

prospectus to such investors. Finally, the Information Bulletin will reference that: An issue of Currency Trust Shares is subject to various fees and expenses described in the applicable prospectus; that there is no regulated source of last-sale information regarding non-U.S. currencies; and the Commission has no jurisdiction over the trading of physical currencies on which the value of an issue of Currency Trust Shares may be based.

#### E. Firewall Procedures

Currency Trust Shares, which are securities issued by a trust that may hold multiple currencies, will be subject to the firewall requirements under proposed Commentary .05 to NYSE Arca Equities Rule 8.202. The firewall requirements provide that, if the value of a Currency Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel responsible for the maintenance of the underlying index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer. Furthermore, any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

The Commission believes that the proposed "firewall" restrictions applicable to Currency Trust Shares are designed to prevent the use and dissemination of material, non-public information regarding an underlying index and prevent conflicts of interest with respect to personnel of a broker-dealer maintaining an index underlying such securities. The Commission notes that such proposed restrictions are substantially similar to restrictions adopted for the listing and trading of Index-Linked Securities and Units.<sup>33</sup>

#### F. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> for approving the proposed rule change prior to the 30th day after publication of notice in the **Federal Register**. The Commission notes that the Exchange previously filed a proposed

rule change (NYSEArca-2008-51) seeking to adopt generic listing standards for Currency Trust Shares and other commodity-related derivative securities products.<sup>35</sup> Notice of the proposed rule change was published in the **Federal Register** on August 15, 2008 for a 21-day comment period, and no comments were received by the Commission.<sup>36</sup> The Commission further notes that the proposed changes to NYSE Arca Equities Rule 8.202 in NYSEArca-2008-51 are substantively identical to this proposed rule change. The Commission believes that the Exchange's proposed amendments to NYSE Arca Equities Rule 8.202 do not raise any new issues or significant regulatory concerns. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, enhanced competition in the market for Currency Trust Shares, consistent with Section 6(b) of the Act and Rule 19b-4(e) thereunder.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> that the proposed rule change (SR-NYSEArca-2009-47) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-13970 Filed 6-12-09; 8:45 am]

**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60064; File No. SR-NYSEArca-2009-30]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Adoption of Listing Standards for Managed Trust Securities and the Listing and Trading of Shares of the iShares® Diversified Alternatives Trust

June 8, 2009.

#### I. Introduction

On April 9, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE

Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation"), filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to: (1) Adopt listing standards for Managed Trust Securities; (2) amend NYSE Arca Equities Rule 7.34 and its Listing Fees to add references to proposed NYSE Arca Equities Rule 8.700 relating to Managed Trust Securities; and (3) list and trade shares ("Shares") of the iShares® Diversified Alternatives Trust ("Trust"). On April 24, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 6, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

##### A. Listing Standards for Managed Trust Securities

The Exchange proposes to adopt new NYSE Arca Equities Rule 8.700 to list and trade, or trade pursuant to unlisted trading privileges, Managed Trust Securities. A Managed Trust Security as a security that is registered under the Securities Act of 1933, as amended, and (a) is issued by a trust that (i) is a commodity pool, as defined in the Commodity Exchange Act ("CEA") and regulations thereunder, and is managed by a commodity pool operator registered with the Commodity Futures Trading Commission ("CFTC"), and (ii) holds long and/or short positions in exchange-traded futures contracts and/or currency forward contracts selected by the trust's advisor consistent with the trust's investment objectives,<sup>4</sup> which would only include exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private, and mortgage or asset backed debt instruments<sup>5</sup> and/or forward contracts on specified currencies, as disclosed in the trust's prospectus, as

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59835 (April 28, 2009), 74 FR 21041 ("Notice").

<sup>4</sup> It should be noted that the trust holdings will be actively managed in accordance with the trust's investment objectives; therefore, products listed under proposed NYSE Arca Equities Rule 8.700 are ineligible for listing under any other existing Exchange rule (e.g., NYSE Arca Equities Rules 8.203 and 8.204).

<sup>5</sup> The trust may only hold exchange-traded futures contracts on sovereign, private, and mortgage- or asset-backed debt and not the debt itself.

<sup>33</sup> See *id.* and accompanying text.

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> See *supra* note 7.

<sup>36</sup> See *id.* (noting that the Exchange subsequently withdrew the proposed rule change on May 18, 2009).

<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</sup> 17 CFR 200.30-3(a)(12).

such may be amended from time to time, and (b) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value (“NAV”).

Additional details of proposed NYSE Arca Equities Rule 8.700 and the proposed conforming changes to NYSE Arca Equities Rule 7.34 and the NYSE Arca Equities Listing Fee Schedule can be found in the Notice.

