

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
--	--

Description
Provide a brief description of the proposed rule change (limit 250 characters).

FINRA is filing a proposed rule change to amend the Industry Code to change the criteria for determining the panel composition when the claim involves an associated person in industry disputes.

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	<input type="text" value="Mignon"/>	Last Name	<input type="text" value="McLemore"/>
Title	<input type="text" value="Assistant Chief Counsel"/>		
E-mail	<input type="text" value="mignon.mclemore@finra.org"/>		
Telephone	<input type="text" value="(202) 728-8151"/>	Fax	<input type="text"/>

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	<input type="text" value="03/04/2009"/>
By	<input type="text" value="Linda D. Fienberg"/>
	(Name)
	<input type="text" value="President, 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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

[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

[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

[Add](#) [Remove](#) [View](#)

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

[Add](#) [Remove](#) [View](#)

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

[Add](#) [Remove](#) [View](#)

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.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to change the criteria for determining the panel composition when the claim involves an associated person in industry disputes.

Below is the text of the proposed rule change. Proposed new language is underlined; deletions are in brackets.

* * * * *

13402. Composition of Arbitration Panels in Cases Not Involving a Statutory Discrimination Claim

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) **[Disputes Between Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions] Disputes Between Members**

(1) In an arbitration between members, the panel composition will be as follows:

- No change.
- No change.

(2) If an arbitration involves only members and a member amends a pleading, pursuant to Rule 13309(c) to add an associated person, a majority public panel will be appointed, as described in Rule 13402(b).

¹ 15 U.S.C. 78s(b)(1).

(b) [Other] Disputes Between Associated Persons or Between or Among Members and Associated Persons

- No change.
- No change.

13403. Generating and Sending Lists to the Parties

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) [Disputes Between or Among Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions] Lists Generated in Disputes Between Members

(1) – (4) No change.

(b) [Other Disputes Between or Among Members and Associated Persons] Lists Generated in Disputes Between Associated Persons or Between or Among Members and Associated Persons

(1) - (4) No change.

(c) Sending Lists to Parties

No change.

* * * *

13406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) [Disputes Between Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions] Appointment of Arbitrators in Disputes Between Members

(1) – (2) No change.

(b) [Other] Appointment of Arbitrators in Disputes Between Associated Persons or Between or Among Members and Associated Persons

(1) - (2) No change.

(c) No change.

(d) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on December 2, 2008, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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

Questions regarding this rule filing may be directed to Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution at (202) 728-8151.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a) Purpose

Currently, Rule 13402(a) of the Industry Code requires an all non-public panel for disputes between members, and for employment disputes between or among members and associated persons that relate exclusively to employment contracts, promissory notes, or receipt of commissions.² In all other disputes between or among members and

² If the panel consists of one arbitrator, the arbitrator will be a non-public arbitrator selected from the non-public chairperson roster described in Rule 13400(c). *See* Rule 13402(a).

associated persons, Rule 13402(b) requires a majority public panel, where one arbitrator would be a non-public arbitrator and two would be public arbitrators.³

FINRA is proposing to amend the Industry Code to change the criteria for determining panel composition when the claim involves an associated person in industry disputes.⁴ Specifically, FINRA is proposing to amend Rule 13402 and related rules of the Industry Code to:

- appoint a majority public panel for all industry disputes involving associated persons (excluding disputes involving statutory employment discrimination claims which require a specialized all public panel);⁵
- clarify that in disputes involving only members, FINRA appoints an all non-public panel; and
- provide that if a party amends its pleadings to add an associated person to a previously all member case, FINRA would appoint a majority public panel.

Thus, cases involving only members would have an all non-public panel; cases involving a member and an associated person (excluding cases involving a claim for statutory discrimination) would have a majority public panel; and cases involving an associated person with a statutory discrimination claim would have a specialized all public panel.⁶

³ If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster described in Rule 12400(c) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”). *See* Rule 13402(b).

⁴ The proposed changes discussed in this rule filing will not apply to claims filed under the Customer Code.

⁵ The proposal would not apply to disputes involving a claim of statutory employment discrimination. *See* Rule 13802.

⁶ *See* Rule 13802(c) (panel composition rule for statutory employment discrimination claims).

Employment Disputes Involving Associated Persons

Currently, in employment disputes between or among members and associated persons, FINRA appoints an all non-public panel in cases that arise out of the employment or termination of employment of an associated person, and that relate exclusively to 1) employment contracts, 2) promissory notes, or 3) receipt of commissions. However, if a party adds a claim that does not meet these criteria, FINRA appoints a majority public panel.

