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Page 1 of * 61

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

File No.* SR - 2014 - * 028
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) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

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

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 relating to revisions to the definitions of non-public arbitrator and public arbitrator.

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.

Date 06/18/2014

By Kenneth Andrichik

(Name *)

(Title *)

Senior VP, Chief Counsel, FINRA Dispute Resolution

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.

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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 *

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 *

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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, 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

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Exhibit Sent As Paper Document

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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

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

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

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 the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to refine and reorganize the definitions of "non-public" arbitrator and "public" arbitrator. The amendments would, among other matters, provide that persons who worked in the financial industry for any duration during their careers would always be classified as non-public arbitrators, and persons who represent investors or the financial industry as a significant part of their business would also be classified as non-public, but could become public arbitrators after a cooling-off period. The amendments would reorganize the definitions to make it easier for arbitrator applicants and parties, among others, to determine the correct arbitrator classification.

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

(b) Not applicable.

(c) Not applicable.

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

2. Procedures of the Self-Regulatory Organization

At its meeting on February 12, 2014, 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 90 days following Commission approval. 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

FINRA classifies arbitrators as "non-public" or "public" based on their professional and/or personal affiliations. The Customer Code and Industry Code define these terms. The non-public arbitrator definition (Rules 12100(p) and 13100(p)) lists financial industry affiliations that might *qualify* a person to serve as a non-public arbitrator in the forum. Conversely, the public arbitrator definition (Rules 12100(u) and 13100(u)) itemizes affiliations that *disqualify* a person from serving as a public arbitrator in the forum. Public arbitrators do not have a significant affiliation with the financial industry.

FINRA has amended its arbitrator definitions several times over the years to address constituent perceptions that an affiliation might affect an arbitrator's neutrality.[2] The SEC approved the latest amendments in 2013 ("the 2013 amendments").[3] Under the 2013 amendments, FINRA disqualified persons associated with a mutual fund or hedge fund from serving as public arbitrators. The 2013 amendments also provided that specified individuals must wait for two years after ending certain disqualifying affiliations ("cooling-off period") before they may serve as public arbitrators.

The SEC received several comment letters on the 2013 amendments. Commenters recommended that FINRA increase the proposed two-year cooling-off period, add new categories of individuals whom FINRA would disqualify from serving as public arbitrators, and add new categories of individuals to the non-public arbitrator definition.[4] In its response to the comment letters, FINRA asked the SEC to approve the proposed rule change as a significant measure to address constituent perceptions about the fairness and neutrality of the public arbitrator roster. FINRA staff agreed to conduct a comprehensive review in consultation with the National Arbitration and Mediation

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[2] See Securities Exchange Act Rel. No. 49573 (April 16, 2004), 69 FR 21871 (April 22, 2004) (File No. SR-NASD-2003-95) and Notice to Members 04-49 (June 2004); Securities Exchange Act Rel. No. 54607 (Oct. 16, 2006), 71 FR 62026 (Oct. 20, 2006) (File No. SR-NASD-2005-094) and Notice to Members 06-64 (November 2006); and Securities Exchange Act Rel. No. 57492 (March 13, 2008), 73 FR 15025 (March 20, 2008) (File No. SR-NASD-2007-021) and Regulatory Notice 08-22 (May 2008).

[3] See Securities Exchange Act Rel. No. 69297 (April 4, 2013), 78 FR 21449 (April 10, 2013) (File No. SR-FINRA-2013-003) and Regulatory Notice 13-21 (June 2013).

[4] See Securities Exchange Act Rel. No. 69297 (April 4, 2013), 78 FR 21449 (April 10, 2013) Discussion of Comment Letters. The comment letters are available on the SEC's website at www.sec.gov.

Committee ("NAMC"),[5] of both the non-public and public arbitrator definitions with a view towards clarifying the definitions and reviewing the additional issues raised in the comment letters.[6]

FINRA staff met with the NAMC several times to review both arbitrator definitions. As the result of these discussions, as well as general discussions with interested groups over a period of time, FINRA is proposing to amend the non-public and public arbitrator definitions. The intent of the proposed rule change is to address the concerns about arbitrator neutrality that were raised by the commenters on the 2013 amendments. As noted above, these concerns relate to the cooling-off periods, the categories of individuals whom FINRA disqualifies from serving as public arbitrators, and the categories of individuals whom FINRA classifies as non-public. The proposed rule change includes several substantive changes to the definitions and an extensive reorganization of the public arbitrator definition. In light of extensive revisions, FINRA is proposing to delete the definitions in their entirety, and replace them with new definitions. The proposed amendments are described below. For ease of reading, the discussion only refers to Rule 12100 of the Customer Code. The proposed amendments to Rule 13100 of the Industry Code are identical, and FINRA's rationale is the same.

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[5] The NAMC, which is composed of investor, industry, and neutral (arbitrator and mediator) representatives, provides policy guidance to FINRA Dispute Resolution staff. A majority of the NAMC members and its chair are public.

[6] See letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Elizabeth M. Murphy, dated March 11, 2013. The letter is available on FINRA's website at www.finra.org, and on the SEC's website at www.sec.gov.

Non-Public Arbitrator Definition

The non-public arbitrator definition lists financial industry affiliations that might qualify a person to serve as a non-public arbitrator in the forum. The affiliations relate to individuals who work in the industry, and individuals who provide services to industry entities and their employees. Each qualifying affiliation has a corresponding disqualification in the public arbitrator definition. Currently, FINRA permits individuals who worked in the financial industry to join the public arbitrator roster after a cooling-off period so long as they meet other requirements.

FINRA is proposing to expand the scope of the non-public arbitrator definition in three ways. First, the definition would provide that individuals who worked in the financial industry for any duration during their careers would always be classified as non-public. Second, FINRA would add new categories of financial industry personnel who might qualify to serve as non-public arbitrators. Third, FINRA would add to the definition professionals who devote a significant part of their business to representing or providing services to parties in disputes concerning investments or employment relationships.

Expansion of the non-public arbitrator definition becomes particularly significant when parties are selecting arbitrators in customer cases with three arbitrators.[7] In these cases, FINRA sends the parties three randomly generated lists of arbitrators – a list of 10 chair-qualified public arbitrators, a list of 10 public arbitrators, and a list of 10 non-public arbitrators. The parties select their panel through a process of striking and ranking the arbitrators on the lists. FINRA limits the parties to four strikes on the chair-qualified

[7] Under Rule 12401, one arbitrator hears customer claims up to $100,000 and three arbitrators hear customer claims of more than $100,000 or unspecified claims.

public list and four strikes on the public list. However, FINRA gives parties unlimited strikes on the non-public arbitrator list. By expanding the scope of the non-public arbitrator definition, parties would have a greater ability to address their own perceptions of bias through the use of their unlimited strikes on the non-public arbitrator list.

New Rule 12100(p)(1)

Under the current non-public arbitrator definition, if a person is currently, or was within the past five years, affiliated with a securities industry entity specified in the rule (e.g., associated with a broker or dealer), the person may qualify to serve as a non-public arbitrator at the forum.[8] Subject to two exceptions, FINRA allows these individuals to join the public arbitrator roster five years after ending all industry affiliation. The first exception to the five-year clause applies to persons who retired from, or who spent a substantial part of their career with, a specified industry entity.[9] FINRA keeps these individuals on the non-public roster for the duration of their service to the forum. The second exception applies to persons who were affiliated for 20 years or more with a specified industry entity.[10] FINRA also keeps these arbitrators on the non-public roster for the duration of their service.

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8 See current Rule 12100(p)(1). This provision applies to a person who is, or was within the past five years:

- Associated with, including registered through, a broker or dealer (including a government securities broker or dealer or A municipal securities dealer);
- Registered under the Commodities Exchange Act;
- A member of a commodities exchange or a registered futures association; or
- Associated with a person or firm registered under the Commodity Exchange Act.

9 See current Rule 12100(p)(2).

10 See current Rule 12100(u)(2).

Investor representatives raised concerns about the neutrality of FINRA's public arbitrator roster because they do not believe that former industry-affiliated persons should ever serve as public arbitrators. In response to these concerns, FINRA is proposing to adopt new Rule 12100(p)(1) to eliminate the five-year cooling-off provision for persons who work in the financial industry. Under the new rule, FINRA would classify persons who are, or were, affiliated with a specified financial industry entity at any point in their careers, for any duration, as non-public.[11] Once FINRA classifies an arbitrator as non-public, FINRA would never reclassify the arbitrator as public. Under the proposed rule change, there would be no exceptions to this provision.

