OMB APPROVAL	
OMB Number:	3235-0045
Expires:	August 31, 2011
Estimated average burden hours per response	38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 12

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2010 - * 053
Amendment No. (req. for Amendments *) 1

Proposed Rule Change by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☐	☑	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

- ☐ 19b-4(f)(1)
- ☐ 19b-4(f)(2)
- ☐ 19b-4(f)(3)
- ☐ 19b-4(f)(4)
- ☐ 19b-4(f)(5)
- ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Margo Last Name * Hassan

Title * Assistant Chief Counsel, FINRA Dispute Resolution

E-mail * Margo.Hassan@finra.org

Telephone * (212) 858-4481 Fax (301) 527-4761

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 12/16/2010

By Kenneth Andrichik
(Name *)

Senior Vice President and Chief Counsel, FINRA Dispute Resolution
(Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Kenneth Andrichik,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document ☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

December 16, 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2010-053 – Proposed Rule Change to Amend the Panel Composition Rule, and Related Rules, of the Code of Arbitration Procedure for Customer Disputes, to Provide Customers with the Option to Choose an All Public Arbitration Panel in All Cases; Response to Comments and Partial Amendment No. 1.

Dear Ms. Murphy:

The Financial Industry Regulatory Authority, Inc. ("FINRA") hereby responds to the comments received by the Securities and Exchange Commission ("SEC" or "Commission") with respect to the above rule filing. In this rule filing, FINRA is proposing to amend the panel composition rule, and related rules, of the Code of Arbitration Procedure for Customer Disputes ("Customer Code"), to provide customers with the option to choose an all public arbitration panel in all cases.[1]

FINRA's Customer Code provides, generally, for a single public arbitrator for claims up to $100,000.[2] For claims over $100,000, the panel is comprised of a chair-qualified public arbitrator, a public arbitrator, and a non-public arbitrator.[3] Under the proposed rule change, customers with disputes over $100,000 would have an option to elect a panel composition method that allows parties to select an all public arbitration panel.

As of December 14, 2010,[4] the SEC posted 125 comments on the proposed rule change on its website, with 103 commenters supporting the proposed rule change as

[1] See Securities Exchange Act Rel. No. 63250 (November 5, 2010), 75 FR 69481 (November 12, 2010) (File No. SR-FINRA-2010-053).

[2] See FINRA Rules 12401 and 12402.

[3] Id.

[4] The comment period ended on December 3, 2010. Under the streamlined filing procedures enacted in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law No.

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filed,[5] 21 commenters supporting the proposed rule change with suggested modifications,[6] and one commenter opposing the proposed rule change.[7]

111-203), the Commission must take action on the proposed rule change within 45 days of the date of publication of the proposed rule change in the Federal Register. The Commission may extend the approval process for an additional 45 days. In order to ensure that the Commission has sufficient time to act on the proposed rule change, FINRA determined to respond to comments submitted to the SEC and dated no later than December 10, 2010 (one week after the comment period expiration date).

