

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 19	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2016 - * 022 Amendment No. (req. for Amendments *)
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Filing by Financial Industry Regulatory Authority  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

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

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

Proposed rule change relating to the panel selection process in customer cases with three arbitrators.

**Contact Information**

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

First Name \* Margo      Last Name \* Hassan

Title \* Associate Chief Counsel

E-mail \* margo.hassan@finra.org

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

**Signature**

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

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

(Title \*)

Date 06/22/2016      SVP, Chief Counsel, FINRA Office of Dispute Resolution

By Kenneth Andrichik      Kenneth Andrichik,

(Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

Add Remove View

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

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

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

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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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

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

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

Add Remove View

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

**Exhibit 5 - Proposed Rule Text**

Add Remove View

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

**Partial Amendment**

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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”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 12403 of the Code of Arbitration Procedure for Customer Disputes (“Code”) concerning customer cases with three arbitrators, to increase the number of public arbitrators on the list that FINRA sends parties during the arbitration panel selection process from 10 arbitrators to 15 arbitrators. FINRA would also increase the number of strikes that parties may make to the public list from four to six strikes to keep the proportion of strikes the same under the amended rule as it is under the current rule.

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

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

At its meeting on May 6, 2016, 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.

If the Commission approves 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 60 days following publication of the Regulatory Notice announcing Commission approval.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

Questions regarding this rule filing may be directed to Margo Hassan, Associate 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 allows parties to participate in selecting the arbitrators who serve on their cases. Parties select their arbitration panel from computer generated lists of arbitrators that FINRA sends them. Under FINRA Rule 12403(a), in customer cases with three arbitrators,<sup>2</sup> FINRA sends the parties three lists: a list of 10 chair-qualified public arbitrators, a list of 10 public arbitrators, and a list of 10 non-public arbitrators.<sup>3</sup> The parties select their panel through a process of striking and ranking the arbitrators on the lists.<sup>4</sup> Under Rule 12403(c)(2), each party is allowed to strike up to four arbitrators on the chair-qualified public list and four arbitrators on the public list. At least six names must remain on each list. However, Rule 12403(c)(1) provides for unlimited strikes on the non-public list so that any party may select a panel of all public arbitrators in a customer case.

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

<sup>3</sup> Public arbitrators do not have an affiliation with the financial industry. The non-public arbitrator roster includes individuals who: (1) are employed in the financial industry; (2) provide services to industry entities and their employees; or (3) devote a significant part of their business to representing or providing services to parties in disputes concerning investments or employment relationships.

<sup>4</sup> See FINRA Rule 12403(c) (Striking and Ranking Arbitrators).

When parties collectively strike all of the non-public arbitrators from the list, FINRA fills all three panel seats from the two 10-person lists of public arbitrators. Specifically, the Code provides that when parties collectively strike all of the arbitrators appearing on the non-public list, FINRA returns to the public list to select the next highest ranked available arbitrator to fill the seat. If no public arbitrators remain available to fill the vacancy, FINRA returns to the chair-qualified public list to select the next highest ranked public chair. In doing so, there is a likelihood that FINRA will appoint an arbitrator who the parties accepted, but ranked lower on the public or chair-qualified public lists.

#### **FINRA Dispute Resolution Task Force**

In 2014, FINRA formed the FINRA Dispute Resolution Task Force (“Task Force”) to suggest strategies to enhance the transparency, impartiality, and efficiency of FINRA’s securities dispute resolution forum for all participants. The Task Force discussed panel selection in customer cases. During its discussions, the Task Force reviewed statistics on how often parties were striking all of the non-public arbitrators on the list. The data indicated that between September 30, 2013 (the effective date of the rule change providing for all public panels) and January 16, 2015, claimants struck all non-public arbitrators in 69 percent of cases. Given the data on strikes, the Task Force concluded that in many cases, the parties are selecting the three public arbitrators from the 20 candidates appearing on the public lists. The Task Force recommended that in instances where parties collectively strike all the non-public arbitrators, FINRA should provide a new list of 10 public arbitrators to fill the third public arbitrator seat.

