SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101993; File No. SR-FINRA-2024-022)

December 19, 2024

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend the Codes of Arbitration Procedure to Make Clarifying, Technical, and Procedural Changes to the Arbitrator List Selection Process

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 19, 2024, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code") (together, "Codes") to make changes to certain provisions relating to arbitrator list selection.

The proposed rule change would amend FINRA Rules 12403 (Cases with Three Arbitrators) and 13403 (Generating and Sending Lists to the Parties) to increase the opportunity for public arbitrators who are not qualified to serve as chairpersons[3] to be selected by a computer algorithm, known as the "list selection algorithm," for the list of arbitrators that is sent to the parties in certain customer and industry disputes that have a three-arbitrator panel.

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

2 17 CFR 240.19b-4.

3 See infra note 9 and accompanying text.

In addition, the proposed rule change would make changes to the Codes that are consistent with FINRA's focus on increasing the transparency of arbitrator list selection and with current practices that were developed to efficiently administer arbitrator list selection. Specifically, the proposed rule change would amend FINRA Rule 12402 (Cases with One Arbitrator), FINRA Rule 12403 (Cases with Three Arbitrators), FINRA Rule 13403 (Generating and Sending Lists to the Parties), FINRA Rules 12404 and 13407 (Additional Parties), FINRA Rule 13404 (Striking and Ranking Arbitrators), FINRA Rules 12407 and 13410 (Removal of Arbitrator by Director), and FINRA Rule 13804 (Temporary Injunctive Orders; Requests for Permanent Injunctive Relief). The proposed rule change also would make non-substantive, technical changes to FINRA Rules 13406 (Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List) and 13411 (Replacement of Arbitrators) to update cross-references in those rules.

The text of the proposed rule change is available on FINRA's website 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, 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

I. Overview of FINRA's Arbitrator List Selection Process

Decisions in the FINRA Dispute Resolution Services ("DRS") arbitration forum are made by independent arbitrators.[4] To ensure fairness to all parties during arbitrator list selection, FINRA uses a computer algorithm, known as the list selection algorithm, to generate lists of arbitrators on a random basis from its rosters of arbitrators for the selected hearing location.[5] DRS maintains three rosters of arbitrators: public arbitrators, non-public arbitrators, and arbitrators who are eligible to serve as chairperson of a panel.[6] In general, a public arbitrator is a person who is otherwise qualified to serve as an arbitrator and is not disqualified from service as a public arbitrator due to their current or past ties to the financial industry.[7] A non-public arbitrator is a person who is otherwise qualified to serve as an arbitrator and is disqualified from service as a public arbitrator due to their current or previous association with the financial industry.[8] An arbitrator is eligible to serve as a chairperson if they have completed FINRA's chairperson training and (1) have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least one arbitration administered by a self-regulatory organization ("SRO") in which hearings were held; or (2) have

4 As a neutral administrator of the arbitration forum, DRS does not participate in the decision-making process by arbitrators. DRS maintains a roster of over 8,300 arbitrators. See FINRA, Arbitration and Mediation, Dispute Resolution Statistics, https://www.finra.org/arbitration-mediation/dispute-resolution-statistics; FINRA, Arbitration and Mediation, Become an Arbitrator, https://www.finra.org/arbitration-mediation/become-arbitrator.

5 See FINRA Rules 12400(a) and 13400(a).

6 See FINRA Rules 12400(b) and 13400(b).

7 See FINRA Rules 12100(aa) and 13100(x).

8 See FINRA Rules 12100(t) and 13100(r).

served as an arbitrator through award on at least three arbitrations administered by an SRO in which hearings were held.[9]

The number and composition of the arbitrator lists that are generated using the list selection algorithm varies depending on the nature of the dispute and whether it will be heard by a panel of three arbitrators or by a single arbitrator. With respect to both customer disputes with three arbitrators and industry disputes involving associated persons with three arbitrators[10]—the two types of disputes affected by the proposed amendments to the procedures for generating lists of public arbitrators—DRS uses the list selection algorithm to generate three lists: (1) a list of 10 public arbitrators from the FINRA chairperson roster ("Chairperson List"); (2) a list of 15 arbitrators (in customer disputes) or 10 arbitrators (in industry disputes involving associated persons) from the FINRA public arbitrator roster ("Public List"); and (3) a list of 10 arbitrators from the FINRA non-public arbitrator roster ("Non-Public List").[11]

Once the lists of arbitrators are generated,[12] the Director[13] sends the lists to the parties.[14] The parties then select their arbitrators through a process that involves striking and ranking the

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9 See FINRA Rules 12400(c) and 13400(c).

10 The panel will consist of three arbitrators in both customer and industry disputes when (1) the amount of the claim is more than $50,000 but not more than $100,000, exclusive of interest and expenses, and the parties agree in writing to three arbitrators; or (2) the amount of the claim is more than $100,000, exclusive of interest and expenses, is unspecified, or the claim does not request money damages, unless the parties agree in writing to one arbitrator. See FINRA Rules 12401 and 13401.

11 See FINRA Rules 12403(a)(1) and 13403(b)(2).

12 The list selection algorithm will automatically exclude arbitrators from the lists based upon current conflicts of interest identified within the list selection algorithm. See FINRA Rules 12402(b)(2), 12403(a)(3), 13403(a)(4), and 13403(b)(4). In addition, DRS conducts a review for other conflicts not identified within the list selection algorithm. See FINRA Rules 12402(b)(3), 12403(a)(4), 13403(a)(5), and 13403(b)(5). If any arbitrators are removed due to such conflicts, the list selection algorithm is used to generate replacement arbitrators. See FINRA Rules 12402(b)(3), 12403(a)(4), 13403(a)(5), and 13403(b)(5).

13 The term "Director" means the Director of DRS. Unless the Code provides that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority. See FINRA Rules 12100 (m) and 13100(m).

