

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="41"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2010"/> - * <input type="text" value="053"/> Amendment No. (req. for Amendments *) <input type="text"/>
---------------------------------------------	----------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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

Description
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

This proposal amends the panel composition rule and related rules under the Code of Arbitration Procedure for Customer Disputes to provide customers with the option to chose an all public arbitration panel in all cases.

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

First Name * <input type="text" value="Margo"/>	Last Name * <input type="text" value="Hassan"/>
Title * <input type="text" value="Assistant 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"/>

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

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

Date <input type="text" value="10/26/2010"/>		
By <input type="text" value="Kenneth Andrichik"/>	<input type="text" value="Senior Vice President and Chief Counsel, FINRA Dispute Resolution"/>	
(Name *)	(Title *)	

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

[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 (required)

[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 2 - Notices, Written Comments, Transcripts, Other Communications

[Add](#) [Remove](#) [View](#)

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

[Add](#) [Remove](#) [View](#)

Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

[Add](#) [Remove](#) [View](#)

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

Exhibit 5 - Proposed Rule Text

[Add](#) [Remove](#) [View](#)

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

Partial Amendment

[Add](#) [Remove](#) [View](#)

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the panel composition rule, and related rules, of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”), to provide customers with the option to choose an all public arbitration panel in all cases.

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 22, 2010, the FINRA Board of Governors authorized the filing of the rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The rule will become effective on the date of publication of the Regulatory Notice announcing Commission approval. Upon implementation of the proposed rule change, FINRA will end its Public Arbitrator Pilot Program (“Pilot”) that is currently scheduled to end on October 5, 2011.

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

¹ 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

Background

Under FINRA Dispute Resolution rules, parties in arbitration participate in selecting the arbitrators who serve on their cases. For customer claims of more than \$100,000, the Customer Code currently provides for a three arbitrator panel² comprised of a chair-qualified public arbitrator,³ a public arbitrator,⁴ and a non-public arbitrator.⁵ FINRA uses the computerized Neutral List Selection System (“NLSS”) to generate random lists of 10 arbitrators from each of these categories. The parties select their panel through a process of striking and ranking the arbitrators on the lists generated by NLSS. The Customer Code permits the parties to strike the names of up to four arbitrators from each list. The parties then rank the arbitrators remaining on the lists in order of preference. FINRA appoints the panel from among the names remaining on the lists that the parties return.

FINRA is proposing to amend the Customer Code to provide customers with the option to choose between two panel selection methods – the current panel selection

² Rule 12401 provides for a single, chair-qualified public arbitrator if the amount of the claim is not more than \$100,000. It provides for a three arbitrator panel if the amount of a claim is more than \$100,000, or is unspecified, or if the claim requests non-monetary damages. The parties, in claims of more than \$25,000, but not more than \$100,000, may agree in writing to have a three arbitrator panel.

³ Rule 12400(c) specifies the criteria for arbitrator inclusion on the chairperson roster.

⁴ Rule 12100(u) specifies the criteria FINRA uses to classify arbitrators as public.

⁵ Rule 12100(p) specifies the criteria FINRA uses to classify arbitrators as non-public.

method, which would be labeled “Composition Rules for Majority Public Panel” (“Majority Public Panel”), and a new panel selection method, which would be labeled “Composition Rules for Optional All Public Panel” (“Optional All Public Panel”). Under the proposed rule change, customers could choose the panel selection method; neither firms nor associated persons could choose the selection method.

The Majority Public Panel option would continue to provide for a panel of one chair-qualified public arbitrator, one public arbitrator, and one non-public arbitrator, and would retain the current limit of four strikes for each arbitrator list. The new Optional All Public Panel provision, if chosen by the customer, would allow parties to select an all public arbitration panel. Under this new provision, FINRA would send the parties the same three lists of randomly generated arbitrators that they would have received under the Majority Public Panel option, but FINRA would allow each party to strike any or *all* of the arbitrators on the non-public arbitrator list. If individually, or collectively, the parties struck all of the non-public arbitrators, FINRA would complete the panel by appointing a public arbitrator. Thus, by striking all the arbitrators on the non-public list, any party could ensure that the panel would have three public arbitrators.

The proposed rule change would apply only to customer disputes. It would not apply to arbitrator selection in disputes involving only industry parties. FINRA believes giving customers the option of an all public panel will enhance confidence in and increase the perception of fairness in the FINRA arbitration process. All customers will have greater freedom in choosing arbitration panels, and any customer will have the power to have his or her case heard by a panel with no industry participants.

FINRA's Public Arbitrator Pilot Program

Customer advocates argue that the mandatory inclusion of a non-public arbitrator (often referred to as the “industry” arbitrator) in a three arbitrator case raises a perception that FINRA Dispute Resolution’s current forum is not fair to customers. In order to address this perception, FINRA launched the Pilot that allows parties to choose a panel of three public arbitrators instead of two public arbitrators and one non-public arbitrator.

