

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 35

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

File No.* SR - 2013 - * 023

Amendment No. (req. for Amendments *)

Filing 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) *



Rule

Pilot

Extension of Time Period
for Commission Action *

Date Expires *

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1)



Section 806(e)(2)

Security-Based Swap Submission pursuant
to the Securities Exchange Act of 1934

Section 3C(b)(2)



Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

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

Proposed rule change to amend FINRA Rule 12403 of the Code of Arbitration Procedure for Customer Disputes to
simplify arbitrator selection in cases with three arbitrators.**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 action.

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.

(Title *)

Date 06/03/2013

By Kenneth Andrichik

(Name *)

Senior Vice President and Chief Counsel, FINRA
Dispute Resolution

Kenneth Andrichik,

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 EFFT 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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies 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, security-based swap submission, or advance notice 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 the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 12403 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) to simplify arbitration panel selection in cases with three arbitrators. Under the proposed rule change, FINRA would no longer require a customer to elect a panel selection method, and parties in all customer cases with three arbitrators would get the same selection method. FINRA would provide all parties with lists of 10 chair-qualified public arbitrators, 10 public arbitrators, and 10 non-public arbitrators. FINRA would permit the parties to strike four arbitrators on the chair-qualified public list and on the public list. However, any party could select an all-public arbitration panel by striking all of the arbitrators on the non-public list.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on April 17, 2013, 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.

¹ 15 U.S.C. 78s(b)(1).

The effective date will be no later than 30 days following publication of the Regulatory Notice announcing Commission approval.

Questions regarding this rule filing may be directed to Margo Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, at (212) 858-4481.

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

(a) Purpose

Background

Under the Customer Code, parties in arbitration participate in selecting the arbitrators who serve on their cases. Until January 31, 2011, the Customer Code contained one panel composition method for cases with three arbitrators (generally cases with claims of more than \$100,000).² This method provided for a panel of one chair-qualified public arbitrator, one public arbitrator, and one non-public arbitrator. To begin the selection process, FINRA used the computerized Neutral List Selection System ("NLSS") to generate random lists of 10 chair-qualified public arbitrators, 10 public arbitrators, and 10 non-public arbitrators. The parties selected their panel through a process of striking and ranking the arbitrators on the lists generated by NLSS. The Customer Code permitted the parties to strike the names of up to four arbitrators from each list. The parties then ranked the arbitrators remaining on the lists in order of preference. FINRA appointed the panel from among the names remaining on the lists that the parties returned.

² See FINRA Rule 12401 which provides that if the amount of a claim is more than \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

Customer advocates argued that the mandatory inclusion of a non-public arbitrator in a three arbitrator case raised a perception that FINRA Dispute Resolution's forum was not fair to customers. In order to address this perception, FINRA sought and received SEC approval to implement a new panel composition rule for customer cases with three arbitrators.³ Under current Rule 12403, customers may choose between two panel composition methods. The first method, the composition rules for majority public panel (Majority Public Panel Option), provides for a panel of one chair-qualified public arbitrator, one public arbitrator, and one non-public arbitrator. The Majority Public Panel Option is the same panel composition method that was in place prior to February 1, 2011, and it operates as described above.

The second method, the composition rules for optional all public panel (All Public Panel Option), allows any party to select an arbitration panel consisting of three public arbitrators. Under this provision, FINRA sends the parties the same three lists of randomly generated arbitrators that they would have received under the Majority Public Panel option, but FINRA allows each party to strike any or *all* of the arbitrators on the non-public arbitrator list. FINRA will not appoint a non-public arbitrator if the parties individually or collectively strike all the arbitrators appearing on the non-public list or if all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason. In either instance, FINRA will select the next highest-ranked *public* arbitrator to complete the panel. By striking all the arbitrators on the non-public list, any party can ensure that the panel will have three public arbitrators.

³ See Securities Exchange Act Rel. No. 63799 (January 31, 2011), 76 Federal Register 6500 (February 4, 2011), (File No. SR-FINRA-2010-053) and *Regulatory Notice* 11-05 (February 2011).

Under Rule 12403, a customer may choose a panel composition method in the statement of claim (or accompanying documentation) or at any time up to 35 days from service of the statement of claim. In the absence of an affirmative choice by the customer, the Majority Public Panel Option is the default composition method. To ensure that the customer understands the options available, FINRA notifies the customer in writing that the customer may elect the All Public Panel Option within 35 days from service of the statement of claim. In its letter to the customer, FINRA explains how each panel composition method works.