14 See FINRA Rules 12403(b) and 13403(c).

arbitrators on the lists, which is described in more detail in Section III below in connection with the discussion of the proposed amendments to increase the transparency of the arbitrator selection process.[15]

II. Proposed Amendments to the Procedures for Generating Public Lists

Currently, under the Codes, when generating the three lists of arbitrators to send to the parties in both customer disputes with three-person panels and industry disputes involving associated persons with three-person panels, the list selection algorithm will first generate a Chairperson List from FINRA's roster of chair-qualified public arbitrators.[16] When the list selection algorithm selects the chair-qualified public arbitrators for the Chairperson List for an arbitration, those chair-qualified public arbitrators will not be eligible to be selected for a Public List for the arbitration and, therefore, will be automatically removed from the list selection algorithm before the Public List is generated for the arbitration.[17] However, the chair-qualified public arbitrators who are not selected by the list selection algorithm for the Chairperson List for an arbitration will be eligible to be selected for the Public List for the arbitration.[18] Thus, chair-qualified public arbitrators have two chances to be selected for lists for an arbitration: they may be selected for the Chairperson List, and if they are not selected for the Chairperson List, they may be selected for the Public List.[19]

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15 See infra Section A.1.III. ("Proposed Amendments to Increase the Transparency of the Arbitrator Selection Process"); see also FINRA Rules 12400(a), 12403(c)-(e), 13400(a), 13404, 13405, and 13406. FINRA notes that the proposed rule change would impact all members, including members that are funding portals or have elected to be treated as capital acquisition brokers ("CABs"), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

16 See FINRA Rules 12403(a)(2) and 13403(b)(3).

17 See FINRA Rules 12403(a)(2) and 13403(b)(3).

18 See FINRA Rules 12403(a)(2) and 13403(b)(3).

19 An individual arbitrator cannot be selected for both the Chairperson List and the Public List for the same case. See FINRA Rules 12403(a)(2) and 13403(b)(3).

Public arbitrators who are not chair-qualified do not have the same opportunity. Rather, public arbitrators who are not chair-qualified can only be selected for a Public List and, therefore, have only one chance to be selected for a list of arbitrators. As a result, public arbitrators who are not chair-qualified are less likely to be selected for a list than chair-qualified public arbitrators, even though the number of public arbitrators who are not chair-qualified greatly exceeds the number of chair-qualified public arbitrators.[20]

To address this imbalance and increase the opportunity for public arbitrators who are not chair-qualified to be selected for the Public List, the proposed rule change would amend FINRA Rules 12403(a)(3) and 13403(b)(4) to provide that, in preparing the Public List, the list selection algorithm will provide two chances for selection to public arbitrators who are not chair-qualified, and will continue to provide one chance for selection to chair-qualified public arbitrators.[21] The procedures for generating the Public List would not otherwise be modified under the proposed rule change.

FINRA believes it is appropriate to address this imbalance and increase the opportunity for public arbitrators who are not chair-qualified to be selected for Public Lists. By providing an additional opportunity to be selected for Public Lists, the proposed rule change may increase the likelihood for public arbitrators who are not chair-qualified to be selected by parties to serve as panelists, which could help FINRA retain these arbitrators on its roster. FINRA has observed

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20 See infra Section B.ii. (Economic Baseline).

21 See proposed FINRA Rules 12403(a)(3) and 13403(b)(4). The list selection algorithm would affect the proposed rule change by including the names of public arbitrators who are not chair qualified twice on the roster of available public arbitrators used to randomly generate a Public List. For more information on how the list selection algorithm currently generates a Public List, see https://www.finra.org/arbitration-mediation/about/arbitration-process/arbitrator-selection. Although the proposed rule change would give public arbitrators who are not chair-qualified two chances to be selected for a Public List, proposed FINRA Rules 12403(a)(3) and 13403(b)(4) would provide that an individual arbitrator cannot appear more than once on the Public List selected for the same case.

that parties appear to prefer chair-qualified public arbitrators who have experience in the DRS arbitration forum and a record of previous arbitration award outcomes. If arbitrators who are new to the roster or have less experience in the forum are never selected by parties to serve as panelists, they may lose interest in serving as arbitrators in the DRS arbitration forum. The proposed rule change could help incent new or less experienced public arbitrators to remain on FINRA's arbitrator roster by providing a higher likelihood of selection by the parties as a panelist than currently exists under the Codes.[22]

The proposed rule change also may help FINRA increase the roster of chair-qualified public arbitrators. By increasing the opportunity for public arbitrators who are not chair-qualified to be selected by the parties to serve as panelists, the proposed rule change would help these arbitrators to gain the experience they need to become chair-qualified. This, in turn, could help FINRA increase the number of local chairpersons across hearing locations.[23] Parties generally prefer chair-qualified public arbitrators who live near their hearing location and who are more likely to be familiar with local laws and customs. However, 78 percent of hearing locations lack a sufficient number of local chairpersons to generate enough arbitrators for Chairperson Lists, which means that the list selection algorithm must often generate lists that include chair-qualified public arbitrators from other hearing locations.[24] In over half of these hearing locations, the roster of local chair-qualified public arbitrators could be filled by non-chair-qualified public arbitrators if they became chair-qualified. By increasing the number of local chairpersons, the list selection algorithm would be able to generate Chairperson Lists that include more local chair-qualified public arbitrators to address parties' preferences.

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22 See infra Section B.iii. (Economic Impact).

23 See infra Section B.iii. (Economic Impact).

24 See infra Section B.iii. (Economic Impact).

III. Proposed Amendments to Increase the Transparency of the Arbitrator Selection Process

FINRA is also proposing to codify certain practices that DRS has developed to efficiently administer arbitrator list selection, establish new timeframes for objecting to requests for additional information from arbitrators, withdrawing such requests for additional information, and filing motions to remove arbitrators after disclosures of causal challenges, and align provisions of the Codes related to the expungement of customer dispute information. These proposed amendments are explained in detail below.

A. Shortening the Time for Sending Arbitrator Lists to Parties

FINRA Rules 12402(c)(1), 12403(b)(1), and 13403(c)(1) currently provide that the Director will send lists of arbitrators generated by the list selection algorithm to all parties at the same time, within approximately 30 days after the last answer is due, regardless of the parties' agreement to extend any answer due date. In practice, however, DRS sends lists of arbitrators to the parties well within the 30-day timeframe provided by the rules.

To align FINRA Rules 12402(c)(1), 12403(b)(1), and 13403(c)(1) with current practice, which, in turn, would increase transparency and efficiency in arbitrator list selection, FINRA is proposing to decrease the number of days within which the Director sends the lists to the parties from 30 days to 20 days. Specifically, under the proposed rule change, FINRA Rules 12402(c)(1), 12403(b)(1), and 13403(c)(1) would be amended to provide that the Director will send the lists generated by the list selection algorithm to all parties at the same time, within approximately 20 days after the last answer is due, regardless of the parties' agreement to extend any answer due date.