FINRA designed the Pilot to run for two sequential years, beginning October 6, 2008, and ending October 5, 2010. In Year One, 11 brokerage firms volunteered to participate in the Pilot, each contributing a set number of cases to the Pilot per year for two years. In Year Two, FINRA expanded the number of participating brokerage firms to 14 firms. In addition, several of the original participants increased their respective case commitments for Year Two. Participating firms agreed to extend the Pilot for a third year at the same case levels while the rule making process proceeds. Year Three of the Pilot began October 6, 2010 and ends October 5, 2011, or upon implementation of the proposed rule change, whichever comes first.

Under the Pilot, FINRA only permits the customers bringing the arbitration claim to decide whether their case should proceed under Pilot rules; the participating firms cannot select the Pilot cases. The parties receive the same three lists of proposed arbitrators that parties in non-Pilot cases receive. The difference is that, in the Pilot cases, any party can strike any or **all** of the arbitrators on the non-public list (as opposed to the four-strike limit for each party). If the parties rank one or more of the non-public arbitrators, FINRA appoints the highest ranked non-public arbitrator to the panel. If the parties strike all of the non-public arbitrators or if they are unable to serve, FINRA

returns to the public arbitrator lists (the public list first, followed by the chair-qualified public list) to complete the panel. If no public arbitrators remain on the lists, FINRA uses NLSS to appoint randomly an additional public arbitrator. Thus, by striking all proposed non-public arbitrators, any party can choose a panel of three public arbitrators.

Reactions from participants in the Pilot indicate that customer representatives strongly support the right of customers to decide whether to select a non-public arbitrator. That feedback leads FINRA to propose amending the panel composition rule for customer cases to allow the customer party to choose between the current panel selection method and the method used in the Pilot. Unlike the Pilot, however, the proposed rule would apply to all customer disputes against any firm and any individual broker.

Details of the Proposed Rule Change

Currently, Rule 12402 (Composition of Arbitration Panels) specifies the panel composition for all customer cases.⁶ Rules 12403 (Generating and Sending Lists to the Parties),⁷ 12404 (Striking and Ranking Arbitrators),⁸ 12405 (Combining Lists),⁹ 12406

⁶ Rule 12402 provides that a single arbitrator panel will consist of a chair-qualified public arbitrator, and that a three arbitrator panel will consist of a chair-qualified public arbitrator, a public arbitrator, and a non-public arbitrator.

⁷ Rule 12403 provides that if a panel consists of one arbitrator, NLSS will generate a list of 10 chair-qualified public arbitrators. If a panel consists of three arbitrators, NLSS will generate a list of 10 chair-qualified public arbitrators, 10 public arbitrators, and 10 non-public arbitrators. Under the rule, NLSS excludes arbitrators from the list based on current known conflicts of interest identified in NLSS. The rule also details how NLSS generates the lists, and how FINRA sends lists to the parties and handles requests for additional information about arbitrators.

⁸ Rule 12404 states that parties may strike up to four arbitrators from each list leaving at least six arbitrator names remaining. It also explains the process for ranking arbitrator preferences and returning the lists to FINRA.

(Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List),¹⁰ and 12411 (Replacement of Arbitrators) enumerate the procedures for selecting, appointing, and replacing arbitrators.¹¹ FINRA is proposing to consolidate these rules into two new rules: new Rule 12402 relating to customer cases with one arbitrator and new Rule 12403 relating to customer cases with three arbitrators. New Rule 12402 would describe the procedures for selecting, appointing, and replacing the arbitrator in a single arbitrator case. New Rule 12403 would describe the two options that customers have for selecting arbitrators and would include the procedures for appointing and replacing arbitrators. The proposed rule change would apply to all customer cases.

FINRA would delete current Rules 12402, 12403, 12404, 12405, 12406, and 12411 in their entirety. FINRA would renumber the remaining rules in the 12400 series so that the numbering would remain consecutive after FINRA consolidated the rules.

⁹ Rule 12405 explains how FINRA prepares combined ranked lists of arbitrators based on the parties' numerical rankings.

¹⁰ Rule 12406 explains that FINRA appoints the highest ranked available arbitrator from each of the combined lists and describes FINRA's procedures for appointing an arbitrator when the number of arbitrators available to serve from a combined list is not sufficient to fill the panel. The rule also provides that appointment occurs when FINRA sends notice to the parties of the names of the arbitrators on the panel and that arbitrators must execute FINRA's arbitrator oath or affirmation before making any decision as an arbitrator or attending a hearing.

¹¹ Rule 12411 provides that if FINRA removes an arbitrator, or an arbitrator becomes otherwise unable or unwilling to serve, FINRA appoints as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator from the applicable combined list. It also states the procedure for replacing an arbitrator if there aren't any arbitrators left on a combined list.

New Rule 12402 – Cases with One Arbitrator

New Rule 12402 (Cases with One Arbitrator) would consolidate the content of current Rules 12402, 12403, 12404, 12405, 12406, and 12411, relating to single arbitrator cases. FINRA is not proposing any substantive changes to the current procedures for selecting, appointing, and replacing arbitrators in cases with one arbitrator.