Customer Elections and Award Results

Since implementation of the All Public Panel Option, customers in approximately three-quarters of eligible cases have chosen the All Public Panel Option.⁴ Customers using the Majority Public Panel Option have done so by default 77 percent of the time, rather than by making an affirmative choice (i.e., these customers did not make an election in their statement of claim or accompanying documentation, and did not respond to the follow up letter FINRA sent).

As of March 31, 2013, customers selecting the All Public Panel Option have chosen to strike all of the non-public arbitrators in 66 percent of the cases during the ranking process. Customers have ranked one or more non-public arbitrators in 34 percent of cases and four or more in 13 percent of cases proceeding under the All Public Panel Option. Industry parties have ranked one or more non-public arbitrators in 97 percent of cases and have ranked four or more non-public arbitrators in 90 percent of cases. FINRA has been tracking the results of arbitration awards decided by all public panels and

⁴ The current panel composition rule went into effect on February 1, 2011. The percentage noted is for the period between February 1, 2011 and March 31, 2013.

majority public panels since implementation of the rule change. For the period February 1, 2011 through March 31, 2013, investors prevailed 49 percent of the time in cases decided by all public panels and 34 percent of the time in cases decided by majority public panels.⁵

Proposal to Use One Panel Composition Method at the Forum

Based on FINRA's experience with having two panel composition methods, FINRA is proposing to amend Rule 12403 to use one panel composition method in all customer cases. The provisions in the All Public Panel Option as currently codified, with one clarifying change, would be the panel composition method for the forum. The clarifying change relates to striking and ranking arbitrators. Currently Rule 12403(d)(3)(B)(i) states that "[e]ach separately represented party may strike up to four of the arbitrators from the chairperson and public arbitrator lists for any reason by crossing through the names of the arbitrators." FINRA is proposing to add clarity to that provision by amending it to state that "[e]ach separately represented party may strike up to four of the arbitrators from the chairperson list and up to four of the arbitrators from the public arbitrator list for any reason by crossing through the names of the arbitrators."

FINRA believes that forum users would benefit by having one panel composition method for a number of reasons. First, having one panel composition method would simplify the arbitrator selection process for all parties and FINRA staff while leaving in place the method affirmatively chosen by customers in approximately three-quarters of customer cases. Second, it would ensure that every party has an opportunity to see the

⁵ The results for awards issued by majority public panels include both instances where a customer selected the Majority Public Panel Option (affirmatively or by default), and instances where the parties selected a non-public arbitrator under the All-Public Panel Option.

list of non-public arbitrators and rank or strike any or all of the arbitrators on the list. Third, the proposal would ensure that customers would not miss the opportunity to select an all public panel because of the inherent complexity of the rule. In its 2011 order approving adoption of the All Public Panel Option, the SEC noted commenter concerns that customers without attorneys, or attorneys new to the practice of securities arbitration, might not elect the All Public Panel Option within the prescribed deadline, or might not appreciate the significance of making such an election.⁶ At that time, FINRA responded by implementing the notification procedure discussed earlier. The proposed rule change would further ameliorate the commenter concerns.

Cross References

To implement the proposal, FINRA is proposing to correct several cross references in the Customer Code.

As noted in Item 2 of this filing, 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 no later than 30 days following publication of the Regulatory Notice announcing Commission approval.)

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ 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

⁶ Supra Note 3.

⁷ 15 U.S.C. 78o-3(b)(6).

interest. FINRA believes that having one panel composition method, instead of the current two methods, would improve user experience at the forum. All parties would be subject to the same rules. There would be no confusion about panel composition, and less experienced parties would not be in the position to make an election that could inadvertently limit their options. For firms, one panel composition method brings certainty to the process and continues to assure that all parties have an opportunity to review the non-public arbitrator list.

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. FINRA considered the potential impact of the proposed rule change on efficiency, competition, and capital formation. FINRA believes that simplifying the arbitrator selection process will improve the efficiency of administering cases at the forum and would not increase the burden on parties to the arbitration.

The proposal would improve efficiency at the forum because FINRA staff would no longer be required to notify the customer in writing that the customer may elect the All Public Panel Option and would not have to wait for the 35-day period to expire before generating arbitrator lists. Improved efficiency may reduce expenses at the forum benefiting both investors and FINRA members.