B. Providing Arbitrator Disclosure Reports to Parties

FINRA Rules 12402(c)(1), 12403(b)(1), 12404(a), 13403(c)(1), 13407(a), and 13804(b)(3)(A)(i) and (B)(i) currently provide that when the Director sends lists of arbitrators to the parties, the parties will also receive employment history for the past 10 years and other background information for each arbitrator listed. In practice, however, DRS requests from arbitrators their full employment history after the completion of their education, and it sends this employment history and other background information to the parties in a document that DRS refers to as a "disclosure report."

To align FINRA Rules 12402(c)(1), 12403(b)(1), 12404(a), 13403(c)(1), 13407(a), and 13804(b)(3)(A)(i) and (B)(i) with current practice and increase transparency, the proposed rule change would remove the language stating that the parties will be provided with each arbitrator's employment history only "for the past 10 years." These same rules would be amended to clarify that an arbitrator's employment history and other background information will be provided to the parties in a document called a "disclosure report."

C. Requesting Additional Information About Arbitrators

FINRA Rules 12405(a) and 13408(a) impose upon each arbitrator an obligation to make a reasonable effort to learn of, and disclose to DRS, any circumstances that might preclude the arbitrator from rendering an objective and impartial determination in a proceeding. This obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination is continuous, requiring an arbitrator who accepts appointment to an arbitration proceeding to disclose to DRS and the parties, at any stage of the proceeding, any such interests, relationships or circumstances that arise, or that the arbitrator recalls or discovers.[25]

[25] See FINRA Rules 12405(b) and 13408(b).

In addition to imposing these affirmative disclosure obligations on arbitrators, paragraph (c)(2) of FINRA Rules 12402 and 13403 and paragraph (b)(2) of FINRA Rule 12403 provide that if a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time.[26] Because these provisions appear in parts of the Codes that focus on the appointment of arbitrators, however, FINRA is concerned that they could be misinterpreted as only allowing parties to request additional information about arbitrators prior to panel appointment. In practice, DRS permits the parties to request additional information about an arbitrator at any point during the arbitration proceeding. If an opposing party does not object to the request for additional information, DRS will permit the request for additional information to be submitted to the arbitrator anonymously. If there is an objection, however, DRS will disclose to the arbitrator the identity of the party submitting the request and forward any requests and objections to the arbitrator who is the subject of the request.

The proposed rule change would align the Codes to DRS's current practice of allowing requests for additional information about an arbitrator at any stage of the proceeding. Specifically, the proposed rule change would amend FINRA Rules 12402, 12403, and 13403 to add new paragraphs (c)(2)(A), (b)(2)(A), and (c)(2)(A), respectively, to provide that a party may request additional information about an arbitrator "at any stage of the proceeding" by filing with the Director and serving all other parties with a written request.

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[26] FINRA is proposing to move this language to new paragraphs (c)(2)(D) of FINRA Rule 12402, (b)(2)(D) of FINRA Rule 12403, and (c)(2)(D) of FINRA Rule 13403, without any substantive changes. FINRA Rules 12402(c)(2), 12403(b)(2), and 13403(c)(2) also currently provide that when a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists. FINRA is proposing to move this language to new paragraphs (c)(2)(E) of FINRA Rule 12402, (b)(2)(E) of FINRA Rule 12403, and (c)(2)(E) of FINRA Rule 13403, without any substantive changes. These technical changes would result from the proposed rule changes discussed below, which would create new subparagraphs under these rules.

FINRA believes it is appropriate to permit parties to request additional information about arbitrators at any stage of the proceeding because such requests could uncover circumstances that might preclude an arbitrator from rendering an objective and impartial decision. Although, as explained above, arbitrators have a continuing duty to disclose potential conflicts,[27] allowing the parties to request additional information at any stage of the proceeding complements arbitrators' continuing duty to disclose, further ensures the integrity of final awards, and helps to minimize the number of requests for vacatur based on an arbitrator's failure to disclose. Additionally, because DRS currently allows parties as a matter of practice to make requests for additional information at any stage of the proceeding, the proposed rule change would align the Codes to increase transparency and ensure that all parties are aware of their ability to request additional information about arbitrators at any stage of the proceeding.

The proposed rule change also would align the Codes to DRS's current practice of preserving the anonymity of parties who request additional information about arbitrators, unless an opposing party objects to the request for additional information within the specified timeframe. Specifically, the proposed rule change would provide in new paragraphs (c)(2)(A), (b)(2)(A), and (c)(2)(A) of FINRA Rules 12402, 12403, and 13403, respectively, that a written request for additional information about an arbitrator may omit any information that would reveal the identity of the party making the request. The proposed rule change would further amend FINRA Rules 12402, 12403, and 13403 to add new paragraphs (c)(2)(C), (b)(2)(C), and (c)(2)(C), respectively, to provide that, if no opposing party objects to the request for additional information, the Director and the parties shall not disclose the identity of the requesting party to the arbitrator. FINRA believes it is appropriate to preserve the confidentiality of the requesting

[27] See FINRA Rules 12405(b) and 13408(b).

parties' identities to minimize any potential bias. However, when any opposing parties object to requests, FINRA believes it is then appropriate to disclose the requesting parties' identities to minimize the risk of any potential bias shifting to the opposing parties. Opposing parties have expressed concerns that an arbitrator or panel may erroneously attribute requests for additional information to opposing parties and make negative inferences against the opposing parties based on the request. Moreover, in cases involving only two parties, opposing parties may choose to file objections to requests that disclose their identities, which would result in the arbitrator or panel being able to identify the requesting party by process of elimination.

Finally, to increase efficiency in arbitrator list selection, the proposed rule change would establish new timeframes for an opposing party to object to a party's request for additional information, and for the Director to forward the request together with any objections to the arbitrator who is the subject of the request. In addition, the proposed rule change would make clear that the requesting party may withdraw their request for additional information prior to the Director forwarding the request and any objections to the arbitrator. Specifically, paragraphs (c)(2)(B), (b)(2)(B), and (c)(2)(B) of FINRA Rules 12402, 12403, and 13403, respectively, would be amended to provide that: (i) within ten days of receipt of the request for additional information, an opposing party may object to the request by filing objections with the Director and serving the objections on all other parties; and (ii) after five days have elapsed from the service of any objections and provided that the request for additional information has not been withdrawn, the Director will forward the request together with any objections to the arbitrator who is the subject of the request.