FINRA is concerned that parties may be manipulating the rules to secure what they hope will be a favorable panel, which, in many cases, they believe to be a majority public panel. For example, if a party files a claim in which the sole cause of action involves an issue of compensation, FINRA will appoint an all non-public panel. However, if a party adds a claim that falls outside of the three causes of action described in the preceding paragraph (e.g., adds a cause of action involving a tort), then FINRA will appoint a majority public panel instead.

Further, FINRA finds Rule 13402(a) cumbersome to implement. Because the three causes of action under the rule are the only exceptions to the requirement for a majority public panel in employment cases, FINRA will appoint a majority public panel if there is any ambiguity concerning whether a claim falls outside of the three exceptions. The lack of an objective standard for determining panel composition, therefore, makes the rule difficult to apply and often requires Dispute Resolution staff (“staff”) to interpret the parties’ pleadings to determine the appropriate panel composition. As further evidence of this concern, staff regularly receives inquiries from parties questioning whether their panel composition is proper under Rule 13402.

FINRA is proposing, therefore, to amend Rule 13402 of the Industry Code to require that for all employment disputes between or among members and associated persons (except for statutory employment discrimination cases), FINRA must appoint a majority public panel.⁷ Rule 13402(a) would be amended to delete the title of the rule, which contains the exceptions to the rule, and replace it with a concise description, which clarifies that Rule 13402(a) would apply to disputes involving only members. Rule 13402(b) would be amended to modify the title of the rule to require that for all industry disputes involving associated persons (excluding disputes involving statutory employment discrimination claims), FINRA must appoint a majority public panel. FINRA is also proposing to make similar, consistent changes to Rules 13403(a) and 13403(b), which govern generating and sending lists to parties, and to Rules 13406(a) and 13406(b), which govern appointment of arbitrators and discretion to appoint arbitrators not on the list.

FINRA believes the proposed amendments would establish an objective standard for determining panel composition and ensure that panel composition is determined by the types of parties involved, and not by the types of claims filed.

Employment Disputes Involving Only Members

FINRA is proposing to amend Rule 13402(a) to clarify that, in disputes involving only members, FINRA would appoint an all non-public panel. FINRA notes that the proposed amendment to Rule 13402(a) is consistent with the current rule and its intent, which is that disputes involving only members should receive an all non-public panel.

⁷ The proposed change would be consistent with the rules and procedures of the former New York Stock Exchange (“NYSE”) arbitration forum. In the NYSE arbitration forum, cases involving associated persons received a majority public panel because the rules classified associated persons as non-members, and non-members received a majority public panel. *See* NYSE Rule 607(a)(1).

FINRA believes that simplifying the rule, by amending the title as described above, will make the rule easier to apply for staff and easier to understand for users of the forum.

Amendments to Pleadings that Add an Associated Person

Occasionally, in a case that began with an all non-public arbitrator panel, a party will amend its pleadings in such a way that a majority public panel would be required. As noted, this might occur when a party added a tort claim to prior claims that fit within the three exceptions under Rule 13402(a). Under the proposed amendments, this change in panel composition would occur only in disputes involving only members in which an associated person is later added. Thus, FINRA is proposing to add a provision to Rule 13402(a) to address amended pleadings that add an associated person as a party.

The proposed rule change would state that if a member (in a dispute involving only members) amends a pleading to add a party who is an associated person, a majority public panel must be appointed. If ranked lists have not been sent to parties, the Director would generate three lists as outlined in Rule 13403(b)(2) of the Industry Code. Specifically, the Director would send a public chairperson list, a public arbitrator list, and a non-public arbitrator list.

If the ranked lists have been sent to parties but are not yet due, the Director would send two new lists to the parties: a public chairperson list and a public arbitrator list as outlined in Rule 13403(b)(2). The parties would keep the non-public chairperson list provided to them as described in Rule 13403(a), and would select the non-public arbitrator from this list. The arbitrator selected from the public chairperson list would be the chairperson of the panel.

If the ranked lists are due, then the parties may not amend a pleading to add a new party until a panel has been appointed and the panel grants a motion to add the party.⁸ If the panel grants the motion to add an associated person, the Director will retain the non-public chairperson from the panel, and remove the remaining non-public arbitrators. The parties would select two public arbitrators from new lists that the Director would send to them in the same manner as if the ranked lists are not yet due. The arbitrator selected from the public chairperson list would be the chairperson of the panel.

FINRA believes that these procedures would be consistent with the intent of the proposal to require that a majority public panel be appointed if a dispute involves associated persons, and would clarify that amending a pleading to add an associated person would require a change to the panel composition.

b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ 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 the public interest by minimizing the parties' ability to manipulate the panel composition rules by filing certain types of claims in industry cases. Moreover, FINRA believes that the proposed rule change will protect the public interest by simplifying the criteria for panel composition in industry disputes, establishing an objective standard for determining panel composition, and ensuring that panel

⁸ See Rule 13309(c) of the Industry Code.

