would harmonize the voting requirements under the two plans in respect of fee-setting. As a result of the proposed Amendments, a two-thirds vote would be required under both plans to establish or increase a fee or to eliminate or reduce a fee. These changes would provide the Participants with greater flexibility in respect of the plans' fee schedule.

The Participants understand that the Participants in the Nasdaq/UTP Plan expect to file changes to voting requirements that would subject votes on these same matters to the same requirements as the Participants in the CTA Plan and the CQ Plan are proposing in these Amendments. In addition, subjecting fee reductions to a two-thirds vote would harmonize the CTA Plan and the CQ Plan with the counterpart requirement under the OPRA Plan.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

All of the Participants have manifested their approval of the proposed Amendments by means of their execution of the Amendments. The Amendments would become operational upon approval by the Commission.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The proposed Amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed plan Amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

See Item I.C above.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I.A above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I.A above.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a) (Solely in Its Application to the Amendments to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not Applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments are 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 email to *rule-comments@sec.gov. Please include File Number* SR–CTA/CQ–2014–02 *on the subject line.*

Paper Comments

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

All submissions should refer to File Number SR–CTA/CQ–2014–02. This file number should be included on the subject line if email 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 Amendments that are filed with the Commission, and all written communications relating to the Amendments 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 10:00 a.m. and 3:00 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of the CTA. 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–CTA/CQ–2014–02 and should be submitted on or before October 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–23849 Filed 10–6–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73277; File No. SR–FINRA–2014–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator

October 1, 2014.

I. Introduction

On June 17, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act

[5] 17 CFR 200.30–3(a)(27).

of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend provisions in the FINRA rulebook to ''refine and reorganize the definitions of 'non-public arbitrator' and 'public arbitrator.' '' [3] The proposed rule change was published for comment in the **Federal Register** on July 3, 2014.[4] On August 4, 2014, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to October 1, 2014. The Commission received three hundred sixteen (316) comment letters in response to the proposed rule change.[5] On September 30, 2014, the Commission received a letter from FINRA responding to the comment letters.[6] The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input from interested parties on the issues presented by the proposal.

II. Description of the Proposed Rule Change

Currently, FINRA Rule 12100(p) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and FINRA Rule 13100(p) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') (collectively, ''Codes'') define the term ''non-public arbitrator;'' and FINRA Rule 12100(u) of the Customer Code and Rule 13100(u) of the Industry Code'' define the term ''public arbitrator.'' [8] In general, the Codes classify arbitrators as ''non-public'' or ''public'' based on their professional and personal affiliations. Individuals affiliated with the financial industry are typically considered ''non-public arbitrators.'' Individuals unaffiliated with the financial industry are typically considered ''public arbitrators.'' [9]

FINRA is now proposing to amend the Codes to revise and reorganize the definitions of ''non-public arbitrator'' and ''public arbitrator.'' The amendments would, among other matters, provide that persons who worked in the financial industry for any duration during their careers would always be classified as non-public arbitrators. The amendments would also provide that persons who represent investors or the financial industry as a significant part of their business would also be classified as non-public arbitrators, but could become public arbitrators after a cooling-off period. The amendments would also reorganize the definitions to make it easier for arbitrator applicants and parties, among others, to determine the correct arbitrator classification.[10]

The text of the proposed rule change is available, at the principal office of FINRA, on FINRA's Web site at *http://www.finra.org,* and at the Commission's Public Reference Room. In addition, you may also find a more detailed description of the proposed rule changes in the Notice of Filing.[11]

III. Summary of Comments

Five of the commenters expressed support for the proposed rule change in its entirety.[12] Two commenters opposed the proposed rule change in its entirety.[13] The other commenters (including the independent financial advisors) generally supported the proposed rule change in part, but raised concerns about various aspects of the proposal (discussed below).