FINRA believes it is important for the proposed rules to establish timeframes for objecting to requests for additional information and for withdrawing requests for additional

information, so that the parties are aware of their ability to object to or to withdraw a request and the timeframes for doing so. Further, FINRA believes that the proposed ten days for an opposing party to object to a request for additional information, and the five days for a requesting party to withdraw a request for additional information following an objection, would help ensure that the arbitrator list selection process and the arbitration proceedings are efficient.

D. Allowing Parties to Strike Arbitrators from Lists for Any Reason

Once the parties receive the lists of arbitrators generated by the list selection algorithm, they have the opportunity to strike a certain number of arbitrators, as set forth in FINRA Rules 12402(d)(1), 12403(c)(1)(A), 12403(c)(2)(A), and 13404(a) and (b).[28] In describing the striking process, FINRA Rules 12402(d)(1), 12403(c)(2)(A), and 13404(a) and (b) provide that each separately represented party may strike arbitrators from lists "for any reason." Although Rule 12403(c)(1)(A) also describes the arbitrator striking process, unlike the other rules related to the striking process, it does not expressly provide that each separately represented party may strike arbitrators from the list "for any reason," even though there are no limitations on the reasons a party may strike an arbitrator. To make the provisions describing the striking process consistent, the proposed rule change would amend FINRA Rule 12403(c)(1)(A) to expressly provide that each separately represented party may strike any or all of the arbitrators from the Non-Public List for any reason.

[28] See FINRA Rule 12402(d)(1) (allowing each separately represented party in a customer dispute with one arbitrator to strike up to four of the arbitrators from the list); FINRA Rule 12403(c)(1)(A) (allowing each separately represented party in a customer dispute with three arbitrators to strike any or all of the arbitrators from a Non-Public List); FINRA Rule 12403(c)(2)(A) (allowing each separately represented party in a customer dispute with three arbitrators to strike up to four of the arbitrators from a Chairperson List and up to six of the arbitrators from a Public List); FINRA Rule 13404(a) (allowing each separately represented party in an industry dispute to strike up to four of the arbitrators from each list, except for lists generated, pursuant to FINRA Rule 13403(a)(2), in disputes between members with a panel of three non-public arbitrators); and FINRA Rule 13404(b) (allowing each separately represented party in a dispute between members with a panel of three non-public arbitrators to strike up to eight of the arbitrators from a Non-Public List and up to four of the arbitrators from a non-public Chairperson List).

E. Conducting List Selection Electronically

FINRA Rules 12402(d)(1), 12403(c)(1)(A) and (c)(2)(A), and 13404(a) and (b) currently provide that each separately represented party may strike arbitrators from the list or lists of arbitrators "by crossing through the names of the arbitrators." In practice, however, parties generally use the Party Portal, the web-based system that is accessible by arbitration and mediation parties and their representatives, to complete arbitrator list selection electronically.[29] To update the Codes and align them with the method by which parties generally select arbitrators, the proposed rule change would amend FINRA Rules 12402(d)(1), 12403(c)(1)(A) and (c)(2)(A), and 13404(a) and (b) to remove the phrase "by crossing through the names of the arbitrators."

FINRA is aware that FINRA Rule 12300(a)(2) permits pro se customers to opt out of using the Party Portal. As a result, these parties may receive hard copy lists of arbitrators that would require them to manually strike names. However, FINRA believes that, even as amended to remove the phrase "by crossing through the names of the arbitrators," FINRA Rules 12402(d)(1), 12403(c)(1)(A), and 12403(c)(2)(A) are broad enough to appropriately instruct pro se customers on how to strike arbitrators manually from hard copy lists.[30]

F. Extensions of Time to Complete Ranked Lists

FINRA Rules 12402(d)(3), 12403(c)(3), 12404(a), 13404(d), and 13407(a) currently provide that, after striking arbitrators and ranking the remaining arbitrators according to

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29 See FINRA Rules 12100(v) and 13100(t).

30 See proposed FINRA Rule 12402(d)(1) (providing that "[e]ach separately represented party may strike up to four of the arbitrators from the list for any reason"); proposed FINRA Rule 12403(c)(1)(A) (providing that "[e]ach separately represented party may strike any or all of the arbitrators from the non-public arbitrator list for any reason"); proposed FINRA Rule 12403(c)(2)(A) (providing that "[e]ach separately represented party may strike up to four of the arbitrators from the chairperson list and up to six of the arbitrators from the public arbitrator list for any reason").

preference, each separately represented party must complete and return their ranked lists to the Director (generally via the Party Portal)[31] either within 20 days or no more than 20 days after the date upon which the Director sent the lists to the parties.[32] If the Director does not receive a party's ranked list within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators. However, FINRA has observed that parties frequently file requests with the Director to extend the 20-day deadline only after it has elapsed. Though FINRA Rules 12207(c) and 13207(c) provide that the Director may extend or modify any deadline or time period set by the Code for good cause, in practice, the Director typically declines a party's request for an extension of time to complete the ranked list(s) when such request is filed after the 20-day deadline has elapsed, absent a showing of extraordinary circumstances.

In its cover letters to parties that accompany the lists of arbitrators, DRS currently advises parties of the due date for the ranked lists. In addition, the language in these cover letters provides that if the Director does not receive the party's ranked lists on or before the due date, the party will be deemed to have accepted all arbitrators on the lists.

FINRA is proposing to align FINRA Rules 12402(d)(3), 12403(c)(3), 12404(a), 13404(d), and 13407(a) with current practice, to expressly provide, that absent extraordinary circumstances, the Director will not grant a party's request for an extension to complete the ranked lists that is filed after the deadline has elapsed. FINRA believes it is appropriate for the

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31 If a party is a pro se customer who opted out of using the Party Portal, pursuant to FINRA Rule 12300(a), the party may return their ranked list to the Director by first-class mail, overnight mail service, overnight delivery service, hand delivery, email, or facsimile. See FINRA Rules 12402(d)(3) and 12403(c)(3).

32 FINRA Rules 12404(a) and 13407(a) provide that the parties must return their ranked lists "within 20 days" after the date upon which the Director sent the lists to the parties. FINRA Rules 12402(d)(3), 12403(c)(3) and 13404(d) provide that the parties must return their ranked lists "no more than 20 days" after the date upon which the Director sent the lists to the parties.