⁹ 15 U.S.C. 78o-3(b)(6).

composition is determined by the types of parties involved, and not by the types of claims filed.

4. 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, as amended.

5. 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 by FINRA.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-_____; File No. SR-FINRA-2009-011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to the Panel Composition rules of the Code of Arbitration Procedure for Industry Disputes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that 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”) on March 4, 2009, the proposed rule change as described in Items I, II, and III below, which Items have been 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 Dispute Resolution is proposing to amend the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to change the criteria for determining the panel composition when the claim involves an associated person in industry disputes.

Below is the text of the proposed rule change. Proposed deletions are in brackets.

* * * * *

13402. Composition of Arbitration Panels in Cases Not Involving a Statutory Discrimination Claim

For disputes involving statutory employment discrimination claims, see Rule 13802.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(a) [Disputes Between Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions] Disputes Between Members

(1) In an arbitration between members, the panel composition will be as follows:

- No change.
- No change.

(2) If an arbitration involves only members and a member amends a pleading, pursuant to Rule 13309(c) to add an associated person, a majority public panel will be appointed, as described in Rule 13402(b).

(b) [Other] Disputes Between Associated Persons or Between or Among Members and Associated Persons

- No change.
- No change.

13403. Generating and Sending Lists to the Parties

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) [Disputes Between or Among Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions] Lists Generated in Disputes Between Members

(1) – (4) No change.

(b) [Other Disputes Between or Among Members and Associated Persons] Lists Generated in Disputes Between Associated Persons or Between or Among Members and Associated Persons

(1) - (4) No change.

(c) Sending Lists to Parties

No change.

* * * *

13406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) [Disputes Between Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions] Appointment of Arbitrators in Disputes Between Members

(1) – (2) No change.

(b) [Other] Appointment of Arbitrators in Disputes Between Associated Persons or Between or Among Members and Associated Persons

(1) - (2) No change.

(c) No change.

(d) No change.

* * * * *

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 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

Currently, Rule 13402(a) of the Industry Code requires an all non-public panel for disputes between members, and for employment disputes between or among members and associated persons that relate exclusively to employment contracts, promissory notes, or

receipt of commissions.³ In all other disputes between or among members and associated persons, Rule 13402(b) requires a majority public panel, where one arbitrator would be a non-public arbitrator and two would be public arbitrators.⁴

FINRA is proposing to amend the Industry Code to change the criteria for determining panel composition when the claim involves an associated person in industry disputes.⁵ Specifically, FINRA is proposing to amend Rule 13402 and related rules of the Industry Code to:

- appoint a majority public panel for all industry disputes involving associated persons (excluding disputes involving statutory employment discrimination claims which require a specialized all public panel);⁶
- clarify that in disputes involving only members, FINRA appoints an all non-public panel; and
- provide that if a party amends its pleadings to add an associated person to a previously all member case, FINRA would appoint a majority public panel.

Thus, cases involving only members would have an all non-public panel; cases involving a member and an associated person (excluding cases involving a claim for statutory

³ If the panel consists of one arbitrator, the arbitrator will be a non-public arbitrator selected from the non-public chairperson roster described in Rule 13400(c). *See* Rule 13402(a).

⁴ If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster described in Rule 12400(c) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”). *See* Rule 13402(b).

⁵ The proposed changes discussed in this rule filing will not apply to claims filed under the Customer Code.

⁶ The proposal would not apply to disputes involving a claim of statutory employment discrimination. *See* Rule 13802.

discrimination) would have a majority public panel; and cases involving an associated person with a statutory discrimination claim would have a specialized all public panel.⁷

Employment Disputes Involving Associated Persons

Currently, in employment disputes between or among members and associated persons, FINRA appoints an all non-public panel in cases that arise out of the employment or termination of employment of an associated person, and that relate exclusively to 1) employment contracts, 2) promissory notes, or 3) receipt of commissions. However, if a party adds a claim that does not meet these criteria, FINRA appoints a majority public panel.

FINRA is concerned that parties may be manipulating the rules to secure what they hope will be a favorable panel, which, in many cases, they believe to be a majority public panel. For example, if a party files a claim in which the sole cause of action involves an issue of compensation, FINRA will appoint an all non-public panel. However, if a party adds a claim that falls outside of the three causes of action described in the preceding paragraph (e.g., adds a cause of action involving a tort), then FINRA will appoint a majority public panel instead.

