SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103753; File No. SR-FINRA-2024-022]

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

August 20, 2025.

I. Introduction

On December 18, 2024, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change 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 the arbitrator selection process. Specifically, the proposed rule change would amend the Codes to increase the odds that public arbitrators who are not eligible to serve as chairpersons would appear on the list of public arbitrator candidates in certain disputes that have a three-arbitrator panel. In addition, the proposed rule changes would, among other things: codify certain current practices to increase transparency; establish new timeframes for objecting to requests for additional information from arbitrators, withdrawing such requests for additional information,

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

2 17 CFR 240.19b-4.

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.[3]

The proposed rule change was published for comment in the Federal Register on December 30, 2024.[4] The public comment period closed on January 21, 2025. The Commission received comment letters related to this filing.[5] On January 27, 2025, FINRA consented to extend until March 28, 2025, the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] On March 10, 2025, the Commission published an order instituting proceedings ("OIP") to determine whether to approve or disapprove the proposed rule change.[7] On March 11, 2025, FINRA responded to the comment letters received in response to the Notice.[8] The OIP public comment period closed on April 4, 2025, and the Commission received an additional comment letter. On June 11, 2025, FINRA

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3 See Exchange Act Release No. 101993 (Dec. 19, 2024), 89 FR 106635, 106637 (Dec. 30, 2024) (File No. SR-FINRA-2024-022) ("Notice").

4 See Notice.

5 The comment letters are available at https://www.sec.gov/comments/sr-finra-2024-022/srfinra2024022.htm.

6 See letter from Bria Adams, Assistant General Counsel, FINRA (dated Jan. 27, 2025), https://www.finra.org/sites/default/files/2025-01/FINRA-2024-022-Extension-3-28-25.pdf.

7 Exchange Act Release No. 102559 (Mar. 10, 2025), 90 FR 12196 (Mar. 14, 2025) (File No. SR-FINRA-2024-022).

8 See letter from Bria Adams, Assistant General Counsel, FINRA (dated Mar. 11, 2025), https://www.sec.gov/comments/sr-finra-2024-022/srfinra2024022-582475-1676182.pdf ("FINRA Response").

consented to extend until August 27, 2025, the time period in which the Commission must approve or disapprove the proposed rule change.[9] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

1. FINRA's Arbitration Forum

FINRA's Dispute Resolution Services ("DRS") provides an arbitration forum to resolve disputes between customers, member firms, and associated persons of member firms arising in connection with the business activities of a member firm or its associated persons, except disputes involving the insurance business activities of a member firm that is also an insurance company.[10] FINRA maintains a roster for each of the three types of arbitrators that may be appointed to an arbitration panel to hear a claim: public, non-public, and chairperson arbitrators.[11] 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.[12] 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 past ties to the financial industry.[13] A public arbitrator is eligible to serve as a "chairperson" if he or she has completed FINRA's chairperson training and: (1) has a law degree, is a member of a bar of at least one jurisdiction, and has served as an arbitrator through award on at least one arbitration administered by a self-regulatory organization ("SRO") in which hearings were held;

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9 See letter from Bria Adams, Assistant General Counsel, FINRA (dated Jun. 11, 2025), https://www.finra.org/sites/default/files/2025-06/2024-022x2.pdf.

10 See FINRA Rules 12101, 12200, 12201, 13101, 13200, 13201, 13202.

11 See FINRA Rules 12400(b), 13400(b).

12 See FINRA Rules 12100(aa), 13100(x).

13 See FINRA Rules 12100(t), 13100(r).

or (2) has served as an arbitrator through award on at least three arbitrations administered by a SRO in which hearings were held.[14] For purposes of this Order, a "chair-qualified public arbitrator" is a public arbitrator who is eligible to serve as a chairperson, and a "non-chair-qualified public arbitrator" is a public arbitrator who is not eligible to serve as a chairperson.

2. The Arbitrator-Selection Process

The proposed rule change addresses rules in the Codes that govern the arbitrator-selection process in certain cases with three arbitrators. As relevant here, a three-arbitrator panel decides claims that are greater than $100,000 (exclusive of interest and expenses), are unspecified, or do not request money damages (unless the parties agree in writing to one arbitrator).[15] For claims greater than $50,000 but not more than $100,000, exclusive of interest and expenses, the panel will consist of one arbitrator unless the parties agree in writing to three.[16]

In these cases, the arbitrator-selection process begins with a computerized list-selection algorithm (the "list-selection algorithm"), which generates three pools of available arbitrators from DRS's rosters for the selected hearing location: one for chair-qualified public arbitrators, one for public arbitrators (both chair-qualified and non-chair-qualified), and one for non-public arbitrators.[17] From these pools, the list-selection algorithm randomly generates three lists of arbitrators for the parties.[18] For a customer claim, the list-selection algorithm generates one list

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14 See FINRA Rules 12400(c), 13400(c). In customer disputes, the chairperson must be a public arbitrator. See FINRA Rule 12400(c).

