

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

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

The proposed rule change would amend Rules 12602 and 13602 of the Customer and Industry Codes of Arbitration Procedure, respectively, to provide for attorney representation of non-party witnesses in arbitration.

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

First Name	<input type="text" value="Margo"/>	Last Name	<input type="text" value="Hassan"/>
Title	<input type="text" value="Counsel"/>		
E-mail	<input type="text" value="margo.hassan@finra.org"/>		
Telephone	<input type="text" value="(212) 858-4481"/>	Fax	<input type="text" value="(301) 527-4761"/>

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

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

Date	<input type="text" value="01/22/2010"/>
By	<input type="text" value="Linda D. Fienberg"/>
	(Name)
	<input type="text" value="President, FINRA Dispute Resolution"/>
	(Title)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Rule 12602 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rule 13602 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (together, “Codes”) to provide that a non-party witness may be represented by an attorney at an arbitration hearing while the witness is testifying.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

12602. Attendance at Hearings

(a) The parties and their representatives are entitled to attend all hearings. Absent persuasive reasons to the contrary, expert witnesses should be permitted to attend all hearings. [The panel will decide who else may attend any or all of the hearings.]

(b) While testifying at an arbitration proceeding held in a United States hearing location, all non-party witnesses shall have the right to be represented by an attorney at law in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless

¹ 15 U.S.C. 78s(b)(1).

state law prohibits such representation. The panel will determine the extent to which the attorney may participate.

(c) The panel will decide who else may attend any or all of the hearings.

13602. Attendance at Hearings

(a) The parties and their representatives are entitled to attend all hearings.

Absent persuasive reasons to the contrary, expert witnesses should be permitted to attend all hearings. [The panel will decide who else may attend any or all of the hearings.]

(b) While testifying at an arbitration proceeding held in a United States hearing location, all non-party witnesses shall have the right to be represented by an attorney at law in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation. The panel will determine the extent to which the attorney may participate.

(c) The panel will decide who else may attend any or all of the hearings.

* * * * *

2. Procedures of the Self-Regulatory Organization

At its meeting on December 8, 2009, the FINRA Board of Governors authorized the filing of the rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

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

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

(a) Purpose

FINRA is proposing to amend Rules 12602 and 13602 to provide that a non-party witness has the right to be represented by an attorney at an arbitration hearing while the witness is testifying. Under the proposed rule change, the panel would determine the extent to which the attorney could participate at the hearing. The attorney would have to be in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States unless state law prohibits such representation.

The Codes expressly allow a party to be represented at any stage in an arbitration proceeding.² They do not address representation of a non-party witness. FINRA believes that a non-party witness should be entitled to be represented by an attorney while he or she is testifying. Currently, under the Codes, the arbitration panel determines

² Rules 12208 and 13208 (Representation of Parties) provide that parties have the right to be represented by an attorney at any stage in an arbitration proceeding. They also allow parties to be represented by a person who is not an attorney subject to certain limitations.

if a non-party witness' attorney may attend a hearing.³ A non-party witness may testify at a hearing: 1) voluntarily; 2) pursuant to a subpoena;⁴ or 3) in compliance with an arbitrator's order for an associated person to appear and give testimony.⁵

While the proposed rule change would apply to all non-party witnesses, in many instances when a non-party is testifying at a FINRA arbitration hearing, the non-party witness is an associated person who handled the customer claimant's account, but was not named as a respondent in the case. Under the current Codes, the arbitrators determine whether an associated person can bring an attorney to a hearing. FINRA does not believe that arbitrators have been denying requests by non-party witnesses to be represented by counsel while testifying; nevertheless, to assure due process in its dispute resolution forum, FINRA believes that the Codes should expressly provide that a non-party witness is entitled to be represented by an attorney while testifying.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

³ Rules 12602 and 13602 (Attendance at Hearings) provide that parties and their representatives are entitled to attend all hearings and that, absent persuasive reasons to the contrary, expert witnesses should also be permitted to attend. The panel determines who else may attend any or all hearings.

⁴ Rules 12512 and 13512 (Subpoenas) provide that arbitrators have the authority to issue subpoenas for the production of documents or the appearance of witnesses. The rules permit a party to make a written motion requesting that an arbitrator issue a subpoena to a party or a non-party.

⁵ Rules 12513 and 13513 (Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas) provide that

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would enhance fairness in the arbitration process by ensuring that a non-party witness may be represented by counsel during his or her testimony.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁷

the panel may order the appearance of any employee or associated person of a FINRA member.

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78s(b)(2).

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

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

Not applicable

9. **Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2010-006)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the Codes of Arbitration Procedure to Provide for Attorney Representation of Non-party Witnesses in Arbitration

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 22, 2010, 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”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 12602 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rule 13602 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (together, “Codes”) to provide that a non-party witness may be represented by an attorney at an arbitration hearing while the witness is testifying.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

FINRA is proposing to amend Rules 12602 and 13602 to provide that a non-party witness has the right to be represented by an attorney at an arbitration hearing while the witness is testifying. Under the proposed rule change, the panel would determine the extent to which the attorney could participate at the hearing. The attorney would have to be in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States unless state law prohibits such representation.

The Codes expressly allow a party to be represented at any stage in an arbitration proceeding.³ They do not address representation of a non-party witness. FINRA believes that a non-party witness should be entitled to be represented by an attorney while he or

³ Rules 12208 and 13208 (Representation of Parties) provide that parties have the right to be represented by an attorney at any stage in an arbitration proceeding. They also allow parties to be represented by a person who is not an attorney subject to certain limitations.

she is testifying. Currently, under the Codes, the arbitration panel determines if a non-party witness' attorney may attend a hearing.⁴ A non-party witness may testify at a hearing: 1) voluntarily; 2) pursuant to a subpoena;⁵ or 3) in compliance with an arbitrator's order for an associated person to appear and give testimony.⁶

While the proposed rule change would apply to all non-party witnesses, in many instances when a non-party is testifying at a FINRA arbitration hearing, the non-party witness is an associated person who handled the customer claimant's account, but was not named as a respondent in the case. Under the current Codes, the arbitrators determine whether an associated person can bring an attorney to a hearing. FINRA does not believe that arbitrators have been denying requests by non-party witnesses to be represented by counsel while testifying; nevertheless, to assure due process in its dispute resolution forum, FINRA believes that the Codes should expressly provide that a non-party witness is entitled to be represented by an attorney while testifying.

⁴ Rules 12602 and 13602 (Attendance at Hearings) provide that parties and their representatives are entitled to attend all hearings and that, absent persuasive reasons to the contrary, expert witnesses should also be permitted to attend. The panel determines who else may attend any or all hearings.

⁵ Rules 12512 and 13512 (Subpoenas) provide that arbitrators have the authority to issue subpoenas for the production of documents or the appearance of witnesses. The rules permit a party to make a written motion requesting that an arbitrator issue a subpoena to a party or a non-party.

⁶ Rules 12513 and 13513 (Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas) provide that the panel may order the appearance of any employee or associated person of a FINRA member.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ 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. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would enhance fairness in the arbitration process by ensuring that a non-party witness may be represented by counsel during his or her testimony.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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

Within 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:

⁷ 15 U.S.C. 78o-3(b)(6).

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2010-006 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2010-006. 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-2010-006 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).