### *B. Description of the Trust and the Shares*

The Exchange also proposes to list and trade the Shares.<sup>6</sup> The Shares represent ownership of a fractional undivided beneficial interest in the net assets of the Trust. The Trust will be a commodity pool, as defined in the CEA and the applicable rules of the CFTC, and will be formed as a Delaware statutory trust.<sup>7</sup>

The investment objective of the Trust will be to maximize absolute returns from its portfolio of (i) exchange-traded futures contracts involving commodities, currencies, certain eligible stock and/or bond indices, interest rates and sovereign, private and mortgage- or asset-backed debt instruments<sup>8</sup> and/or (ii) certain currency forward contracts in the top 25 most liquid or actively traded currencies measured by turnover in the most recent BIS Central Bank Survey, each as disclosed in the Trust’s prospectus as such may be amended from time to time, while seeking to

<sup>6</sup> The Exchange represents that the Shares will conform to the initial and continued listing criteria under proposed NYSE Arca Equities Rule 8.700 and that the Trust is required to comply with Rule 10A-3 under the Act for the initial and continued listing of the Shares. See 17 CFR 240.10A-3. Rule 10A-3(e)(3) provides that, in the case of a listed limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term “board of directors” means the board of directors of the managing general partner, managing member or equivalent body. The Trust itself has no employees or board of directors and its operations are conducted by the Trustee, subject to the direction by the Sponsor. Accordingly, the Trust has designated a committee of the board of directors of the Sponsor to act as the audit committee of the Trust for Rule 10A-3 purposes. The Sponsor’s role under the governing documents of the Trust makes the Sponsor analogous to the managing member of a limited liability company. The Exchange believes it is reasonable to interpret Rule 10A-3(e)(3) as permitting a trust to utilize a committee of the board of directors of its sponsor as the trust’s audit committee for purposes of compliance with Rule 10A-3, provided that the sponsor’s role with respect to the trust is analogous to the relationship between a managing member and a limited liability company.

<sup>7</sup> The Trust is not an investment company registered under the Investment Company Act of 1940, according to the Registration Statement on Form S-1 for the Trust, which was filed with the Commission on August 20, 2008 (File No. 333-153099) (“Registration Statement”).

<sup>8</sup> See *supra* note 5.

reduce the risks and volatility inherent in those investments by taking long and short positions in historically correlated assets. The Trust will also earn interest on the assets used to collateralize its trading positions. The return on assets in the portfolio, if any, is not intended to track the performance of any index or benchmark.

Additional details regarding creations and redemptions of the Shares, the organization and structure of the Trust, the commodity trading advisor of the Trust, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin can be found in the Notice and/or the Registration Statement.

### **III. Discussion and Commission’s Findings**

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the Exchange’s rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

With respect to the Exchange’s proposal to adopt new NYSE Arca Equities Rule 8.700 relating to the listing and trading of Managed Trust Securities, the Commission notes that the standards proposed therein are based on listing standards of other derivative securities products that have previously been approved by the Commission. Except for the definition of “Managed Trust Securities,” each of the defined terms under new NYSE Arca Equities Rule 8.700(c) are substantively identical to those applicable to Managed Fund Shares under NYSE Arca Equities Rule 8.600.<sup>11</sup> In addition, almost all of

<sup>9</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) (approving the adoption of NYSE Arca Equities Rule 8.600 governing the

the proposed initial and continued listing criteria and Commentaries under new NYSE Arca Equities Rule 8.700 are substantively identical to those applicable to Managed Fund Shares set forth in NYSE Arca Equities Rule 8.600. Specifically with respect to the proposed continued listing criteria for Managed Trust Securities, the Commission notes that new NYSE Arca Equities Rule 8.700(e)(2)(C)(i) is substantively identical to the continued listing criteria applicable to other types of commodity- and currency-based derivative securities products.<sup>12</sup> The Commission also notes that proposed NYSE Arca Equities Rules 8.700(e)(2)(E), 8.700(e)(3)–(5), and 8.700(f)–(g), relating to the trust, trustee, voting rights, Market Maker accounts, and limitation of liability of the Corporation, are substantively identical to those respective provisions applicable to other types of commodity- and currency-based derivative securities products.<sup>13</sup> Further, the Commission notes that the Exchange is required to file a proposed rule change pursuant to Section 19(b)(1) of the Act to list and trade each issue of Managed Trust Securities. The Commission believes that the proposed new listing rule, NYSE Arca Equities Rule 8.700, is reasonably designed to protect investors and the public interest.