In addition, the proposed rule change would not increase the burden of panel selection on the parties. FINRA would continue to send the parties the same three lists of arbitrators and the task of reviewing and analyzing arbitrator backgrounds would be the same.

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.

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.⁸

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

Not applicable.

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

Not applicable.

9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

11. **Exhibits**

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

Exhibit 5. Text of proposed rule change.

⁸ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2013-023)

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

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 on June 3, 2013, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) 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 FINRA Rule 12403 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) to simplify arbitration panel selection in cases with three arbitrators. Under the proposed rule change, FINRA would no longer require a customer to elect a panel selection method, and parties in all customer cases with three arbitrators would get the same selection method. FINRA would provide all parties with lists of 10 chair-qualified public arbitrators, 10 public arbitrators, and 10 non-public arbitrators. FINRA would permit the parties to strike four arbitrators on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

chair-qualified public list and on the public list. However, any party could select an all-public arbitration panel by striking all of the arbitrators on the non-public list.

The text of the proposed rule change is available on FINRA's website 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

Background

Under the Customer Code, parties in arbitration participate in selecting the arbitrators who serve on their cases. Until January 31, 2011, the Customer Code contained one panel composition method for cases with three arbitrators (generally cases with claims of more than \$100,000).³ This method provided for a panel of one chair-qualified public arbitrator, one public arbitrator, and one non-public arbitrator. To begin the selection process, FINRA used the computerized Neutral List Selection System

³ See FINRA Rule 12401 which provides that if the amount of a claim is more than \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

(“NLSS”) to generate random lists of 10 chair-qualified public arbitrators, 10 public arbitrators, and 10 non-public arbitrators. The parties selected their panel through a process of striking and ranking the arbitrators on the lists generated by NLSS. The Customer Code permitted the parties to strike the names of up to four arbitrators from each list. The parties then ranked the arbitrators remaining on the lists in order of preference. FINRA appointed the panel from among the names remaining on the lists that the parties returned.

Customer advocates argued that the mandatory inclusion of a non-public arbitrator in a three arbitrator case raised a perception that FINRA Dispute Resolution’s forum was not fair to customers. In order to address this perception, FINRA sought and received SEC approval to implement a new panel composition rule for customer cases with three arbitrators.⁴ Under current Rule 12403, customers may choose between two panel composition methods. The first method, the composition rules for majority public panel (Majority Public Panel Option), provides for a panel of one chair-qualified public arbitrator, one public arbitrator, and one non-public arbitrator. The Majority Public Panel Option is the same panel composition method that was in place prior to February 1, 2011, and it operates as described above.

The second method, the composition rules for optional all public panel (All Public Panel Option), allows any party to select an arbitration panel consisting of three public arbitrators. Under this provision, FINRA sends the parties the same three lists of randomly generated arbitrators that they would have received under the Majority Public

⁴ See Securities Exchange Act Rel. No. 63799 (January 31, 2011), 76 Federal Register 6500 (February 4, 2011), (File No. SR-FINRA-2010-053) and *Regulatory Notice* 11-05 (February 2011).

Panel option, but FINRA allows each party to strike any or *all* of the arbitrators on the non-public arbitrator list. FINRA will not appoint a non-public arbitrator if the parties individually or collectively strike all the arbitrators appearing on the non-public list or if all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason. In either instance, FINRA will select the next highest-ranked *public* arbitrator to complete the panel. By striking all the arbitrators on the non-public list, any party can ensure that the panel will have three public arbitrators.

Under Rule 12403, a customer may choose a panel composition method in the statement of claim (or accompanying documentation) or at any time up to 35 days from service of the statement of claim. In the absence of an affirmative choice by the customer, the Majority Public Panel Option is the default composition method. To ensure that the customer understands the options available, FINRA notifies the customer in writing that the customer may elect the All Public Panel Option within 35 days from service of the statement of claim. In its letter to the customer, FINRA explains how each panel composition method works.

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Since implementation of the All Public Panel Option, customers in approximately three-quarters of eligible cases have chosen the All Public Panel Option.⁵ Customers using the Majority Public Panel Option have done so by default 77 percent of the time, rather than by making an affirmative choice (i.e., these customers did not make an

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election in their statement of claim or accompanying documentation, and did not respond to the follow up letter FINRA sent).

