

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 20	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2017 - * 025	Amendment No. (req. for Amendments *)
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"/>			
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Proposed rule change relating to revisions to the definition of non-public arbitrator."/>				
<b>Contact Information</b>				
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 *	<input type="text" value="Margo"/>	Last Name *	<input type="text" value="Hassan"/>	
Title *	<input type="text" value="Associate Chief Counsel, FINRA Dispute Resolution"/>			
E-mail *	<input type="text" value="margo.hassan@finra.org"/>			
Telephone *	<input type="text" value="(212) 858-4481"/>	Fax	<input type="text" value="(301) 527-4761"/>	
<b>Signature</b>				
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	<input type="text" value="07/10/2017"/>	<input type="text" value="Senior VP, Chief Counsel, FINRA Dispute Resolution"/>		
By	<input type="text" value="Kenneth Andrichik"/>	<input type="text" value=""/>		
(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.				
<input type="text" value="Ken Andrichik, Ken.Andrichik@Finra.Org"/>				

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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**

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

**Partial Amendment**

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

**1. Text of 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 12100 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and FINRA Rule 13100 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code” and together, “Codes”), to define a non-public arbitrator to mean a person who is otherwise qualified to serve as an arbitrator, and is disqualified from service as a public arbitrator under the Codes.

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 September 29, 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 60 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, Associate Chief Counsel, FINRA Office of Dispute Resolution, at (212) 858-4481.

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

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

(a) Purpose

FINRA classifies arbitrators under the Codes as either “non-public” or “public.” The Codes define these terms.<sup>2</sup> The non-public arbitrator definition lists affiliations that might *qualify* a person to serve as a non-public arbitrator at the forum. Conversely, the public arbitrator definition enumerates criteria that *disqualify* an applicant from inclusion on the public arbitrator roster.

In 2015, the SEC approved amendments to the definitions of non-public arbitrator and public arbitrator in the Codes.<sup>3</sup> Among other things, the amendments provided that persons who worked in the financial industry for any duration during their careers would always be classified as non-public arbitrators and the amendments added new disqualifications to the public arbitrator definition relating to an arbitrator’s provision of services to parties in securities arbitration and litigation and to revenues earned from the financial industry by an arbitrator’s co-workers. The amendments also broadened the disqualifications based on the activities or affiliations of an arbitrator’s family members. The intent of the proposed rule change was to address concerns about arbitrator neutrality raised by forum users.<sup>4</sup> For example, prior to the 2015 amendments, the Codes, with specified exceptions, permitted former financial industry employees who ended their

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<sup>2</sup> See FINRA Rules 12100(r) and 13100(r) for the definition of non-public arbitrator and Rules 12100(y) and 13100(x) for the definition of public arbitrator.

<sup>3</sup> See Securities Exchange Act Rel. No. 74383 (February 26, 2015), 80 FR 11695 (March 4, 2015).

<sup>4</sup> [Regulatory Notice 15-18](#) (Definitions of Non-Public and Public Arbitrator) describes the changes made to the arbitrator definitions.

industry affiliations to qualify as public arbitrators five years after leaving the financial industry. Forum users raised concerns about the neutrality of these individuals, and indicated that they did not believe former industry employees should ever serve as public arbitrators. In response to these concerns, the 2015 amendments eliminated the five-year cooling-off period, thereby classifying all former financial industry employees as non-public arbitrators.

Under the definitions as revised in 2015, the non-public arbitrator roster is composed of individuals who work, or worked, in the financial industry, or provide services to the financial industry or to parties engaged in securities arbitration and litigation. The public arbitrator roster is composed of individuals who do not have any significant affiliation with the financial industry. These arbitrators have never been employed by the industry, do not provide services to the industry or to parties engaged in securities arbitration and litigation, and do not have immediate family members or co-workers who do so.

### **Eligibility Gap**

The 2015 amendments to the arbitrator definitions created an eligibility gap whereby certain otherwise qualified arbitrators<sup>5</sup> could not serve in any capacity. The eligibility gap was created when FINRA narrowed the public arbitrator definition as described above. Over 800 public arbitrators were disqualified from the public arbitrator roster under the revised public arbitrator definition. In addition, more than 100 of these disqualified arbitrators did not meet any of the criteria outlined in the non-public

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<sup>5</sup> Unless waived by FINRA at its discretion, arbitrator applicants must have a minimum of five years of paid business and/or professional experience and at least two years of college-level credits. Qualification criteria can be found at <http://www.finra.org/arbitration-and-mediation/finra-arbitrators>.

arbitrator definition for service on the non-public arbitrator roster. As a result of this eligibility gap, FINRA removed them from service at the forum.