FINRA is also proposing to add two new categories of financial industry professionals to new Rule 12100(p)(1) – persons associated with, including registered through, a mutual fund or hedge fund, and persons associated with, including registered through, an investment adviser. Currently, FINRA does not permit these professionals to serve in any capacity, but if they end their affiliation, they may serve as public arbitrators

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[11] See new Rule 12100(p)(1). The financial industry affiliations enumerated in new Rule 12100(p)(1) relate to a person who is, or was, associated with, including registered through:

- a broker or a dealer (including a government securities broker or dealer or a municipal securities broker or dealer); or
- a member of, or an entity registered under, the Commodity Exchange Act, the Commodities Future Trading Commission, the National Futures Association, or the Municipal Securities Rulemaking Board; or
- an entity that is organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisers Act of 1940; or
- a mutual fund or a hedge fund; or
- an investment adviser.

after a two-year cooling-off period.[12] FINRA believes that these professionals would bring valuable knowledge and experience to the forum and that FINRA should classify them as non-public. Under the proposed rule change, once FINRA classifies them as non-public, these arbitrators would remain on the non-public roster for the duration of their service to the forum.

Finally, FINRA is proposing to add clarity to new Rule 12100(p)(1) by revising the references in several ways. First, instead of referring to a person registered under the Commodity Exchange Act, or associated with a person or firm registered under the Commodity Exchange Act, or a member of a commodities exchange, FINRA would simplify the reference in Rule 12100(p)(1)(B) by referring to a person who is, or was, associated with, including registered through, under, or with (as applicable), the Commodity Exchange Act or the Commodities Futures Trading Commission. FINRA is not proposing any substantive change to the categories of persons relating to commodities. Second, instead of referring to a member of a registered futures association, FINRA proposes in Rule 12100(p)(1)(B) to specify the association by name – the National Futures Association. FINRA is not proposing any substantive change to the category of persons relating to futures. Third, FINRA is proposing to add in Rule 12100(p)(1)(B) a reference to a person who is, or was, associated with, including registered through, under, or with (as applicable), the Municipal Securities Rulemaking Board ("MSRB"). While such an individual would be covered under the current "municipal securities broker or dealer," FINRA believes adding the MSRB would add

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[12] These persons may serve as non-public arbitrators if they are qualified to serve under another provision (e.g., dually registered as an investment adviser and an associated person of a FINRA member).

clarity to the rule. Fourth, FINRA is proposing an omnibus reference in Rule 12100(p)(1)(C) to cover industry affiliated persons not otherwise specified in the rule and potential categories of industry professionals that may be created in the future.

New Rule 12100(p)(2)

Under the current non-public arbitrator definition, attorneys, accountants, and other professionals who devoted 20 percent or more of their professional work in the last two years to serving specified industry entities and/or employees, may qualify to serve as non-public arbitrators at the forum.[13] FINRA permits these individuals to join the public arbitrator roster two years after they stop providing services to the industry. However, they are permanently disqualified them from serving as public arbitrators if they provided services to the industry for 20 years or more over the course of their careers.[14]

FINRA is proposing to adopt new Rule 12100(p)(2) to broaden the current provision in two ways. First, the new rule increases the look-back period from two years to five years. Second, it broadens application of the provision to include services to industry entities *and* any persons or entities associated with those industry entities. The proposed new public arbitrator definition provides that persons would be permanently disqualified from serving as public arbitrators if they provided the specified services for 15 calendar years or more over the course of their careers (as opposed to the current 20 year provision).[15] The 15 years are a total number of years – they would not have to be consecutive years. After 15 years of service, FINRA would keep these arbitrators on the

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[13] See current Rule 12100(p)(3). The rule applies to the persons and entities listed in current Rule 12100(p)(1).

[14] See current Rule 12100(u)(2).

[15] See new Rule 12100(u)(2).

non-public roster for the duration of their service to the forum. FINRA is increasing the look-back period, and decreasing the number of years before it applies a permanent disqualification, to ensure that these individuals are sufficiently removed from their industry affiliation before FINRA permits them to serve on the public arbitrator roster.

Finally, FINRA is proposing to add clarity to the rule by changing the phrase "professional work" to "professional time." FINRA staff believes that the term "time" is better because time would be more easily quantified by the professionals in the category.

New Rule 12100(p)(3)

Currently, FINRA permits professionals who represent or provide services to investors in securities disputes to serve as public arbitrators at the forum.[16] Industry representatives raised concerns about the neutrality of the public arbitrator roster, and they do not believe that these professionals should serve as public arbitrators. To address these concerns, FINRA is proposing to add a new qualifying affiliation to the non-public definition.

Under new Rule 12100(p)(3), FINRA would classify as non-public, attorneys, accountants, and other professionals who devoted 20 percent or more of their professional time, within the past five years, to serving parties in investment or financial industry employment disputes. FINRA selected the 20 percent threshold for application of the provision to keep it consistent with the threshold in new Rule 12100(p)(2).

FINRA would permit these individuals to serve as public arbitrators five years after their business mix changes. However, if the person accumulates 15 calendar years

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[16] These individuals are not qualified under the non-public arbitrator definition to serve as non-public arbitrators, nor are they disqualified from serving as public arbitrators under the public arbitration definition.

of providing the qualifying services over the course of a career, FINRA would keep that arbitrator on the non-public roster for the duration of the arbitrator's service to the forum. The 15 years are a total number of years – they would not have to be consecutive years. [17]

New Rule 12100(p)(4)

FINRA currently classifies as non-public, persons working in a bank or other financial institution (e.g., a credit union) who execute transactions in securities or who supervise employees who execute transactions in securities.[18] This provision covers persons who are not employed by an industry entity that falls under current paragraph (p)(1). When such persons end their affiliation, they may immediately apply to serve as public arbitrators at the forum unless they have engaged in this type of work for 20 years or more over the course of their careers.[19]

FINRA is proposing to adopt new Rule 12100(p)(4) to add a five-year look-back period to this provision. The substance of the qualifying affiliation is the same. Only the look-back period is new. Under the new rule, FINRA would classify as non-public, any person who, within the last five calendar years, worked in a bank or other financial institution and executed transactions in securities or supervised or monitored compliance with the securities and commodities laws of employees who execute transactions in securities. FINRA would permit these persons to serve as public arbitrators five years after they ended their industry affiliation unless they provided these services for 15 years or more. As is the case with proposed new paragraphs (p)(2) and (p)(3) described above,

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17 See new Rule 12100(u)(3).

18 See current Rule 12100(p)(4).

19 See current Rule 12100(u)(2).

the proposed new public arbitrator definition provides that these persons would be permanently disqualified from serving as public arbitrators if they provided the specified services for 15 calendar years or more over the course of their careers.[20] Again, the 15 years are a total number of years – they would not have to be consecutive years. After 15 years of service, FINRA would keep these arbitrators on the non-public roster for the duration of their service to the forum.

Public Arbitrator Definition

The public arbitrator definition lists affiliations that disqualify a person from serving as a public arbitrator in the forum. It includes a disqualification that corresponds to each qualifying affiliation in the non-public arbitrator definition. Currently, the definition reflects these disqualifications by cross-references to the non-public definition. The public arbitrator definition includes additional disqualifiers that do not have a corresponding qualifier in the non-public arbitrator definition. Over the years, FINRA added these disqualifications to the public arbitrator definition to address investors' perceptions about the neutrality of the public arbitrator roster.

FINRA is proposing substantive changes to the public definition which: add new disqualifications; amend an existing disqualification to simply it; and revise the cooling-off periods. Under new Rule 12100(u), FINRA would subject individuals to a five-year cooling-off period after they end an affiliation based on their own activities, and a two-year cooling-off period after they end an affiliation based on someone else's activities (provided that another disqualification isn't applicable).

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[20] See new Rule 12100(u)(4).

FINRA is also proposing to reorganize the public arbitrator definition to make it easier for FINRA staff, arbitrators and potential arbitrators, and parties to ascertain the correct arbitrator classification. Under the proposed rule change, FINRA would remove the cross-references between the definitions, and fully describe each disqualification. FINRA would also separate the disqualifications into categories of those that are permanent versus those that are temporary, and those based on a person's own activities versus those based on the activities of others (e.g., others at a person's firm). FINRA would repeat some of the disqualifying affiliations to make it clear that the affiliations are subject to both a temporary disqualification and a permanent disqualification depending on how many years a person was engaged in a stated activity.