As of March 31, 2013, customers selecting the All Public Panel Option have chosen to strike all of the non-public arbitrators in 66 percent of the cases during the ranking process. Customers have ranked one or more non-public arbitrators in 34 percent of cases and four or more in 13 percent of cases proceeding under the All Public Panel Option. Industry parties have ranked one or more non-public arbitrators in 97 percent of cases and have ranked four or more non-public arbitrators in 90 percent of cases. FINRA has been tracking the results of arbitration awards decided by all public panels and majority public panels since implementation of the rule change. For the period February 1, 2011 through March 31, 2013, investors prevailed 49 percent of the time in cases decided by all public panels and 34 percent of the time in cases decided by majority public panels.⁶

Proposal to Use One Panel Composition Method at the Forum

Based on FINRA's experience with having two panel composition methods, FINRA is proposing to amend Rule 12403 to use one panel composition method in all customer cases. The provisions in the All Public Panel Option as currently codified, with one clarifying change, would be the panel composition method for the forum. The clarifying change relates to striking and ranking arbitrators. Currently Rule 12403(d)(3)(B)(i) states that "[e]ach separately represented party may strike up to four of the arbitrators from the chairperson and public arbitrator lists for any reason by crossing

⁶ The results for awards issued by majority public panels include both instances where a customer selected the Majority Public Panel Option (affirmatively or by default), and instances where the parties selected a non-public arbitrator under the All-Public Panel Option.

through the names of the arbitrators.” FINRA is proposing to add clarity to that provision by amending it to state that “[e]ach separately represented party may strike up to four of the arbitrators from the chairperson list and up to four of the arbitrators from the public arbitrator list for any reason by crossing through the names of the arbitrators.”

FINRA believes that forum users would benefit by having one panel composition method for a number of reasons. First, having one panel composition method would simplify the arbitrator selection process for all parties and FINRA staff while leaving in place the method affirmatively chosen by customers in approximately three-quarters of customer cases. Second, it would ensure that every party has an opportunity to see the list of non-public arbitrators and rank or strike any or all of the arbitrators on the list. Third, the proposal would ensure that customers would not miss the opportunity to select an all public panel because of the inherent complexity of the rule. In its 2011 order approving adoption of the All Public Panel Option, the SEC noted commenter concerns that customers without attorneys, or attorneys new to the practice of securities arbitration, might not elect the All Public Panel Option within the prescribed deadline, or might not appreciate the significance of making such an election.⁷ At that time, FINRA responded by implementing the notification procedure discussed earlier. The proposed rule change would further ameliorate the commenter concerns.

Cross References

To implement the proposal, FINRA is proposing to correct several cross references in the Customer Code.

⁷ Supra Note 3.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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. FINRA believes that having one panel composition method, instead of the current two methods, would improve user experience at the forum. All parties would be subject to the same rules. There would be no confusion about panel composition, and less experienced parties would not be in the position to make an election that could inadvertently limit their options. For firms, one panel composition method brings certainty to the process and continues to assure that all parties have an opportunity to review the non-public arbitrator list.

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. FINRA considered the potential impact of the proposed rule change on efficiency, competition, and capital formation. FINRA believes that simplifying the arbitrator selection process will improve the efficiency of administering cases at the forum and would not increase the burden on parties to the arbitration.

The proposal would improve efficiency at the forum because FINRA staff would no longer be required to notify the customer in writing that the customer may elect the All Public Panel Option and would not have to wait for the 35-day period to expire before

⁸ 15 U.S.C. 78o-3(b)(6).

generating arbitrator lists. Improved efficiency may reduce expenses at the forum benefiting both investors and FINRA members.

In addition, the proposed rule change would not increase the burden of panel selection on the parties. FINRA would continue to send the parties the same three lists of arbitrators and the task of reviewing and analyzing arbitrator backgrounds would be the same.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 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 or disapprove 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-2013-023 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-023. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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 File Number SR-FINRA-2013-023 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.⁹

Elizabeth M. Murphy

Secretary

⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined; proposed deletions are in brackets.

12403. Cases with Three Arbitrators

[(a)] Composition of Panels

[The customer may elect to proceed with panel composition under either of the following options:

(1) Composition Rules for Majority Public Panel

Rule 12403(c) provides for limited strikes on each of the three lists. In each majority public panel case, the panel will consist of two public arbitrators and one non-public arbitrator.

(2) Composition Rules for Optional All Public Panel

Rule 12403(d) provides for limited strikes on the public and public chairperson lists and unlimited strikes on the non-public list. In optional all public panel cases, the panel may consist of three public arbitrators or two public arbitrators and one non-public arbitrator. Under this option, either party can ensure that the panel will have three public arbitrators by striking all of the arbitrators on the non-public list.

