

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"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<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 Exhibit 3 Sent As Paper Document

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

FINRA is amending the Customer and Industry Codes to amend the definition of "associated person," streamline a case administration procedure, and clarify that customers could be assessed hearing fees based on their own claims for relief in connection with an industry claim.

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 Last Name
Title
E-mail
Telephone Fax

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
By
(Name) (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

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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

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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

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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

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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.

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 Rules 12100(r), 12506(a), and 12902(a) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rule 13100(r) of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to amend the definition of “associated person,” streamline a case administration procedure, and clarify that customers could be assessed hearing session fees based on their own claims for relief in connection with an industry claim.

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

* * * * *

Customer Code

12100. Definitions

(r) Person Associated with a Member

The term “person associated with a member” means:

(1) A natural person who is registered or has applied for registration under the Rules of FINRA; or

(2) A sole proprietor, partner, officer, director, or branch manager of a member, or [a] other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

12506. Document Production Lists

(a) Applicability of Document Production Lists

When the Director serves the statement of claim, the Director will [provide] notify parties of the location of the FINRA Discovery Guide and Document Production Lists on FINRA's Web site, but will provide a copy to the parties upon request. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member or associated person. Other Document Production Lists may also apply, depending on the specific cause(s) of action alleged.

(b) – (c) No change.

* * * *

12902. Hearing Session Fees, and Other Costs and Expenses

(a) Hearing Session Fees

(1) – (3) No change.

(4) If hearing session fees are allocated against a customer in connection with a claim filed by a member or associated person, the amount of hearing session fees the customer must pay must be based on the amount actually awarded to the member or associated person, rather than on the amount claimed by the member or associated person. No hearing session fees may be assessed against a customer in connection with a claim filed by a member that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed a filing fee under Rule 12900(a), and may be subject to hearing session fees under Rule 12902(a).

(b) – (e) No change.

* * * *

Industry Code

13100. Definitions

(r) Person Associated with a Member

The term “person associated with a member” means:

(1) A natural person who is registered or has applied for registration under the Rules of FINRA; or

(2) A sole proprietor, partner, officer, director, or branch manager of a member, or [a] other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on April 15, 2009, the FINRA Board of Governors authorized the filing of the 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

On January 24, 2007, the SEC approved the Code Revision,² which reorganized the old Code of Arbitration Procedure (“old Code”) into three separate procedural codes: the Customer Code, the Industry Code, and the Mediation Code. The Code Revision simplified the language of the old Code, codified current dispute resolution practices, and implemented several substantive changes to dispute resolution rules. Since the SEC approved the Code Revision, Dispute Resolution staff (“staff”) has found rule language that was omitted inadvertently from the Code of Arbitration Procedure for Customer Disputes and for Industry Disputes (collectively, “Codes”), as well as rule language that

² See Securities Exchange Act Release No. 55158 (January 24, 2007); 72 FR 4574 (January 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011).

could be improved to better convey FINRA’s intent or to clarify current practice regarding certain dispute resolution rules. To address these concerns, FINRA is proposing to amend:

- Rules 12100(r) and 13100(r) of the Codes (the definition of “person associated with a member”) so that the definition in the Codes conforms to the definition in the By-Laws of the Corporation;
- Rule 12506(a) of Customer Code (Document Production Lists) to encourage parties to download the Discovery Guide from FINRA’s Web site instead of having a copy mailed to them automatically when a claim is filed; and
- Rule 12902(a) of the Customer Code (Hearing Session Fees, and Other Costs and Expenses) to add language to clarify that the arbitrators may assess hearing session fees against a customer in connection with a claim filed by a member against a customer in cases where there is also a responsive customer claim.

A discussion of the proposed amendments to each rule follows.

Rules 12100(r) and 13100(r) – Person Associated with a Member

A “person associated with a member” or an “associated person” is an individual who is licensed by FINRA to buy and sell securities for a FINRA member and its customers.³ An associated person works for a member and, in most cases, is the

³ Rules 12100(r) and 13100(r) define “person associated with a member” to mean:

- (1) A natural person registered under the Rules of FINRA; or
- (2) A sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA.

individual with whom customers communicate to discuss their accounts or securities transactions.