New Rule 12100(u)(1)

FINRA is proposing to adopt new Rule 12100(u)(1) to specify the types of financial industry employment that disqualify a person from serving as a public arbitrator.[21] Substantively, the affiliations are identical to those listed in new Rule 12100 (p)(1). None of the disqualifying affiliations is new – FINRA currently includes each of

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[21] Under new Rule 12100(u)(1), A person shall not be designated as a public arbitrator who is, or was, associated with, including registered through:

- a broker or a dealer (including a government securities broker or dealer or a municipal securities broker or dealer); or
- a member of, or an entity registered under, the Commodity Exchange Act, the Commodities Future Trading Commission, the National Futures Association, or the Municipal Securities Rulemaking Board; or
- an entity that is organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisers Act of 1940; or
- a mutual fund or a hedge fund; or
- an investment adviser.

them in the public arbitrator definition.[22] FINRA currently permits non-public arbitrators to become public arbitrators at some point after ending their affiliations (subject to specified exceptions). As explained in the above discussion on new Rule 12100(p)(1), under the proposed rule change, FINRA would classify these individuals as non-public for the duration of their service to the forum and would never reclassify them as public arbitrators. Therefore, anyone disqualified under new Rule 12100(u)(1) would be subject to a permanent disqualification from the public arbitrator roster.

New Rules 12100(u)(2) and 12100(u)(6)

Under the current public arbitrator definition, attorneys, accountants, and other professionals who devoted 20 percent or more of their professional work in the last two years to serving securities industry employees and/or entities, may not serve as public arbitrators at the forum.[23] These individuals may join the public arbitrator roster two years after they stop providing services to the industry. However, FINRA permanently disqualifies them from the public roster if they provided the services for 20 years or more over the course of their careers.[24]

FINRA is proposing to adopt new Rules 12100(u)(2) and 12100(u)(6) to expand the current provision. FINRA would broaden application of the disqualification to include services to financial industry entities *and* any persons or entities associated with

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22 See current Rule 12100(u)(1) and Rule 12100(u)(3).

23 See current Rule 12100(u)(1), which incorporates, among other things, current Rule 12100(p)(3).

24 See current Rule 12100(u)(2).

those financial industry entities.[25] In new Rule 12100(u)(6), FINRA would increase the cooling-off period in the rule from two years to five years,[26] and in new Rule 12100(u)(2), FINRA would decrease the number of years for a permanent disqualification from 20 years to 15 years.[27] The 15 years are a total number of years – they would not have to be consecutive years. Although the description of the disqualification in paragraphs (u)(2) and (u)(6) is identical, FINRA believes it would add clarity to the definition to separate out when the provision results in a permanent disqualification, and when it results in a temporary disqualification. Substantively, new Rules 12100(u)(2) and 12100(u)(6) are identical to new Rule 12100(p)(2).

New Rules 12100(u)(3) and 12100(u)(7)

As explained above, FINRA currently permits professionals who represent or provide services to investors in securities disputes to serve as public arbitrators at the forum. Industry representatives raised concerns about the neutrality of the public arbitrator roster, and they do not believe that these professionals should serve as public arbitrators.

To address these concerns, FINRA is proposing to disqualify from the public arbitrator roster, attorneys, accountants, expert witnesses, and other professionals who devote 20 percent or more of their professional time to serving parties in investment or financial industry employment disputes. Under new Rule 12100(u)(7), FINRA would

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[25] See current Rule 12100(p)(3) for content to be expanded by new Rules 12100(u)(2) and 12100(u)(6).

[26] See current Rule 12100(u)(1), referencing current Rule 12100(p)(3), which includes a two year look-back period.

[27] See current Rule 12100(u)(2) which references a 20 year time period.

apply a five-year cooling-off period to the rule. Under new Rule 12100(u)(3), these persons would be permanently disqualified from serving as public arbitrators if they provide the specified services for 15 calendar years or more over the course of their careers. The 15 years are a total number of years – they would not have to be consecutive years. The substance of the disqualification corresponds to the proposed qualifying affiliation in new Rule 12100(p)(3). FINRA selected the 20 percent threshold for application of the provision to keep it consistent with the thresholds in new Rules 12100(u)(2) and 12100(u)(6).

New Rules 12100(u)(4) and 12100(u)(8)

FINRA currently disqualifies personnel working in a bank or other financial institution (e.g., a credit union) who execute transactions in securities, or who supervise employees who execute transactions in securities, from serving as public arbitrators.[28] This provision applies to persons who are employed by a financial industry entity that is not covered by current Rule 12100(p)(1). When these individuals end their affiliation, they may immediately apply to serve as public arbitrators at the forum unless they have engaged in this type of work for 20 years or more over the course of their careers.[29]

FINRA is proposing to adopt new Rules 12100(u)(4) and 12100(u)(8) to expand the current provision. In new Rule 12100(u)(8), FINRA would impose a five-year cooling-off period in the rule, and in new Rule 12100(u)(4), FINRA would decrease the number of years for a permanent disqualification from 20 years to 15 years. The 15 years are a total number of years – they would not have to be consecutive years. Although the

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[28] See current Rule 12100(u)(1) which references current Rule 12100(p)(4).

[29] See current Rule 12100(u)(2).

description of the disqualification in paragraphs (u)(4) and (u)(8) is identical, FINRA believes it would add clarity to the definition to separate out when the provision results in a permanent disqualification, and when it results in a temporary disqualification. Substantively, new Rules 12100(u)(4) and 12100(u)(8) are identical to new Rule 12100(p)(4).

New Rule 12100(u)(5)

FINRA currently disqualifies individuals employed by, or who are directors or officers of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other or organization that is engaged in the securities business.[30] These persons may become public arbitrators two years after ending their affiliation.[31]

FINRA is proposing to adopt new Rule 12100(u)(5) to expand application of the provision. FINRA would expand the disqualification from an "organization that is engaged in the securities business" to an "organization that is engaged in the financial industry," and would increase the cooling-off period from two years to five years. This disqualification addresses the perception that employees, officers, and directors of entities that are associated with industry entities should not serve as public arbitrators because they may favor an industry party in an arbitration proceeding. FINRA staff used the term "financial industry" instead of "securities business" to ensure that the provision covers all financial services entities that may raise concerns about neutrality. The term securities

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30 See current Rules 12100(u)(6) and 12100(u)(7).

31 See current Rule 12100(u).

business may be interpreted too narrowly to apply only to the affiliations in current Rule 12100(p)(1).

New Rule 12100(u)(9)

Currently, professionals may not serve as public arbitrators if their firm: derived 10 percent or more of its annual revenue in the past two years from providing services to the financial industry;[32] or derived $50,000 or more in annual revenue in the past two years from providing services to the securities industry relating to customer disputes concerning an investment account or transaction.[33] For example, a real estate attorney working at a law firm with a securities practice devoted to serving the industry is disqualified from serving as a public arbitrator if the threshold percentage or dollar figure is met. Under these provisions, individuals may become public arbitrators two years after ending their affiliations.

FINRA is proposing to adopt new Rule 12100(u)(9) to combine the two disqualifications into one, and to simplify the disqualification relating to the $50,000 threshold. New Rule 12100(u)(9) would provide that professionals may not serve as public arbitrators if their firm derived $50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the course of the past two calendar years, from: the entities listed in paragraph (u)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (u)(1); or from a bank or other financial institution where persons effect transactions in securities including government or municipal securities, commodities, futures, or options. The cooling-off period of two years would be the same. FINRA is proposing to remove the requirement that the

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32 See current Rule 12100(u)(4).

33 See current Rule 12100(u)(5).

$50,000 in revenue relate to customer disputes concerning an investment account or transaction to make it easier for potential and existing arbitrators to determine if the disqualification applies.

New Rule 12100(u)(10)

FINRA is proposing to adopt new Rule 12100(u)(10) to disqualify from the public arbitrator roster, professionals whose firm derived $50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the course of the past two calendar years, from individual and/or institutional investors relating to securities matters. FINRA would apply a two-year cooling-off period to this provision. For example, a trust and estates attorney working at a law firm with a securities practice devoted to serving investors would be disqualified from serving as a public arbitrator if the threshold percentage or dollar figure is met.

New Rule 12100(u)(10) is not based on an existing disqualification – it is entirely new. This purpose of this provision is to address an industry perception that a professional whose firm derives significant revenue from representing investors in securities matters in not neutral, and should not be permitted to serve as a public arbitrator. The revenue thresholds and cooling-off period are consistent with proposed New Rule 12100(u)(9).

New Rule 12100(u)(11)

FINRA currently disqualifies individuals from serving as public arbitrators if their spouse or immediate family member is employed by, or is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other or organization that is engaged in the

securities business.[34] FINRA applies a two-year cooling-off period to these disqualifications.[35] In addition, if an individual's spouse or immediate family member is employed in a securities industry entity or provides services to such an entity and/or the entity's employees, the person may not serve as a public arbitrator.[36] While the current public arbitrator definition does not include a cooling-off period for this disqualification, it has been FINRA's practice to make these individuals wait for five years after their spouse or immediate family member ends the disqualifying affiliation before they may become public arbitrators.