In most instances, the basis for removal from the roster was an affiliation relating to an arbitrator's family members or co-workers. For example, a real estate attorney in a large law firm that has a securities practice would be disqualified from service as a public arbitrator if the firm derived \$50,000 or more in a calendar year from providing services to securities entities. In addition, employment as a real estate attorney would not qualify the arbitrator to serve as a non-public arbitrator under the current definition. Therefore, the arbitrator falls into the eligibility gap. In addition to losing over 100 public arbitrators, the eligibility gap required FINRA to reject over 140 arbitrator applicants in 2016 who met FINRA's minimum arbitrator qualifications.

### **Proposed Rule Change**

FINRA is proposing to amend the Codes to allow FINRA to appoint individuals to the non-public arbitrator roster if they meet FINRA's general arbitrator qualification criteria,<sup>6</sup> but cannot be classified as public arbitrators. FINRA would amend the non-public arbitrator definition to delete the specific criteria for inclusion on the non-public arbitrator roster. Instead, Rules 12100(r) and 13100(r) would provide that the term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator, and is disqualified from service as a public arbitrator.

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 60 days following Commission approval.

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<sup>6</sup> See id.

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,<sup>7</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. Specifically, the proposed rule change would close the eligibility gap, simplify the non-public arbitrator definition, and provide greater choice for parties during the panel selection process.

**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. A key focus of the 2015 amendments was the elimination of certain individuals from the public arbitrator roster. FINRA's intent was not to prevent these individuals from serving in any capacity. Hundreds of arbitrators or arbitrator applicants who formerly qualified to serve as public arbitrators are now unable to serve as arbitrators in the forum. As a result, the pool of eligible arbitrators has decreased, and FINRA is forced to turn away new candidates who would have been eligible to serve but for the recent amendments.

The proposed rule change would permit these previously eligible persons to serve as non-public arbitrators. While not changing the public arbitrator definition as approved

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<sup>7</sup> 15 U.S.C. 78q-3(b)(6).

by the SEC in 2015, the proposed rule change would expand the pool of candidates eligible to serve as non-public arbitrators. FINRA considered revising the public arbitrator definition to close the eligibility gap, but chose to maintain the recently approved criteria that exclude individuals who have any significant affiliation with the financial industry. Increasing the number of qualified arbitrators benefits all parties who come before the forum because it permits parties to consider additional arbitrators during panel selection and may reduce costs that arise due to an insufficient pool of qualified arbitrators such as the costs associated with arbitrators traveling from other hearing locations. Further, readmitting previously qualified persons increases the pool of experienced arbitrators, which strengthens the forum.

The proposal would impose no direct or indirect costs on persons previously eliminated from acting as arbitrators, new candidates for arbitrator, or parties accessing the forum.

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>8</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.

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<sup>8</sup> 15 U.S.C. 78s(b)(2).



**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 the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2017-025)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Definition of Non-public Arbitrator

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 July 10, 2017, 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.

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

FINRA is proposing to amend FINRA Rule 12100 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and FINRA Rule 13100 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code” and together, “Codes”), to define a non-public arbitrator to mean a person who is otherwise qualified to serve as an arbitrator, and is disqualified from service as a public arbitrator under the Codes.

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.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

FINRA classifies arbitrators under the Codes as either “non-public” or “public.” The Codes define these terms.<sup>3</sup> The non-public arbitrator definition lists affiliations that might *qualify* a person to serve as a non-public arbitrator at the forum. Conversely, the public arbitrator definition enumerates criteria that *disqualify* an applicant from inclusion on the public arbitrator roster.

In 2015, the SEC approved amendments to the definitions of non-public arbitrator and public arbitrator in the Codes.<sup>4</sup> Among other things, the amendments provided that persons who worked in the financial industry for any duration during their careers would always be classified as non-public arbitrators and the amendments added new disqualifications to the public arbitrator definition relating to an arbitrator's provision of services to parties in securities arbitration and litigation and to revenues earned from the

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<sup>3</sup> See FINRA Rules 12100(r) and 13100(r) for the definition of non-public arbitrator and Rules 12100(y) and 13100(x) for the definition of public arbitrator.

<sup>4</sup> See Securities Exchange Act Rel. No. 74383 (February 26, 2015), 80 FR 11695 (March 4, 2015).

financial industry by an arbitrator's co-workers. The amendments also broadened the disqualifications based on the activities or affiliations of an arbitrator's family members. The intent of the proposed rule change was to address concerns about arbitrator neutrality raised by forum users.<sup>5</sup> For example, prior to the 2015 amendments, the Codes, with specified exceptions, permitted former financial industry employees who ended their industry affiliations to qualify as public arbitrators five years after leaving the financial industry. Forum users raised concerns about the neutrality of these individuals, and indicated that they did not believe former industry employees should ever serve as public arbitrators. In response to these concerns, the 2015 amendments eliminated the five-year cooling-off period, thereby classifying all former financial industry employees as non-public arbitrators.

