

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73277; File No. SR-FINRA-2014-028)

October 1, 2014

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

**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 of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend provisions in the FINRA rulebook to “refine and reorganize the definitions of ‘non-public arbitrator’ and ‘public arbitrator.’”<sup>3</sup> The proposed rule change was published for comment in the Federal Register on July 3, 2014.<sup>4</sup> 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.<sup>5</sup> On September

---

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

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

<sup>3</sup> 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”).

<sup>4</sup> Id. The comment period closed on July 24, 2014.

<sup>5</sup> 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

30, 2014, the Commission received a letter from FINRA responding to the comment letters.<sup>6</sup>

The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>7</sup> 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

---

(“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”).

<sup>6</sup> Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Brent J. Fields, Secretary, SEC, dated September 30, 2014 (“FINRA Letter”).

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

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.”<sup>8</sup> 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.”<sup>9</sup>

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.<sup>10</sup>

The text of the proposed rule change is available, at the principal office of FINRA, on FINRA’s website 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.<sup>11</sup>

---

<sup>8</sup> 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.

<sup>9</sup> Notice of Filing.

<sup>10</sup> Id.

<sup>11</sup> See supra note 3.

### **III. Summary of Comments**

Five of the commenters expressed support for the proposed rule change in its entirety.<sup>12</sup> Two commenters opposed the proposed rule change in its entirety.<sup>13</sup> 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.<sup>14</sup>

##### **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.<sup>15</sup>

Many commenters opposed the elimination of the five-year cooling-off period for Industry Affiliates.<sup>16</sup> For instance, some commenters expressed concern that eliminating the cooling-off period could exclude arbitrators with industry experience who could be useful on a

---

<sup>12</sup> See Aidikoff Letter, Bakhtiari Letter, Caruso Letter, Gitomer Letter, and SIFMA Letter.

<sup>13</sup> 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.”

<sup>14</sup> See e.g., Type A Letter, FSI Letter, Getman Letter, and Vernon Letter.

<sup>15</sup> See Aidikoff Letter; see also Bakhtiari Letter, SIFMA Letter, NASAA Letter, PIABA Letter, and AAJ Letter.

<sup>16</sup> See e.g., Type A Letter, FSI Letter, Getman Letter, Berthel Letter and Vernon Letter.

panel to, among other things, educate the other panelists on industry practice.<sup>17</sup> 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 proportional to the number of years they were Industry Affiliates.<sup>18</sup>

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.”<sup>19</sup> 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.<sup>20</sup>

## **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.<sup>21</sup> 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).<sup>22</sup> Accordingly, this commenter suggested FINRA amend the definition of the term “associated person” in the

---

<sup>17</sup> See Type A Letter and Berthel Letter; see also FSI Letter.

<sup>18</sup> See PIRC Letter and FSI Letter.

<sup>19</sup> See FINRA Letter.

<sup>20</sup> See FINRA Letter.

<sup>21</sup> See Stephens Letter, FSI Letter, Getman Letter, and Vernon Letter.

<sup>22</sup> See Stephens Letter.

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.<sup>23</sup>

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.<sup>24</sup>

## **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.<sup>25</sup>

---

<sup>23</sup> 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).

<sup>24</sup> See FINRA Letter.

<sup>25</sup> 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.

Eight commenters opposed this provision.<sup>26</sup> 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.<sup>27</sup> 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.”<sup>28</sup> One commenter noted that past NASD response letters, as well as the FINRA website, also make this distinction.<sup>29</sup>

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

---

<sup>26</sup> See NASAA Letter, PIABA Letter, Stephens Letter, PIRC Letter, Bacine Letter, Mass Letter, Hardiman Letter, and Friedman Letter.

<sup>27</sup> 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”).

<sup>28</sup> See e.g., Stephens Letter, NASAA Letter, PIABA Letter, PIRC Letter, and Bacine Letter.

<sup>29</sup> See PIRC Letter.

thereby excluding them from the public arbitrator roster. Accordingly, FINRA declined to amend the proposed rule change.<sup>30</sup>

## **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.<sup>31</sup> One commenter opposed this provision of the proposal.<sup>32</sup> 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).<sup>33</sup>

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

---

<sup>30</sup> See FINRA Letter.

<sup>31</sup> See SIFMA Letter, NASAA Letter, PIABA Letter, and Berthel Letter.

<sup>32</sup> See NASAA Letter.

<sup>33</sup> 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).

providers to both investors and the financial industry. Accordingly, FINRA declined to amend the proposed rule change.<sup>34</sup>

### **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.<sup>35</sup> 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.<sup>36</sup>

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.”<sup>37</sup> Accordingly, FINRA declined to amend the proposed rule change.<sup>38</sup>

---

<sup>34</sup> See FINRA Letter.

<sup>35</sup> See PIRC Letter.

<sup>36</sup> Id.

<sup>37</sup> FINRA Letter.

<sup>38</sup> Id.

### **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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> Another one of these commenters suggested that the potential shortages of public arbitrators may be more concentrated in some locations more than others.<sup>42</sup> Two of these commenters also suggested that FINRA would need to devote resources to recruit additional public arbitrators.<sup>43</sup>

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

---

<sup>39</sup> See Friedman Letter, SAC Letter, NASAA Letter, and FSI Letter.

<sup>40</sup> 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).

<sup>41</sup> 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).

<sup>42</sup> See SAC Letter.

<sup>43</sup> See SAC Letter and NASAA Letter.

were necessary in any particular geographic area and would deploy the necessary resources to avoid any undue delay in the arbitration process.<sup>44</sup>

#### **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.<sup>45</sup> 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.<sup>46</sup> Another one of these commenters suggested FINRA make information about each arbitrator publicly available, particularly to academic researchers.<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup>

---

<sup>44</sup> See FINRA Letter.

<sup>45</sup> See SAC Letter, Friedman Letter, and Estell Letter.

<sup>46</sup> 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.

<sup>47</sup> See Estell Letter.

<sup>48</sup> Id.

<sup>49</sup> See FINRA Letter.

## **E. General Comments**

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

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.<sup>55</sup>

## **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.<sup>56</sup> Institution of

---

<sup>50</sup> 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).

<sup>51</sup> See AAJ Letter and Estell Letter.

<sup>52</sup> 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).

<sup>53</sup> 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).

<sup>54</sup> See Friedman Letter.

<sup>55</sup> See FINRA Letter.

<sup>56</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2)(B) of the Act provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180

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,<sup>57</sup> the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15A(b)(6) of the Act<sup>58</sup> 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<sup>59</sup> 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

---

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.

<sup>57</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>58</sup> 15 U.S.C. 78o-3(b)(6).

<sup>59</sup> 15 U.S.C. 78o-3(b)(9).

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.<sup>60</sup>

Interested persons are invited to submit written data, views, and arguments by [insert date 30 days from publication in the Federal Register] 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 [insert date 45 days from publication in the Federal Register]. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-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 e-mail is used. To help the Commission process and review your

---

<sup>60</sup> 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).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 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 [insert date 30 days from publication in the Federal Register]. If comments are received, any rebuttal comments should be submitted by [insert date 45 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>61</sup>

Kevin M. O'Neill  
Deputy Secretary

---

<sup>61</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).