FINRA is proposing to simplify these disqualifications and add clarity to them by combining them into one disqualification with a two-year cooling-off period. New Rule 12100(u)(11) would provide that a person shall not be designated as a public arbitrator if his or her immediate family member is an individual whom FINRA would disqualify from serving on the public arbitrator roster. If the person's immediate family member ends the disqualifying affiliation, or the person ends the relationship with the individual so that the individual is no longer the person's immediate family member, the person may, after two calendar years have passed from the end of the affiliation or relationship, be designated as a public arbitrator. FINRA believes it is appropriate to have a two-year cooling-off period for all disqualifications based on the activities of others.

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34 See current Rules 12100(u)(6) and 12100(u)(7).

35 See current Rule 12100(u).

36 See current Rule 12100(u)(8).

Immediate Family

In the current public arbitrator definition, the term spouse appears in the disqualification text, not in the description of immediate family member. The term immediate family member includes a person's parent, stepparent, child, step-child, or household member. It also includes an individual that the person supports financially,[37] and an individual who is claimed as a dependent for federal tax purposes. FINRA is proposing to update the term to reflect current societal relationships. Under proposed new Rule 12100(u)(11), FINRA would add as immediate family members a person's spouse, partner in a civil union, and domestic partner.

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 90 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,[38] 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 the proposed amendments to the public arbitrator definition would benefit forum users by addressing concerns raised about the fairness and neutrality of FINRA's public arbitrator roster. FINRA expects all arbitrators to be fair

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[37] Financial support is defined as providing an individual with more than 50 percent of his or her annual income.

[38] 15 U.S.C. 78o-3(b)(6).

and neutral, and believes that they are. However, FINRA believes that it must address perceptions about the allegiances or inclinations of arbitrators that may erode confidence in the forum.

By providing that FINRA would classify any individual who worked in the financial industry for any duration as non-public, FINRA should improve investors' views about the neutrality of the public arbitrator roster. By classifying professionals who represent or provide services to parties in disputes concerning investment accounts or transactions as non-public, FINRA would enable all parties in customer cases with three arbitrators to address their perceptions about the neutrality of public arbitrator roster through the use of strikes during the panel selection process.

The proposed cooling-off periods in the public arbitrator definition ensure that potential arbitrators have sufficient separation from their financial industry affiliations before FINRA permits them to serve as public arbitrators.

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.

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.[39]

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[39] 15 U.S.C. 78s(b)(2).

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2014-028)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator

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 17, 2014, 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 refine and reorganize the definitions of "non-public" arbitrator and "public" arbitrator. The amendments would, among other matters, provide that persons who worked in the financial industry for any duration during their careers would always be classified as non-public arbitrators, and persons who represent investors or the financial industry as a significant part of their business would also be classified as non-public, but could become public arbitrators after a cooling-off period. The amendments would reorganize the definitions to make it easier for arbitrator applicants and parties, among others, to determine the correct arbitrator classification.

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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 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

FINRA classifies arbitrators as "non-public" or "public" based on their professional and/or personal affiliations. The Customer Code and Industry Code define these terms. The non-public arbitrator definition (Rules 12100(p) and 13100(p)) lists financial industry affiliations that might *qualify* a person to serve as a non-public arbitrator in the forum. Conversely, the public arbitrator definition (Rules 12100(u) and 13100(u)) itemizes affiliations that *disqualify* a person from serving as a public arbitrator in the forum. Public arbitrators do not have a significant affiliation with the financial industry.

FINRA has amended its arbitrator definitions several times over the years to address constituent perceptions that an affiliation might affect an arbitrator's neutrality.[3] The SEC approved the latest amendments in 2013 ("the 2013 amendments").[4] Under the 2013 amendments, FINRA disqualified persons associated with a mutual fund or hedge fund from serving as public arbitrators. The 2013 amendments also provided that specified individuals must wait for two years after ending certain disqualifying affiliations ("cooling-off period") before they may serve as public arbitrators.

The SEC received several comment letters on the 2013 amendments. Commenters recommended that FINRA increase the proposed two-year cooling-off period, add new categories of individuals whom FINRA would disqualify from serving as public arbitrators, and add new categories of individuals to the non-public arbitrator definition.[5] In its response to the comment letters, FINRA asked the SEC to approve the proposed rule change as a significant measure to address constituent perceptions about the fairness and neutrality of the public arbitrator roster. FINRA staff agreed to conduct a comprehensive review in consultation with the National Arbitration and Mediation

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[3] See Securities Exchange Act Rel. No. 49573 (April 16, 2004), 69 FR 21871 (April 22, 2004) (File No. SR-NASD-2003-95) and Notice to Members 04-49 (June 2004); Securities Exchange Act Rel. No. 54607 (Oct. 16, 2006), 71 FR 62026 (Oct. 20, 2006) (File No. SR-NASD-2005-094) and Notice to Members 06-64 (November 2006); and Securities Exchange Act Rel. No. 57492 (March 13, 2008), 73 FR 15025 (March 20, 2008) (File No. SR-NASD-2007-021) and Regulatory Notice 08-22 (May 2008).

[4] See Securities Exchange Act Rel. No. 69297 (April 4, 2013), 78 FR 21449 (April 10, 2013) (File No. SR-FINRA-2013-003) and Regulatory Notice 13-21 (June 2013).

[5] See Securities Exchange Act Rel. No. 69297 (April 4, 2013), 78 FR 21449 (April 10, 2013) Discussion of Comment Letters. The comment letters are available on the SEC's website at www.sec.gov.

Committee ("NAMC"),[6] of both the non-public and public arbitrator definitions with a view towards clarifying the definitions and reviewing the additional issues raised in the comment letters.[7]

FINRA staff met with the NAMC several times to review both arbitrator definitions. As the result of these discussions, as well as general discussions with interested groups over a period of time, FINRA is proposing to amend the non-public and public arbitrator definitions. The intent of the proposed rule change is to address the concerns about arbitrator neutrality that were raised by the commenters on the 2013 amendments. As noted above, these concerns relate to the cooling-off periods, the categories of individuals whom FINRA disqualifies from serving as public arbitrators, and the categories of individuals whom FINRA classifies as non-public. The proposed rule change includes several substantive changes to the definitions and an extensive reorganization of the public arbitrator definition. In light of extensive revisions, FINRA is proposing to delete the definitions in their entirety, and replace them with new definitions. The proposed amendments are described below. For ease of reading, the discussion only refers to Rule 12100 of the Customer Code. The proposed amendments to Rule 13100 of the Industry Code are identical, and FINRA's rationale is the same.

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6 The NAMC, which is composed of investor, industry, and neutral (arbitrator and mediator) representatives, provides policy guidance to FINRA Dispute Resolution staff. A majority of the NAMC members and its chair are public.

7 See letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Elizabeth M. Murphy, dated March 11, 2013. The letter is available on FINRA's website at www.finra.org, and on the SEC's website at www.sec.gov.

Non-Public Arbitrator Definition

The non-public arbitrator definition lists financial industry affiliations that might qualify a person to serve as a non-public arbitrator in the forum. The affiliations relate to individuals who work in the industry, and individuals who provide services to industry entities and their employees. Each qualifying affiliation has a corresponding disqualification in the public arbitrator definition. Currently, FINRA permits individuals who worked in the financial industry to join the public arbitrator roster after a cooling-off period so long as they meet other requirements.

FINRA is proposing to expand the scope of the non-public arbitrator definition in three ways. First, the definition would provide that individuals who worked in the financial industry for any duration during their careers would always be classified as non-public. Second, FINRA would add new categories of financial industry personnel who might qualify to serve as non-public arbitrators. Third, FINRA would add to the definition professionals who devote a significant part of their business to representing or providing services to parties in disputes concerning investments or employment relationships.

Expansion of the non-public arbitrator definition becomes particularly significant when parties are selecting arbitrators in customer cases with three arbitrators.[8] In these cases, FINRA sends the parties three randomly generated lists of arbitrators – a list of 10 chair-qualified public arbitrators, a list of 10 public arbitrators, and a list of 10 non-public

[8] Under Rule 12401, one arbitrator hears customer claims up to $100,000 and three arbitrators hear customer claims of more than $100,000 or unspecified claims.

arbitrators. The parties select their panel through a process of striking and ranking the arbitrators on the lists. FINRA limits the parties to four strikes on the chair-qualified public list and four strikes on the public list. However, FINRA gives parties unlimited strikes on the non-public arbitrator list. By expanding the scope of the non-public arbitrator definition, parties would have a greater ability to address their own perceptions of bias through the use of their unlimited strikes on the non-public arbitrator list.