In addition, the Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>14</sup> which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association CQ High-Speed Lines, and one or more major market data vendors will disseminate the Intraday Indicative Value (“IIV”) at least every 15 seconds during the time the Shares trade on the Exchange. In addition, the Trust will make available daily on its Web site the Disclosed Portfolio, which will include, as applicable, the name identifier and

listing and trading of Managed Fund Shares). See also NYSE Arca Equities Rule 8.600.

<sup>12</sup> See, e.g., NYSE Arca Equities Rule 8.200 (Trust Issued Receipts), NYSE Arca Equities Rule 8.201 (Commodity-Based Trust Shares), NYSE Arca Equities Rule 8.202 (Currency-Based Trust Shares), and NYSE Arca Equities Rule 8.204 (Commodity Futures Trust Shares).

<sup>13</sup> See *id.*

<sup>14</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

number of each futures contract, the amount and currency type of each forward contract, and the amount of cash held. The Web site for the Trust will also contain the following information: (1) The prior business day's NAV per Share<sup>15</sup> and the reported closing price; (2) the mid-point of the bid-ask price in relation to the NAV per Share as of the time the NAV is calculated ("Bid-Ask Price");<sup>16</sup> (3) calculation of the premium or discount of such price against such NAV per Share; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus and the most recent periodic reports filed with the Commission or required by the CFTC;<sup>17</sup> and (6) other applicable quantitative information. The Exchange will disseminate for the Trust on a daily basis by means of Consolidated Tape Association CQ High Speed Lines information with respect to the recent Trust NAV, number of Shares outstanding, and the basket amount. The Exchange will also make available on its Web site daily trading volume, closing prices, and the Trust's NAV per Share. The Exchange states that pricing for futures contracts is available from the relevant exchange on which such futures contracts trade, and pricing for forward contracts is available from major market data vendors. Lastly, information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The

<sup>15</sup> The most recent end-of-day NAV of the Trust and NAV per Share will be published by the Sponsor as of 4 p.m. Eastern Time daily on Reuters and/or Bloomberg and on the Trust's Web site at <http://www.iShares.com>. The end-of-day NAV per Share will also be published the following morning on the Consolidated Tape.

<sup>16</sup> The Bid-Ask Price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV per Share.

<sup>17</sup> Monthly account statements conforming to applicable CFTC and NFA requirements are posted on the Trust's Web site at <http://www.iShares.com>. Additional reports may be posted on the Trust's Web site in the discretion of the Sponsor or as required by regulatory authorities.

Commission notes that the Exchange will obtain a representation from the Trust that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>18</sup> Additionally, if the Exchange becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants.<sup>19</sup> Further, if the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>20</sup> The Exchange represents that Barclays Global Fund Advisors, the commodity trading advisor of the Trust, is affiliated with a broker-dealer. As a result, Barclays Global Fund Advisors and its applicable affiliated broker-dealers that are authorized to conduct trading have in place (or will erect before launch) policies and procedures designed to prevent the disclosure of material non-public information, including changes and adjustments to the Disclosed Portfolio.<sup>21</sup> Finally, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.<sup>22</sup>

<sup>18</sup> See proposed NYSE Arca Equities Rule 8.700(e)(1)(B).

<sup>19</sup> See proposed NYSE Arca Equities Rule 8.700(e)(2)(D).

<sup>20</sup> See *id.* Trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts or currency forward contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. E-mail from Sudhir Bhattacharya, Vice President—Legal, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated May 26, 2009.

<sup>21</sup> E-mail from Sudhir Bhattacharya, Vice President—Legal, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated May 26, 2009. The Exchange further represents that personnel who make decisions concerning the Trust's portfolio composition are subject to procedures designed to prevent the use and dissemination of material, non-public information, including information relating to the applicable Trust portfolio. See Commentary .05 to proposed NYSE Arca Equities Rule 8.700.

<sup>22</sup> See proposed NYSE Arca Equities Rule 8.700(e)(2)(B)(ii).

The Exchange has represented that the Shares are deemed equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under proposed NYSE Arca Equities Rule 8.700.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. In addition, the Exchange has an Information Sharing Agreement in place with the New York Mercantile Exchange, the Kansas City Board of Trade, ICE Futures, and the London Metal Exchange for the purpose of providing information in connection with trading in or related to futures contracts traded on such exchanges. Further, for components traded on exchanges, not more than 10% of the weight of the Trust's portfolio in the aggregate shall consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (d) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; and (e) trading information.

(4) The Fund will be in compliance with Rule 10A-3 under the Act.<sup>23</sup>

<sup>23</sup> See *supra* note 6.