When FINRA revised the Codes, staff incorporated the definition of “person associated with a member” found in Article I of the By-Laws of the Corporation⁴ into Rules 12100(r) and 13100(r), except for one phrase relating only to Procedural Rule 8210. FINRA intended the definition of associated person in the Codes to match the By-Laws definition. However, the definition in the By-Laws was amended⁵ around the same time that the Code Revision project began, and the definition in the Codes inadvertently omitted the amended By-Laws definition.

In light of the inconsistency between the two definitions of “person associated with a member,” FINRA is proposing to amend Rules 12100(r) and 13100(r) of the Codes to make these definitions consistent with the definition in FINRA’s By-Laws. The proposal would amend the definition of “person associated with a member” in the Codes in two ways: (1) insert the word “other” before the second reference to “natural person” to clarify that the definition does not include corporate entities; and (2) insert the criterion that a natural person includes someone who has applied for registration.

FINRA believes that amending the definition in Rules 12100(r) and 13100(r) to exclude corporate entities from the definition of associated person would remove any

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

⁴ FINRA’s By-Laws define “person associated with a member or associated person of a member” as (1) a natural person who is registered or has applied for registration under the Rules of the Corporation; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Corporation under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member. *See* By-Laws of the Corporation, Article I, Definitions (rr).

⁵ *See* Securities Exchange Act Release No. 42036 (Oct. 19, 1999), 64 FR 57678 (Oct. 26, 1999)(File No. SR-NASD-99-35).

ambiguity concerning how the definition will be applied. Further, amending these rules to expand the forum's jurisdiction to natural persons who have applied for registration would ensure that these individuals, who may be working in some capacity with a firm while awaiting their license, are subject to FINRA's rules, and hence would be required to arbitrate should a dispute involving them arise. Moreover, FINRA notes that this amendment would conform the definitions under the Codes to the Corporation's definition of person associated with a member.⁶

Rule 12506 – Document Production Lists

During the arbitration process, parties can request discovery of documents, names of witnesses, and other information from each other to prepare their cases for the arbitration hearing. To help parties understand what information they should disclose, staff provides a copy of the FINRA Discovery Guide⁷ to parties when the Director serves the statement of claim. The Discovery Guide provides parties in customer cases with guidance on which documents they should exchange without arbitrator or staff intervention (called Document Production Lists)⁸ and provides guidance to arbitrators in determining which documents parties are presumptively required to produce.⁹

Rule 12506 of the Customer Code states that when the Director serves the statement of claim, “the Director will provide the FINRA Discovery Guide and Document Production Lists to the parties.” In light of the availability of Dispute

⁶ See note 4 *supra*.

⁷ In January 1996, FINRA (then-NASD) created a Discovery Guide to assist customers in an arbitration with directing discovery and resolving discovery disputes. The Discovery Guide was approved by the SEC after a public comment period, and was made available for use in arbitration proceedings involving customer disputes upon the publication of *Notice to Members 99-90* (November 1999).

⁸ The Code Revision converted many sections of the Discovery Guide into rules and included them in both the Customer and Industry Codes. See note 2 *supra*.

⁹ Although there are discovery rules in each Code, the Discovery Guide applies only in customer arbitration disputes.

Resolution forms, guides and the claim filing system on FINRA's Web site, FINRA believes that it is no longer necessary to disseminate the Discovery Guide to parties automatically when they file a claim in the dispute resolution forum. Further, many parties and counsel who use FINRA's arbitration forum are repeat users who are likely to have a current copy of the documents in their files. Due to these circumstances, FINRA believes that automatic distribution of the Discovery Guide is not an efficient use of resources.

Therefore, FINRA is proposing to amend Rule 12506(a) to state that, when the Director serves the statement of claim, the Director will notify parties of the location of the Discovery Guide (which includes the Document Production Lists) on FINRA's Web site, but will not provide a copy except upon request. FINRA believes the proposed change would enhance the efficiency of the case administration process, and would reduce FINRA's printing and mailing costs. Moreover, the proposal would encourage parties, especially those who frequently use the forum, to download relevant information from FINRA's Web site as needed.

