substantive changes to the rule text related to the Exchange's Quarterly Option Series Pilot Program.

The Weeklys Program allows CBOE to list and trade Short Term Option Series, which expire one week after the date on which a series is opened. Under the Weeklys Program, CBOE may select up to five approved option classes on which Short Term Option Series could be opened. For each class selected for the Weeklys Program, the Exchange may open up to 20 Short Term Option Series for each expiration date in that class, with approximately the same number of strike prices above and below the value of the underlying security or calculated index value at about the time that the Short Term Option Series is opened. If the Exchange opens less than 20 Short Term Option Series for a given expiration date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the current value of the underlying security or index moves substantially from the previously listed exercise prices. In any event, the total number of series for a given expiration date will not exceed 20 series.

The Exchange has selected the following four options classes to participate in the Weeklys Program: S&P 500 Index options (SPX); S&P 100 Index American-style options (OEX); Mini-S&P 500 Index options (XSP); and S&P 100 Index European-style options (XEO).

In support of its proposal seeking permanent approval of the Weeklys Program, and as required by the Weeklys Pilot Program Approval Order, the Exchange submitted to the Commission a report on the Weeklys Program (the ''Report'') detailing the Exchange's experience with the Weeklys Program. In addition to the Report, the Exchange represented that it has not experienced any capacity-related problems with respect to Short Term Option Series, and also that it has the necessary system capacity to continue to support the option series listed under the Weeklys Program.

After careful review, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] and, in particular, the requirements of Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of a national securities exchange be designed 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.

The Commission finds that the Weeklys Program, as evidenced by the Report, has furthered the public interest by offering investors an alternative means of managing their risk exposures and carrying out their investment objectives. The Commission notes CBOE's representation that there is sufficient investor interest and demand in the Weeklys Program to warrant its permanent approval. The Commission further notes CBOE's representations that it has not experienced any capacity-related problems with respect to Short Term Option Series, and that the Exchange has the necessary system capacity to continue to support the option series listed under the Weeklys Program. Accordingly, the Commission finds that the proposed Weeklys Program strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid the unnecessary proliferation of option series that could compromise systems capacity. The Commission expects CBOE to continue to monitor the trading and quotation volume associated with the Weeklys Program, and the effect the Weeklys Program has on the capacity of the Exchange's, OPRA's, and vendors' systems.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–2009–018) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–10120 Filed 5–1–09; 8:45 am]

BILLING CODE 8010–01–P

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59836; File No. SR–FINRA–2009–011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend the Panel Composition Rules of the Code of Arbitration Procedure for Industry Disputes

April 28, 2009.

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 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 4, 2009 the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. On April 7, 2009, FINRA filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

FINRA is proposing to amend the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') to change the criteria for determining the panel composition when the claim involves an associated person in industry disputes.

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.

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,

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes the initial filing in its entirety.

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

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.[4] 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.[5]

FINRA is proposing to amend the Industry Code to change the criteria for determining panel composition when the claim involves an associated person in industry disputes.[6] Specifically, FINRA is proposing 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);[7]
- 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.[8] 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 is concerned that parties may be manipulating the rules to secure what they hope will be a favorable panel, which, in many cases, they believe to be a majority public panel. For example, if a party files a claim in which the sole cause of action involves an issue of compensation, FINRA requires parties to select an all non-public panel. However, if a party adds a claim that falls outside of the three causes of action described in the preceding paragraph (e.g., adds a cause of action involving a tort), then the parties receive a majority public panel instead.

FINRA also finds Rule 13402(a) cumbersome to implement. Because the three causes of action under the rule are the only exceptions to the requirement for a majority public panel in employment cases, the parties will receive a majority public panel if there is any ambiguity concerning whether a claim falls outside of the three exceptions. The lack of an objective standard for determining panel composition, therefore, makes the rule difficult to apply and often requires Dispute Resolution staff (''staff'') to interpret the parties' pleadings to determine the appropriate panel composition. Underscoring this concern, staff regularly receives inquiries from parties questioning whether their panel composition is proper under Rule 13402.

FINRA is proposing, therefore, 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.[9] 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 is also proposing 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.

FINRA believes the proposed amendments would establish an objective standard for determining panel composition and ensure that panel composition is determined by the types of parties involved, and not by the types of claims filed (other than claims for employment discrimination).