New Rule 12403 – Cases with Three Arbitrators

New Rule 12403 (Cases with Three Arbitrators) would provide customers with two options for panel selection in three arbitrator cases. The first option, the Majority Public Panel, would consist of the panel composition method currently provided in the Customer Code. It would ensure that FINRA appoints one non-public arbitrator on a three arbitrator panel. The second option, the Optional All Public Panel (based on the Pilot), if selected by the customer, would guarantee that any party could select an all public panel. As stated above, the proposed rule change allows only customers to make the election between the two panel selection methods. If the SEC approves the proposed rule change, upon implementation, FINRA will allow any customer that has not been sent lists of arbitrators to choose between the two panel selection methods. Except as outlined below, FINRA would incorporate into new Rule 12403 the contents of current Rules 12403, 12404, 12405, 12406, and 12411, that are pertinent to three arbitrator cases.

Under the proposed rule change, the customers could elect either arbitrator selection method within 35 days from service of the Statement of Claim. If the customers declined to make an affirmative election by the 35-day deadline, FINRA would apply the composition rule for a Majority Public Panel.

Under either panel selection option, the parties would receive three lists – i.e., one with 10 chair-qualified public arbitrators, one with 10 public arbitrators, and one with 10 non-public arbitrators. FINRA would permit each party to strike up to four arbitrators on the chair-qualified public and public lists leaving at least six arbitrator names remaining on each party's list. However, the process for striking arbitrators on the non-public list would be different for each method, as detailed below.

Majority Public Panel – This is the current method for panel composition. Under this method:

- Each separately represented party could exercise up to four strikes on the non-public list.
- FINRA would appoint the highest-ranked available non-public arbitrator from the combined rankings.
- In cases in which the parties struck all of the arbitrators appearing on the non-public list or when all remaining arbitrators on the non-public list were unable or unwilling to serve for any reason, FINRA would appoint a non-public arbitrator selected randomly by NLSS.

Optional All Public Panel – Under this method of panel composition:

- All parties would have unlimited strikes with respect to the non-public list (meaning that any party may strike up to all names on the non-public list).
- FINRA would not appoint a non-public arbitrator if the parties (individually or collectively) struck all the arbitrators appearing on the non-public list or if all

remaining arbitrators on the non-public list were unable or unwilling to serve for any reason.

- If all non-public arbitrators were stricken or unavailable to serve, FINRA would select the next highest-ranked public arbitrator to complete the panel.
- If all public arbitrators were stricken or unavailable to serve, FINRA would select the next highest-ranked arbitrator on the public chair-qualified list.
- If all public chair-qualified arbitrators were stricken or unavailable to serve, FINRA would appoint a public arbitrator selected randomly by NLSS.

Additional Clarifying Provisions

FINRA proposes to add clarity to Rules 12402 and 12403 by stating that parties are not required to send a copy of their ranking list to opposing parties.

In addition, under the Optional All Public Panel method, FINRA would appoint a non-public arbitrator to a panel if the Director did not receive a party's ranked lists within the timeframe for returning lists to FINRA because the Director would proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators. FINRA proposes to add clarity to the Optional All Public Panel provision by alerting parties that a failure to comply with the required timeframe for returning lists to FINRA may result in the appointment of a panel consisting of two public arbitrators and one non-public arbitrator. As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later

than 60 days following Commission approval. The effective date will be the date of 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,¹² 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 providing customers with choice on the issue of including a non-public arbitrator on the panel deciding their case will enhance customers' perception of the fairness of our rules and of the FINRA securities arbitration 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.

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.¹³

¹² 15 U.S.C. 78o-3(b)(6).

¹³ 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)**

Not applicable.

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

Not applicable.

9. **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-2010-053)

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

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 October 25, 2010, the 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 the panel composition rule, and related rules, of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”), to provide customers with the option to choose an all public arbitration panel in all cases.

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

¹ 15 U.S.C. 78s(b)(1).

² 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

Background

Under FINRA Dispute Resolution rules, parties in arbitration participate in selecting the arbitrators who serve on their cases. For customer claims of more than \$100,000, the Customer Code currently provides for a three arbitrator panel³ comprised of a chair-qualified public arbitrator,⁴ a public arbitrator,⁵ and a non-public arbitrator.⁶ FINRA uses the computerized Neutral List Selection System ("NLSS") to generate random lists of 10 arbitrators from each of these categories. The parties select their panel through a process of striking and ranking the arbitrators on the lists generated by NLSS.

³ Rule 12401 provides for a single, chair-qualified public arbitrator if the amount of the claim is not more than \$100,000. It provides for a three arbitrator panel if the amount of a claim is more than \$100,000, or is unspecified, or if the claim requests non-monetary damages. The parties, in claims of more than \$25,000, but not more than \$100,000, may agree in writing to have a three arbitrator panel.

⁴ Rule 12400(c) specifies the criteria for arbitrator inclusion on the chairperson roster.

⁵ Rule 12100(u) specifies the criteria FINRA uses to classify arbitrators as public.

⁶ Rule 12100(p) specifies the criteria FINRA uses to classify arbitrators as non-public.

