encompassed by a class action will be referred to an arbitrator(s) pursuant to Exchange Rule 18.4 or Exchange Rule 18.10 or, at the election of a party, to the court with jurisdiction over the class action.

Notwithstanding the above, a party may proceed in arbitration if certification is denied to the class, if the class is decertified, if the individual is excluded from the class by the court, or if the individual elects not to participate in the class. Concomitantly, the provision prohibits members and persons associated with members from moving to compel arbitration, pursuant to a predispute arbitration agreement, against a customer who is a participant in a class unless or until the above list of criteria for proceeding in arbitration are met. Proposed paragraph (e) to Rule 18.35, "Requirements when Using Pre-Dispute Arbitration Agreements with Customers," will require members to include a statement setting forth the ineligibility of class actions in arbitration in any new predispute arbitration agreement with customers.

Rule 18.4, Simplified Arbitration

The Exchange proposes to amend paragraph (a) of Rule 18.4 to codify the existing practice of applying simplified arbitration procedures to claims not exceeding \$10,000 ("small claims"), without the demand or written request of the customer. This amendment also is consistent with the Uniform Code. Pursuant to paragraph 18.4(f), a customer continues to have the right to demand or consent to a hearing before the arbitrator. The Exchange proposes to delete as unnecessary language in paragraph (b) that requires that a Statement of Claim filed under the simplified procedures indicate when a hearing is not demanded. Paragraph 18.4(b) continues to specify that if a hearing is demanded, such demand must be set forth in the Statement of Claim.

Clarifying and non-substantive amendments are proposed to existing paragraphs (c) through (f). For example, obsolete language in Rule 18.4(c) relating to forum fees is proposed to be deleted and reference inserted to the schedule of fees contained in Rule 18.33. In addition, paragraph (c) is divided and subsequent paragraphs are redesignated accordingly.

The Exchange proposes to amend redesignated paragraph 18.4(d) to require that if a respondent raises a third-party claim, the respondent must serve the third-party with an executed Submission Agreement, a copy of Respondent's Answer containing the third-party claim and a copy of the

original claim filed by the Claimant. Currently, the Rule requires service of only the third-party claim and the original claim.

As adopted by SICA, the Exchange proposes to amend existing paragraph (g), renumbered (h), to provide a mechanism for discovery in simplified proceedings. For cases in which an oral hearing is requested, the parties are referred to the general provisions governing pre-hearing procedures, herein renumbered Rule 18.22. For cases that will be decided on the written submissions, new subparagraph (h)(iii) provides procedures for resolving disputes over the production of documents within shortened time periods. In simplified cases where no hearing is demanded, paragraph (h)(iii) will require that all requests for documents be served by the parties and filed with the Director of Arbitration within ten business days of notification of the appointment of an arbitrator. Any response or objection to a request will be required to be served on all parties and filed with the Director within five business days of receipt of the production request. Finally, paragraph (h)(iii) will provide that the selected arbitrator will resolve any document production issues on the papers submitted. Such abbreviated procedures are consistent with Exchange policy to expedite small claims.

Rule 18.10, Designation of the Number of Arbitrators

Consistent with the Uniform Code, the Exchange proposes to adopt new paragraph 18.10(a)(2)(v) in order to classify individuals registered under the Commodities Exchange Act or associated with the commodities industry as securities industry arbitrators. This provision parallels other exclusions in Rule 18.10 which preclude individuals with close ties to the securities industry from serving as public arbitrators.

Rule 18.12, Challenges

The Exchange proposes to amend Rule 18.12 to clarify that all parties to an arbitration are entitled to one peremptory challenge to an appointed arbitrator and to clarify the timing for exercising such challenge. As amended, Rule 18.12 will codify existing procedures that require a peremptory challenge to be raised within five days of notification of an arbitrator named under either the general selection procedures set forth in Rule 18.10 or the pre-hearing procedures of Rule 18.22 (formerly Rule 18.15(e)), whichever comes first. If a party has not objected to an arbitrator selected to handle a prehearing conference or discovery dispute, that party may not later raise a peremptory challenge to the same arbitrator when notified of the names of the entire panel. The above-mentioned revisions conform the rule to the Uniform Code.

Because the Rule governs both "for cause" and peremptory challenges, the title of Rule 18.12 is proposed to be changed from "Peremptory Challenges" to "Challenges" and the rule is divided into two paragraphs.

Rule 18.15, Initiation of Proceedings

The Exchange is proposing various minor editorial, non-substantive amendments to Rule 18.15. In the interest of clarity, paragraph 18.15(e), "General Provision Governing Prehearing Proceeding," is proposed to be amended and moved to Rule 18.22. The proposed amendments to Rule 18.22 are discussed below.

Rule 18.19, Failure to Appear

The Exchange proposes to amend Rule 18.19 to clarify the authority of the arbitrator(s) to proceed with and decide a case when a party fails to appear not only at the initial hearing, but also at any continuation thereof. Currently, the rule grants arbitrators the authority to proceed if "any of the parties, after due notice, fails to appear at a hearing, or any adjourned hearing session." Following the Uniform Code, the reference to any adjourned hearings is proposed to be replaced with "any continuation of a hearing."

Rule 18.20, Adjournments

Consistent with the Uniform Code, the Exchange proposes to amend Rule 18.20(b) to provide that an adjournment fee shall be deposited with a request for adjournment. Currently, the fee is required upon the arbitrators' granting of the request. In addition, as amended, Rule 18.20(b) will allow the Director of Arbitration to waive the adjournment fee in appropriate cases. If an adjournment is not granted by the arbitrators, the amended rule will provide that the deposited fee will be refunded. If the adjournment is granted, the arbitrators may direct a return of the adjournment fee.

Rule 18.22, General Provision Governing Pre-Hearing Proceeding

In the interest of clarity and conformity with the Uniform Code, the Exchange proposes to move paragraph 18.15(e), "General Provision Governing Prehearing Proceeding," to new Rule 18.22. Subparagraphs within the Rule will be renumbered accordingly. Only conforming, non-substantive, editorial