Employment Disputes Involving Only Members

FINRA is proposing to amend Rule 13402(a) to clarify that, in disputes involving only members, the parties will receive an all non-public panel. FINRA notes that the proposed amendment to Rule 13402(a) is consistent with the current rule and its intent, which is that disputes involving only members should receive an all non-public panel. FINRA believes that simplifying the rule, by amending the title as described above, will make the rule easier to apply for staff and easier to understand for users of the forum.

Amendments to Pleadings That Add an Associated Person

Occasionally, in a case that began with an all non-public arbitrator panel, a party will amend its pleadings in such a way that a majority public panel would be required. For example, this might occur when a party added a tort claim to prior claims that fit within the three exceptions to the majority public

[4] 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).

[5] 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).

[6] The proposed changes discussed in this rule filing will not apply to claims filed under the Customer Code.

[7] The proposal would not apply to disputes involving a claim of statutory employment discrimination. *See* Rule 13802.

[8] *See* Rule 13802(c) (panel composition rule for statutory employment discrimination claims).

[9] 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).

panel requirement under Rule 13402(a). Under the proposed amendments, this change in panel composition would occur solely in disputes involving only members in which an associated person is later added. Thus, FINRA is proposing to add a provision to Rule 13402(a) to address amended pleadings that add an associated person as a party.

The proposed rule change would mean that if a member (in a dispute involving only members) amends a pleading to add a party who is an associated person, the parties will receive a majority public panel. If lists of potential arbitrators have not been sent to parties, the Neutral List Selection System (NLSS) would generate three lists as outlined in Rule 13403(b)(2) of the Industry Code. Specifically, FINRA would send a public chairperson list, a public arbitrator list, and a non-public arbitrator list. If the panel consists of one arbitrator,[10] NLSS would generate a public chairperson list, and FINRA would send this list only to the parties.[11]

If the lists have been sent to parties but are not yet due, FINRA would send two new lists to the parties: a public chairperson list and a public arbitrator list as outlined in Rule 13403(b)(2).[12] The parties would keep the non-public chairperson list provided to them as described in Rule 13403(a), and would select the non-public arbitrator from this list. The arbitrator selected from the public chairperson list would be the chairperson of the panel. If the panel consists of one arbitrator, FINRA would send only a new public chairperson list to the parties.[13]

If the ranked lists are due, then the parties may not amend a pleading to add a new party until a panel has been selected and the panel grants a motion to add the party.[14] If the panel grants the motion to add an associated person, FINRA will retain the non-public chairperson from the panel, and remove the remaining non-public arbitrators.[15] The parties would select two public arbitrators from new lists that FINRA would send to them in the same manner as if the ranked lists are not yet due. The arbitrator selected from the public chairperson list would be the chairperson of the panel. If the panel consists of one arbitrator and the arbitrator grants a motion to add an associated person, the arbitrator would be replaced with a public chair-qualified arbitrator that the parties select from a new public chairperson list that NLSS would generate.[16]

FINRA believes that these procedures would be consistent with the intent of the proposal to require that a majority public panel be selected if a dispute involves associated persons, and would clarify that amending a pleading to add an associated person would require a change to the panel composition.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[17] 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 the public interest by minimizing the parties' ability to manipulate the panel composition rules by filing certain types of claims in industry cases. Moreover, FINRA believes that the proposed rule change will protect the public interest by simplifying the criteria for panel composition in industry disputes, establishing an objective standard for determining panel composition, and ensuring that panel composition is determined by the types of parties involved, and not by the types of claims filed.

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:

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–2009–011 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2009–011. 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

[10] In a dispute between members, if the panel consists of one arbitrator, the arbitrator will be selected from FINRA's non-public chairperson arbitrator roster. *See* Rule 13402(a).

[11] *See* Rule 13403(b)(1). FINRA has raised the amount in controversy that will be heard by a single chair-qualified arbitrator to $100,000. The rule became effective on March 30, 2009.*See* Securities Exchange Release No. 59340 (February 2, 2009), 74 FR 6335 (February 6, 2009) (File No. FINRA–2008–047); *see also* Regulatory Notice 09–13.

[12] Pursuant to Rule 13407(a), FINRA will send the list of non-public arbitrators to the new party, with employment history for the past 10 years and other background information for each arbitrator listed. The newly added party may rank and strike arbitrators in accordance with Rule 13404.