The Customer Code permits the parties to strike the names of up to four arbitrators from each list. The parties then rank the arbitrators remaining on the lists in order of preference. FINRA appoints the panel from among the names remaining on the lists that the parties return.

FINRA is proposing to amend the Customer Code to provide customers with the option to choose between two panel selection methods – the current panel selection method, which would be labeled “Composition Rules for Majority Public Panel” (“Majority Public Panel”), and a new panel selection method, which would be labeled “Composition Rules for Optional All Public Panel” (“Optional All Public Panel”). Under the proposed rule change, customers could choose the panel selection method; neither firms nor associated persons could choose the selection method.

The Majority Public Panel option would continue to provide for a panel of one chair-qualified public arbitrator, one public arbitrator, and one non-public arbitrator, and would retain the current limit of four strikes for each arbitrator list. The new Optional All Public Panel provision, if chosen by the customer, would allow parties to select an all public arbitration panel. Under this new provision, FINRA would send the parties the same three lists of randomly generated arbitrators that they would have received under the Majority Public Panel option, but FINRA would allow each party to strike any or *all* of the arbitrators on the non-public arbitrator list. If individually, or collectively, the parties struck all of the non-public arbitrators, FINRA would complete the panel by appointing a public arbitrator. Thus, by striking all the arbitrators on the non-public list, any party could ensure that the panel would have three public arbitrators.

The proposed rule change would apply only to customer disputes. It would not apply to arbitrator selection in disputes involving only industry parties. FINRA believes giving customers the option of an all public panel will enhance confidence in and increase the perception of fairness in the FINRA arbitration process. All customers will have greater freedom in choosing arbitration panels, and any customer will have the power to have his or her case heard by a panel with no industry participants.

FINRA's Public Arbitrator Pilot Program

Customer advocates argue that the mandatory inclusion of a non-public arbitrator (often referred to as the "industry" arbitrator) in a three arbitrator case raises a perception that FINRA Dispute Resolution's current forum is not fair to customers. In order to address this perception, FINRA launched the Pilot that allows parties to choose a panel of three public arbitrators instead of two public arbitrators and one non-public arbitrator.

FINRA designed the Pilot to run for two sequential years, beginning October 6, 2008, and ending October 5, 2010. In Year One, 11 brokerage firms volunteered to participate in the Pilot, each contributing a set number of cases to the Pilot per year for two years. In Year Two, FINRA expanded the number of participating brokerage firms to 14 firms. In addition, several of the original participants increased their respective case commitments for Year Two. Participating firms agreed to extend the Pilot for a third year at the same case levels while the rule making process proceeds. Year Three of the Pilot began October 6, 2010 and ends October 5, 2011, or upon implementation of the proposed rule change, whichever comes first.

Under the Pilot, FINRA only permits the customers bringing the arbitration claim to decide whether their case should proceed under Pilot rules; the participating firms

cannot select the Pilot cases. The parties receive the same three lists of proposed arbitrators that parties in non-Pilot cases receive. The difference is that, in the Pilot cases, any party can strike any or **all** of the arbitrators on the non-public list (as opposed to the four-strike limit for each party). If the parties rank one or more of the non-public arbitrators, FINRA appoints the highest ranked non-public arbitrator to the panel. If the parties strike all of the non-public arbitrators or if they are unable to serve, FINRA returns to the public arbitrator lists (the public list first, followed by the chair-qualified public list) to complete the panel. If no public arbitrators remain on the lists, FINRA uses NLSS to appoint randomly an additional public arbitrator. Thus, by striking all proposed non-public arbitrators, any party can choose a panel of three public arbitrators.

Reactions from participants in the Pilot indicate that customer representatives strongly support the right of customers to decide whether to select a non-public arbitrator. That feedback leads FINRA to propose amending the panel composition rule for customer cases to allow the customer party to choose between the current panel selection method and the method used in the Pilot. Unlike the Pilot, however, the proposed rule would apply to all customer disputes against any firm and any individual broker.

Details of the Proposed Rule Change

Currently, Rule 12402 (Composition of Arbitration Panels) specifies the panel composition for all customer cases.⁷ Rules 12403 (Generating and Sending Lists to the Parties),⁸ 12404 (Striking and Ranking Arbitrators),⁹ 12405 (Combining Lists),¹⁰ 12406

⁷ Rule 12402 provides that a single arbitrator panel will consist of a chair-qualified public arbitrator, and that a three arbitrator panel will consist of a chair-qualified public arbitrator, a public arbitrator, and a non-public arbitrator.

⁸ Rule 12403 provides that if a panel consists of one arbitrator, NLSS will generate a list of 10 chair-qualified public arbitrators. If a panel consists of three

(Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List),¹¹ and 12411 (Replacement of Arbitrators) enumerate the procedures for selecting, appointing, and replacing arbitrators.¹² FINRA is proposing to consolidate these rules into two new rules: new Rule 12402 relating to customer cases with one arbitrator and new Rule 12403 relating to customer cases with three arbitrators. New Rule 12402 would describe the procedures for selecting, appointing, and replacing the arbitrator in a single arbitrator case. New Rule 12403 would describe the two options that customers have for selecting arbitrators and would include the procedures for appointing and replacing arbitrators. The proposed rule change would apply to all customer cases.

arbitrators, NLSS will generate a list of 10 chair-qualified public arbitrators, 10 public arbitrators, and 10 non-public arbitrators. Under the rule, NLSS excludes arbitrators from the list based on current known conflicts of interest identified in NLSS. The rule also details how NLSS generates the lists, and how FINRA sends lists to the parties and handles requests for additional information about arbitrators.