New Rule 12100(p)(1)

Under the current non-public arbitrator definition, if a person is currently, or was within the past five years, affiliated with a securities industry entity specified in the rule (e.g., associated with a broker or dealer), the person may qualify to serve as a non-public arbitrator at the forum.[9] Subject to two exceptions, FINRA allows these individuals to join the public arbitrator roster five years after ending all industry affiliation. The first exception to the five-year clause applies to persons who retired from, or who spent a substantial part of their career with, a specified industry entity.[10] FINRA keeps these individuals on the non-public roster for the duration of their service to the forum. The second exception applies to persons who were affiliated for 20 years or more with a

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[9] See current Rule 12100(p)(1). This provision applies to a person who is, or was within the past five years:

- Associated with, including registered through, a broker or dealer (including a government securities broker or dealer or A municipal securities dealer);
- Registered under the Commodities Exchange Act;
- A member of a commodities exchange or a registered futures association; or
- Associated with a person or firm registered under the Commodity Exchange Act.

[10] See current Rule 12100(p)(2).

specified industry entity.[11] FINRA also keeps these arbitrators on the non-public roster for the duration of their service.

Investor representatives raised concerns about the neutrality of FINRA's public arbitrator roster because they do not believe that former industry-affiliated persons should ever serve as public arbitrators. In response to these concerns, FINRA is proposing to adopt new Rule 12100(p)(1) to eliminate the five-year cooling-off provision for persons who work in the financial industry. Under the new rule, FINRA would classify persons who are, or were, affiliated with a specified financial industry entity at any point in their careers, for any duration, as non-public.[12] Once FINRA classifies an arbitrator as non-public, FINRA would never reclassify the arbitrator as public. Under the proposed rule change, there would be no exceptions to this provision.

FINRA is also proposing to add two new categories of financial industry professionals to new Rule 12100(p)(1) – persons associated with, including registered through, a mutual fund or hedge fund, and persons associated with, including registered through, an investment adviser. Currently, FINRA does not permit these professionals to

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11 See current Rule 12100(u)(2).

12 See new Rule 12100(p)(1). The financial industry affiliations enumerated in new Rule 12100(p)(1) relate to a person who is, or was, associated with, including registered through:

- a broker or a dealer (including a government securities broker or dealer or a municipal securities broker or dealer); or
- a member of, or an entity registered under, the Commodity Exchange Act, the Commodities Future Trading Commission, the National Futures Association, or the Municipal Securities Rulemaking Board; or
- an entity that is organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisers Act of 1940; or
- a mutual fund or a hedge fund; or
- an investment adviser.

serve in any capacity, but if they end their affiliation, they may serve as public arbitrators after a two-year cooling-off period.[13] FINRA believes that these professionals would bring valuable knowledge and experience to the forum and that FINRA should classify them as non-public. Under the proposed rule change, once FINRA classifies them as non-public, these arbitrators would remain on the non-public roster for the duration of their service to the forum.

Finally, FINRA is proposing to add clarity to new Rule 12100(p)(1) by revising the references in several ways. First, instead of referring to a person registered under the Commodity Exchange Act, or associated with a person or firm registered under the Commodity Exchange Act, or a member of a commodities exchange, FINRA would simplify the reference in Rule 12100(p)(1)(B) by referring to a person who is, or was, associated with, including registered through, under, or with (as applicable), the Commodity Exchange Act or the Commodities Futures Trading Commission. FINRA is not proposing any substantive change to the categories of persons relating to commodities. Second, instead of referring to a member of a registered futures association, FINRA proposes in Rule 12100(p)(1)(B) to specify the association by name – the National Futures Association. FINRA is not proposing any substantive change to the category of persons relating to futures. Third, FINRA is proposing to add in Rule 12100(p)(1)(B) a reference to a person who is, or was, associated with, including registered through, under, or with (as applicable), the Municipal Securities Rulemaking Board ("MSRB"). While such an individual would be covered under the current

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[13] These persons may serve as non-public arbitrators if they are qualified to serve under another provision (e.g., dually registered as an investment adviser and an associated person of a FINRA member).

"municipal securities broker or dealer," FINRA believes adding the MSRB would add clarity to the rule. Fourth, FINRA is proposing an omnibus reference in Rule 12100(p)(1)(C) to cover industry affiliated persons not otherwise specified in the rule and potential categories of industry professionals that may be created in the future.

New Rule 12100(p)(2)

Under the current non-public arbitrator definition, attorneys, accountants, and other professionals who devoted 20 percent or more of their professional work in the last two years to serving specified industry entities and/or employees, may qualify to serve as non-public arbitrators at the forum.[14] FINRA permits these individuals to join the public arbitrator roster two years after they stop providing services to the industry. However, they are permanently disqualified them from serving as public arbitrators if they provided services to the industry for 20 years or more over the course of their careers.[15]

FINRA is proposing to adopt new Rule 12100(p)(2) to broaden the current provision in two ways. First, the new rule increases the look-back period from two years to five years. Second, it broadens application of the provision to include services to industry entities *and* any persons or entities associated with those industry entities. The proposed new public arbitrator definition provides that persons would be permanently disqualified from serving as public arbitrators if they provided the specified services for 15 calendar years or more over the course of their careers (as opposed to the current 20 year provision).[16] The 15 years are a total number of years – they would not have to be

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[14] See current Rule 12100(p)(3). The rule applies to the persons and entities listed in current Rule 12100(p)(1).

[15] See current Rule 12100(u)(2).

[16] See new Rule 12100(u)(2).

consecutive years. After 15 years of service, FINRA would keep these arbitrators on the non-public roster for the duration of their service to the forum. FINRA is increasing the look-back period, and decreasing the number of years before it applies a permanent disqualification, to ensure that these individuals are sufficiently removed from their industry affiliation before FINRA permits them to serve on the public arbitrator roster.

Finally, FINRA is proposing to add clarity to the rule by changing the phrase "professional work" to "professional time." FINRA staff believes that the term "time" is better because time would be more easily quantified by the professionals in the category.

New Rule 12100(p)(3)

Currently, FINRA permits professionals who represent or provide services to investors in securities disputes to serve as public arbitrators at the forum.[17] Industry representatives raised concerns about the neutrality of the public arbitrator roster, and they do not believe that these professionals should serve as public arbitrators. To address these concerns, FINRA is proposing to add a new qualifying affiliation to the non-public definition.

Under new Rule 12100(p)(3), FINRA would classify as non-public, attorneys, accountants, and other professionals who devoted 20 percent or more of their professional time, within the past five years, to serving parties in investment or financial industry employment disputes. FINRA selected the 20 percent threshold for application of the provision to keep it consistent with the threshold in new Rule 12100(p)(2).

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[17] These individuals are not qualified under the non-public arbitrator definition to serve as non-public arbitrators, nor are they disqualified from serving as public arbitrators under the public arbitration definition.

FINRA would permit these individuals to serve as public arbitrators five years after their business mix changes. However, if the person accumulates 15 calendar years of providing the qualifying services over the course of a career, FINRA would keep that arbitrator on the non-public roster for the duration of the arbitrator's service to the forum. The 15 years are a total number of years – they would not have to be consecutive years. [18]

New Rule 12100(p)(4)

FINRA currently classifies as non-public, persons working in a bank or other financial institution (e.g., a credit union) who execute transactions in securities or who supervise employees who execute transactions in securities.[19] This provision covers persons who are not employed by an industry entity that falls under current paragraph (p)(1). When such persons end their affiliation, they may immediately apply to serve as public arbitrators at the forum unless they have engaged in this type of work for 20 years or more over the course of their careers.[20]

FINRA is proposing to adopt new Rule 12100(p)(4) to add a five-year look-back period to this provision. The substance of the qualifying affiliation is the same. Only the look-back period is new. Under the new rule, FINRA would classify as non-public, any person who, within the last five calendar years, worked in a bank or other financial institution and executed transactions in securities or supervised or monitored compliance with the securities and commodities laws of employees who execute transactions in securities. FINRA would permit these persons to serve as public arbitrators five years

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18 See new Rule 12100(u)(3).

19 See current Rule 12100(p)(4).

20 See current Rule 12100(u)(2).

after they ended their industry affiliation unless they provided these services for 15 years or more. As is the case with proposed new paragraphs (p)(2) and (p)(3) described above, the proposed new public arbitrator definition provides that these persons would be permanently disqualified from serving as public arbitrators if they provided the specified services for 15 calendar years or more over the course of their careers.[21] Again, the 15 years are a total number of years – they would not have to be consecutive years. After 15 years of service, FINRA would keep these arbitrators on the non-public roster for the duration of their service to the forum.