### **Proposed Rule Change**

FINRA agrees with the Task Force that FINRA should provide parties with greater choice of public arbitrators in cases with all public panels. However, if FINRA waits until the parties collectively strike all the non-public arbitrators from the list before it provides the parties with additional names of public arbitrators, the panel selection process is likely to take at least one additional month to complete. Also, FINRA is concerned about the additional time and expense the parties would incur in vetting an additional list of 10 public arbitrators.

To address the Task Force's recommendation without delaying the panel selection process, or unduly burdening the parties, FINRA is proposing to amend Rule 12403(a)(1) to increase the number of arbitrators on the public arbitrator list FINRA sends the parties from 10 to 15. In doing so, FINRA would provide greater choice of public arbitrators during the panel selection process, and minimize the burden of vetting additional public arbitrators later in the process.

FINRA is also proposing to amend Rule 12403(c)(2) to increase the number of strikes to the public arbitrator list from four to six, so that the proportion of strikes is the same under the amended rule as it is under the current rule. Task Force members felt strongly that parties wanted additional public arbitrators to choose from because they did not want FINRA to appoint lower ranked arbitrators to the panel. We are proposing to increase the number of strikes the parties can make to the newly increased public list to improve the likelihood that FINRA will appoint the parties' preferred arbitrators to the panel.

As noted in Item 2 of this filing, if the Commission approves 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 60 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,<sup>5</sup> 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 the proposed rule change would protect investors and the public interest by providing greater choice during the panel selection process for the parties in all customer cases with three 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. Current rules permit parties to an arbitration to strike a specified number of arbitrators from each list of arbitrators that FINRA sends them and require them to rank order the remaining arbitrators. The propensity to strike all non-public arbitrators combined with the current rules for selecting the panel has led to concerns that panels may include a party's least preferred arbitrator, thereby diminishing a party's overall satisfaction with the arbitration process at the forum.

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<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

To remedy this concern, FINRA proposes to expand the number of arbitrators on the public arbitrator list. The longer list will increase the parties' choice of arbitrators during the panel selection process, and will improve the likelihood that FINRA will appoint the parties' preferred arbitrators to the panel.

Forum users are likely to incur costs in vetting the five additional public arbitrators on the list FINRA would send them. However, forum practitioners have indicated that they would willingly incur the additional expense in order to have greater choice in selecting arbitrators.

**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.<sup>6</sup>

**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.

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<sup>6</sup> 15 U.S.C. 78s(b)(2).

**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 the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2016-022)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Panel Selection Process in Arbitration

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 22, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 12403 of the Code of Arbitration Procedure for Customer Disputes (“Code”) concerning customer cases with three arbitrators, to increase the number of public arbitrators on the list that FINRA sends parties during the arbitration panel selection process from 10 arbitrators to 15 arbitrators. FINRA would also increase the number of strikes that parties may make to the public list from four to six strikes to keep the proportion of strikes the same under the amended rule as it is under the current rule.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 allows parties to participate in selecting the arbitrators who serve on their cases. Parties select their arbitration panel from computer generated lists of arbitrators that FINRA sends them. Under FINRA Rule 12403(a), in customer cases with three arbitrators,<sup>3</sup> FINRA sends the parties three lists: a list of 10 chair-qualified public arbitrators, a list of 10 public arbitrators, and a list of 10 non-public arbitrators.<sup>4</sup> The

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

<sup>4</sup> Public arbitrators do not have an affiliation with the financial industry. The non-public arbitrator roster includes individuals who: (1) are employed in the financial industry; (2) provide services to industry entities and their employees; or (3)

parties select their panel through a process of striking and ranking the arbitrators on the lists.<sup>5</sup> Under Rule 12403(c)(2), each party is allowed to strike up to four arbitrators on the chair-qualified public list and four arbitrators on the public list. At least six names must remain on each list. However, Rule 12403(c)(1) provides for unlimited strikes on the non-public list so that any party may select a panel of all public arbitrators in a customer case.

When parties collectively strike all of the non-public arbitrators from the list, FINRA fills all three panel seats from the two 10-person lists of public arbitrators. Specifically, the Code provides that when parties collectively strike all of the arbitrators appearing on the non-public list, FINRA returns to the public list to select the next highest ranked available arbitrator to fill the seat. If no public arbitrators remain available to fill the vacancy, FINRA returns to the chair-qualified public list to select the next highest ranked public chair. In doing so, there is a likelihood that FINRA will appoint an arbitrator who the parties accepted, but ranked lower on the public or chair-qualified public lists.