[5] Comments supporting the proposed rule change as filed were submitted by David P. Neuman, Esq., Stoltmann Law Offices, P.C., dated November 15, 2010 ("Neuman comment"); Steven B. Caruso, Esq., Maddox Hargett Caruso P.C., dated November 22, 2010 ("Caruso comment"); Constantine N. Katsoris, Esq., Fordham School of Law and Chairman, Securities Industry Conference on Arbitration ("SICA"), dated November 22, 2010 ("SICA comment"); Ryan K. Bakhtiari, Esq,. Aidikoff, Uhl and Bakhtiari, dated November 24, 2010 ("Bakhtiari comment"); Mitchell S. Ostwald, Esq., dated November 24, 2010 ("Ostwald comment"); Leonard Steiner, Esq., dated November 24, 2010 ("Steiner comment"); Scott R. Shewan, Esq., Pape & Shewan, LLP, dated November 24, 2010 ("Shewan comment"); Joseph C. Korsak, Esq., dated November 24, 2010 ("Korsak comment"); David Harrison, Esq., dated November 25, 2010 ("Harrison comment"); Richard Stephens, Esq., dated November 25, 2010 ("Stephens comment"); Braden W. Sparks, Esq., dated November 25, 2010 ("Sparks comment"); Royal L. Lea, III, Bingham & Lea, P.C., dated November 25, 2010 ("Lea comment"); Donald M. Feferman, Esq., dated November 25, 2010 ("Feferman comment"); Philip M. Aidikoff, Esq., Aidikoff, Uhl and Bakhtiari, dated November 25, 2010 ("Aidikoff comment"); W. Scott Greco, Greco & Greco, P.C., dated November 25, 2010 ("Greco comment"); Seth E. Lipner, Esq., Zicklin School of Business, and Deutsch & Lipner, dated November 26, 2010 ("Lipner comment"); Jan Graham, Esq., dated November 26, 2010 ("Graham comment"); Bert Savage, Esq., dated November 29, 2010 ("Savage comment"); Keith L. Griffin, Esq., Griffin Law Firm, LLC, dated November 29, 2010 ("Griffin comment"); Henry Simpson, Esq., dated November 29, 2010 ("Simpson comment"); James A. Sigler, dated November 29, 2010 ("Sigler comment"); Gary M. Brewer, Esq., dated November 29, 2010 ("Brewer comment"); Robert H. Rex, Esq., dated November 29, 2010 ("Rex comment"); Herb Pounds, Jr., Esq., dated November 29, 2010 ("Pounds comment"); Robert C. Port, Esq., Cohen Goldstein Port Gottlieb, LLP, dated November 29, 2010 ("Port comment"); Jeffrey P. Coleman, Esq., Coleman Law Firm, dated November 29, 2010 ("Coleman comment"); Robert A. Uhl, Esq., Aidikoff, Uhl & Bakhtiari, dated November 29, 2010 ("Uhl comment"); Thomas Costello, Esq., Costello Law Group, dated November 29, 2010 ("Costello comment"); Jeffrey A. Feldman, Esq., Law Offices of Jeffrey A. Feldman, dated November 29, 2010 ("Feldman comment"); Brian N. Smiley, Esq., Smiley Bishop & Porter, LLP, dated November 29, 2010 ("Smiley comment"); Steve A. Buchwalter, Esq., dated November 29, 2010 ("Buchwalter comment"); Robert S. Banks, Jr., Esq., Banks Law Office P.C., dated November 29, 2010 ("Banks comment"); Mark E. Maddox, Esq., Maddox Hargett Caruso, P.C., dated November 30, 2010 ("Maddox comment"); Glenn S. Gitomer, Esq., Chair of Litigation Dept., McCausland Keen Buckman, dated November 30, 2010 ("Gitomer comment"); Dale Ledbetter, Esq., Ledbetter & Associates, P.A., dated November 30, 2010 ("Ledbetter comment"); Ronald M. Amato, Esq., Eccleston Law Offices, P.C., dated November 30, 2010 ("Amato comment"); James J. Eccleston, Esq., Eccleston Law Offices, P.C., dated November 30, 2010 ("Eccleston comment"); Gail E. Boliver, Esq., dated November 30, 2010 ("Boliver comment"); Ronald G.