Rule 12902 – Hearing Session Fees, and Other Costs and Expenses

Under the old Code, arbitrators could allocate hearing session fees against any party. Rule 10332(c)¹⁰ of the old Code protected customers from potentially higher forum fees (now hearing session fees) triggered by amounts sought in industry claims by prohibiting the arbitrators from assessing forum fees against customers if the industry claim was dismissed. Moreover, the rule protected customers from higher forum fees by requiring that the amount of the forum fees be based on the amount awarded to an

¹⁰ Rule 10332(c) of the old Code stated, in relevant part, that "no fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim."

industry party and not on the amount of damages requested by the industry claim.

However, Rule 10332(c) also provided that customers could be fairly subject to potential forum fees based on their own claims for relief in connection with the industry claim.¹¹

During the Code Revision, FINRA inadvertently omitted from the corresponding Rule 12902(a)(4) in the Customer Code, the provision in old Rule 10332(c) that permitted the forum to assess fees against the customer based on the customer's claim in an industry dispute. Thus, FINRA is proposing to amend Rule 12902(a)(4) to incorporate the omitted language. The proposed rule change would amend the rule by adding the omitted language to the end of the rule. Specifically, the new language would state that "in cases where there is also a customer claim, the customer may be assessed a filing fee under Rule 12900(a), and may be subject to hearing session fees under Rule 12902(a)."

FINRA notes that the proposed amendment does not reflect a change in stated policy or practice. Under the Customer Code, if a customer files a claim, counterclaim, cross claim or third party claim, Rule 12900(a)(1) requires customers to pay a filing fee. Moreover, the first sentence of Rule 12902(a)(4) addresses the instance in which a customer may be assessed hearing session fees in connection with a claim filed by a member or associated person.¹² Similarly, the proposed amendment to Rule 12902(a)(4) would make it clear to customers that if they file a claim in connection with a claim filed by a member, they may be subject to filing fees and hearing session fees based on their own claim for relief. FINRA believes the proposed amendment would clarify the

¹¹ For example, if a member filed a claim against a customer, and the arbitrators dismissed the claim, the customer would not be assessed any forum fees. However, if, in connection with the industry claim, the customer filed a counterclaim against the member, the customer would be subject to potential forum fees based on the customer's own claim for relief.

¹² Rule 12902(a)(4) maintains the protection of old Rule 10332(c) by requiring that "the amount of hearing session fees the customer must pay must be based on the amount actually awarded to the member or associated person, rather than on the amount claimed by the member or associated person."

forum's policy concerning fees in connection with a customer counterclaim for relief and make the Code easier to administer for staff.

b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹³ 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 investors and the public interest because the proposal would ensure that individuals who have applied for registration are bound by FINRA's rules, and therefore subject the jurisdiction of the dispute resolution forum, and would assist in the efficient administration of the arbitration process by streamlining certain procedures.

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.

¹³ 15 U.S.C. 78o-3(b)(6).

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-2009-041

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend Rules 12100, 12506, and 12902 of the Code of Arbitration Procedure for Customer Disputes and Rule 13100 of the Code of Arbitration Procedure for Industry Disputes to Implement Conforming Changes

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 June 5, 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 is proposing to amend the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to amend Rules 12100(r), 12506(a), and 12902(a) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rule 13100(r) of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to amend the definition of “associated person,” streamline a case administration procedure, and clarify that customers could be assessed hearing session fees based on their own claims for relief in connection with an industry claim.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

On January 24, 2007, the SEC approved the Code Revision,³ which reorganized the old Code of Arbitration Procedure ("old Code") into three separate procedural codes: the Customer Code, the Industry Code, and the Mediation Code. The Code Revision simplified the language of the old Code, codified current dispute resolution practices, and implemented several substantive changes to dispute resolution rules. Since the SEC approved the Code Revision, Dispute Resolution staff ("staff") has found rule language that was omitted inadvertently from the Code of Arbitration Procedure for Customer Disputes and for Industry Disputes (collectively, "Codes"), as well as rule language that could be improved to better convey FINRA's intent or to clarify current practice regarding certain dispute resolution rules. To address these concerns, FINRA is proposing to amend:

³ See Securities Exchange Act Release No. 55158 (January 24, 2007); 72 FR 4574 (January 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011).