[13] *See supra* note 11.

[14] *See* Rule 13309(c) of the Industry Code.

[15] Pursuant to Rule 13407(b), the newly added party may not strike the non-public arbitrator but may challenge the arbitrator for cause in accordance with Rule 13410.

[16] *See supra* note 11.

[17] 15 U.S.C. 78o–3(b)(6).

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. 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 the File Number SR–FINRA–2009–011 and should be submitted on or before May 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–10172 Filed 5–1–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0354]

Agency Information Collection Activities; Revision of a Currently Approved Information Collection Request: COMPASS Portal Customer Satisfaction Assessment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The collection involves the assessment of Federal Motor Carrier Safety Administration's (FMCSA's) strategic decision to integrate its Information Technology (IT) with its business processes using portal technology to consolidate its systems and databases through the FMCSA COMPASS modernization initiative. The information to be collected will be used to assess the satisfaction of Federal, State, and industry customers with the FMCSA COMPASS Portal. On January 29, 2009, FMCSA published a **Federal Register** notice (at 74 FR 5207) allowing for a 60-day comment period on the revision of this ICR. No comments were received in response to the notice.

[18] 17 CFR 200.30–3(a)(12).

DATES: Please send your comments by June 3, 2009. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2008–0354. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Office of the Secretary, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Schlicht, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–4441; e-mail: *adam.schlicht@dot.gov*.

SUPPLEMENTARY INFORMATION:

Title: COMPASS Portal Customer Satisfaction Assessment.

OMB Control Number: 2126–0042.

Type of Request: Revision of a currently-approved information collection request.

Respondents: Federal, State, and Industry customers/users.

Estimated Number of Respondents: 100,422.

Estimated Time per Response: Five (5) minutes.

Expiration Date: 08/31/2009.

Frequency of Response: 4 times per year.

Estimated Total Annual Burden: 33,474 hours [(5 minutes to complete survey × 4 times per year = 20 minutes/60 minutes × 140,000 annual industry respondents × .70 (70%) response rate = 32,667) + (5 minutes to complete survey × 4 times per year = 20 minutes/60 minutes × 2,691 State government users × .90 (90%) response rate) = 807 burden hours].

Background: Title II, section 207, of the E-Government Act of 2002 (Pub. L. 107–347, 116 Stat. 2899, 2916; December 17, 2002) requires Government agencies to improve the methods by which government information, including information on the Internet, is organized, preserved, and made accessible to the public. To meet this goal, FMCSA plans to provide a survey on the FMCSA Portal, allowing all users to assess its functionality. This includes the capability for Federal, State, and Industry users to access the Agency's existing safety IT systems with a single set of credentials and have easy access to safety data about the companies that do business with FMCSA. The COMPASS program will also focus on improving the accuracy of data to help ensure information, such as carrier name and address, is valid and reliable.

FMCSA's legacy information systems are currently operational. However, having this many stand-alone systems has led to data quality concerns, a need for excessive IDs and passwords, and significant operational and maintenance costs. Integrating our information technologies with our business processes will, in turn, improve our operations considerably, particularly in terms of data quality, ease of use, and reduction of maintenance costs.

In early 2007, FMCSA's COMPASS program launched a series of releases of a new FMCSA Portal to its Federal, State and Industry customers. Over the coming years, more than 15 releases are planned. These releases will use portal technology to fuse and provide numerous services and functions via a single user interface and provide tailored services that seek to meet the needs of specific constituencies within our customer universe.

The FMCSA COMPASS Portal will entail considerable expenditure of Federal Government dollars over the years and will fundamentally impact the nature of the relationship between the Agency and its Federal, State, and Industry customers. Consequently, the Agency intends to conduct regular and ongoing assessments of customer satisfaction with COMPASS through Form MCSA–5845 entitled, ''FMCSA Portal Customer Satisfaction Assessment.'' The primary purposes of the assessment are to:

- Determine the extent to which the FMCSA Portal functionality continues to meet the needs of Agency customers;
- Identify and prioritize additional modifications; and
- Determine the extent that the FMCSA Portal has impacted FMCSA's relationships with its main customer groups.

The assessment will address:

- Overall customer satisfaction;
- Customer satisfaction against specific items;
- Performance of systems integrator against agreed objectives;
- Desired adjustments and modifications to systems;