Naramore, Esq., Garnett Naramore, dated November 30, 2010 (“Naramore comment”); Alan C. Friedberg, Pendleton, Friedberg, Wilson, Hennessey, P.C., dated November 30, 2010 (Friedberg comment”); Tom Porter, Esq., Law Offices of Jeffrey A. Feldman, dated November 30, 2010 (“Porter comment”); Rebecca B. Robinson, dated November 30, 2010 (“Robinson comment”); Leonard P. Haberman, Esq., dated November 30, 2010 (“Haberman comment”); Frank L. Flautt, Jr., dated November 30, 2010 (“Flautt comment”); Gene Holcomb, CPA, dated November 30, 2010 (“Holcomb comment”); Joyce M. Wilfong, dated November 30, 2010 (“Wilfong comment”); Joel V. Roberts, Esq., Counsel to City of Odessa, dated November 30, 2010 (“Roberts comment”); Joe Kimbrough, dated November 30, 2010 (“Kimbrough comment”); James H. Boyd, Jr., dated November 30, 2010 (“Boyd comment”); George R. DeLoach, Jr., Esq., dated November 30, 2010 (“DeLoach comment”); James Graven, Esq., dated November 30, 2010 (“Graven comment”); Richard A. Trippeer, Jr., dated November 30, 2010 (“Trippeer comment”); William S. Shepherd, Esq., Shepherd Smith Edwards Kantas LLP, dated on November 30, 2010 (“Shepherd comment”); William Smythe, IV, dated November 30, 2010 (“Smythe comment”); Douglas W. Oldfield, Esq., dated November 30, 2010 (“Oldfield comment”); Katrina M. Boice, Esq., Aidikoff, Uhl & Bakhtiari, dated November 30, 2010 (“Boice comment”); Donald G. McGrath, Esq., dated November 30, 2010 (“McGrath comment”); James E. Harwood, dated December 1, 2010 (“Harwood comment”); Donald R. McNeil, Esq., dated December 1, 2010 (“McNeil comment”); James B. Page, Esq., Page Perry, LLC, dated December 1, 2010 (“Page comment”); William P. Torngren, Law Offices of William P. Torngren, dated December 1, 2010 (“Torngren comment”); Timothy C. Karen, Esq., dated December 1, 2010 (“Karen comment”); Michael L. Offerle, dated December 1, 2010 (“Offerle comment”); Peter J. Mougey, Esq., Levin, Papantonio, Thomas, Mitchell, Rafferty, Proctor P.A., dated December 1, 2010 (“Mougey comment”); Larry W. Meyers, dated December 1, 2010 (“Meyers comment”); Joseph Fogel, Esq., StockBrokerLawyer.com, dated December 2, 2010 (“Fogel comment”); Richard A. Lewins, Esq., dated December 2, 2010 (“Lewins comment”); Joelle B. Franc and Gary J. Pieples, Syracuse University Securities Arbitration and Consumer Law Clinic, dated December 2, 2010 (“Syracuse comment”); Robert L. Sheppard, Assistant Professor, USC, dated December 3, 2010 (“Sheppard comment”); Jason R. Doss, Esq., dated December 3, 2010 (“Doss comment”); Pete Tashie, dated December 3, 2010 (“Tashie comment”); Connie J. Becker, Esq., Ledbetter Associates P.A., dated December 3, 2010 (“Becker comment”); Barbara B. Lapides, Esq., dated December 3, 2010 (“Lapides comment”); William A. Jacobson, Esq., Associate Clinical Professor of Law, Cornell Law School and Director, Cornell Securities Law Clinic, and David D. Samani, dated December 3, 2010 (“Cornell comment”); Frederick W. Rosenberg, Esq., dated December 3, 2010 (“Rosenberg comment”); David P. Meyer, Esq., David P. Meyer Associates Co. LPA, dated December 3, 2010 (“Meyer comment”); Jenice L. Malecki, Esq., Malecki Law, dated December 3, 2010 (“Malecki comment”); Kevin G. Diamond, Esq., dated December 3, 2010 (“Diamond comment”); Cary S. Lapidus, Esq., Law Offices of Cary S. Lapidus, dated December 3, 2010 (“Lapidus comment”); Melinda Steuer, Esq., dated December 3, 2010 (“Steuer comment”); Scott T. Beall, Esq., dated December 3, 2010 (“Beall comment”); Deborah Howard, dated December 3, 2010 (“Howard comment”); Page A. Poerschke, dated December 3, 2010 (“Poerschke comment”); Randall Pitts, dated December 3, 2010 (“Pitts comment”); Stephen Krosschell, Esq., Goodman & Nekvasil, P.A., dated December 3, 2010 (“Krosschell comment”); John Lox, dated December 3, 2010 (“Lox comment”); Laura Dunning, dated December 3, 2010 (“Dunning comment”); Kirk Reasonover, Esq., dated December 3, 2010 (“Reasonover comment”); Troy D. Stubbs, CEO, Intermodal Sales Corporation, dated December 3, 2010 (“Stubbs comment”); Rafael E. Lugo, Esq., dated