(b) Customer 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 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.

(c) Composition Rules for Majority Public Panel

(1) Generating Lists

(A) The Neutral List Selection System will generate:

- A list of 10 arbitrators from the FINRA non-public arbitrator roster;
- A list of 10 arbitrators from the FINRA public arbitrator roster; and
- A list of 10 public arbitrators from the FINRA chairperson roster.

(B) The Neutral List Selection System will generate the chairperson list first.

Chair-qualified arbitrators who were not selected for the chairperson list will be eligible for selection on the public list. An individual arbitrator cannot appear on both the chairperson list and the public list for the same case.

(C) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(2) Sending Lists to Parties

(A) The Director will send the lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

(B) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 12403(c)(3)(C).

(3) Striking and Ranking Arbitrators

(A) Each separately represented party may strike up to four of the arbitrators from each list for any reason by crossing through the names of the arbitrators. At least six names must remain on each list.

(B) Each separately represented party shall rank all remaining arbitrators on the lists in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each list of arbitrators must be ranked separately.

(C) The ranked lists must be returned to the Director no more than 20 days after the date upon which the Director sent the lists to the parties. If the Director does not receive a party's ranked lists within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators.

(D) Parties are not required to send a copy of their ranking list to the opposing parties.

(4) Combining Lists

For each arbitrator classification (public, non-public, and chairperson), the Director will prepare combined ranked lists of arbitrators based on the parties' numerical rankings, as follows:

- The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents.

- The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.

- The Director will create separate combined ranked lists for each arbitrator classification.

(5) Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

(A) The Director will appoint:

- The highest-ranked available non-public arbitrator from the combined non-public arbitrator list;

- The highest-ranked available public arbitrator from the combined public arbitrator list, and

- The highest-ranked available public arbitrator from the combined chairperson list, who will serve as chairperson of the panel.

(B) If the number of arbitrators available to serve from the combined lists is not sufficient to fill an initial panel, the Director will appoint one or more arbitrators of the required classification to complete the panel from names generated randomly by the Neutral List Selection System. If the Director must appoint a non-public arbitrator, the Director may not appoint a non-public arbitrator as defined in Rule 12100(p)(2) or (3), unless the parties agree otherwise. The Director will provide the parties information

about the arbitrators as provided in Rule 12403(c)(2) and the parties will have the right to challenge the arbitrators as provided in Rule 12407.

(C) Appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. Before making any decision as an arbitrator or attending a hearing session, the arbitrators must execute FINRA's arbitrator oath or affirmation.

(6) Replacement of Arbitrators

(A) If an arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

(B) The Director will appoint as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator of the required classification remaining on the combined list.

(C) If there are no available arbitrators of the required classification on the consolidated list, the Director will appoint an arbitrator of the required classification to complete the panel from names generated by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12403(c)(2) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

(D) If the Director must appoint a non-public arbitrator under Rule 12403(c)(6)(C), the Director may not appoint a non-public arbitrator as defined in Rule 12100(p)(2) or (3), unless the parties agree otherwise.

(d) Composition Rules for Optional All Public Panel]

[(1)] (a) Generating Lists

[(A)] (1) The Neutral List Selection System will generate:

[•] (A) A list of 10 arbitrators from the FINRA non-public arbitrator roster;

[•] (B) A list of 10 arbitrators from the FINRA public arbitrator roster; and

[•] (C) A list of 10 public arbitrators from the FINRA chairperson roster.

[(B)] (2) The Neutral List Selection System will generate the chairperson list first. Chair-qualified arbitrators who were not selected for the chairperson list will be eligible for selection on the public list. An individual arbitrator cannot appear on both the chairperson list and the public list for the same case.

[(C)] (3) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

[(2)] (b) Sending Lists to Parties

[(A)] (1) The Director will send the lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

[(B)] (2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule [12403(d)(3)(C)] 12403(c)(3).

[(3)] (c) Striking and Ranking Arbitrators

[(A)] (1) Non-Public Arbitrator List

[i.] (A) Each separately represented party may strike any or all of the arbitrators from the non-public arbitrator list by crossing through the names of the arbitrators.

[ii.] (B) If any names remain on the non-public arbitrator list, each separately represented party shall rank all remaining arbitrators in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on.