15 See FINRA Rules 12401(c), 13401(c).

16 See FINRA Rules 12401(b), 13401(b).

17 See FINRA, How Parties Select Arbitrators, https://www.finra.org/arbitration-mediation/about/arbitration-process/arbitrator-selection. When generating these "pools," the list-selection algorithm screens for both geography and conflicts of interest, excluding those who are not available to serve at the selected hearing location and those with certain known conflicts of interest with a party. Id.

18 See FINRA Rules 12403(a) (Generating Lists in Customer Cases with Three Arbitrators), 13403(b) (Lists Generated in Disputes Between Associated Persons or Between or Among Members and Associated Persons); see also FINRA Rules 12400(a), 13400(a).

with chair-qualified public arbitrators, one list with public arbitrators, and one list with non-public arbitrators.[19] For an industry claim between associated persons or between or among member firms and associated persons,[20] the list-selection algorithm generates one list with chair-qualified public arbitrators, one list with public arbitrators, and one list with non-public arbitrators.[21] In each case, the list-selection algorithm generates the chair-qualified public list before it generates the public list.[22] When the algorithm generates the list of public arbitrators, any available chair-qualified public arbitrator is eligible for selection as a public arbitrator so long as he or she was not already selected for the chair-qualified public list.[23] In this way, the list-generation algorithm effectively gives chair-qualified public arbitrators two chances to appear on a list: once as a chairperson; and, if not selected for the chair-qualified public list, a second as a public arbitrator.[24]

Once the parties receive the three lists, they may exercise a specified number of strikes against each list and rank the remaining arbitrators on each list in order of preference.[25] The

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19 See FINRA Rule 12403(a)(1). Here, the list-selection algorithm generates one list with 10 chair-qualified public arbitrators, one list with 15 public arbitrators, and one list with 10 non-public arbitrators. Id.

20 Three-arbitrator panels also decide industry disputes between member firms, but those panels do not include public arbitrators and are therefore not relevant to this proposed rule change. See FINRA Rule 13403(a).

21 See FINRA Rule 13403(b)(2). Here, the list-selection algorithm generates one list with 10 chair-qualified public arbitrators, one list with 10 public arbitrators, and one list with 10 non-public arbitrators. Id.

22 FINRA Rules 12403(a)(2), 13403(b)(3).

23 See id.

24 Notice at 106636.

25 See FINRA Rules 12403(c)(1), 12403(c)(2), 13404(a), 13404(c).

DRS Director then consolidates the strike and ranking lists and appoints the highest-ranking arbitrators who survived the parties' strikes.[26]

B. The Proposed Rule Change

1. Generating Public Lists in Cases with Three Arbitrators

The proposed rule change would amend the list-selection algorithm in certain cases in which the three-arbitrator panel includes at least two public arbitrators, increasing the chances that non-chair-qualified public arbitrators would appear on the public list.[27] Specifically, the proposed rule change would provide that, "[i]n preparing the public list, the list selection algorithm will provide two chances for selection to public arbitrators that are not chair-qualified, and will [continue to] provide one chance for selection to chair-qualified public arbitrators."[28] Although non-chair-qualified public arbitrators would have two chances for selection to the public list, the proposed rule change would provide that "[a]n individual arbitrator cannot appear more than once on the public list selected for the same case."[29] The proposed rule change would not otherwise amend the process by which the list-selection algorithm generates the public list.[30]

FINRA stated that the proposed rule change could help FINRA retain non-chair-qualified public arbitrators on its arbitrator roster because it "may increase the likelihood for public arbitrators who are not chair-qualified to be selected by parties to serve as panelists."[31] As noted

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26 See FINRA Rules 12402(e), 12402(f), 12403(d), 12403(e)(1), 13405, 13406. FINRA publishes more detailed information on the arbitrator-selection process online. See supra note 17.

27 Notice at 106636.

28 Proposed Rules 12403(a)(3), 13403(b)(4).

29 Proposed Rules 12403(a)(3), 13403(b)(4). FINRA stated that the list-selection algorithm would implement this 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." Notice at 106636 n.21.