Customer Election of Panel Composition Method

Under the proposed rule change, a customer has 35 days from FINRA's service of the Statement of Claim to elect to proceed under either the composition rules for a majority public panel, or the composition rules for an optional all public

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December 3, 2010 ("Lugo comment"); Theodore G. Eppenstein, Esq., Eppenstein and Eppenstein, PLLC, dated December 3, 2010 ("Eppenstein comment"); David T. DeBerry, dated December 3, 2010 ("DeBerry comment"); Shustak Frost and Partners, P.C., dated December 3, 2010 ("Shustak comment"); Sam Edwards, Esq., dated December 3, 2010 ("Edwards comment"); Dr. Edward L. Wampold, dated December 3, 2010 ("Wampold comment"); Austin Smith, dated December 3, 2010 ("Smith comment"); Al Van Kampen, Esq., Rohde Van Kampen PLLC, dated December 3, 2010 ("Van Kampen comment"); Steven M. McCauley, Esq., dated December 4, 2010 ("McCauley comment"); Sara F. Byrd, dated December 4, 2010 ("Byrd comment"); Martin A. Grusin, Esq., dated December 6, 2010 ("Grusin comment"); Barbara B. Hanemann, dated December 6, 2010 ("Hanemann comment"); Nicholas J. Guiliano, Esq., The Guiliano Law Firm, dated December 6, 2010 ("Guiliano comment"); and Joseph C. Peiffer, dated December 6, 2010 ("Peiffer comment").

[6] Comments supporting the proposed rule change and suggesting modifications were submitted by Richard M. Layne, Esq., Law Office of Richard M. Layne, dated November 22, 2010 ("Layne comment"); Jeremy Chalmers, dated November 30, 2010 ("Chalmers comment"); William J. Gladden, dated November 30, 2010 ("Gladden comment"); Barry D. Estell, Esq., dated November 30, 2010 ("Estell comment"); Dayton P. Haigney, Esq., dated November 30, 2010 ("Haigney comment"); Eliot Goldstein, Esq., Law Offices of Eliot Goldstein, LLP, dated November 30, 2010 ("Goldstein comment"); John E. Sutherland, Brickley, Sears & Sorett P.A., dated November 30, 2010 ("Sutherland comment"); Jon C. Furgison, Esq., Law Offices of Jon C. Furgison, dated December 1, 2010 ("Furgison comment"); Susan R. Healy, Esq., Vernon Healy, Attorneys at Law, dated December 2, 2010 ("Healy comment"); Patricia Cowart, Chair, SIFMA Arbitration Committee, dated December 3, 2010 ("SIFMA comment"); Steven Samson, Esq., dated December 2, 2010 ("Samson comment"); Barbara Black, Esq., University of Cincinnati College of Law, and Jill I. Gross, Esq., Pace University School of Law, dated December 3, 2010 ("Black and Gross comment"); Jonathan D. Berg, Esq., Lagemann Law Offices, dated December 3, 2010 ("Berg comment"); John Miller, Esq., Swanson Midgley, LLC, dated December 3, 2010 ("Miller comment"); Scott C. Ilgenfritz, Esq., dated December 3, 2010 ("Ilgenfritz comment"); Howard Rosenfield, Esq., dated December 3, 2010 ("Rosenfield comment"); Rob Bleecher, Esq., dated December 3, 2010 ("Bleecher comment"); Charles C. Mihalek, Esq., Charles C. Mihalek, P.S.C. dated December 3, 2010 ("Mihalek comment"); Peter J. Mougey, Esq., President, Public Investors Arbitration Bar Association ("PIABA"), dated December 3, 2010 ("PIABA comment"); Lisa A. Catalano, Esq., Director, and Christine Lazaro, Esq., Supervising Attorney, St John's University School of Law Securities Arbitration Clinic, dated December 3, 2010 ("St. John's comment"); and Leslie Van Buskirk, Chair, North American Securities Administrators Association, Inc. ("NASAA"), Arbitration Project Group, dated December 10, 2010 ("NASAA comment").