(5) A minimum of 100,000 Shares will be required to be outstanding at the start of trading.<sup>24</sup>

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>25</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-NYSEArca-2009-30), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-13969 Filed 6-12-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60061; File No. SR-FINRA-2009-011]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Amend the Panel Composition Rules of the Code of Arbitration Procedure for Industry Disputes

June 5, 2009.

On March 4, 2009, the 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the panel composition rules of the Code of Arbitration Procedure for Industry Disputes ("Industry Code"). On April 7, 2009, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in

the **Federal Register** on May 4, 2009.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

#### I. Description of the Proposal

FINRA proposed to amend the Industry Code to change the criteria for determining the panel composition when the claim involves an associated person in industry disputes.

Currently, Rule 13402(a) of the Industry Code requires an all non-public panel for disputes between members, and for employment disputes between or among members and associated persons that relate exclusively to employment contracts, promissory notes, or receipt of commissions.<sup>4</sup> In all other disputes between or among members and associated persons, Rule 13402(b) requires a majority public panel, where one arbitrator would be a non-public arbitrator and two would be public arbitrators.<sup>5</sup>

FINRA proposed to amend the Industry Code to change the criteria for determining panel composition when the claim involves an associated person in industry disputes.<sup>6</sup> Specifically, FINRA proposed to amend Rule 13402 and related rules of the Industry Code to:

- Require that the parties receive a majority public panel for all industry disputes involving associated persons (excluding disputes involving statutory employment discrimination claims which require a specialized all public panel);<sup>7</sup>
  - Clarify that in disputes involving only members, parties will receive an all non-public panel; and
  - Provide that if a party amends its pleadings to add an associated person to a previously all member case, parties will receive a majority public panel.
- Thus, cases involving only members would have an all non-public panel; cases involving a member and an associated person (excluding cases involving a claim for statutory

discrimination) would have a majority public panel; and cases involving an associated person with a statutory discrimination claim would have a specialized all public panel.<sup>8</sup> Moreover, if a member amends its pleadings to add an associated person, the case would receive a majority public panel, and the rules that apply to cases between associated persons and members would govern list selection and the administration of the arbitration proceeding.

#### *Employment Disputes Involving Associated Persons*

Currently, in employment disputes between or among members and associated persons, FINRA requires that the panel consist of all non-public arbitrators in cases that arise out of the employment or termination of employment of an associated person, and that relate exclusively to (1) employment contracts, (2) promissory notes, or (3) receipt of commissions. However, if a party adds a claim that does not meet these criteria, the parties receive a majority public panel.

FINRA proposed to amend Rule 13402 of the Industry Code to clarify that for all employment disputes between or among members and associated persons (except for statutory employment discrimination cases), the parties must select a majority public panel.<sup>9</sup> Rule 13402(a) would be amended to delete the title of the rule, which contains the exceptions to the majority public panel requirement, and replace it with a concise description, which clarifies that Rule 13402(a) would apply to disputes involving only members. Rule 13402(b) would be amended to modify the title of the rule to clarify that for all industry disputes involving associated persons (excluding disputes involving statutory employment discrimination claims), the parties would receive a majority public panel. FINRA also proposed to make similar title changes to Rules 13403(a) and 13403(b), which govern generating and sending lists to parties, and to Rules 13406(a) and 13406(b), which govern appointment of arbitrators and discretion to appoint arbitrators not on the list.

<sup>8</sup> See Rule 13802(c) (panel composition rule for statutory employment discrimination claims).

<sup>9</sup> The proposed change would be consistent with the rules and procedures of the former New York Stock Exchange ("NYSE") arbitration forum. In the NYSE arbitration forum, cases involving associated persons received a majority public panel because the rules classified associated persons as non-members, and non-members received a majority public panel. See NYSE Rule 607(a)(1).

<sup>24</sup> See proposed NYSE Arca Equities Rule 8.700(e)(1)(A).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</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.

<sup>3</sup> See Exchange Act Release No. 59836 (April 28, 2009); 74 FR 20519 (May 4, 2009).

<sup>4</sup> If the panel consists of one arbitrator, the arbitrator will be a non-public arbitrator selected from the non-public chairperson roster described in Rule 13400(c). See Rule 13402(a).

<sup>5</sup> If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster described in Rule 12400(c) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code"). See Rule 13402(b).

<sup>6</sup> The proposed changes discussed in this order will not apply to claims filed under the Customer Code.

<sup>7</sup> The proposal would not apply to disputes involving a claim of statutory employment discrimination. See Rule 13802.