- ⁹ Rule 12404 states that parties may strike up to four arbitrators from each list leaving at least six arbitrator names remaining. It also explains the process for ranking arbitrator preferences and returning the lists to FINRA.
- ¹⁰ Rule 12405 explains how FINRA prepares combined ranked lists of arbitrators based on the parties' numerical rankings.
- ¹¹ Rule 12406 explains that FINRA appoints the highest ranked available arbitrator from each of the combined lists and describes FINRA's procedures for appointing an arbitrator when the number of arbitrators available to serve from a combined list is not sufficient to fill the panel. The rule also provides that appointment occurs when FINRA sends notice to the parties of the names of the arbitrators on the panel and that arbitrators must execute FINRA's arbitrator oath or affirmation before making any decision as an arbitrator or attending a hearing.
- ¹² Rule 12411 provides that if FINRA removes an arbitrator, or an arbitrator becomes otherwise unable or unwilling to serve, FINRA appoints as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator from the applicable combined list. It also states the procedure for replacing an arbitrator if there aren't any arbitrators left on a combined list.

FINRA would delete current Rules 12402, 12403, 12404, 12405, 12406, and 12411 in their entirety. FINRA would renumber the remaining rules in the 12400 series so that the numbering would remain consecutive after FINRA consolidated the rules.

New Rule 12402 – Cases with One Arbitrator

New Rule 12402 (Cases with One Arbitrator) would consolidate the content of current Rules 12402, 12403, 12404, 12405, 12406, and 12411, relating to single arbitrator cases. FINRA is not proposing any substantive changes to the current procedures for selecting, appointing, and replacing arbitrators in cases with one arbitrator.

New Rule 12403 – Cases with Three Arbitrators

New Rule 12403 (Cases with Three Arbitrators) would provide customers with two options for panel selection in three arbitrator cases. The first option, the Majority Public Panel, would consist of the panel composition method currently provided in the Customer Code. It would ensure that FINRA appoints one non-public arbitrator on a three arbitrator panel. The second option, the Optional All Public Panel (based on the Pilot), if selected by the customer, would guarantee that any party could select an all public panel. As stated above, the proposed rule change allows only customers to make the election between the two panel selection methods. If the SEC approves the proposed rule change, upon implementation, FINRA will allow any customer that has not been sent lists of arbitrators to choose between the two panel selection methods. Except as outlined below, FINRA would incorporate into new Rule 12403 the contents of current Rules 12403, 12404, 12405, 12406, and 12411, that are pertinent to three arbitrator cases.

Under the proposed rule change, the customers could elect either arbitrator selection method within 35 days from service of the Statement of Claim. If the customers

declined to make an affirmative election by the 35-day deadline, FINRA would apply the composition rule for a Majority Public Panel.

Under either panel selection option, the parties would receive three lists – i.e., one with 10 chair-qualified public arbitrators, one with 10 public arbitrators, and one with 10 non-public arbitrators. FINRA would permit each party to strike up to four arbitrators on the chair-qualified public and public lists leaving at least six arbitrator names remaining on each party's list. However, the process for striking arbitrators on the non-public list would be different for each method, as detailed below.

Majority Public Panel – This is the current method for panel composition. Under this method:

- Each separately represented party could exercise up to four strikes on the non-public list.
- FINRA would appoint the highest-ranked available non-public arbitrator from the combined rankings.
- In cases in which the parties struck all of the arbitrators appearing on the non-public list or when all remaining arbitrators on the non-public list were unable or unwilling to serve for any reason, FINRA would appoint a non-public arbitrator selected randomly by NLSS.

Optional All Public Panel – Under this method of panel composition:

- All parties would have unlimited strikes with respect to the non-public list (meaning that any party may strike up to all names on the non-public list).

- FINRA would not appoint a non-public arbitrator if the parties (individually or collectively) struck all the arbitrators appearing on the non-public list or if all remaining arbitrators on the non-public list were unable or unwilling to serve for any reason.
- If all non-public arbitrators were stricken or unavailable to serve, FINRA would select the next highest-ranked public arbitrator to complete the panel.
- If all public arbitrators were stricken or unavailable to serve, FINRA would select the next highest-ranked arbitrator on the public chair-qualified list.
- If all public chair-qualified arbitrators were stricken or unavailable to serve, FINRA would appoint a public arbitrator selected randomly by NLSS.

Additional Clarifying Provisions

FINRA proposes to add clarity to Rules 12402 and 12403 by stating that parties are not required to send a copy of their ranking list to opposing parties.