Under the definitions as revised in 2015, the non-public arbitrator roster is composed of individuals who work, or worked, in the financial industry, or provide services to the financial industry or to parties engaged in securities arbitration and litigation. The public arbitrator roster is composed of individuals who do not have any significant affiliation with the financial industry. These arbitrators have never been employed by the industry, do not provide services to the industry or to parties engaged in securities arbitration and litigation, and do not have immediate family members or co-workers who do so.

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<sup>5</sup> [Regulatory Notice 15-18](#) (Definitions of Non-Public and Public Arbitrator) describes the changes made to the arbitrator definitions.

## **Eligibility Gap**

The 2015 amendments to the arbitrator definitions created an eligibility gap whereby certain otherwise qualified arbitrators<sup>6</sup> could not serve in any capacity. The eligibility gap was created when FINRA narrowed the public arbitrator definition as described above. Over 800 public arbitrators were disqualified from the public arbitrator roster under the revised public arbitrator definition. In addition, more than 100 of these disqualified arbitrators did not meet any of the criteria outlined in the non-public arbitrator definition for service on the non-public arbitrator roster. As a result of this eligibility gap, FINRA removed them from service at the forum.

In most instances, the basis for removal from the roster was an affiliation relating to an arbitrator's family members or co-workers. For example, a real estate attorney in a large law firm that has a securities practice would be disqualified from service as a public arbitrator if the firm derived \$50,000 or more in a calendar year from providing services to securities entities. In addition, employment as a real estate attorney would not qualify the arbitrator to serve as a non-public arbitrator under the current definition. Therefore, the arbitrator falls into the eligibility gap. In addition to losing over 100 public arbitrators, the eligibility gap required FINRA to reject over 140 arbitrator applicants in 2016 who met FINRA's minimum arbitrator qualifications.

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<sup>6</sup> Unless waived by FINRA at its discretion, arbitrator applicants must have a minimum of five years of paid business and/or professional experience and at least two years of college-level credits. Qualification criteria can be found at <http://www.finra.org/arbitration-and-mediation/finra-arbitrators>.

## **Proposed Rule Change**

FINRA is proposing to amend the Codes to allow FINRA to appoint individuals to the non-public arbitrator roster if they meet FINRA's general arbitrator qualification criteria,<sup>7</sup> but cannot be classified as public arbitrators. FINRA would amend the non-public arbitrator definition to delete the specific criteria for inclusion on the non-public arbitrator roster. Instead, Rules 12100(r) and 13100(r) would provide that the term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator, and is disqualified from service as a public arbitrator.

### **2. Statutory Basis**

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</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. Specifically, the proposed rule change would close the eligibility gap, simplify the non-public arbitrator definition, and provide greater choice for parties during the panel selection process.

#### **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. A key focus of the 2015 amendments was the elimination of certain individuals from the public arbitrator roster. FINRA's intent was not to prevent these individuals

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<sup>7</sup> See id.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

from serving in any capacity. Hundreds of arbitrators or arbitrator applicants who formerly qualified to serve as public arbitrators are now unable to serve as arbitrators in the forum. As a result, the pool of eligible arbitrators has decreased, and FINRA is forced to turn away new candidates who would have been eligible to serve but for the recent amendments.

The proposed rule change would permit these previously eligible persons to serve as non-public arbitrators. While not changing the public arbitrator definition as approved by the SEC in 2015, the proposed rule change would expand the pool of candidates eligible to serve as non-public arbitrators. FINRA considered revising the public arbitrator definition to close the eligibility gap, but chose to maintain the recently approved criteria that exclude individuals who have any significant affiliation with the financial industry. Increasing the number of qualified arbitrators benefits all parties who come before the forum because it permits parties to consider additional arbitrators during panel selection and may reduce costs that arise due to an insufficient pool of qualified arbitrators such as the costs associated with arbitrators traveling from other hearing locations. Further, readmitting previously qualified persons increases the pool of experienced arbitrators, which strengthens the forum.

The proposal would impose no direct or indirect costs on persons previously eliminated from acting as arbitrators, new candidates for arbitrator, or parties accessing the forum.

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-2017-025 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-2017-025. 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-2017-025 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>9</sup>

Robert W. Errett  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

Proposed new language is underlined; deletions are in brackets

**Customer Code**

**Rule 12100 (Definitions)**

**(r) Non-Public Arbitrator**

The term “non-public arbitrator” means a person who is otherwise qualified to serve as an arbitrator, and is disqualified from service as a public arbitrator under paragraph (y). [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 (r)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (r)(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.]

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## **Industry Code**

### **Rule 13100 (Definitions)**

#### **(r) Non-Public Arbitrator**

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator, and is disqualified from service as a public arbitrator under paragraph (x). [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 (r)(1) and/or to any persons or entities associated with any of the entities listed in paragraph (1)(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.]