[7] A comment opposing the proposed rule change was submitted by Harvey Wacht, Shufro, Rose & Co., LLC, dated November 18, 2010 ("Wacht comment").

panel. If the customer does not make an affirmative election in writing by the 35-day deadline, the composition rules for majority public panel would apply. Certain commenters requested that the optional all public panel method of panel composition be the default panel composition instead of the majority public panel method of panel composition.[8] Commenters raised concerns that customers without attorneys ("pro se" customers), or attorneys new to the practice of securities arbitration, might not elect the optional all public panel method within the prescribed deadline, or might not appreciate the benefit of electing the method. One commenter raised concerns that pro se customers may be confused by receiving a list of non-public arbitrators after making the election for the optional all public panel method.[9] Another commenter suggested that, if a customer elects to proceed with the optional all public panel method of panel composition, the parties should only receive lists of public arbitrators (i.e., they should not receive a list of non-public arbitrators).[10] Finally, two commenters asked FINRA to clarify whether customers may make their panel composition election at the time of filing the Statement of Claim.[11]

FINRA based the proposed rule change on its experience with its Public Arbitrator Pilot Program ("Pilot"). Under the Pilot's panel selection process, parties receive three lists of 10 arbitrators – 10 chair-qualified public arbitrators, 10 public arbitrators, and 10 non-public arbitrators. The parties select their panel through a process of striking and ranking the arbitrators on the lists. Under the majority public panel option, each party may strike up to four arbitrators on each list. Under the all public panel option, each party may strike up to four arbitrators on the chair-qualified public list and on the public list, but may strike up to *all* of the arbitrators on the non-public list.

During the Pilot, a substantial percentage of customers opted for a majority public panel. From launch of the Pilot in October 2008, until December 1, 2010, in 74 percent of cases eligible for the Pilot, customers accepted a non-public arbitrator on their panel either by choosing not to participate in the Pilot or by ranking one or more

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[8] See the following: Haigney comment, Sutherland comment, Black and Gross comment, Berg comment, PIABA comment; St. John's comment; and NASAA comment.

[9] See NASAA comment. The comment also suggests that FINRA change the "majority public panel" option label to "mixed affiliation" and that FINRA describe the term "non-public arbitrator" as "industry-affiliated." FINRA believes the majority public panel label clearly describes the panel composition and that changing the term non-public at this point would cause confusion.

[10] See Berg comment.

[11] See the Haigney comment and the PIABA comment.

non-public arbitrators.[12] If the customers did not opt into the Pilot at the time they filed a Statement of Claim, FINRA staff sent the customers a letter advising them of the deadline to opt into the Pilot. FINRA believes that, as a result of this step, there were very few complaints from customers that they were not aware of the Pilot. Based on the customer elections made during the Pilot, FINRA believes that it is appropriate to have customers elect the optional all public panel composition method and to include a list of non-public arbitrators during list selection.

While the percentage of pro se customers that file arbitration claims over $100,000 at FINRA is very small, to respond to the commenters' concerns relating to pro ses and to attorneys new to the practice of securities arbitration, FINRA is proposing to amend the proposed rule change to state that FINRA will notify the customer in writing that the customer has 35 days from service of the Statement of Claim to elect the optional all public panel method of panel composition. Further, FINRA will highlight the rule change in its case filing instructions, website information, and other materials, as applicable. FINRA believes that amending the proposed rule change to add a customer notification provision and highlighting in its written materials how the panel composition methods work will ensure that customers understand how to elect the optional all public panel method and are aware of the applicable deadlines for election.

FINRA also intends to allow customers to make their election in the Statement of Claim (or correspondence accompanying the Statement of Claim) in instances when the customers are claimants. Therefore, FINRA is proposing to amend the proposed rule change to state that the customer may elect in writing to proceed under either the composition rules for majority public panel or the composition rules for optional all public panel in the customer's Statement of Claim, if the customer is a claimant, or at any time up to 35 days from service of the Statement of Claim, whether the customer is complainant or respondent.