A. Permanent Classification of Industry Employees as Non-Public Arbitrators

In general, the proposal would result in the permanent classification (or reclassification of current public arbitrators) of individuals who worked in the financial industry (a) in any capacity, (b) at any point, and (c) for any duration, (''Industry Affiliates'') as non-public arbitrators. Many commenters opposed the permanent classification of Industry Affiliates as non-public arbitrators for varying reasons.[14]

1. Elimination of the Cooling-Off Period

Six commenters supported this provision as providing a workable ''bright-line'' test that would address criticism regarding bias (perceived or actual) in favor of industry.[15]

Many commenters opposed the elimination of the five-year cooling-off period for Industry Affiliates.[16] For instance, some commenters expressed concern that eliminating the cooling-off period could exclude arbitrators with industry experience who could be useful on a panel to, among other things, educate the other panelists on industry practice.[17] Two other commenters who opposed the proposed elimination of the cooling-off period suggested that FINRA should adopt a proportional cooling-off period for industry employees that would be

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

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–72491 (Jun. 27, 2014), 79 FR 38080 (Jul. 3, 2014) (Notice of Filing of Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator) (''Notice of Filing'').

[4] *Id.* The comment period closed on July 24, 2014.

[5] Of the 316 letters, 21 were unique letters, and 295 of the letters followed a form designated as the ''Type A'' letter, submitted by self-identified independent financial advisors (''independent financial advisors'') (''Type A Letter''). The unique letters were submitted by: Philip M. Aidikoff, Aidikoff, Uhl & Bakhtiari, dated July 1, 2014 (''Aidikoff Letter''); Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated July 1, 2014 (''Caruso Letter''); Ryan K. Bakhtiari, Aidikoff, Uhl and Bakhtiari, dated July 2, 2014 (''Bakhtiari Letter''); Richard A. Stephens, Attorney at Law, dated July 6, 2014 (''Stephens Letter''); Daniel E. Bacine, Barrack, Rodos & Bacine, dated July 18, 2014 (''Bacine Letter''); Blossom Nicinski, dated July 20, 2014 (''Nicinski Letter''); Christopher L. Mass, dated July 21, 2014 (''Mass Letter''); Glenn S. Gitomer, McCausland Keen & Buckman, dated July 23, 2014 (''Gitomer Letter''); Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated July 24, 2014 (''SIFMA Letter''); J. Burton LeBlanc, President, American Association for Justice, dated July 24, 2014 (''AAJ Letter''); George H. Friedman, Esquire, George H. Friedman Consulting, LLC, dated July 24, 2014 (''Friedman Letter''); Andrea Seidt, President, North American Securities Administrators Association, and Ohio Securities Commissioner, dated July 24, 2014 (''NASAA Letter''); CJ Croll, Student Intern, Elissa Germaine, Supervising Attorney, and Jill I. Gross, Director, Investor Rights Clinic at Pace Law School, dated July 24, 2014 (''PIRC Letter''); Jason Doss, President, Public Investors Arbitration Bar Association, dated July 24, 2014 (''PIABA Letter''); David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, dated July 24, 2014 (''FSI Letter''); Richard P. Ryder, Esq., President, Securities Arbitration Commentator, Inc., dated July 24, 2014 (''SAC Letter''); Gary N. Hardiman, dated July 24, 2014 (''Hardiman Letter''); Thomas J. Berthel, CEO, Berthel Fisher & Company, dated July 24, 2014 (''Berthel Letter''); Robert Getman, dated July 28, 2014 (''Getman Letter''); Barry D. Estell, Attorney at Law (retired), dated August 13, 2014 (''Estell Letter''); and Walter N. Vernon III, Esq., dated August 21, 2014 (''Vernon Letter'').

[6] Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Brent J. Fields, Secretary, SEC, dated September 30, 2014 (''FINRA Letter'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Where this order refers only to rules in the Customer Code, please note that the changes and discussion would also apply to the same rules of the Industry Code.

[9] Notice of Filing.