Public Arbitrator Definition

The public arbitrator definition lists affiliations that disqualify a person from serving as a public arbitrator in the forum. It includes a disqualification that corresponds to each qualifying affiliation in the non-public arbitrator definition. Currently, the definition reflects these disqualifications by cross-references to the non-public definition. The public arbitrator definition includes additional disqualifiers that do not have a corresponding qualifier in the non-public arbitrator definition. Over the years, FINRA added these disqualifications to the public arbitrator definition to address investors' perceptions about the neutrality of the public arbitrator roster.

FINRA is proposing substantive changes to the public definition which: add new disqualifications; amend an existing disqualification to simply it; and revise the cooling-off periods. Under new Rule 12100(u), FINRA would subject individuals to a five-year cooling-off period after they end an affiliation based on their own activities, and a two-

[21] See new Rule 12100(u)(4).

year cooling-off period after they end an affiliation based on someone else's activities (provided that another disqualification isn't applicable).

FINRA is also proposing to reorganize the public arbitrator definition to make it easier for FINRA staff, arbitrators and potential arbitrators, and parties to ascertain the correct arbitrator classification. Under the proposed rule change, FINRA would remove the cross-references between the definitions, and fully describe each disqualification. FINRA would also separate the disqualifications into categories of those that are permanent versus those that are temporary, and those based on a person's own activities versus those based on the activities of others (e.g., others at a person's firm). FINRA would repeat some of the disqualifying affiliations to make it clear that the affiliations are subject to both a temporary disqualification and a permanent disqualification depending on how many years a person was engaged in a stated activity.

New Rule 12100(u)(1)

FINRA is proposing to adopt new Rule 12100(u)(1) to specify the types of financial industry employment that disqualify a person from serving as a public arbitrator.[22] Substantively, the affiliations are identical to those listed in new Rule 12100

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[22] Under new Rule 12100(u)(1), A person shall not be designated as a public arbitrator who is, or was, associated with, including registered through:

- a broker or a dealer (including a government securities broker or dealer or a municipal securities broker or dealer); or
- a member of, or an entity registered under, the Commodity Exchange Act, the Commodities Future Trading Commission, the National Futures Association, or the Municipal Securities Rulemaking Board; or
- an entity that is organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisers Act of 1940; or
- a mutual fund or a hedge fund; or
- an investment adviser.

(p)(1). None of the disqualifying affiliations is new – FINRA currently includes each of them in the public arbitrator definition.[23] FINRA currently permits non-public arbitrators to become public arbitrators at some point after ending their affiliations (subject to specified exceptions). As explained in the above discussion on new Rule 12100(p)(1), under the proposed rule change, FINRA would classify these individuals as non-public for the duration of their service to the forum and would never reclassify them as public arbitrators. Therefore, anyone disqualified under new Rule 12100(u)(1) would be subject to a permanent disqualification from the public arbitrator roster.

New Rules 12100(u)(2) and 12100(u)(6)

Under the current public arbitrator definition, attorneys, accountants, and other professionals who devoted 20 percent or more of their professional work in the last two years to serving securities industry employees and/or entities, may not serve as public arbitrators at the forum.[24] These individuals may join the public arbitrator roster two years after they stop providing services to the industry. However, FINRA permanently disqualifies them from the public roster if they provided the services for 20 years or more over the course of their careers.[25]

FINRA is proposing to adopt new Rules 12100(u)(2) and 12100(u)(6) to expand the current provision. FINRA would broaden application of the disqualification to include services to financial industry entities *and* any persons or entities associated with

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23 See current Rule 12100(u)(1) and Rule 12100(u)(3).

24 See current Rule 12100(u)(1), which incorporates, among other things, current Rule 12100(p)(3).

25 See current Rule 12100(u)(2).

those financial industry entities.[26] In new Rule 12100(u)(6), FINRA would increase the cooling-off period in the rule from two years to five years,[27] and in new Rule 12100(u)(2), FINRA would decrease the number of years for a permanent disqualification from 20 years to 15 years.[28] The 15 years are a total number of years – they would not have to be consecutive years. Although the description of the disqualification in paragraphs (u)(2) and (u)(6) is identical, FINRA believes it would add clarity to the definition to separate out when the provision results in a permanent disqualification, and when it results in a temporary disqualification. Substantively, new Rules 12100(u)(2) and 12100(u)(6) are identical to new Rule 12100(p)(2).

New Rules 12100(u)(3) and 12100(u)(7)

As explained above, FINRA currently permits professionals who represent or provide services to investors in securities disputes to serve as public arbitrators at the forum. Industry representatives raised concerns about the neutrality of the public arbitrator roster, and they do not believe that these professionals should serve as public arbitrators.

To address these concerns, FINRA is proposing to disqualify from the public arbitrator roster, attorneys, accountants, expert witnesses, and other professionals who devote 20 percent or more of their professional time to serving parties in investment or financial industry employment disputes. Under new Rule 12100(u)(7), FINRA would

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[26] See current Rule 12100(p)(3) for content to be expanded by new Rules 12100(u)(2) and 12100(u)(6).

[27] See current Rule 12100(u)(1), referencing current Rule 12100(p)(3), which includes a two year look-back period.

[28] See current Rule 12100(u)(2) which references a 20 year time period.

apply a five-year cooling-off period to the rule. Under new Rule 12100(u)(3), these persons would be permanently disqualified from serving as public arbitrators if they provide the specified services for 15 calendar years or more over the course of their careers. The 15 years are a total number of years – they would not have to be consecutive years. The substance of the disqualification corresponds to the proposed qualifying affiliation in new Rule 12100(p)(3). FINRA selected the 20 percent threshold for application of the provision to keep it consistent with the thresholds in new Rules 12100(u)(2) and 12100(u)(6).

New Rules 12100(u)(4) and 12100(u)(8)

FINRA currently disqualifies personnel working in a bank or other financial institution (e.g., a credit union) who execute transactions in securities, or who supervise employees who execute transactions in securities, from serving as public arbitrators.[29] This provision applies to persons who are employed by a financial industry entity that is not covered by current Rule 12100(p)(1). When these individuals end their affiliation, they may immediately apply to serve as public arbitrators at the forum unless they have engaged in this type of work for 20 years or more over the course of their careers.[30]

FINRA is proposing to adopt new Rules 12100(u)(4) and 12100(u)(8) to expand the current provision. In new Rule 12100(u)(8), FINRA would impose a five-year cooling-off period in the rule, and in new Rule 12100(u)(4), FINRA would decrease the number of years for a permanent disqualification from 20 years to 15 years. The 15 years are a total number of years – they would not have to be consecutive years. Although the

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29 See current Rule 12100(u)(1) which references current Rule 12100(p)(4).

30 See current Rule 12100(u)(2).

description of the disqualification in paragraphs (u)(4) and (u)(8) is identical, FINRA believes it would add clarity to the definition to separate out when the provision results in a permanent disqualification, and when it results in a temporary disqualification. Substantively, new Rules 12100(u)(4) and 12100(u)(8) are identical to new Rule 12100(p)(4).

New Rule 12100(u)(5)

FINRA currently disqualifies individuals employed by, or who are directors or officers of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other or organization that is engaged in the securities business.[31] These persons may become public arbitrators two years after ending their affiliation.[32]

FINRA is proposing to adopt new Rule 12100(u)(5) to expand application of the provision. FINRA would expand the disqualification from an "organization that is engaged in the securities business" to an "organization that is engaged in the financial industry," and would increase the cooling-off period from two years to five years. This disqualification addresses the perception that employees, officers, and directors of entities that are associated with industry entities should not serve as public arbitrators because they may favor an industry party in an arbitration proceeding. FINRA staff used the term "financial industry" instead of "securities business" to ensure that the provision covers all financial services entities that may raise concerns about neutrality. The term securities

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31 See current Rules 12100(u)(6) and 12100(u)(7).

32 See current Rule 12100(u).

business may be interpreted too narrowly to apply only to the affiliations in current Rule 12100(p)(1).

New Rule 12100(u)(9)

Currently, professionals may not serve as public arbitrators if their firm: derived 10 percent or more of its annual revenue in the past two years from providing services to the financial industry;[33] or derived $50,000 or more in annual revenue in the past two years from providing services to the securities industry relating to customer disputes concerning an investment account or transaction.[34] For example, a real estate attorney working at a law firm with a securities practice devoted to serving the industry is disqualified from serving as a public arbitrator if the threshold percentage or dollar figure is met. Under these provisions, individuals may become public arbitrators two years after ending their affiliations.

FINRA is proposing to adopt new Rule 12100(u)(9) to combine the two disqualifications into one, and to simplify the disqualification relating to the $50,000 threshold. New Rule 12100(u)(9) would provide that professionals may not serve as public arbitrators if their firm derived $50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the course of the past two calendar years, from: the entities listed in paragraph (u)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (u)(1); or from a bank or other financial institution where persons effect transactions in securities including government or municipal securities, commodities, futures, or options. The cooling-off period of two years would be the same. FINRA is proposing to remove the requirement that the

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33 See current Rule 12100(u)(4).

