

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2008-005 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2008-005. 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 inspection and copying 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-2008-005 and should be submitted on or before April 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57529; File No. SR-FINRA-2008-009]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes To Amend the Chairperson Eligibility Requirements**

March 19, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") on March 12, 2008, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA Dispute Resolution. 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 Dispute Resolution is proposing to amend the chairperson eligibility requirements under NASD Rule 12400(c) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and NASD Rule 13400(c) of the Code of Arbitration Procedure for Industry Disputes ("Industry Code"). Below is the text of the proposed rule change. Proposed deletions are in brackets.

\* \* \* \* \*

**12400. Neutral List Selection System and Arbitrator Rosters**

(a)-(b) No change.

(c) Eligibility for Chairperson Roster

In customer disputes, chairpersons must be public arbitrators. Arbitrators are eligible for the chairperson roster if they have completed chairperson training provided by NASD [or have substantially equivalent training or experience] and:

[Remainder of the rule unchanged.]

\* \* \* \* \*

13400. Neutral List Selection System and Arbitrator Rosters

(a)-(b) No change.

(c) Eligibility for Chairperson Roster

Arbitrators are eligible to serve as chairperson of panels submitted for arbitration under the Code if they have completed chairpersons training provided by NASD [or have substantially equivalent training or experience] and:

[Remainder of the rule unchanged.]

\* \* \* \* \*

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

**1. Purpose**

FINRA<sup>3</sup> proposes to amend the chairperson eligibility requirements under Rule 12400(c) of the Customer Code and Rule 13400(c) of the Industry Code.

On January 24, 2007, the SEC approved the NASD Codes of Arbitration Procedure for Customer and Industry Disputes (collectively referred to as "Codes").<sup>4</sup> The Codes reorganized the dispute resolution rules into separate procedural codes, simplified the language of the old NASD Code of Arbitration Procedure, codified current practices, and implemented several substantive changes. One such substantive change involved improving the arbitrator selection process by creating and maintaining a new roster of arbitrators who are qualified to serve as chairpersons.

Under the Codes, arbitrators are eligible for the chairperson roster if they have completed chairperson training

<sup>3</sup> Although some of the events referenced in this rule filing occurred prior to the formation of FINRA, the rule filing refers to FINRA throughout for simplicity.

<sup>4</sup> See Securities Exchange Act Release No. 55158 (January 24, 2007); 72 FR 4574 (January 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011). The new Codes became effective on April 16, 2007.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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

provided by FINRA or have substantially equivalent training or experience, and satisfy one of two remaining requirements of the rule.<sup>5</sup> In the rule filing proposing this change, FINRA explained that “substantially equivalent training or experience would include service as a judge or administrative hearing officer, chairperson training offered by another recognized dispute resolution forum, or the like. Decisions regarding whether particular training or experience other than FINRA chairperson training would qualify under this provision would be in the sole discretion of the Director.”<sup>6</sup> In referring to the “substantially equivalent training or experience” criterion (hereinafter, “substantially equivalent”), the proposal also stated that FINRA believed that the proposal would allow arbitrators of all professional backgrounds to qualify as chairpersons.<sup>7</sup> FINRA believed that this criterion would help ensure that the forum could meet the demands of the Codes concerning the new chairperson roster, while continuing to administer effectively the arbitrator selection process.

In the year since the Codes were approved, FINRA has determined that the “substantially equivalent” criterion has not been essential to creating and maintaining the chairperson roster, and is, therefore, proposing to remove this criterion from the rule. FINRA notes that all arbitrators currently coded as chairpersons have completed the FINRA Chairperson Training course (chair training),<sup>8</sup> and the chair training has never been waived for an arbitrator claiming to satisfy the “substantially equivalent” criterion. FINRA believes that all arbitrators wishing to serve as chairpersons would benefit from the information contained in the chair training, which instructs arbitrators on the added responsibilities of arbitrators assuming the essential role of chairperson in the FINRA forum. Moreover, FINRA believes that removing the “substantially equivalent” criterion would make the chairperson eligibility standards more objective and uniform, thereby eliminating any perception that large numbers of arbitrators may be added to the

chairperson roster without the benefit of the chair training.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would enhance investor confidence in the fairness and neutrality of FINRA’s arbitration forum because the chairperson eligibility rules would become more objective and uniform.

### 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, as amended.

### 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 by FINRA.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve 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:

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>5</sup> Rule 12400(c) of the Customer Code and Rule 13400(c) of the Industry Code.

<sup>6</sup> See Securities Exchange Act Release No. 51856 (June 15, 2005); 70 FR 36442, at 36446 (June 23, 2005).

<sup>7</sup> *Id.*

<sup>8</sup> The online Chairperson training course is \$50 and is available at <http://www.finra.org/ArbitrationMediation/ResourcesforArbitratorsandMediators/ArbitratorTraining/ArbitratorTrainingPrograms/index.htm> (last visited, March 5, 2008).

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