In addition, under the Optional All Public Panel method, FINRA would appoint a non-public arbitrator to a panel if the Director did not receive a party's ranked lists within the timeframe for returning lists to FINRA because the Director would proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators. FINRA proposes to add clarity to the Optional All Public Panel provision by alerting parties that a failure to comply with the required timeframe for returning lists to

FINRA may result in the appointment of a panel consisting of two public arbitrators and one non-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,¹³ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that providing customers with choice on the issue of including a non-public arbitrator on the panel deciding their case will enhance customers' perception of the fairness of our rules and of the FINRA securities arbitration 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.

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:

¹³ 15 U.S.C. 78o-3(b)(6).

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2010-053 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2010-053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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-2010-053 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.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

Additions are underlined; Deletions are in brackets

[12402. Composition of Arbitration Panels

(a) If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the public chairperson roster, unless the parties agree in writing otherwise.

(b) If the panel consists of three arbitrators, one will be a non-public arbitrator and two will be public arbitrators, one of whom will be selected from the public chairperson roster, unless the parties agree in writing otherwise.

12403. Generating and Sending Lists to the Parties

(a) Generating Lists

(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of 10 public arbitrators from the FINRA chairperson roster.

(2) If the panel consists of three arbitrators, the Neutral List Selection System will generate:

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

(3) If the panel consists of three arbitrators, 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.

(4) 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) Sending Lists to Parties

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

(2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director

may, but is not required to, toll the time for parties to return the ranked lists under Rule 12404(c).

12404. Striking and Ranking Arbitrators

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

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

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

12405. Combining Lists

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

- The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents.
- The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.
- The Director will create separate combined ranked lists for each arbitrator classification in cases with both public and non-public arbitrators.

12406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

(a) If the panel consists of one arbitrator, the Director will appoint the highest-ranked available arbitrator from the combined chairperson list.

(b) If the panel consists of three arbitrators, the Director will appoint:

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

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

(c) If the number of arbitrators available to serve from the combined list(s) is not sufficient to fill an initial panel, the Director will appoint one or more arbitrators of the required classification to complete the panel from names generated randomly by the Neutral List Selection System. If the Director must appoint a non-public arbitrator, the Director may not appoint a non-public arbitrator as defined in Rule 12100 (p)(2) or (3), unless the parties agree otherwise. The Director will provide the parties information about the arbitrators as provided in Rule 12403 and the parties will have the right to challenge the arbitrators as provided in Rule 12410.

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

12402. Cases with One Arbitrator

(a) Composition of Panels

The arbitrator will be a public arbitrator selected from the public chairperson roster, unless the parties agree in writing otherwise.

(b) Generating Lists

- (1) The Neutral List Selection System will generate a list of 10 public arbitrators from the FINRA chairperson roster.
- (2) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(c) Sending Lists to Parties

- (1) The Director will send the list generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.
- (2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 12402(d)(3).

(d) Striking and Ranking Arbitrators

- (1) Each separately represented party may strike up to four of the arbitrators from the list for any reason by crossing through the names of the arbitrators. At least six names must remain on the list.
- (2) Each separately represented party shall rank all remaining arbitrators on the list in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on.
- (3) The ranked list 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 list 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.
- (4) Parties are not required to send a copy of their ranking list to the opposing parties.

(e) Combining Lists

The Director will prepare a combined ranked list of arbitrators based on the parties' numerical rankings, as follows:

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

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

- (1) The Director will appoint the highest-ranked available arbitrator from the combined chairperson list.
- (2) If the number of arbitrators available to serve from the combined list is not sufficient to fill an initial panel, the Director will appoint a chair-qualified arbitrator to complete the panel from names generated randomly by the Neutral List Selection System.
- (3) The Director will provide the parties information about the arbitrator as provided in Rule 12402(c) and the parties will have the right to challenge the arbitrator as provided in Rule 12407.

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

(g) Replacement of Arbitrators

- (1) If an arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule.
- (2) The Director will appoint as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator remaining on the combined list.
- (3) If there are no available arbitrators on the combined list, the Director will appoint an arbitrator from the chairperson roster to complete the panel from names generated by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12402(c) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

12403. Cases with Three Arbitrators

(a) Composition of Panels

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

- (1) Composition Rules for Majority Public Panel

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

- (2) Composition Rules for Optional All Public Panel

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

(b) Customer Claimant Election

- (1) The customer may elect in writing to proceed under either the composition rules for majority public panel or the composition rules for optional all public panel within 35 days from service of the Statement of Claim.

- (2) If the customer declines to make an affirmative election in writing by the 35-day deadline, the composition rules for majority public panel will apply.

(c) Composition Rules for Majority Public Panel

(1) Generating Lists

(A) The Neutral List Selection System will generate:

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

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

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

(2) Sending Lists to Parties

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

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

(3) Striking and Ranking Arbitrators

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

(B) Each separately represented party shall rank all remaining arbitrators on the lists in order of preference, with a "1" indicating the party's first choice.

a “2” indicating the party’s second choice, and so on. Each list of arbitrators must be ranked separately.