Director to require a showing of extraordinary circumstances before granting parties' requests to extend the time to complete ranked list(s) when such requests are filed after the deadline has elapsed. FINRA is concerned that allowing the Director to grant parties' requests to extend the deadline for completing arbitrator list selection only by a showing of good cause, especially when such requests are filed after the deadline has elapsed, could lead to unnecessary delays in the appointment of arbitration panels and arbitration proceedings.

By requiring a showing of extraordinary circumstances, the proposed rule change would help ensure that the arbitrator list selection process and proceedings are efficient. FINRA believes it is appropriate to align the Codes with this practice, so that parties may be made aware of the deadline and encouraged to complete and return their ranked lists to the Director within the 20-day timeframe, or so that parties may be encouraged to file requests with the Director for extensions of the deadline before it has elapsed.

G. Allowing Parties to Agree to Remove an Arbitrator

DRS makes clear in its training materials for arbitrators that, pursuant to the requirements of the ABA's Code of Ethics for Arbitrators in Commercial Disputes, an arbitrator must withdraw from a panel if all of the parties request that the arbitrator do so.[33] This requirement is also supported by Notice to Members 01-13, which announced approval of amendments to the Director's authority to remove arbitrators for cause and described how arbitrators could be removed when "all the parties agree that the arbitrator should be removed."[34] To help ensure

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33 See FINRA, Basic Arbitrator Training, https://www.finra.org/arbitration-mediation/rules-case-resources/arbitrator-training#basic; ABA Code of Ethics for Arbitrators in Commercial Disputes, Canon II(G) (requiring that "[i]f an arbitrator is requested by all parties to withdraw, the arbitrator must do so."), https://www.adr.org/sites/default/files/document_repository/Commercial_Code_of_Ethics_for_Arbitrators_2010_10_14.pdf.

34 See Notice to Members 01-13 (March 2001), https://www.finra.org/rules-guidance/notices/01-13; see also Securities Exchange Act Release No. 43291 (September 14, 2000), 65 FR 57413 (September 22, 2000) (Notice of Filing of File No. SR-NASD-00-34).

that parties are aware of the ability to remove an arbitrator upon party agreement, the proposed rule change would codify the current guidance by amending FINRA Rules 12407 and 13410 to add new paragraph (d)(1) to provide that, at any stage of the arbitration proceeding, the Director may remove an arbitrator if all of the named parties agree in writing to the arbitrator's removal.[35]

The proposed rule change would also add new paragraph (d)(2) to FINRA Rules 12407 and 13410 that would provide that the parties may not agree to remove an arbitrator who is considering a request to expunge customer dispute information, except that a party shall be permitted to challenge any arbitrator selected for cause pursuant to FINRA Rule 12407(a)(1) or (b) or FINRA Rule 13410(a)(1) or (b).

FINRA rules specify a narrow set of circumstances in which expungement of customer dispute information from the Central Registration Depository (CRD®) is appropriate.[36] In addition, FINRA recently amended its rules to make a number of significant enhancements to address concerns with the expungement process and to provide additional safeguards for ensuring that the information in CRD is accurate and complete.[37] FINRA believes that the proposed rule change is consistent with these changes related to enhancing the expungement process. For example, proposed paragraph (d)(2) of FINRA Rule 12407 would align with FINRA Rule 12800(d) by prohibiting the parties from agreeing to remove an arbitrator if there is a request to expunge customer dispute information during a simplified investment-related,

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35 Requests to remove an arbitrator may not be granted when there are extraordinary circumstances which make removal inappropriate (e.g., requests based on discriminatory grounds).

36 See FINRA Rules 12805(c)(8) and 13805(c)(9); see also FINRA Rule 2080(b)(1).

37 See Securities Exchange Act Release No. 95455 (August 9, 2022), 87 FR 50170 (August 15, 2022) (Notice of Filing of File No. SR-FINRA-2022-024); Securities Exchange Act Release No. 97294 (April 12, 2023), 88 FR 24282 (April 19, 2023) (Order Approving File No. SR-FINRA-2022-024); see also Regulatory Notice 23-12 (August 2023).

customer-initiated arbitration ("simplified arbitration") under FINRA Rule 12800.[38] Accordingly, as required by FINRA Rule 12800(d), the arbitrator who has considered the merits of the customer dispute in the simplified arbitration would also decide the expungement request. As noted above, however, the proposed rule change would permit a party to challenge any arbitrator selected for cause pursuant to FINRA Rule 12407(a)(1) or (b).

In addition, proposed paragraph (d)(2) of FINRA Rule 13410 would align with FINRA Rule 13806, which limits parties' ability to have input into the arbitrators who decide straight-in requests.[39] Specifically, FINRA Rule 13806 provides that the list selection algorithm will select randomly the three public arbitrators from a roster of experienced public arbitrators with enhanced expungement training to decide a straight-in request. The parties are not permitted to strike any arbitrators selected by the list selection algorithm or stipulate to their removal. In addition, the parties are not permitted to agree to fewer than three arbitrators or stipulate to the use of pre-selected arbitrators. The parties are permitted, however, to challenge an arbitrator selected for cause pursuant to FINRA Rule 13410(a)(1) or (b).

FINRA believes the proposed rule change would help ensure that the expungement process operates efficiently and as intended by aligning FINRA Rules to make clear that parties may not agree to remove an arbitrator who is considering a request to expunge customer dispute information. However, a party could challenge an arbitrator selected for cause.

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38 FINRA Rule 12800(d)(1)(B)(ii) provides that, if an associated person requests expungement during a simplified arbitration, the arbitrator from the simplified arbitration must consider and decide the expungement request regardless of how the simplified arbitration closes.

39 A "straight-in request" refers to arbitration proceedings in which an associated person requests expungement of customer dispute information separate from a customer arbitration. Straight-in requests must be filed against the member firm at which the person was associated at the time the customer dispute arose. See FINRA Rule 13805(a)(1). These requests are less likely to be opposed or adversarial in nature because they generally involve two parties – associated persons and member firms – whose interests may be aligned. Like the associated person, the member firm may also have an interest in removing information from the associated person's CRD record.