[10] *Id.*

[11] *See supra* note 3.

[12] *See* Aidikoff Letter, Bakhtiari Letter, Caruso Letter, Gitomer Letter, and SIFMA Letter.

[13] *See* SAC Letter and Friedman Letter. The SAC Letter indicates that the proposed rule should be disapproved until a cost-benefit analysis is provided. The Friedman Letter indicates that FINRA should ''go back to the drawing board.''

[14] *See e.g.,* Type A Letter, FSI Letter, Getman Letter, and Vernon Letter.

[15] *See* Aidikoff Letter; *see also* Bakhtiari Letter, SIFMA Letter, NASAA Letter, PIABA Letter, and AAJ Letter.

[16] *See e.g.,* Type A Letter, FSI Letter, Getman Letter, Berthel Letter and Vernon Letter.

[17] *See* Type A Letter and Berthel Letter; *see also* FSI Letter.

proportional to the number of years they were Industry Affiliates.[18]

In its response, FINRA stated that investor advocates have a stated preference for using expert witnesses and making their own arguments rather than relying on members of the arbitration panel that have industry experience to explain and influence matters. It also indicated that its constituents agreed that a cooling off period for financial industry employees would ''always leave a perception of unfairness for some advocates.'' [19] In addition, FINRA stated that it is more workable and preferable to use a bright-line test than a pro rata cooling-off period for industry employees. For these reasons, FINRA declined to amend the proposal as suggested.[20]

2. All Employees, Regardless of Capacity, To Be Categorized as Non-Public Arbitrators

Four commenters stated that, as proposed, the rule would improperly characterize certain individuals without true financial industry experience as non-public arbitrators.[21] One of these commenters expressed concern that individuals performing solely clerical or ministerial functions for a financial industry firm would be classified as non-public arbitrators because they would be considered ''associated persons'' as defined by Rule 12100(p).[22] Accordingly, this commenter suggested FINRA amend the definition of the term ''associated person'' in the proposal to track the language of the definition of the term ''associated person'' in Section 3(a)(18) of the Act, which excludes individuals performing solely clerical or ministerial functions. Another commenter suggested that the proposal should only classify individuals who ''worked for [a financial industry firm] in a capacity for which testing and registration is required'' as non-public arbitrators to address this concern.[23]

In its response letter, FINRA stated that its staff believes that ''investor concerns about the neutrality of the public roster apply to all industry employees, including those who serve in clerical or ministerial positions.'' Accordingly, FINRA declined to amend the proposed rule change.[24]

B. Classification of Professionals

1. Classifying Investor Advocates as Non-Public Arbitrators

In general, the proposed rule change would classify attorneys, accountants, expert witnesses, or other professionals who (a) devote 20 percent or more of their professional time (b) in any single calendar year within the past five calendar years (c) to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the industry (''Investor Advocates'') as non-public arbitrators. Currently, individuals meeting this description are classified as public arbitrators.

Three commenters supported this provision.[25]

Eight commenters opposed this provision.[26] In general, they stated that the distinction between the public and non-public arbitrators has always been based on whether the arbitrators had industry experience and argued for keeping this distinction.[27] Similarly, some of these commenters noted that the proposal would create confusion since that U.S. courts, the American Arbitration Association, and the general public generally view professionals who represent investors to be ''public arbitrators.'' [28] One commenter noted that past NASD response letters, as well as the FINRA Web site, also make this distinction.[29]

In its response letter, FINRA noted that industry constituents have expressed concern about the neutrality of the public arbitrator roster because of the presence on the roster of Investor Advocates. Specifically, FINRA stated that these industry constituents believe that Investor Advocates should not serve as public arbitrators. FINRA further stated that it designed the proposal to address this concern by classifying these individuals as non-public arbitrators thereby excluding them from the public arbitrator roster. Accordingly, FINRA declined to amend the proposed rule change.[30]

2. Five-Year Cooling-Off Period for Professionals Representing Industry

In general, the proposed rule change would extend the cooling-off period from two years to five years for attorneys, accountants, expert witnesses, or other professionals who (a) devote 20 percent or more of their professional time (b) in any single calendar year within the past five calendar years (c) to representing or providing services to financial industry firms (''Industry Advocates'').