- (C) The ranked lists must be returned to the Director no more than 20 days after the date upon which the Director sent the lists to the parties. If the Director does not receive a party’s ranked lists within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators.
- (D) Parties are not required to send a copy of their ranking list to the opposing parties.

(4) Combining Lists

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

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

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

(A) The Director will appoint:

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

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

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

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

(6) Replacement of Arbitrators

- (A) If an arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.
- (B) The Director will appoint as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator of the required classification remaining on the combined list.
- (C) If there are no available arbitrators of the required classification on the consolidated list, the Director will appoint an arbitrator of the required classification to complete the panel from names generated by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12403(c)(2) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.
- (D) If the Director must appoint a non-public arbitrator under Rule 12403(c)(6)(C), the Director may not appoint a non-public arbitrator as defined in Rule 12100(p)(2) or (3), unless the parties agree otherwise.

(d) Composition Rules for Optional All Public Panel

(1) Generating Lists

- (A) The Neutral List Selection System will generate:
- A list of 10 arbitrators from the FINRA non-public arbitrator roster;
 - A list of 10 arbitrators from the FINRA public arbitrator roster; and
 - A list of 10 public arbitrators from the FINRA chairperson roster.
- (B) The Neutral List Selection System will generate the chairperson list first. Chair-qualified arbitrators who were not selected for the chairperson list will be eligible for selection on the public list. An individual arbitrator cannot appear on both the chairperson list and the public list for the same case.

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

(2) Sending Lists to Parties

- (A) The Director will send the lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.
- (B) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 12403(d)(3)(C).

(3) Striking and Ranking Arbitrators

(A) Non-Public Arbitrator List

- i. Each separately represented party may strike any or all of the arbitrators from the non-public arbitrator list by crossing through the names of the arbitrators.
- ii. If any names remain on the non-public arbitrator list, each separately represented party shall rank all remaining arbitrators in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on.

(B) Chairperson and Public Lists

- i. Each separately represented party may strike up to four of the arbitrators from the chairperson and public arbitrator lists for any reason by crossing through the names of the arbitrators. At least six names must remain on each list.
- ii. Each separately represented party shall rank all remaining arbitrators on the lists in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each list of arbitrators must be ranked separately.

- (C) The ranked lists must be returned to the Director no more than 20 days after the date upon which the Director sent the lists to the

parties. If the Director does not receive a party's ranked lists within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators. A party's failure to comply with the 20-day timeframe may result in the appointment of a panel consisting of two public arbitrators and one non-public arbitrator.

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

(4) Combining Lists

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

- The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents.
- The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.
- The Director will create separate combined ranked lists for each arbitrator classification in cases with both public and non-public arbitrators.

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

- (A) The Director will appoint:

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

- (B) If the number of arbitrators available to serve from the combined public or chairperson lists is not sufficient to fill an initial panel, the Director will appoint one or more arbitrators of the required classification to complete the panel from names generated randomly by the Neutral List Selection System. The Director will provide the parties information about the arbitrators as provided in Rule

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

- (C) In cases in which the parties collectively strike all of the arbitrators appearing on the non-public list or when all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason:
- i. The Director will return to the public list and select the next highest ranked available arbitrator (after the public arbitrator position has been filled) to complete the three member panel.
 - ii. In the event no ranked arbitrators remain on the public list or when all remaining arbitrators on the public list are unable or unwilling to serve for any reason, FINRA will select the next highest ranked arbitrator appearing on the chair-qualified list (after the chair position has been filled) to complete the three member panel.
 - iii. If the number of arbitrators available to serve from the chair-qualified list and public list is not sufficient to fill an initial panel, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12403(d)(2) and the parties will have the right to challenge the arbitrator as provided in Rule 12407.
- (D) Appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. Before making any decision as an arbitrator or attending a hearing session, the arbitrators must execute FINRA's arbitrator oath or affirmation.

(6) Replacement of Public Arbitrators

- (A) If a public arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.
- (B) The Director will appoint as a replacement arbitrator the public arbitrator who is the most highly ranked available public arbitrator remaining on the combined public list.
- (C) If the next highest ranked available public arbitrator from the combined list is unable or unwilling to serve for any reason, the Director will return to the initial public list and appoint the next highest ranked available arbitrator to complete the three member panel.

- (D) If all remaining arbitrators on the public list are unable or unwilling to serve for any reason, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System.
- (E) The Director will provide the parties information about the arbitrator as provided in Rule 12403(d)(2) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

(7) Replacement of a Chairperson

- (A) If a chairperson is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.
- (B) The Director will appoint as a replacement arbitrator the chair-qualified arbitrator who is the most highly ranked available arbitrator remaining on the combined chair-qualified list.
- (C) If the next highest ranked available chair-qualified arbitrator from the combined list is unable or unwilling to serve for any reason, the Director will return to the initial chair-qualified list and appoint the next highest ranked available arbitrator to complete the three member panel.
- (D) If all remaining arbitrators on the chair-qualified list are unable or unwilling to serve for any reason, the Director will appoint a chair-qualified public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System.
- (E) The Director will provide the parties information about the arbitrator as provided in Rule 12403(d)(2) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

(8) Replacement of Non-Public Arbitrators

- (A) If a non-public arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.
- (B) In cases in which the parties collectively do not strike all of the non-public arbitrators from the initial list, the Director will appoint as a

replacement arbitrator the non-public arbitrator who is the most highly ranked available non-public arbitrator remaining on the combined non-public list.

