that the Codes allow arbitrators to allocate all or a portion of the late postponement fee to the non-requesting party or parties if it is determined the party or parties caused or contributed to the need for the postponement.[25] FINRA also stated that the arbitrators are in the best position to determine how the fee should be allocated.[26]

With respect to the proposed amendments regarding the hearing session fees, the PIABA Letter challenged the reasonableness of the fee charged for an unspecified damages claim before one arbitrator compared to

[6] *See* Rules 12601(a)(1) and 13601(a)(1).

[7] *See* Rules 12601(a)(2) and 13601(a)(2).

[8] *See* Rules 12601(b)(1) and 13601(b)(1).

[9] *See* Rules 12601(b)(2) and 13601(b)(2).

[10] *See* Rules 12601(b)(3) and 13601(b)(3).

[11] A hearing session can either be an arbitration hearing or a prehearing conference. Rule 12100(n) and Rule 13100(n).

[12] *See* Rules 12902(a)(1) and Rule 13902(a)(1).

[13] *Id.*

[14] *See* Rules 12902(a)(2) and 13902(a)(2).

[15] For hearing sessions involving three arbitrators in which parties request damages ranging from $25,000.01 to over $500,000, the amount for each hearing session can range from $600 to $1200.

[16] *See* Rules 12902(a)(1) and Rule 13902(a)(1).

[17] *See* Rules 12902(a)(2) and 13902(a)(2).

[18] *See supra,* note 4.

[19] *See* Cornell Letter at 2.

[20] *Id.*

[21] *See* PIABA Letter at 1.

[22] *See* PIABA Letter at 2.

[23] *Id.*

[24] *See* FINRA Response at 2–3.

[25] *Id.* at 3.

[26] *Id.*

the fee charged for an unspecified damages claim before three arbitrators.[27]

FINRA disagreed with this assertion, explaining that the hearing session fee is used to not only cover arbitrator honoraria, but also to address certain fixed costs that are incurred in scheduling a hearing, regardless of the amount in dispute or the number of arbitrators.[28] Moreover, FINRA noted that the Codes authorize the Director to determine whether the hearing session fee for an unspecified damages claim should be more or less than the amount specified in the fee schedule.[29] Therefore, FINRA indicated that the proposed amendments would not change its practice of reducing or waiving the fees in documented cases of financial hardship.[30] FINRA also noted that the proposed fee for such unspecified damage claims is the same as the fee charged for hearing sessions heard by one arbitrator involving claims of $10,000.01 to over $500,000, thus providing case administration with a uniform fee structure that is easy to apply.[31]

Finally, the PIABA Letter also asserted that both of the proposed amendments would result in higher fees to the customer in a FINRA arbitration proceeding.[32] In its response, FINRA noted that the fees contemplated by the proposed amendments are not new and do not represent an increase in the fees currently charged.[33] FINRA stated that the proposed amendments clarify the fees applicable in these situations.[34]

IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the comments and FINRA's response, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[35] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[36] which requires, among other things, that FINRA rules 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.

More specifically, the Commission believes clarifying the applicability of the fee waiver provision of the postponement rule will assist in FINRA's efficient administration of the arbitration process by ensuring that arbitrators receive some compensation in the event that a scheduled hearing session is postponed as a result of a late postponement request, and may serve as an incentive to parties to settle their disputes earlier to avoid the imposition of additional fees.

The Commission also believes codifying the hearing session fee for an unspecified damages claim heard by one arbitrator will ensure consistent assessment of fees in FINRA's arbitration forum, will provide more transparency in FINRA's fee structure, and will enhance the efficiency of the forum by making the rules easier to understand and apply.

Further, the Commission believes that the proposed amendments are consistent with Section 15A(b)(5) of the Act, which requires that a national securities association have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.[37]

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (SR–FINRA–2009–075) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3075 Filed 2–17–10; 8:45 am]

BILLING CODE 8011–01–P

[27] *See* PIABA Letter at 2 (noting that if the proposed amendments were adopted, a hearing session fee of $450 would be charged for an unspecified damage claim heard by one arbitrator, but that a hearing session fee of $1,000 would apply for an unspecified damage claim heard by three arbitrators).

[28] *See* FINRA Response at 3–4.

[29] *Id.* at 4.

[30] *Id.*

[31] *Id.*

[32] *See* PIABA Letter at 1.

[33] *See* FINRA Response at 4.

[34] *Id.*

[35] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78*o*–3(b)(6).

[37] 15 U.S.C. 78*o*–3(b)(5).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61498; File No. SR–ISE–2009–90]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to Changes to the U.S. Exchange Holdings, Inc. Corporate Documents and International Securities Exchange Trust Agreement

February 4, 2010.

On November 9, 2009, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to the U.S. Exchange Holdings, Inc. ("U.S. Exchange Holdings") Corporate Documents (as defined below) and the ISE Trust Agreement (as defined below). The proposed rule change was published for comment in the **Federal Register** on November 24, 2009.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

I. Background

U.S. Exchange Holdings wholly owns ISE Holdings, Inc. ("ISE Holdings"). ISE Holdings wholly owns ISE, as well as a 31.54% interest in Direct Edge Holdings, LLC ("Direct Edge"). Direct Edge currently owns and operates a facility of the Exchange.[4] In addition, on May 7, 2009, Direct Edge's direct subsidiaries, EDGA Exchange, Inc. ("EDGA") and EDGX Exchange, Inc. ("EDGX"), each filed a Form 1 Application [5] (as amended, the "Form 1 Applications") with the Commission, to own and operate a registered national securities exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61005 (November 16, 2009), 74 FR 61398 ("Notice").

[4] *See* Securities and Exchange Act Release No. 59135 (December 22, 2008); 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85) (relating to a corporate transaction in which: (1) ISE Holdings purchased an ownership interest in Direct Edge by contributing cash and the marketplace then operated by ISE Stock Exchange, LLC for the trading of U.S. cash equity securities; and (2) Direct Edge's wholly-owned subsidiary, Maple Merger Sub LLC became the operator of the marketplace as a facility of ISE.

[5] The Commission published the Form 1 Applications, as modified by Amendment No. 1, on September 17, 2009. *See* Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 179 (File No. 10–193 and 10–194).