Four commenters generally supported this provision as fair and acknowledged the consistency of approach towards professionals representing investors and those representing industry.[31] One commenter opposed this provision of the proposal.[32] In particular, this commenter stated that Industry Advocates should be permanently classified as non-public arbitrators like financial industry employees (*i.e.,* the commenter suggested that FINRA eliminate the cooling-off period rather than lengthening it).[33]

In its response letter, FINRA stated that it has drawn a distinction between individuals who work in the financial industry and individuals who provide services to the financial industry. It also believes that it needed to take a consistent approach to cooling-off periods for service providers to both investors and the financial industry. Accordingly, FINRA declined to amend the proposed rule change.[34]

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[18] *See* PIRC Letter and FSI Letter.

[19] *See FINRA Letter.*

[20] *See FINRA Letter.*

[21] *See* Stephens Letter, FSI Letter, Getman Letter, and Vernon Letter.

[22] *See* Stephens Letter.

[23] *See* Vernon Letter (expressing concern that under the proposal he could be characterized as a non-public arbitrator based solely on his capacity as a ''trainee'' for Merrill Lynch in 1983).

[24] *See* FINRA Letter.

[25] *See* SIFMA Letter (stating that the proposal ''strike[s] an appropriate balance in the interests of fairness, perceptions of fairness, and arbitrator neutrality for all parties''), FSI Letter, and Bethel Letter. In addition to these three letters, the commenters who used the Type A Letter also supported this provision.

[26] *See* NASAA Letter, PIABA Letter, Stephens Letter, PIRC Letter, Bacine Letter, Mass Letter, Hardiman Letter, and Friedman Letter.

[27] *See* PIRC Letter, Bacine Letter, and Friedman Letter. *See also* NASAA Letter (arguing that FINRA should classify as non-public arbitrators only persons ''representing or providing services to non-retail parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry''); PIABA Letter (arguing that there is no need or basis for classifying Investor Advocates as non-public arbitrators because FINRA has no evidence to support the conclusion that they are biased for or against the securities industry); Stephens Letter (arguing that FINRA should only classify as non-public arbitrators only persons ''. . . representing or providing services to parties in disputes [other than customers] concerning investment accounts . . .''); Mass Letter (asserting that lawyers who represent investors or claimants are public arbitrators because they work on behalf of the public at large against industry); and Hardiman Letter (stating that classifying Investor Advocates as non-public arbitrators would be ''burying professionals who represent the investing public in the industry non-public side'').

[28] *See e.g.,* Stephens Letter, NASAA Letter, PIABA Letter, PIRC Letter, and Bacine Letter.

[29] *See* PIRC Letter.

[30] *See* FINRA Letter.

[31] *See* SIFMA Letter, NASAA Letter, PIABA Letter, and Berthel Letter.

[32] *See* NASAA Letter.

[33] *Id.; but see* SIFMA Letter, NASAA Letter, PIABA Letter, and Berthel Letter (each letter generally supporting this provision of the proposal as fair and acknowledging the consistent approach towards Investor Advocates and Industry Advocates).

[34] *See* FINRA Letter.