Further, FINRA finds Rule 13402(a) cumbersome to implement. Because the three causes of action under the rule are the only exceptions to the requirement for a majority public panel in employment cases, FINRA will appoint a majority public panel if there is any ambiguity concerning whether a claim falls outside of the three exceptions. The lack of an objective standard for determining panel composition, therefore, makes the rule difficult to apply and often requires Dispute Resolution staff (“staff”) to interpret the parties’ pleadings to determine the appropriate panel composition. As further evidence of this concern, staff

⁷ See Rule 13802(c) (panel composition rule for statutory employment discrimination claims).

regularly receives inquiries from parties questioning whether their panel composition is proper under Rule 13402.

FINRA is proposing, therefore, to amend Rule 13402 of the Industry Code to require that for all employment disputes between or among members and associated persons (except for statutory employment discrimination cases), FINRA must appoint a majority public panel.⁸ Rule 13402(a) would be amended to delete the title of the rule, which contains the exceptions to the rule, and replace it with a concise description, which clarifies that Rule 13402(a) would apply to disputes involving only members. Rule 13402(b) would be amended to modify the title of the rule to require that for all industry disputes involving associated persons (excluding disputes involving statutory employment discrimination claims), FINRA must appoint a majority public panel. FINRA is also proposing to make similar, consistent changes to Rules 13403(a) and 13403(b), which govern generating and sending lists to parties, and to Rules 13406(a) and 13406(b), which govern appointment of arbitrators and discretion to appoint arbitrators not on the list.

FINRA believes the proposed amendments would establish an objective standard for determining panel composition and ensure that panel composition is determined by the types of parties involved, and not by the types of claims filed.

Employment Disputes Involving Only Members

FINRA is proposing to amend Rule 13402(a) to clarify that, in disputes involving only members, FINRA would appoint an all non-public panel. FINRA notes that the proposed amendment to Rule 13402(a) is consistent with the current rule and its intent,

⁸ The proposed change would be consistent with the rules and procedures of the former New York Stock Exchange (“NYSE”) arbitration forum. In the NYSE arbitration forum, cases involving associated persons received a majority public panel because the rules classified associated persons as non-members, and non-members received a majority public panel. *See* NYSE Rule 607(a)(1).

which is that disputes involving only members should receive an all non-public panel. FINRA believes that simplifying the rule, by amending the title as described above, will make the rule easier to apply for staff and easier to understand for users of the forum.

Amendments to Pleadings that Add an Associated Person

Occasionally, in a case that began with an all non-public arbitrator panel, a party will amend its pleadings in such a way that a majority public panel would be required. As noted, this might occur when a party added a tort claim to prior claims that fit within the three exceptions under Rule 13402(a). Under the proposed amendments, this change in panel composition would occur only in disputes involving only members in which an associated person is later added. Thus, FINRA is proposing to add a provision to Rule 13402(a) to address amended pleadings that add an associated person as a party.

The proposed rule change would state that if a member (in a dispute involving only members) amends a pleading to add a party who is an associated person, a majority public panel must be appointed. If ranked lists have not been sent to parties, the Director would generate three lists as outlined in Rule 13403(b)(2) of the Industry Code. Specifically, the Director would send a public chairperson list, a public arbitrator list, and a non-public arbitrator list.

If the ranked lists have been sent to parties but are not yet due, the Director would send two new lists to the parties: a public chairperson list and a public arbitrator list as outlined in Rule 13403(b)(2). The parties would keep the non-public chairperson list provided to them as described in Rule 13403(a), and would select the non-public arbitrator from this list. The arbitrator selected from the public chairperson list would be the chairperson of the panel.

If the ranked lists are due, then the parties may not amend a pleading to add a new party until a panel has been appointed and the panel grants a motion to add the party.⁹ If the panel grants the motion to add an associated person, the Director will retain the non-public chairperson from the panel, and remove the remaining non-public arbitrators. The parties would select two public arbitrators from new lists that the Director would send to them in the same manner as if the ranked lists are not yet due. The arbitrator selected from the public chairperson list would be the chairperson of the panel.

FINRA believes that these procedures would be consistent with the intent of the proposal to require that a majority public panel be appointed if a dispute involves associated persons, and would clarify that amending a pleading to add an associated person would require a change to the panel composition.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that the Association's 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 the public interest by minimizing the parties' ability to manipulate the panel composition rules by filing certain types of claims in industry cases. Moreover, FINRA believes that the proposed rule change will protect the public interest by simplifying the criteria for panel composition in industry disputes, establishing an objective standard for

⁹ See Rule 13309(c) of the Industry Code.

¹⁰ 15 U.S.C. 78o-3(b)(6).

determining panel composition, and ensuring that panel composition is determined by the types of parties involved, and not by the types of claims filed.

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, as amended.

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 by FINRA.

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 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. Please include File Number SR-FINRA-2009-011 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-011. 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 inspection and copying in the Commission's Public Reference Room. 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 the File Number SR-FINRA-2009-011 and should be submitted on or before [insert date 21 days from

publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).