[(B)] (2) Chairperson and Public Lists

[i.] (A) Each separately represented party may strike up to four of the arbitrators from the chairperson list and up to four of the arbitrators from the public arbitrator list[s] for any reason by crossing through the names of the arbitrators. At least six names must remain on each list.

[ii.] (B) Each separately represented party shall rank all remaining arbitrators on the lists in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each list of arbitrators must be ranked separately.

[(C)] (3) The ranked lists must be returned to the Director no more than 20 days after the date upon which the Director sent the lists to the parties. If the Director does not receive a party's ranked lists within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators. A party's failure to comply with the 20-day timeframe may result in the appointment of a panel consisting of two public arbitrators and one non-public arbitrator.

[(D)] (4) Parties are not required to send a copy of their ranking list to the opposing parties.

[(4)] **(d) Combining Lists**

For each arbitrator classification (public, non-public, and chairperson), the Director will prepare combined ranked lists of arbitrators based on the parties' numerical rankings, as follows:

[•] (1) The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents.

[•] (2) The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.

[•] (3) The Director will create separate combined ranked lists for each arbitrator classification in cases with both public and non-public arbitrators.

[(5)] **(e) Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on the List**

[(A)] (1) The Director will appoint:

[•] (A) The highest-ranked available non-public arbitrator from the combined non-public arbitrator list;

[•] (B) The highest-ranked available public arbitrator from the combined public arbitrator list, and

[•] (C) The highest-ranked available public arbitrator from the combined chairperson list, who will serve as chairperson of the panel.

[(B)] (2) If the number of arbitrators available to serve from the combined public or chairperson lists is not sufficient to fill an initial panel, the Director will appoint one or more

arbitrators of the required classification to complete the panel from names generated randomly by the Neutral List Selection System. The Director will provide the parties information about the arbitrators as provided in Rule [12403(d)(2)] 12403(b) and the parties will have the right to challenge the arbitrators as provided in Rule 12407.

[(C)] (3) In cases in which the parties collectively strike all of the arbitrators appearing on the non-public list or when all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason:

[i.] (A) The Director will return to the public list and select the next highest ranked available arbitrator (after the public arbitrator position has been filled) to complete the three member panel.

[ii.] (B) In the event no ranked arbitrators remain on the public list or when all remaining arbitrators on the public list are unable or unwilling to serve for any reason, FINRA will select the next highest ranked arbitrator appearing on the chair-qualified list (after the chair position has been filled) to complete the three member panel.

[iii.] (C) If the number of arbitrators available to serve from the chair-qualified list and public list is not sufficient to fill an initial panel, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule [12403(d)(2)] 12403(b) and the parties will have the right to challenge the arbitrator as provided in Rule 12407.

[(D)] (4) Appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. Before making any decision as an arbitrator or attending a hearing session, the arbitrators must execute FINRA's arbitrator oath or affirmation.

[(6)] (f) Replacement of Public Arbitrators

[(A)] (1) If a public arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

[(B)] (2) The Director will appoint as a replacement arbitrator the public arbitrator who is the most highly ranked available public arbitrator remaining on the combined public list.

[(C)] (3) If the next highest ranked available public arbitrator from the combined list is unable or unwilling to serve for any reason, the Director will return to the initial public list and appoint the next highest ranked available arbitrator to complete the three member panel.

[(D)] (4) If all remaining arbitrators on the public list are unable or unwilling to serve for any reason, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System.

[(E)] (5) The Director will provide the parties information about the arbitrator as provided in Rule [12403(d)(2)] 12403(b) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

[(7)] (g) Replacement of a Chairperson

[(A)] (1) If a chairperson is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

[(B)] (2) The Director will appoint as a replacement arbitrator the chair-qualified arbitrator who is the most highly ranked available arbitrator remaining on the combined chair-qualified list.

[(C)] (3) If the next highest ranked available chair-qualified arbitrator from the combined list is unable or unwilling to serve for any reason, the Director will return to the initial chair-qualified list and appoint the next highest ranked available arbitrator to complete the three member panel.

[(D)] (4) If all remaining arbitrators on the chair-qualified list are unable or unwilling to serve for any reason, the Director will appoint a chair-qualified public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System.

[(E)] (5) The Director will provide the parties information about the arbitrator as provided in Rule [12403(d)(2)] 12403(b) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

[(8)] **(h) Replacement of Non-Public Arbitrators**

[(A)] (1) If a non-public arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

[(B)] (2) In cases in which the parties collectively do not strike all of the non-public arbitrators from the initial list, the Director will appoint as a replacement arbitrator the non-public arbitrator who is the most highly ranked available non-public arbitrator remaining on the combined non-public list.