### **FINRA Dispute Resolution Task Force**

In 2014, FINRA formed the FINRA Dispute Resolution Task Force (“Task Force”) to suggest strategies to enhance the transparency, impartiality, and efficiency of FINRA’s securities dispute resolution forum for all participants. The Task Force discussed panel selection in customer cases. During its discussions, the Task Force reviewed statistics on how often parties were striking all of the non-public arbitrators on

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devote a significant part of their business to representing or providing services to parties in disputes concerning investments or employment relationships.

<sup>5</sup> See FINRA Rule 12403(c) (Striking and Ranking Arbitrators).

the list. The data indicated that between September 30, 2013 (the effective date of the rule change providing for all public panels) and January 16, 2015, claimants struck all non-public arbitrators in 69 percent of cases. Given the data on strikes, the Task Force concluded that in many cases, the parties are selecting the three public arbitrators from the 20 candidates appearing on the public lists. The Task Force recommended that in instances where parties collectively strike all the non-public arbitrators, FINRA should provide a new list of 10 public arbitrators to fill the third public arbitrator seat.

### **Proposed Rule Change**

FINRA agrees with the Task Force that FINRA should provide parties with greater choice of public arbitrators in cases with all public panels. However, if FINRA waits until the parties collectively strike all the non-public arbitrators from the list before it provides the parties with additional names of public arbitrators, the panel selection process is likely to take at least one additional month to complete. Also, FINRA is concerned about the additional time and expense the parties would incur in vetting an additional list of 10 public arbitrators.

To address the Task Force's recommendation without delaying the panel selection process, or unduly burdening the parties, FINRA is proposing to amend Rule 12403(a)(1) to increase the number of arbitrators on the public arbitrator list FINRA sends the parties from 10 to 15. In doing so, FINRA would provide greater choice of public arbitrators during the panel selection process, and minimize the burden of vetting additional public arbitrators later in the process.

FINRA is also proposing to amend Rule 12403(c)(2) to increase the number of strikes to the public arbitrator list from four to six, so that the proportion of strikes is the

same under the amended rule as it is under the current rule. Task Force members felt strongly that parties wanted additional public arbitrators to choose from because they did not want FINRA to appoint lower ranked arbitrators to the panel. We are proposing to increase the number of strikes the parties can make to the newly increased public list to improve the likelihood that FINRA will appoint the parties' preferred arbitrators to the panel.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> 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 the proposed rule change would protect investors and the public interest by providing greater choice during the panel selection process for the parties in all customer cases with three 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. Current rules permit parties to an arbitration to strike a specified number of arbitrators from each list of arbitrators that FINRA sends them and require them to rank order the remaining arbitrators. The propensity to strike all non-public arbitrators combined with the current rules for selecting the panel has led to concerns that panels

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<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

may include a party's least preferred arbitrator, thereby diminishing a party's overall satisfaction with the arbitration process at the forum.

To remedy this concern, FINRA proposes to expand the number of arbitrators on the public arbitrator list. The longer list will increase the parties' choice of arbitrators during the panel selection process, and will improve the likelihood that FINRA will appoint the parties' preferred arbitrators to the panel.

Forum users are likely to incur costs in vetting the five additional public arbitrators on the list FINRA would send them. However, forum practitioners have indicated that they would willingly incur the additional expense in order to have greater choice in selecting arbitrators.

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2016-022 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2016-022. 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-2016-022 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.<sup>7</sup>

Robert W. Errett  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

Proposed new language is underlined; deletions are in brackets

**12403. Cases with Three Arbitrators**

**Composition of Panels**

**(a) Generating Lists**

(1) The Neutral List Selection System will generate:

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

(B) A list of [10] 15 arbitrators from the FINRA public arbitrator roster;  
and

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

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

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

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

**(b)** No change.

**(c) Striking and Ranking Arbitrators**

(1) Non-Public Arbitrator List

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

(B) If any names remain on the non-public arbitrator list, each separately represented party shall rank all remaining arbitrators in order of preference, with a

"1" indicating the party's first choice, a "2" indicating the party's second choice, and so on.

(2) Chairperson and Public Lists

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

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

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

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

**(d) – (h)** No change.