H. Prohibiting Disclosure of Party-Initiated Challenges to Remove Arbitrators

FINRA Rules 12407 and 13410 permit the parties to challenge arbitrators for cause. If the challenge occurs after the Director sends the lists(s) generated by the list selection algorithm to the parties, but before the first hearing session begins, the Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration.[40] If the challenge occurs after the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed by an arbitrator that was not previously known by the parties.[41]

In two separate letters—one that accompanies the lists of arbitrators and another that advises the parties of the panel composition—DRS currently advises parties during arbitrator list selection that they may not inform an arbitrator or panel of an opposing party's request to remove an arbitrator for cause. The language in both letters reads, "Parties are advised that they may not inform the panel of an opposing party's causal challenge."

The proposed rule change would align FINRA Rules 12407 and 13410 with the guidance provided by DRS, by adding a new paragraph (e)(1) to each rule, to expressly provide that a party may not inform the panel or arbitrator of another party's request to remove an arbitrator for cause.

The proposed rule change also would establish a remedy if a party discloses to the arbitrator or panel an opposing party's request to remove an arbitrator for cause. Specifically, the proposed rule change would amend FINRA Rules 12407 and 13410 to add a new paragraph

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40 See FINRA Rules 12407(a)(1) and 13410(a)(1).

41 See FINRA Rules 12407(b) and 13410(b).

(e)(2), which would give the party that requested removal of an arbitrator the option to file a written motion with the Director for removal of the arbitrator within five days of being made aware of the disclosure. The requesting party may be made aware of the disclosure in several different ways, including in a pleading or other document filed with the Director, or during a prehearing conference or hearing. If the requesting party does not make a motion for removal of the arbitrator within five days of being made aware of the disclosure, then the requesting party would forfeit the opportunity to request removal of the arbitrator because of the disclosure.[42] Finally, if the party that made the request to remove the arbitrator timely files a motion for removal of the arbitrator based on the disclosure, the proposed rule change would provide that, absent extraordinary circumstances, the Director shall grant the motion.[43]

Disclosure of a party's request to remove an arbitrator could prejudice the arbitrator or create the appearance of bias against the requesting party. FINRA recognizes the importance to the fairness and credibility of the DRS arbitration forum of having processes that are—and that are perceived to be—operated in a fair and neutral manner. As a result, FINRA believes it is appropriate to prohibit a party from disclosing an opposing party's request to remove an arbitrator. Although DRS currently advises the parties by letter that they may not inform the panel of an opposing party's causal challenge, FINRA believes that aligning the Codes with DRS's guidance would more effectively curb the disclosure of a party's request to remove an arbitrator because parties will be incented to comply with the Codes.

Furthermore, FINRA believes that, in the event a party improperly discloses an opposing party's causal challenge, it is appropriate to require that the requesting party either make a

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42 See proposed FINRA Rules 12407(e)(2) and 13410(e)(2).

43 See proposed FINRA Rules 12407(e)(2) and 13410(e)(2).

motion for removal of the arbitrator within five days of being made aware of the disclosure or forfeit the opportunity to request removal of the arbitrator. By requiring that any motion to remove an arbitrator be made within five days, the proposed rule change would strike the right balance between providing an opportunity for any aggrieved party to seek a remedy while, at the same time, allowing for the efficient processing of the proceeding.

I. Updating Cross-References to the Non-Public Arbitrator Definition in the Industry Code

FINRA Rules 13406(c) and 13411(d) cross-reference to FINRA Rule 13100(r), which provides the definition of "non-public arbitrator." Prior to 2017, paragraphs (r)(1), (r)(2), (r)(3), and (r)(4) of FINRA Rule 13100 listed the specific criteria for inclusion on FINRA's non-public arbitrator roster. However, in 2017, FINRA amended the non-public arbitrator definition to eliminate paragraphs (r)(1) through (r)(4).[44] As a result of this amendment, FINRA Rule 13100(r) currently defines a "non-public arbitrator" as a person who is otherwise qualified to serve as an arbitrator, and is disqualified from service as a public arbitrator under FINRA Rule 13100(x).[45] FINRA Rule 13100(x), in turn, lists the criteria for exclusion from FINRA's public arbitrator roster for a person who is otherwise qualified to serve as an arbitrator.[46] The proposed rule change would update FINRA Rules 13406(c) and 13411(d) with the correct cross-references to FINRA Rule 13100(x)(2) through (11) to provide the necessary clarification in light of the amended definition of a "non-public arbitrator."

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44 See Securities Exchange Act Release No. 81572 (September 11, 2017), 82 FR 43436 (September 15, 2017) (Order Approving File No. SR-FINRA-2017-025).

45 See FINRA Rule 13100(r).

46 See Securities Exchange Act Release No. 74383 (February 26, 2015), 80 FR 11695 (March 4, 2015) (Order Approving File No. SR-FINRA-2014-028).

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[47] 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.

FINRA believes that the proposed rule change will protect investors and the public interest by enhancing arbitrator list selection in the DRS arbitration forum. By increasing the opportunity for public arbitrators who are not chair-qualified to be selected for Public Lists, the proposed rule change will increase the likelihood that these arbitrators, who are often new to the arbitrator roster or less experienced arbitrators, may be selected to serve as panelists. As a result, the proposed rule change will help DRS retain new or less experienced arbitrators on its arbitrator roster and expand the number of local public arbitrators who are chair-qualified to address shortages in local hearing locations.

The proposed rule change also will protect investors and the public interest by codifying certain practices that DRS has developed to efficiently administer arbitrator list selection, establishing new timeframes for objecting to requests for additional information from arbitrators, withdrawing such requests for additional information, and filing motions to remove arbitrators after disclosures of causal challenges, and aligning provisions of the Codes related to the expungement of customer dispute information. Together, these proposed changes will increase the transparency and efficiency of the arbitration process for forum users.

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47 15 U.S.C. 78o-3(b)(6).