[(C)] (3) If the next highest ranked available non-public arbitrator is unable or unwilling to serve for any reason, the Director will return to the initial non-public list and appoint the next highest ranked available arbitrator to complete the three member panel.

[(D)] (4) In the event no ranked arbitrators remain on the non-public list or when all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason, the

Director will return to the public list and select the next highest ranked available arbitrator to complete the three member panel.

[i.] (A) In the event no ranked arbitrators remain on the public list or when all remaining arbitrators on the public list are unable or unwilling to serve for any reason, FINRA will select the next highest ranked arbitrator appearing on the chair-qualified list to complete the three member panel.

[ii.] (B) In the event no ranked arbitrators remain on the chair-qualified list or when all remaining arbitrators on the chair-qualified list are unable or unwilling to serve for any reason, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System.

[(E)] (5) The Director will provide the parties information about the arbitrator as provided in Rule [12403(d)(2)] 12403(b) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

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12213. Hearing Locations

(a) U.S. Hearing Location

(1) No change.

(2) Before arbitrator lists are sent to the parties under Rule 12402(c)[, Rule 12403(c) or Rule 12403(d)] or Rule 12403(b), the parties may agree in writing to a hearing location other than the one selected by the Director.

(3) - (4) No change.

(b) Foreign Hearing Location – No change.

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12309. Amending Pleadings

(a) – (b) No change.

c) Amendments to Add Parties

Once the ranked arbitrator lists are due to the Director under Rule 12402(d)[,] or Rule 12403(c) [or Rule 12403(d)], no party may amend a pleading to add a new party to the arbitration until a panel has been appointed and the panel grants a motion to add the party. Motions to add a party after panel appointment must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code.

(d) No change.

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12314. Combining Claims

Before ranked arbitrator lists are due to the Director under Rule 12402(d)[,] or Rule 12403(c) [or Rule 12403(d)], the Director may combine separate but related claims into one arbitration. Once a panel has been appointed, the panel may reconsider the Director's decision upon motion of a party.

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12404. Additional Parties

(a) If a party is added to an arbitration after the Director sends the lists generated by the Neutral List Selection System to the parties, but before parties must return the ranked lists to the Director, the Director will send the lists to the newly added party, with employment history for the past 10 years and other background information for each arbitrator listed. The newly added

party may rank and strike the arbitrators in accordance with Rules 12402(d)[,] or 12403(c)[(3), or 12403(d)(3)]. If the newly added party returns the lists within 20 days after the date upon which the Director sent the lists to the party, the Director will include the new party's lists when combining rankings under Rules 12402(e)[, 12403(c)(4), or 12403(d)(4)] or 12403(d). If the Director does not receive the list within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preference among the listed arbitrators.

(b) Once the ranked lists are due to the Director under Rules 12402(d)(3)[, 12403(c)(3)(C), or 12403(d)(3)(C)] or Rule 12403(c)(3), no party may amend a pleading to add a new party to the arbitration until a panel is appointed and grants a motion to add the party. Motions to add a party must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code. If the panel grants the motion to add the party, the newly added party may not strike and rank the arbitrators, but may challenge an arbitrator for cause in accordance with Rule 12407.

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12800. Simplified Arbitration

(a) – (d) No change.

(e) Increases in Amount in Dispute

If any pleading increases the amount in dispute to more than \$50,000, the arbitration will no longer be administered under this rule, and the regular provisions of the Code will apply. If an arbitrator has been appointed, that arbitrator will remain on the panel. If a three-arbitrator panel is required or requested under Rule 12401, the remaining arbitrators will be appointed by the

Director in accordance with Rule 12403[(c) or Rule 12403(d)]. If no arbitrator has been appointed, the entire panel will be appointed in accordance with the Neutral List Selection System.

(f) No change.

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12903. Process Fees Paid by Members

(a) Each member that is a party to an arbitration in which more than \$25,000, exclusive of interest and expenses, is in dispute must pay:

- A non-refundable prehearing process fee of \$750, due at the time the parties are sent arbitrator lists in accordance with Rule 12402(c)[, Rule 12403(c) or Rule 12403(d)] or Rule 12403(b); and
- No change.

(b) – (c) No change.

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