3. Using Professional Time To Quantify Professional Work

As stated above, the proposal would classify attorneys, accountants, expert witnesses, or other professionals as either public arbitrators or non-public arbitrators depending on, among other things, the amount of time those individuals devoted to representing either the financial industry or investors. One commenter opposed this provision of the proposal.[35] Specifically, this commenter questioned the appropriateness of classifying individuals as public or non-public arbitrators based on the ''amount of time'' an individual devotes to a client. Alternatively, this commenter suggested FINRA base this determination on the amount of revenue generated by the professional relationship. The commenter believes that revenue is a better measurement since not all professionals track their work in terms of time, but all professionals would have a record of revenue.[36]

In its response letter, FINRA stated that it discussed this matter with its National Arbitration and Mediation Committee (''NAMC''). FINRA stated that based on these discussions, FINRA believes that using the term ''professional time'' ''added clarity to the rule text, was simpler to apply, and would result in more accurate calculations by arbitrator applicants and arbitrators reviewing their business mix.'' [37] Accordingly, FINRA declined to amend the proposed rule change.[38]

C. Impact to the Number of Available Public Arbitrators

Four commenters expressed concerns that the proposed rule change would reduce the number of public arbitrators to an amount that would be insufficient to meet future needs.[39] One of these commenters stated that permanently classifying certain individuals as non-public arbitrators would negatively impact the effective administration of the FINRA arbitration forum.[40] Two of these commenters expressed concern that the proposal would reduce the supply of available public arbitrators at a time when more claimants are selecting all-public panels.[41] Another one of these commenters suggested that the potential shortages of public arbitrators may be more concentrated in some locations more than others.[42] Two of these commenters also suggested that FINRA would need to devote resources to recruit additional public arbitrators.[43]

In its response letter, FINRA stated that, based on a preliminary analysis of its data, including a review of the public arbitrator roster, it estimated that approximately 474 arbitrators (out of 3,567) might be reclassified from public arbitrators to non-public arbitrators under the proposed rule change. FINRA also stated, however, that if the proposal was approved, it would conduct a more detailed analysis to determine whether additional arbitrator recruitment efforts were necessary in any particular geographic area and would deploy the necessary resources to avoid any undue delay in the arbitration process.[44]

D. Cost-Benefit/More Data Intensive Analysis

Three commenters stated that the proposed rule change should not be approved until FINRA obtained additional data and published a detailed cost-benefit analysis justifying the proposal.[45] More specifically, two of these commenters expressed concern that the proposal would result in a reduction in the pool of public arbitrators and chair-eligible arbitrators and suggested that FINRA seek additional data to analyze the likelihood of this outcome.[46] Another one of these commenters suggested FINRA make information about each arbitrator publicly available, particularly to academic researchers.[47] This commenter stated that this data could provide FINRA with statistical proof of bias or lack of bias upon which to base its proposal instead of relying on perceptions of bias.[48]

In its response letter, FINRA stated that a cost-benefit analysis would be helpful, but would require a survey of every public arbitrator on its roster and that such a review would be time-intensive. As an interim step, FINRA performed a preliminary analysis of databases currently available to it. FINRA also stated that if the proposal was approved, it would conduct a more robust cost-benefit analysis.[49]

E. General Comments

Two commenters suggested alternatives to characterizing arbitrators as either public or non-public.[50] Two other commenters objected to broker-dealers' used of pre-dispute mandatory arbitration agreements.[51] Other commenters suggested ways to improve the quality of arbitration panels.[52] Another commenter suggested that FINRA's Arbitration Task Force [53] should review the proposal.[54]

In its response letter, FINRA stated that each of these suggestions was either outside the scope of, or would cause undue delay to, the proposed rule change. Accordingly, FINRA declined to amend the proposed rule change.[55]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–FINRA–2014–028 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.[56]

[35] *See* PIRC Letter.

[36] *Id.*

[37] FINRA Letter.

[38] *Id.*

[39] *See* Friedman Letter, SAC Letter, NASAA Letter, and FSI Letter.

[40] *See* FSI Letter; *see also* Bacine Letter (expressing concern that classifying professionals who provide services to customers as non-public arbitrators would negatively impact the quality of chairman-eligible arbitrators).