30 Notice at 106636.

31 Id. at 106637.

above, parties have an opportunity to express preferences in the arbitrator-selection process by striking and ranking the candidates on the arbitrator lists.[32] FINRA explained 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."[33] FINRA explained that if new or less experienced arbitrators are never selected to serve on a panel, they "may lose interest in serving as arbitrators."[34] The proposed rule change, FINRA stated, may incentivize new or less experienced arbitrators to remain on the roster by increasing their opportunities for selection as a panelist.[35]

FINRA also stated that the proposed rule change may help FINRA expand its roster of chair-qualified public arbitrators.[36] As noted above, a public arbitrator is eligible to serve as a "chairperson" if he or she has completed FINRA's chairperson training and: (1) has a law degree, is a member of a bar of at least one jurisdiction, and has served as an arbitrator through award on at least one arbitration administered by a SRO in which hearings were held; or (2) has served as an arbitrator through award on at least three arbitrations administered by a SRO in which hearings were held.[37] FINRA stated that the proposed rule change may help non-chair-

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32 See FINRA Rules 12402(d)(2), 12403(c)(1)(B) and (2)(B), 13404(c).

33 Notice at 106637.

34 Id.

35 Id.

36 Id.

37 See FINRA Rules 12400(c), 13400(c).

qualified public arbitrators "to gain the experience they need to become chair-qualified" by increasing their opportunity to be selected for a panel.[38]

In addition, FINRA stated that the potential increase of chair-qualified public arbitrators might "increase the number of local chairpersons across hearing locations."[39] FINRA stated that parties prefer chair-qualified public arbitrators who live near the hearing location.[40] FINRA stated, however, that "78 percent of hearing locations lack a sufficient number of local chairpersons" to complete a chair-qualified public list, so it must fill such lists with chair-qualified public arbitrators from other hearing locations.[41] FINRA stated that the proposed rule change could help generate chair-qualified public lists with more local chairpersons in these areas by increasing the number of opportunities for non-chair-qualified public arbitrators to serve on panels.[42]

2. Other Proposed Rule Changes

FINRA stated that the proposed rule changes would also, among other things: codify certain current practices to increase transparency; 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

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38 Notice at 106637.

39 Id.

40 Id.

41 See id.

42 Id.

align provisions of the Codes related to the expungement of customer dispute information.[43] The Commission describes each additional proposed rule change in turn.

a. Sending Arbitrator Lists to the Parties

The Codes currently provide that the DRS Director will send the list(s) 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."[44] FINRA stated, however, that in practice the DRS sends the arbitrator lists to the parties "well within the 30-day timeframe provided by the rules."[45] FINRA stated that the proposed rule change would codify current practice by amending FINRA Rules 12402(c)(1), 12403(b)(1), and 13403(c)(1) to replace the 30-day timeline with a 20-day timeline.[46] FINRA stated that the proposed rule change would increase transparency and efficiency in arbitrator list selection.[47]

b. Arbitrator-Disclosure Reports

Current FINRA rules provide that the parties will receive "employment history for the past 10 years" and other background information for each arbitrator on an arbitrator list.[48] FINRA stated that its practice, however, is to request each arbitrator's full post-education employment history and send "this employment history and other background information to the parties" in a "disclosure report."[49] FINRA stated that the proposed rule change would codify this practice by removing "for the past 10 years" from the relevant rules and clarifying that

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43 Id.

44 FINRA Rules 12402(c)(1), 12403(b)(1), 13403(c)(1).

45 Notice at 106637.

46 See proposed Rules 12402(c)(1), 12403(b)(1), 13403(c)(1).

47 Notice at 106637.

48 FINRA Rules 12402(c)(1), 12403(b)(1), 12404(a), 13403(c)(1), 13407(a), 13804(b)(3)(A)(i), 13804(b)(3)(B)(i).

49 Notice at 106637.

employment history and background information will be provided in a "disclosure report."[50] FINRA stated that the proposed rule change would increase transparency.[51]

c. Requests for Additional Information about Arbitrators

The Codes provide that "[i]f a party requests additional information about an arbitrator, the [DRS] Director will request the additional information from the arbitrator[] and will send any response to all the parties at the same time."[52] FINRA stated that, in practice, it permits parties to request additional information about arbitrators at any point during an arbitration proceeding.[53] If such a request is unopposed, FINRA stated that it submits the request to the arbitrator anonymously.[54] If, on the other hand, there is an objection to such a request, FINRA stated that it will disclose the identity of the requesting party and forward both the request and any objections to the relevant arbitrator.[55]

The proposed rule change would make three changes related to this process.[56] First, FINRA stated that the proposed rule change would codify current practice by expressly providing that a party may request additional information about an arbitrator "at any stage of the

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50 See Notice at 106637; proposed Rules 12402(c)(1), 12403(b)(1), 12404(a), 13403(c)(1), 13407(a), 13804(b)(3)(A)(i), 13804(b)(3)(B)(i).