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.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives. FINRA does not expect that the proposed rule change would affect the advantages and costs of the DRS arbitration forum relative to other arbitration fora.

i. Regulatory Need

FINRA is concerned that non-chair-qualified public arbitrators have disproportionately fewer opportunities than chair-qualified public arbitrators to be selected for arbitrator lists. The proposed rule change is anticipated to address this imbalance by increasing the number of opportunities for non-chair-qualified public arbitrators to be selected for Public Lists. Also, FINRA is concerned that some parties are not familiar with the current practices and published guidance for arbitrator list selection. The proposed rule change would increase the transparency and efficiency of the arbitrator list selection process by codifying certain practices that DRS has developed to efficiently administer arbitrator list selection, establishing new timeframes for objecting to requests for additional information from arbitrators, withdrawing such requests for additional information, and filing motions to remove arbitrators after disclosures of causal challenges, and aligning provisions of the Codes related to the expungement of customer dispute information.

ii. Economic Baseline

In general, the economic baseline for the proposed rule change consists of the current provisions under the Codes, current practices, and published guidance that address arbitrator list selection. Relevant features of the economic baseline are described below. The proposed rule change is expected to affect the parties to cases in the DRS arbitration forum and the arbitrators on the FINRA public arbitrator roster.

As of January 2024, there were 4,072 arbitrators on the FINRA public arbitrator roster. The public arbitrator roster consists of 1,104 public arbitrators who are chair-qualified (27 percent = (1,104/4,072)) and 2,968 public arbitrators who are non-chair-qualified (73 percent = (2,968/4,072)).[48]

Chair-qualified public arbitrators appeared relatively more frequently on Chairperson Lists and Public Lists combined. Between January 2018 and December 2023 ("sample period"), 17,544 arbitrations were filed and closed. Chairperson Lists and Public Lists were generated in 9,598 of the 17,544 arbitrations that involved customer disputes with three arbitrators or industry disputes involving associated persons with three arbitrators. Chair-qualified public arbitrators appeared 143,381 times (99,773 appearances on Chairperson Lists and 43,608 appearances on Public Lists) and non-chair-qualified public arbitrators appeared 92,356 times on Public Lists only. Thus, with their additional opportunity to appear on Public Lists, chair-qualified public arbitrators made 61 percent (=143,381/(143,381+92,356)) of appearances but make up just 27 percent of all public arbitrators.[49]

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[48] Among the 1,104 public arbitrators who are chair-qualified, 187 public arbitrators are chair-qualified but currently unwilling to serve as chairpersons. Similar to public arbitrators who are not chair-qualified, chair-qualified public arbitrators who are unwilling to serve as chairperson would have only one chance to be selected for Public Lists.

[49] Due to data limitations, the number of chair-qualified public arbitrators that we identify as appearing on Public Lists would include public arbitrators who were previously qualified and willing to serve as

Relative to non-chair-qualified public arbitrators, a higher percentage of chair-qualified public arbitrators are selected by parties from Public Lists.[50] Chair-qualified public arbitrators were selected by parties in 16 percent of the times they made appearances on Public Lists (6,860 of 43,608 appearances) and non-chair-qualified public arbitrators were selected by parties in 10 percent of the times they made appearances on Public Lists (9,411 of 92,356 appearances). Selection by parties may encourage arbitrators to remain on the FINRA public arbitrator roster. For example, of all the non-chair-qualified public arbitrators who left the roster during the sample period, the median time in the forum for those who were never appointed was five years while the median time for those who were appointed at least once was 10 years.

Using appearances during the sample period as an estimate, the proposed rule change may increase the percentage of non-chair-qualified public arbitrators who appear on affected Public Lists from 68 percent to 81 percent.[51] On a Public List with 15 arbitrators, this translates to two additional appearances by non-chair-qualified public arbitrators; and on a Public List with 10 arbitrators, this translates to one additional appearance by non-chair-qualified public arbitrators.

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chairpersons but subsequently ceased being qualified or willing to serve as chairpersons when the Public Lists were generated. These arbitrators would have only one chance to be selected for Public Lists. See supra note 48. The 61 percent of appearances made by chair-qualified public arbitrators, therefore, overstates the actual percentage and represents an upper bound for the estimate.

50 See, e.g., supra Section II. (Proposed Amendments to the Procedures for Generating Public Lists) (discussing FINRA's observations as to why parties may prefer chair-qualified public arbitrators).

51 To calculate the percentage increase in the appearances by non-chair-qualified public arbitrators, FINRA assumes that the number of appearances is proportional to the pools of public arbitrators available to appear on a Public List. FINRA calculates the 68 percent as the number of appearances by non-chair-qualified public arbitrators divided by the total number of appearances of non-chair-qualified and chair-qualified public arbitrators (=92,356/(92,356+43,608)). FINRA estimates the 81 percent by doubling the number of appearances by non-chair-qualified public arbitrators (from 92,356 to 184,712) and recalculating (81 percent = 184,712/(184,712+43,608)).

The economic baseline for the proposed rule change also consists of the current practices and published guidance that address arbitrator selection. Relative to other parties, parties who are less familiar with current practices or published guidance may have greater difficulty understanding their options when selecting arbitrators. As a result, arbitrator panels may reflect the preferences of these parties less closely than would occur otherwise.

iii. Economic Impact

FINRA anticipates that, over time, the proposed rule change would increase the likelihood for non-chair-qualified public arbitrators to be selected by parties to serve as panelists. The benefits to arbitrators from selection include the experience, networking opportunities, and supplemental income. The benefits also include an increased likelihood of being selected in future arbitrations if, over time, parties become confident in the quality of arbitrators' decision-making or are better able to predict how arbitrators may react to a specific fact pattern. Future selections may incent non-chair-qualified public arbitrators to take necessary steps to remain on FINRA's roster of arbitrators. For some non-chair-qualified public arbitrators, the benefits from the additional selections may include obtaining the experience necessary to become chair-qualified.[52]

A larger pool of chair-qualified public arbitrators also may increase the availability of chair-qualified public arbitrators in the same general geographic area as parties (and who may be familiar with local laws and practices), help facilitate scheduling, and reduce arbitrator travel expenses incurred by the DRS arbitration forum. Currently, 78 percent of the 69 hearing locations have fewer than the requisite number of local chair-qualified public arbitrators to complete Chairperson Lists. In over half of these hearing locations, the roster of local chair-

[52] See supra note 9 and accompanying text.

qualified public arbitrators could be filled by non-chair-qualified public arbitrators if they became chair-qualified.

In general, an increase in the selection of non-chair-qualified public arbitrators would tend to reduce the average level of experience of arbitration panels. This could lessen the ability of some parties to anticipate awards. With a shorter award history, some parties may be less able to predict how an arbitrator might react to a specific fact pattern. Parties with preferences for more experienced public arbitrators may feel constrained by having fewer chair-qualified public arbitrators from which to choose. In addition, chair-qualified public arbitrators may not experience the same level of benefits over time from remaining active in the forum as the likelihood of their selection from Public Lists decreases.