In addition, FINRA is proposing to correct an error in the title of Rule 12403(b) which, as proposed, states "Customer Claimant Election." FINRA proposes to amend the title to eliminate the reference to "Claimant" because a customer may be a respondent in a FINRA arbitration and FINRA intends the proposed rule change to apply to all customer disputes regardless of whether customers are claimants or respondents.

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[12] During the period at issue, 1,047 eligible cases were filed (583 customers opted into the Pilot, 452 declined to participate, and 12 were still pending). Of the 583 customers that opted into the Pilot, customers returned their rankings in 506 cases (77 rankings pending). Customers proceeding in the Pilot chose to rank one or more non-public arbitrators on the list in 255 of the 506 cases. Either by choosing not to participate in the Pilot (452) or by ranking one or more non-public arbitrators (255), 707 customers (74 percent) in 958 cases (583 customers opting into the Pilot plus 452 declining to participate, less 77 rankings pending) agreed to have a non-public arbitrator.

Rule 12403(b) of the proposed rule change is amended as follows. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Customer Code

(b) Customer [Claimant] Election

(1) The customer may elect in writing to proceed under either the composition rules for majority public panel or the composition rules for optional all public panel in the customer's Statement of Claim, if the customer is a claimant, or at any time up to **[**within**]** 35 days from service of the Statement of Claim.

(2) When FINRA serves the Statement of Claim, FINRA will notify the customer in writing that the customer may elect the composition rules for the optional all public panel within 35 days from service of the Statement of Claim.

(3) If the customer declines to make an affirmative election in writing by the 35-day deadline, the composition rules for majority public panel will apply.

* * * * *

Effect of Proposed Rule Change on Individually Named Brokers

The proposed rule change would apply to all firms and all brokers. One commenter opposes applying the proposed rule change to individually named brokers.[13] According to the commenter, FINRA should provide individual brokers with the procedural protection of having a non-public arbitrator on their arbitration panel. FINRA believes that the commenter's suggestion is unworkable. If FINRA does not apply the proposed rule change to individually named brokers, customers that wish to proceed under the optional all public panel method of panel composition for their claims against firms would be compelled to bifurcate their claims against firms from their claims against individual brokers. Moreover, if the firm wishes to assert a third party claim against an individual broker in a customer case where a customer elected the optional all public panel composition method, the firm's claim could interfere with the customer's election of the optional all public panel. Finally, FINRA believes that bifurcation of customers' claims is likely to result in higher overall arbitration costs for customers. FINRA has concluded that the unintended consequences of the commenter's suggestion make the suggestion inefficient and impractical.

[13] See SIFMA comment.

Non-Public Arbitrator's Role

Two commenters assert that inclusion of a non-public arbitrator would benefit all the parties to a dispute, as well as the public arbitrators on the panel, by appropriately educating them about industry-related issues.[14] One commenter states that the non-public arbitrator may also reduce costs for the parties by obviating the need for the parties to call expert witnesses.[15]

However, the SEC received a number of comments that assert that parties frequently use expert witnesses in cases with majority public panels which negates the need for the non-public arbitrator's industry expertise and the potential cost savings.[16] Moreover, FINRA received feedback on the Pilot from both investor and industry attorneys that indicates that panel composition made no difference in how parties used experts to try their cases. In addition, a number of commenters expressed concerns about the non-public arbitrator offering expert opinions to the other arbitrators that are not subject to cross-examination.[17] FINRA believes that the proposed rule ameliorates the commenters' concerns about the non-public arbitrator's role on the panel. Therefore, FINRA does not intend to amend the proposal as it relates to the non-public arbitrator.

Request to Reject the Proposed Rule Change

One commenter requests that the SEC reject the proposed rule change because it hinders the public interest.[18] The commenter asserts that FINRA has other tools to correct the public's perception that FINRA arbitration is not fair to investors. FINRA believes that the results of the Pilot, the public's feedback on the program, and the overwhelming support reflected in the comments submitted on the proposed rule change clearly indicate the need to provide customers with the choice of whether to select an all public panel or a majority public panel.