[41] *See* FSI Letter and Friedman Letter; *see also* Release No. 34–63799 (Jan. 31, 2011); 76 FR 6500 (Feb. 4, 2011) (order approving a proposed rule change to provide customers with the option to choose an all-public arbitration panel in all cases); Release No. 34–70442 (Sept. 18, 2013); 78 FR 58580 (Sept. 24, 2013) (order approving a proposed rule change to, among other things, permit all parties to select an all-public panel).

[42] *See* SAC Letter.

[43] *See* SAC Letter and NASAA Letter.

[44] *See* FINRA Letter.

[45] *See* SAC Letter, Friedman Letter, and Estell Letter.

[46] *See* SAC Letter (expressing concern that a decrease in the number of public arbitrators could result in greater delays in arbitrating claims, particularly (1) during declines in the financial markets (when the number of arbitration claims filed increases) or (2) in certain hearing locations with smaller rosters of arbitrators) and Friedman Letter.

[47] *See* Estell Letter.

[48] *Id.*

[49] *See* FINRA Letter.

[50] *See* Friedman Letter (suggesting the following categories: (1) Affiliated with the financial industry, (2) not affiliated with the financial industry, and (3) a ''no-man's land,'' which would preclude an individual from acting as an arbitrator); and Nicinski Letter (suggesting the discontinuance of all categories of arbitrators).

[51] *See* AAJ Letter and Estell Letter.

[52] *See e.g.,* Nicinski Letter (recommending that arbitrators be required to display some knowledge of the investment products likely to be discussed during an arbitration); and Berthel Letter (recommending (1) that every panel include arbitrators with a strong background in securities laws and (2) that the Chair be a judge or hold a law degree).

[53] *See* FINRA News Release, FINRA Announces Arbitration Task Force (Jul. 17, 2014), available at *http://www.finra.org/Newsroom/NewsReleases/2014/P554192* (announcing the formation of an Arbitration Task Force to consider possible enhancements to improve transparency, impartiality and efficiency of FINRA's securities arbitration forum for all participants).

[54] *See* Friedman Letter.

[55] *See* FINRA Letter.

[56] 15 U.S.C. 78s(b)(2). Section 19(b)(2)(B) of the Act provides that proceedings to determine whether

Continued

Institution of such proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the issues presented by the proposed rule change and provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Act,[57] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15A(b)(6) of the Act [58] 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. In addition, Section 15A(b)(9) of the Act [59] requires that FINRA rules not impose any unnecessary or inappropriate burden on competition.

The Commission believes FINRA's proposed rule change raises questions as to whether it is consistent with the requirements of Sections 15A(b)(6) and 15A(b)(9) of the Act.

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues raised by the proposed rule change. In particular, the Commission invites the written views of interested persons on whether the proposed rule change is inconsistent with Sections 15A(b)(6) and 15A(b)(9), or any other provision, of the Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[60]

Interested persons are invited to submit written data, views, and arguments by November 6, 2014 concerning whether the proposed rule change should be approved or disapproved. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 21, 2014. 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 email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–028 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2014–028. This file number should be included on the subject line if email 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principle 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 publicly available. All submissions should refer to File Number SR–FINRA–2014–028 and should be submitted on or before November 6, 2014. If comments are received, any rebuttal comments should be submitted by November 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Kevin M. O'Neill,

Deputy Secretary.

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to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension.

[57] 15 U.S.C. 78s(b)(2)(B).

[58] 15 U.S.C. 78*o*–3(b)(6).

[59] 15 U.S.C. 78*o*–3(b)(9).

[60] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[61] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73284; File No. SR–NYSEMKT–2014–84]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 900.2NY To Codify the Terms Complex BBO and Complex NBBO and To Amend Exchange Rule 900.3NY(w) To Revise the Definition of a PNP Plus Order

October 1, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 24, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

The Exchange proposes to amend Exchange Rule 900.2NY to codify the terms Complex BBO and Complex NBBO and to amend Exchange Rule 900.3NY(w) to revise the definition of a PNP Plus order. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,*

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.