34 See current Rule 12100(u)(5).

$50,000 in revenue relate to customer disputes concerning an investment account or transaction to make it easier for potential and existing arbitrators to determine if the disqualification applies.

New Rule 12100(u)(10)

FINRA is proposing to adopt new Rule 12100(u)(10) to disqualify from the public arbitrator roster, professionals whose firm derived $50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the course of the past two calendar years, from individual and/or institutional investors relating to securities matters. FINRA would apply a two-year cooling-off period to this provision. For example, a trust and estates attorney working at a law firm with a securities practice devoted to serving investors would be disqualified from serving as a public arbitrator if the threshold percentage or dollar figure is met.

New Rule 12100(u)(10) is not based on an existing disqualification – it is entirely new. This purpose of this provision is to address an industry perception that a professional whose firm derives significant revenue from representing investors in securities matters in not neutral, and should not be permitted to serve as a public arbitrator. The revenue thresholds and cooling-off period are consistent with proposed New Rule 12100(u)(9).

New Rule 12100(u)(11)

FINRA currently disqualifies individuals from serving as public arbitrators if their spouse or immediate family member is employed by, or is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other or organization that is engaged in the

securities business.[35] FINRA applies a two-year cooling-off period to these disqualifications.[36] In addition, if an individual's spouse or immediate family member is employed in a securities industry entity or provides services to such an entity and/or the entity's employees, the person may not serve as a public arbitrator.[37] While the current public arbitrator definition does not include a cooling-off period for this disqualification, it has been FINRA's practice to make these individuals wait for five years after their spouse or immediate family member ends the disqualifying affiliation before they may become public arbitrators.

FINRA is proposing to simplify these disqualifications and add clarity to them by combining them into one disqualification with a two-year cooling-off period. New Rule 12100(u)(11) would provide that a person shall not be designated as a public arbitrator if his or her immediate family member is an individual whom FINRA would disqualify from serving on the public arbitrator roster. If the person's immediate family member ends the disqualifying affiliation, or the person ends the relationship with the individual so that the individual is no longer the person's immediate family member, the person may, after two calendar years have passed from the end of the affiliation or relationship, be designated as a public arbitrator. FINRA believes it is appropriate to have a two-year cooling-off period for all disqualifications based on the activities of others.

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35 See current Rules 12100(u)(6) and 12100(u)(7).

36 See current Rule 12100(u).

37 See current Rule 12100(u)(8).

Immediate Family

In the current public arbitrator definition, the term spouse appears in the disqualification text, not in the description of immediate family member. The term immediate family member includes a person's parent, stepparent, child, step-child, or household member. It also includes an individual that the person supports financially,[38] and an individual who is claimed as a dependent for federal tax purposes. FINRA is proposing to update the term to reflect current societal relationships. Under proposed new Rule 12100(u)(11), FINRA would add as immediate family members a person's spouse, partner in a civil union, and domestic partner.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[39] 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 the proposed amendments to the public arbitrator definition would benefit forum users by addressing concerns raised about the fairness and neutrality of FINRA's public arbitrator roster. FINRA expects all arbitrators to be fair and neutral, and believes that they are. However, FINRA believes that it must address perceptions about the allegiances or inclinations of arbitrators that may erode confidence in the forum.

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[38] Financial support is defined as providing an individual with more than 50 percent of his or her annual income.

[39] 15 U.S.C. 78o-3(b)(6).

By providing that FINRA would classify any individual who worked in the financial industry for any duration as non-public, FINRA should improve investors' views about the neutrality of the public arbitrator roster. By classifying professionals who represent or provide services to parties in disputes concerning investment accounts or transactions as non-public, FINRA would enable all parties in customer cases with three arbitrators to address their perceptions about the neutrality of public arbitrator roster through the use of strikes during the panel selection process.

The proposed cooling-off periods in the public arbitrator definition ensure that potential arbitrators have sufficient separation from their financial industry affiliations before FINRA permits them to serve as public arbitrators.

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.

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-2014-028 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2014-028. 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-2014-028 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.[40]

Secretary

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[40] 17 CFR 200.30-3(a)(12).

Exhibit 5

Proposed new language is underlined; deletions are in brackets

Customer Code

Rule 12100 (Definitions)

[(p) Non-Public Arbitrator

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(1) is, or within the past five years, was:

(A) associated with, including registered through, a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(B) registered under the Commodity Exchange Act;

(C) a member of a commodities exchange or a registered futures association; or

(D) associated with a person or firm registered under the Commodity Exchange Act;

(2) is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph (p)(1);

(3) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in paragraph (p)(1); or

(4) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

For purposes of this rule, the term "professional work" shall not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.**]**

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[(u) Public Arbitrator

The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(1) is not engaged in the conduct or activities described in paragraphs (p)(1)–(4);

(2) was not engaged in the conduct or activities described in paragraphs (p)(1)–(4) for a total of 20 years or more;

(3) is not an investment adviser, or associated with, including registered through, a mutual fund or hedge fund;

(4) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (p)(1)–(4);

(5) is not an attorney, accountant, or other professional whose firm derived $50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in paragraph (p)(1) relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees;

(6) is not employed by, and is not the spouse or an immediate family member of a person who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business;

(7) is not a director or officer of, and is not the spouse or an immediate family member of a person who is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business; and

(8) is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (p)(1)–(4). For purposes of this rule, the term immediate family member means:

(A) a person's parent, stepparent, child, or stepchild;
(B) a member of a person's household;
(C) an individual to whom a person provides financial support of more than 50 percent of his or her annual income; or
(D) a person who is claimed as a dependent for federal income tax purposes.

A person whom FINRA would not designate as a public arbitrator because of an affiliation under subparagraphs (3)–(7) shall not be designated as a public arbitrator for two calendar years after ending the affiliation.

For purposes of this rule, the term "revenue" shall not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation**.]**

* * * * *

(p) Non-Public Arbitrator

The term “non-public arbitrator” means a person who is otherwise qualified to serve as an arbitrator, and meets any of the following criteria:

(1) is, or was, associated with, including registered through, under, or with (as applicable):

(A) a broker or a dealer (including a government securities broker or dealer or a municipal securities broker or dealer); or

(B) the Commodity Exchange Act or the Commodities Future Trading Commission, or a member of the National Futures Association or the Municipal Securities Rulemaking Board; or

(C) an entity that is organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisers Act of 1940; or

(D) a mutual fund or a hedge fund; or

(E) an investment adviser;

(2) is an attorney, accountant, or other professional who has, within the past five years, devoted 20 percent or more of his or her professional time, in any single calendar year, to any entities listed in paragraph (p)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (p)(1); or

(3) is an attorney, accountant, expert witness or other professional who has, within the past five years, devoted 20 percent or more of his or her professional time, in any single calendar year, to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry; or

(4) is, or within the past five years was, an employee of a bank or other financial institution who effects transactions in securities, including government or municipal securities, commodities, futures, or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

For purposes of the non-public arbitrator definition, the term "professional time" shall not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

* * * * *

(u) Public Arbitrator

The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator, and is not disqualified from service as an arbitrator, as enumerated by any of the criteria below.

Permanent Disqualifications Based on a Person's Own Activities

(1) A person shall not be designated as a public arbitrator who is, or was, associated with, including registered through, under, or with (as applicable):

(A) a broker or a dealer (including a government securities broker or dealer or a municipal securities broker or dealer); or

(B) the Commodity Exchange Act or the Commodities Future Trading Commission, or a member of the National Futures Association or the Municipal Securities Rulemaking Board; or

(C) an entity that is organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisers Act of 1940; or

(D) a mutual fund or a hedge fund; or

(E) an investment adviser.

(2) A person shall not be designated as a public arbitrator, who was, for a total of 15 years or more, an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional time annually, to any entities listed in paragraph (u)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (u)(1).

(3) A person shall not be designated as a public arbitrator, who was, for a total of 15 years or more, an attorney, accountant, expert witness or other professional who has devoted 20 percent or more of his or her professional time annually to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry.

(4) A person shall not be designated as a public arbitrator, who was, for a total of 15 years or more, an employee of a bank or other financial institution who effects transactions in securities, including government or municipal securities, commodities, futures, or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

Temporary Disqualifications Based on a Person's Own Activities

(5) A person shall not be designated as a public arbitrator who is employed by, or is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the financial industry unless the affiliation ended more than five calendar years ago.

(6) A person shall not be designated as a public arbitrator who is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional time, in any single calendar year, to any entities listed in paragraph (u)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (u)(1) unless the calendar year ended more than five calendar years ago.