- (C) If the next highest ranked available non-public arbitrator is unable or unwilling to serve for any reason, the Director will return to the initial non-public list and appoint the next highest ranked available arbitrator to complete the three member panel.
- (D) In the event no ranked arbitrators remain on the non-public list or when all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason, the Director will return to the public list and select the next highest ranked available arbitrator to complete the three member panel.
 - i. In the event no ranked arbitrators remain on the public list or when all remaining arbitrators on the public list are unable or unwilling to serve for any reason, FINRA will select the next highest ranked arbitrator appearing on the chair-qualified list to complete the three member panel.
 - ii. In the event no ranked arbitrators remain on the chair-qualified list or when all remaining arbitrators on the chair-qualified list are unable or unwilling to serve for any reason, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System.
- (E) The Director will provide the parties information about the arbitrator as provided in Rule 12403(d)(2) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

[12407] 12404. Additional Parties

(a) If a party is added to an arbitration after the Director sends the lists generated by the Neutral List Selection System to the parties, but before parties must return the ranked lists to the Director, the Director will send the lists to the newly added party, with employment history for the past 10 years and other background information for each arbitrator listed. The newly added party may rank and strike the arbitrators in accordance with Rules [12404] 12402(d), 12403(c)(3), or 12403(d)(3). If the newly added party returns the lists within 20 days after the date upon which the Director sent the lists to the party, the Director will include the new party's lists when combining rankings under Rules [12405] 12402(e), 12403(c)(4), or 12403(d)(4). If the Director does not receive the list within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preference among the listed arbitrators.

(b) Once the ranked lists are due to the Director under Rules [12404] 12402(d)(3), 12403(c)(3)(C), or 12403(d)(3)(C), no party may amend a pleading to add a new party to the arbitration until a panel is appointed and grants a motion to add the party. Motions to add a party must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code. If the panel grants the motion to add the party, the newly added party may not strike and rank the arbitrators, but may challenge an arbitrator for cause in accordance with Rule [12410] 12407.

[12408] 12405. Disclosures Required of Arbitrators

(a) Before appointing arbitrators to a panel, the Director will notify the arbitrators of the nature of the dispute and the identity of the parties. Each potential arbitrator must make a reasonable effort to learn of, and must disclose to the Director, any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, including:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration;

(2) Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any party, any party's representative, or anyone who the arbitrator is told may be a witness in the proceeding, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias;

(3) Any such relationship or circumstances involving members of the arbitrator's family or the arbitrator's current employers, partners, or business associates; and

(4) Any existing or past service as a mediator for any of the parties in the case for which the arbitrator has been selected.

(b) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in paragraph (a) is a continuing duty that requires an arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

(c) The Director will inform the parties to the arbitration of any information disclosed to the Director under this rule unless the arbitrator who disclosed the information declines appointment or voluntarily withdraws from the panel as soon as the arbitrator learns of any interest, relationship or circumstance that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator.

[12409] 12406. Arbitrator Recusal

Any party may ask an arbitrator to recuse himself or herself from the panel for good cause. Requests for arbitrator recusal are decided by the arbitrator who is the subject of the request.

[12410] 12407. Removal of Arbitrator by Director

(a) Before First Hearing Session Begins

Before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be definite and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer under this rule will be resolved in favor of the customer.

(2) The Director must first notify the parties before removing an arbitrator on the Director's own initiative. The Director may not remove the arbitrator if the parties agree in writing to retain the arbitrator within five days of receiving notice of the Director's intent to remove the arbitrator.

(b) After First Hearing Session Begins

After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under Rule ~~12408~~ 12405 that was not previously known by the parties. The Director may exercise this authority upon request of a party or on the Director's own initiative. Only the Director or the President of FINRA Dispute Resolution may exercise the Director's authority under this paragraph (b).

[12411. Replacement of Arbitrators

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

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

(c) If there are no available arbitrators of the required classification on the consolidated list, the Director will appoint an arbitrator of the required classification to complete the panel from names generated by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12403 and the parties shall have the right to object to the arbitrator as provided in Rule 12410.

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

[12412] 12408. Director's Discretionary Authority

The Director may exercise discretionary authority and make any decision that is consistent with the purposes of the Code to facilitate the appointment of arbitrators and the resolution of arbitrations.

[12413] 12409. Jurisdiction of Panel and Authority to Interpret the Code

The panel has the authority to interpret and determine the applicability of all provisions under the Code. Such interpretations are final and binding upon the parties.

[12414] 12410. Determinations of Arbitration Panel

All rulings and determinations of the panel must be made by a majority of the arbitrators, unless the parties agree, or the Code or applicable law provides, otherwise.