- Rules 12100(r) and 13100(r) of the Codes (the definition of “person associated with a member”) so that the definition in the Codes conforms to the definition in the By-Laws of the Corporation;
- Rule 12506(a) of Customer Code (Document Production Lists) to encourage parties to download the Discovery Guide from FINRA’s Web site instead of having a copy mailed to them automatically when a claim is filed; and
- Rule 12902(a) of the Customer Code (Hearing Session Fees, and Other Costs and Expenses) to add language to clarify that the arbitrators may assess hearing session fees against a customer in connection with a claim filed by a member against a customer in cases where there is also a responsive customer claim.

A discussion of the proposed amendments to each rule follows.

Rules 12100(r) and 13100(r) – Person Associated with a Member

A “person associated with a member” or an “associated person” is an individual who is licensed by FINRA to buy and sell securities for a FINRA member and its customers.⁴ An associated person works for a member and, in most cases, is the individual with whom customers communicate to discuss their accounts or securities transactions.

⁴ Rules 12100(r) and 13100(r) define “person associated with a member” to mean:

- (1) A natural person registered under the Rules of FINRA; or
- (2) A sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA.

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

When FINRA revised the Codes, staff incorporated the definition of “person associated with a member” found in Article I of the By-Laws of the Corporation⁵ into Rules 12100(r) and 13100(r), except for one phrase relating only to Procedural Rule 8210. FINRA intended the definition of associated person in the Codes to match the By-Laws definition. However, the definition in the By-Laws was amended⁶ around the same time that the Code Revision project began, and the definition in the Codes inadvertently omitted the amended By-Laws definition.

In light of the inconsistency between the two definitions of “person associated with a member,” FINRA is proposing to amend Rules 12100(r) and 13100(r) of the Codes to make these definitions consistent with the definition in FINRA’s By-Laws. The proposal would amend the definition of “person associated with a member” in the Codes in two ways: (1) insert the word “other” before the second reference to “natural person” to clarify that the definition does not include corporate entities; and (2) insert the criterion that a natural person includes someone who has applied for registration.

FINRA believes that amending the definition in Rules 12100(r) and 13100(r) to exclude corporate entities from the definition of associated person would remove any ambiguity concerning how the definition will be applied. Further, amending these rules to expand the forum’s jurisdiction to natural persons who have applied for registration would ensure that these individuals, who may be working in some capacity with a firm while

⁵ FINRA’s By-Laws define “person associated with a member or associated person of a member” as (1) a natural person who is registered or has applied for registration under the Rules of the Corporation; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Corporation under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member. *See* By-Laws of the Corporation, Article I, Definitions (rr).

⁶ *See* Securities Exchange Act Release No. 42036 (Oct. 19, 1999), 64 FR 57678 (Oct. 26, 1999)(File No. SR-NASD-99-35).

awaiting their license, are subject to FINRA's rules, and hence would be required to arbitrate should a dispute involving them arise. Moreover, FINRA notes that this amendment would conform the definitions under the Codes to the Corporation's definition of person associated with a member.⁷

Rule 12506 – Document Production Lists

During the arbitration process, parties can request discovery of documents, names of witnesses, and other information from each other to prepare their cases for the arbitration hearing. To help parties understand what information they should disclose, staff provides a copy of the FINRA Discovery Guide⁸ to parties when the Director serves the statement of claim. The Discovery Guide provides parties in customer cases with guidance on which documents they should exchange without arbitrator or staff intervention (called Document Production Lists)⁹ and provides guidance to arbitrators in determining which documents parties are presumptively required to produce.¹⁰

Rule 12506 of the Customer Code states that when the Director serves the statement of claim, “the Director will provide the FINRA Discovery Guide and Document Production Lists to the parties.” In light of the availability of Dispute Resolution forms, guides and the claim filing system on FINRA's Web site, FINRA believes that it is no longer necessary to disseminate the Discovery Guide to parties automatically when they file a claim in the dispute resolution forum. Further, many parties and counsel who use FINRA's arbitration

⁷ See note 4 *supra*.