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[14] See SIFMA comment and Wacht comment.

[15] See SIFMA comment.

[16] See the following: Neuman comment, Shewan comment, Banks comment, and Rosenberg comment.

[17] See the following: Aidikoff comment, Coleman comment, Amato comment, Eccleston comment, Goldstein comment, Karen comment, Fogel comment, Cornell comment, Mihalek comment, PIABA comment, and NASAA comment.

[18] See Wacht comment.

Comments Outside the Scope of the Proposed Rule Change

Commenters raised concerns about mandatory securities arbitration of investor disputes.[19] While FINRA believes this issue is outside the scope of the proposed rule change, FINRA notes that Congress addressed the issue in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law No. 111-203 "Dodd-Frank"). Under Dodd-Frank, Congress authorized the SEC to limit or prohibit use of pre-dispute arbitration agreements arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization, if it finds this action is in the public interest and for the protection of investors. FINRA does not require firms to use pre-dispute arbitration clauses ("PDAAs"). Where firms elect to use a PDAA, FINRA regulates its content and use so as to ensure investor protection.[20] FINRA believes its arbitration forum is fair and stands ready to assist the SEC as the Commission considers this issue.

In addition to asking the SEC to reject mandatory arbitration, one commenter also suggests that investors should be able unilaterally to demand FINRA arbitration pursuant to existing Rule 12200, if mandatory arbitration is prohibited.[21] FINRA believes that the right of a customer to demand arbitration against a firm is essential for investor protection and is not proposing to amend Rule 12200.[22]

One commenter requested that FINRA amend the definition of "public arbitrator" to exclude any person who is an attorney, accountant, or other professional whose firm has represented industry members within the past five years.[23] As FINRA is not proposing to amend its public arbitrator definition, the comment is outside the scope of the proposed rule change. FINRA does not intend to make the suggested amendment at this time.

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[19] See the following: Layne comment, Steiner comment, Chalmers comment, Gladden comment, Estell comment, Sutherland comment, Furgison comment, Healy comment, Samson comment, Berg comment, Miller comment, Ilgenfritz comment, Rosenfield comment, Bleecher comment, Mihalek comment, and NASAA comment.

[20] See FINRA Code Rule 3110(f).

[21] See the Layne comment.

[22] Under Rule 12200, a member or associated person is required to arbitrate at a customer's request if a dispute is between a customer and a member or associated person of a member and the dispute arises in connection with the business activities of the member or the associated person (except disputes involving the insurance business activities of a member that is also an insurance company).

[23] See Goldstein comment.

One commenter requests that the SEC limit investor arbitration fees to the filing fee applicable in U.S. District Court.[24] Another raised concern about the cost of FINRA arbitration.[25] As FINRA is not proposing to amend its fee rules, the comments are outside the scope of the proposed rule change. FINRA does not intend to amend the fee rules at this time.

Two commenters raised concerns about the discovery process at FINRA.[26] As FINRA is not proposing to amend discovery rules in this proposed rule change, the comment is outside the scope of the proposed rule change. However, FINRA has filed a proposed rule change relating to its discovery process and will respond to the comments submitted to the SEC in a separate letter to the Commission.[27] Therefore, FINRA does not intend to make the suggested amendment at this time.

One commenter raised concerns about the Neutral List Selection System and blue sky laws.[28] As both topics are outside the scope of the proposed rule change FINRA will not address them in this letter.

Conclusion

FINRA believes the proposed rule change will enhance customers' perception of the fairness of its rules and of the FINRA securities arbitration process in general, and requests that the SEC approve the proposal as filed with the additional proposed amendments to Rule 12403(b).

If you have any questions, please contact me by telephone at (212) 858-4481 or email at margo.hassan@finra.org.

Very truly yours,

Margo A. Hassan
Assistant Chief Counsel
FINRA Dispute Resolution

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[24] See Layne comment.

[25] See Estell comment.

[26] See Layne comment and Estell comment.

[27] See SR-FINRA-2010-035.

[28] See Estell comment.