(7) A person shall not be designated as a public arbitrator who is an attorney, accountant, expert witness or other professional who has devoted 20 percent or more of his or her professional time, in any single calendar year, to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry unless the calendar year ended more than five calendar years ago.

(8) A person shall not be designated as a public arbitrator if the person is an employee of a bank or other financial institution and the person effects transactions in securities, including government or municipal securities, commodities, futures, or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities unless the affiliation ended more than five calendar years ago.

Temporary Disqualifications Based on the Activities of Others at a Person's Employer

(9) A person shall not be designated as a public arbitrator who is an attorney, accountant, or other professional whose firm derived $50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the course of the past two calendar years, from any entities listed in paragraph (u)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (u)(1), or from a bank or other financial institution where persons effect transactions in securities including government or municipal securities, commodities, futures, or options. A person whom FINRA would not designate as a public arbitrator under this subparagraph shall also not be designated as a public arbitrator for two calendar years after ending employment at the firm.

(10) A person shall not be designated as a public arbitrator, who is an attorney, accountant, or other professional whose firm derived $50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the course of the past two calendar years, from individual and/or institutional investors relating to securities matters. A person whom FINRA would not designate as a public arbitrator under this subparagraph shall also not be designated as a public arbitrator for two calendar years after ending employment at the firm.

Temporary Disqualification Based on the Financial Industry Affiliation of an Immediate Family Member

(11) A person shall not be designated as a public arbitrator if his or her immediate family member is an individual whom FINRA would disqualify from serving on the public arbitrator roster. If the person's immediate family member ends the disqualifying affiliation, or the person ends the relationship with the individual so that the individual is no longer the person's immediate family member, the person may, after two calendar years have passed from the end of the affiliation or relationship, be designated as a public arbitrator.

For purposes of this rule, the term immediate family member means:

(A) a person's spouse, partner in a civil union, domestic partner, parent, stepparent, child, or stepchild;
(B) a member of a person's household;
(C) an individual to whom a person provides financial support of more than 50 percent of his or her annual income; or
(D) a person who is claimed as a dependent for federal income tax purposes.

For purposes of the public arbitrator definition, the term "revenue" shall not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

Industry Code

Rule 13100 (Definitions)

[(p) Non-Public Arbitrator

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(2) is, or within the past five years, was:

(A) associated with, including registered through, a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);
(B) registered under the Commodity Exchange Act;

(C) a member of a commodities exchange or a registered futures association; or

(D) associated with a person or firm registered under the Commodity Exchange Act;

(2) is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph (p)(1);

(3) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in paragraph (p)(1); or

(4) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

For purposes of this rule, the term "professional work" shall not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.**]**

*** * * * ***

[(u) Public Arbitrator

The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(1) is not engaged in the conduct or activities described in paragraphs (p)(1)–(4);

(2) was not engaged in the conduct or activities described in paragraphs (p)(1)–(4) for a total of 20 years or more;

(3) is not an investment adviser, or associated with, including registered through, a mutual fund or hedge fund;

(4) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (p)(1)–(4);

(5) is not an attorney, accountant, or other professional whose firm derived $50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in paragraph (p)(1) relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees;

(6) is not employed by, and is not the spouse or an immediate family member of a person who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business;

(7) is not a director or officer of, and is not the spouse or an immediate family member of a person who is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business; and

(8) is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (p)(1)–(4). For purposes of this rule, the term immediate family member means:

(A) a person's parent, stepparent, child, or stepchild;
(B) a member of a person's household;
(C) an individual to whom a person provides financial support of more than 50 percent of his or her annual income; or
(D) a person who is claimed as a dependent for federal income tax purposes.

A person whom FINRA would not designate as a public arbitrator because of an affiliation under subparagraphs (3)–(7) shall not be designated as a public arbitrator for two calendar years after ending the affiliation.

For purposes of this rule, the term "revenue" shall not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation**.]**

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(p) Non-Public Arbitrator

The term “non-public arbitrator” means a person who is otherwise qualified to serve as an arbitrator, and meets any of the following criteria:

(1) is, or was, associated with, including registered through, under, or with (as applicable):

(A) a broker or a dealer (including a government securities broker or dealer or a municipal securities broker or dealer); or

(B) the Commodity Exchange Act or the Commodities Future Trading Commission, or a member of the National Futures Association or the Municipal Securities Rulemaking Board; or

(C) an entity that is organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisers Act of 1940; or

(D) a mutual fund or a hedge fund; or

(E) an investment adviser;

(2) is an attorney, accountant, or other professional who has, within the past five years, devoted 20 percent or more of his or her professional time, in any single calendar year, to any entities listed in paragraph (p)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (p)(1); or

(3) is an attorney, accountant, expert witness or other professional who has, within the past five years, devoted 20 percent or more of his or her professional time, in any single calendar year, to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry; or

(4) is, or within the past five years was, an employee of a bank or other financial institution who effects transactions in securities, including government or municipal securities, commodities, futures, or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

For purposes of the non-public arbitrator definition, the term "professional time" shall not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

* * * * *

(u) Public Arbitrator

The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator, and is not disqualified from service as an arbitrator, as enumerated by any of the criteria below.

Permanent Disqualifications Based on a Person's Own Activities

(1) A person shall not be designated as a public arbitrator who is, or was, associated with, including registered through, under, or with (as applicable):

(A) a broker or a dealer (including a government securities broker or dealer or a municipal securities broker or dealer); or

(B) the Commodity Exchange Act or the Commodities Future Trading Commission, or a member of the National Futures Association or the Municipal Securities Rulemaking Board; or

(C) an entity that is organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisers Act of 1940; or

(D) a mutual fund or a hedge fund; or

(E) an investment adviser.

(2) A person shall not be designated as a public arbitrator, who was, for a total of 15 years or more, an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional time annually, to any entities listed in paragraph (u)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (u)(1).

(3) A person shall not be designated as a public arbitrator, who was, for a total of 15 years or more, an attorney, accountant, expert witness or other professional who has devoted 20 percent or more of his or her professional time annually to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry.

(4) A person shall not be designated as a public arbitrator, who was, for a total of 15 years or more, an employee of a bank or other financial institution who effects transactions in securities, including government or municipal securities, commodities, futures, or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

Temporary Disqualifications Based on a Person's Own Activities

(5) A person shall not be designated as a public arbitrator who is employed by, or is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the financial industry unless the affiliation ended more than five calendar years ago.

(6) A person shall not be designated as a public arbitrator who is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional time, in any single calendar year, to any entities listed in paragraph (u)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (u)(1) unless the calendar year ended more than five calendar years ago.

(7) A person shall not be designated as a public arbitrator who is an attorney, accountant, expert witness or other professional who has devoted 20 percent or more of his or her professional time, in any single calendar year, to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry unless the calendar year ended more than five calendar years ago.

(8) A person shall not be designated as a public arbitrator if the person is an employee of a bank or other financial institution and the person effects transactions in securities, including government or municipal securities, commodities, futures, or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities unless the affiliation ended more than five calendar years ago.

Temporary Disqualifications Based on the Activities of Others at a Person's Employer

(9) A person shall not be designated as a public arbitrator who is an attorney, accountant, or other professional whose firm derived $50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the course of the past two calendar years, from any entities listed in paragraph (u)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (u)(1), or from a bank or other financial institution where persons effect transactions in securities including government or municipal securities, commodities, futures, or options. A person whom FINRA would not designate as a public arbitrator under this subparagraph shall also not be designated as a public arbitrator for two calendar years after ending employment at the firm.

(10) A person shall not be designated as a public arbitrator, who is an attorney, accountant, or other professional whose firm derived $50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the course of the past two calendar years, from individual and/or institutional investors relating to securities matters. A person whom FINRA would not designate as a public arbitrator under this subparagraph shall also not be designated as a public arbitrator for two calendar years after ending employment at the firm.

Temporary Disqualification Based on the Financial Industry Affiliation of an Immediate Family Member

(11) A person shall not be designated as a public arbitrator if his or her immediate family member is an individual whom FINRA would disqualify from serving on the public arbitrator roster. If the person's immediate family member ends the disqualifying affiliation, or the person ends the relationship with the individual so that the individual is no longer the person's immediate family member, the person may, after two calendar years have passed from the end of the affiliation or relationship, be designated as a public arbitrator.

For purposes of this rule, the term immediate family member means:

(A) a person's spouse, partner in a civil union, domestic partner, parent, stepparent, child, or stepchild;

(B) a member of a person's household;

(C) an individual to whom a person provides financial support of more than 50 percent of his or her annual income; or

(D) a person who is claimed as a dependent for federal income tax purposes.

For purposes of the public arbitrator definition, the term "revenue" shall not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.