⁸ In January 1996, FINRA (then-NASD) created a Discovery Guide to assist customers in an arbitration with directing discovery and resolving discovery disputes. The Discovery Guide was approved by the SEC after a public comment period, and was made available for use in arbitration proceedings involving customer disputes upon the publication of *Notice to Members* 99-90 (November 1999).

⁹ The Code Revision converted many sections of the Discovery Guide into rules and included them in both the Customer and Industry Codes. See note 2 *supra*.

¹⁰ Although there are discovery rules in each Code, the Discovery Guide applies only in customer arbitration disputes.

forum are repeat users who are likely to have a current copy of the documents in their files. Due to these circumstances, FINRA believes that automatic distribution of the Discovery Guide is not an efficient use of resources.

Therefore, FINRA is proposing to amend Rule 12506(a) to state that, when the Director serves the statement of claim, the Director will notify parties of the location of the Discovery Guide (which includes the Document Production Lists) on FINRA's Web site, but will not provide a copy except upon request. FINRA believes the proposed change would enhance the efficiency of the case administration process, and would reduce FINRA's printing and mailing costs. Moreover, the proposal would encourage parties, especially those who frequently use the forum, to download relevant information from FINRA's Web site as needed.

Rule 12902 – Hearing Session Fees, and Other Costs and Expenses

Under the old Code, arbitrators could allocate hearing session fees against any party. Rule 10332(c)¹¹ of the old Code protected customers from potentially higher forum fees (now hearing session fees) triggered by amounts sought in industry claims by prohibiting the arbitrators from assessing forum fees against customers if the industry claim was dismissed. Moreover, the rule protected customers from higher forum fees by requiring that the amount of the forum fees be based on the amount awarded to an industry party and not on the amount of damages requested by the industry claim. However, Rule 10332(c) also provided that

¹¹ Rule 10332(c) of the old Code stated, in relevant part, that "no fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim."

customers could be fairly subject to potential forum fees based on their own claims for relief in connection with the industry claim.¹²

During the Code Revision, FINRA inadvertently omitted from the corresponding Rule 12902(a)(4) in the Customer Code, the provision in old Rule 10332(c) that permitted the forum to assess fees against the customer based on the customer's claim in an industry dispute. Thus, FINRA is proposing to amend Rule 12902(a)(4) to incorporate the omitted language. The proposed rule change would amend the rule by adding the omitted language to the end of the rule. Specifically, the new language would state that "in cases where there is also a customer claim, the customer may be assessed a filing fee under Rule 12900(a), and may be subject to hearing session fees under Rule 12902(a)."

FINRA notes that the proposed amendment does not reflect a change in stated policy or practice. Under the Customer Code, if a customer files a claim, counterclaim, cross claim or third party claim, Rule 12900(a)(1) requires customers to pay a filing fee. Moreover, the first sentence of Rule 12902(a)(4) addresses the instance in which a customer may be assessed hearing session fees in connection with a claim filed by a member or associated person.¹³ Similarly, the proposed amendment to Rule 12902(a)(4) would make it clear to customers that if they file a claim in connection with a claim filed by a member, they may be subject to filing fees and hearing session fees based on their own claim for relief. FINRA believes the proposed amendment would clarify the forum's policy concerning fees in

¹² For example, if a member filed a claim against a customer, and the arbitrators dismissed the claim, the customer would not be assessed any forum fees. However, if, in connection with the industry claim, the customer filed a counterclaim against the member, the customer would be subject to potential forum fees based on the customer's own claim for relief.

¹³ Rule 12902(a)(4) maintains the protection of old Rule 10332(c) by requiring that "the amount of hearing session fees the customer must pay must be based on the amount actually awarded to the member or associated person, rather than on the amount claimed by the member or associated person."

connection with a customer counterclaim for relief and make the Code easier to administer for staff.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ 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 investors and the public interest because the proposal would ensure that individuals who have applied for registration are bound by FINRA's rules, and therefore subject the jurisdiction of the dispute resolution forum, and would assist in the efficient administration of the arbitration process by streamlining certain procedures.

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

¹⁴ 15 U.S.C. 78o-3(b)(6).

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-2009-041 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-2009-041. 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-2009-041 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).