The magnitude of the economic impact, including the eventual impact on the combined forum experience of arbitrators who are selected for panels, is dependent on the preferences of parties for chair-qualified public arbitrators. For example, although fewer chair-qualified public arbitrators would appear on Public Lists, stronger preferences among parties for chair-qualified public arbitrators and their continued selection from Public Lists would result in the proposed rule change having little impact relative to the baseline. As noted above, parties with preferences for more experienced public arbitrators may feel constrained by having fewer chair-qualified public arbitrators from which to choose. Parties' selection of arbitrators, however, is dependent on multiple factors, including the lists that parties receive and their preferences for certain arbitrator characteristics. For this reason, FINRA does not believe that the proposed change to the Public List generation process would materially affect their decision to file a claim in the DRS arbitration forum (and not, for example, directly settling the dispute if the situation allows) or the number of claims filed in the forum.

The proposed rule change would establish new timeframes for objecting to requests for additional information from arbitrators, withdrawing such requests for additional information, and filing motions to remove arbitrators after disclosures of causal challenges. The new timeframes would help the efficiency of the arbitration proceedings by ensuring that issues relating to arbitrator selection do not delay or disrupt the proceedings. As discussed above, the timeframes are consistent with those relating to similar motions and should therefore not impose an undue burden.

The proposed rule change would align FINRA Rules to current guidance providing that at any stage of the arbitration proceeding, the Director may remove an arbitrator if all of the named parties agree in writing to the arbitrator's removal.[53] The proposed rule change would also add that parties may not agree to remove an arbitrator who is considering a request to expunge customer dispute information.[54] The proposed rule change may help further ensure that arbitrators issue awards containing expungement relief only when appropriate and that the customer dispute information in CRD reflects the conduct of associated persons.[55] The inability to agree to remove an arbitrator may result in some associated persons choosing to forego requesting expungement in the DRS arbitration forum, though requesting expungement in the DRS arbitration forum may continue to be the preferred option. Associated persons who decide not to request expungement in the DRS arbitration forum may incur additional costs or delays in

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53 See proposed FINRA Rules 12407(d)(1) and 13410(d)(1).

54 See proposed FINRA Rules 12407(d)(2) and 13410(d)(2).

55 The proposed rule change would primarily affect expungement requests in non-simplified customer arbitrations. See supra notes 38 and 39 and accompanying text (discussing existing requirements under the Codes for simplified arbitrations and straight-in requests). There were 2,195 non-simplified customer arbitrations filed and closed between January 2018 and December 2023 where parties requested expungement. Information is not available describing party agreements to remove arbitrators where parties requested expungement.

requesting expungement of the customer dispute information other than through the DRS arbitration forum. Associated persons who are delayed in requesting expungement may experience a loss of business and professional opportunities.

Finally, the proposed rule change would codify current practices and DRS guidance relating to arbitrator selection. The codification may increase the efficient administration of the arbitrator selection process if it results in an increase in the transparency of the process and proves to be informative for parties who are unfamiliar with current practices or unaware of the DRS guidance. These parties may be more likely to resolve the dispute by filing a claim in the DRS arbitration forum.

As best FINRA can determine, in the vast majority of sample cases, few cases would have been affected by the proposed rule change to align the Codes with current practices.[56] For example, in the vast majority of sample cases, data suggests that the forum sends lists of arbitrators to the parties within 20 days of when the last answer is due. FINRA can also identify 63 requests for additional information about a listed arbitrator in 38 cases (less than one percent of the 17,544 sample cases) and 54 requests for additional information about an appointed arbitrator in 45 cases. FINRA can also identify nine challenges to remove a listed arbitrator in nine cases, and 165 challenges to remove an appointed arbitrator in 132 cases (one percent). Information describing the basis for challenges to remove a listed or appointed arbitrator (e.g., due to the disclosure of a causal challenge) is not available.[57]

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[56] Other information describing the potential impact of the proposed amendments that address arbitrator selection under the baseline is not available. This information includes requests for additional time to complete ranked lists and grants or denials of these requests, objections to requests for additional information and withdrawals of these requests, and disclosures of challenges to remove arbitrators.

[57] This estimate does not account for any potential changes in the behaviors of associated persons with respect to requesting expungement during a customer case in response to recently amended rules. See supra note 37 and accompanying text.

While it is not known how many parties are unfamiliar with current practices or DRS guidance, FINRA believes that the small number of instances likely reflects informed decisions by most parties, and so the proposed rule change is therefore not likely to cause a large increase in the number of these instances.

iv. Alternatives Considered

FINRA developed the proposed amendments over a multi-year process during which FINRA considered and modified proposals based on feedback from forum users, including investors, securities industry professionals, and FINRA arbitrators. In evaluating proposals, FINRA considered numerous factors including efficiency, cost, fairness and transparency, and certain tradeoffs among these factors.

The proposed amendments that relate to the generation of Public Lists strike an appropriate balance between leveling the opportunities for selection and minimizing the disruption to the selection process and its associated costs. As an alternative, FINRA considered amending the Codes to provide that, in preparing the Public List, the list selection algorithm would generate a list that includes a fixed number of non-chair-qualified public arbitrators. This would ensure that non-chair-qualified public arbitrators have a designated opportunity to appear on the Public List for selection. However, depending on list size, there is an insufficient number in approximately one-quarter to two-fifths of hearing locations of non-chair-qualified public arbitrators to fill Public Lists. Thus, for selected hearing locations with few arbitrators, the alternative may require generating Public Lists that include non-chair-qualified public arbitrators who live outside of the local hearing location to fill Public Lists. FINRA believes that the proposed rule change would increase the opportunity for non-chair-qualified public arbitrators to

be selected for the Public List, and will monitor the impact of the proposed rule change if approved by the Commission and continue to consider if additional changes are warranted.

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 45 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 or disapprove 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 email to rule-comments@sec.gov. Please include file number SR-FINRA-2024-022 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-2024-022. This file number should be included on the subject line if email 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 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-FINRA-2024-022 and should be submitted on or before [INSERT DATE 21 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

J. Matthew DeLesDernier,

Deputy Secretary.

[58] 17 CFR 200.30-3(a)(12).