51 See Notice at 106637.

52 FINRA Rules 12402(c)(2), 12403(b)(2), 13403(c)(2).

53 Notice at 106637.

54 See id. at 106638.

55 Id.

56 FINRA stated that the proposed rule change would also make "technical changes" that would result from these proposed rule changes. Id. at 106637 n.26. Specifically, FINRA stated that the proposed rule change would relocate – without substantive changes – text from FINRA Rules 12402(c)(2), 12403(b)(2), and 13403(c)(2) to new proposed sub-sections within the same FINRA rules. Id. Specifically, proposed Rules 12402(c)(2)(D), 12403(b)(2)(D), and 13403(c)(2)(D) would provide that "[t]he Director will send any response from the arbitrator to all of the parties at the same time." In addition, proposed Rules 12402(c)(2)(E), 12403(b)(2)(E), and 13403(c)(2)(E) would provide that "[w]hen a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists . . . ."

proceeding" by filing such request with the Director and serving it upon all other parties.[57] FINRA stated that "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."[58] FINRA further stated that this proposed rule change "complements arbitrators' continuing duty to disclose [potential conflicts], 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."[59]

Second, FINRA stated that the proposed rule change would codify current practice by amending FINRA Rules 12402, 12403, and 13403 to provide that a request for additional information about an arbitrator "may omit any information that would reveal the identity of the party making the request."[60] The proposed rule change also would provide that "[i]f no opposing party objects to the request for additional information, the [DRS] Director and the parties shall not disclose the identity of the requesting party" to the arbitrator or the panel.[61] In cases of unopposed requests for information, FINRA stated that it is appropriate to preserve confidentiality "to minimize any potential bias."[62] If, however, an opposing party objects to such a request, FINRA stated that it is appropriate to disclose the identity of the requesting party to "minimize the risk of any potential bias shifting to the opposing parties."[63] FINRA stated that arbitration participants have expressed concern that other parties' requests could be erroneously

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57 Proposed Rules 12402(c)(2)(A), 12403(b)(2)(A), 13403(c)(2)(A); Notice at 106638.

58 Notice at 106638.

59 Id.

60 Proposed Rules 12402(c)(2)(A), 12403(b)(2)(A), 13403(c)(2)(A); Notice at 106638.

61 Proposed Rules 12402(c)(2)(C), 12403(b)(2)(C), 13403(c)(2)(C).

62 Notice at 106638.

63 Id.

attributed to them and result in negative inferences against them.[64] In addition, FINRA stated that in cases involving only two parties, a requesting party likely could not – as a practical matter – remain anonymous, as the opposing party may identify itself in its objection, thereby indirectly identifying the other party as the requestor.[65]

Third, the proposed rule change would amend FINRA Rules 12402, 12403, and 13403 to provide that an opposing party may object to a request for additional information by filing its objection with the Director and serving it upon all other parties "[w]ithin ten days of receipt of the request" for additional information.[66] The proposed rule change also would provide that the Director will forward the request for additional information along with any objections to the arbitrator who is the subject of the request "[a]fter five days have elapsed from the service of any objections and provided that the request for additional information has not been withdrawn."[67] FINRA stated that this proposed rule change would increase efficiency in arbitrator-list selection by helping to ensure that "parties are aware of their ability to object to or withdraw a request and the timeframes for doing so."[68]

d. Striking Arbitrators for Any Reason

FINRA Rules 12402(d)(1), 12403(c)(1)(A), 12403(c)(2)(A), and 13404(a) and (b) provide that each separately represented party may strike a certain number of arbitrators from the lists of arbitrators that the list-selection algorithm generates.[69] All but one of these provisions – FINRA Rule 12403(c)(1)(A) (governing striking arbitrators from the non-public arbitrator list) –

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64 Id.

65 See id.

66 Proposed Rules 12402(c)(2)(B), 12403(b)(2)(B), 13403(c)(2)(B).

67 Id.

68 Notice at 106638.

69 FINRA Rules 12402(d)(1), 12403(c)(1)(A), 12403(c)(2)(A), 13404(a), 13404(b).

expressly provides that a party may strike arbitrators from a list "for any reason."[70] FINRA stated that even though FINRA Rule 12403(c)(1)(A) lacks this language, "there are no limitations on the reasons a party may strike an arbitrator.[71] 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*."[72] FINRA stated that the proposed rule change would promote consistency among the provisions describing the striking process.[73]

e. Electronic List Selection

FINRA Rules 12402(d)(1), 12403(c)(1)(A), 12403(c)(2)(A), and 13404(a) and (b) currently provide that each separately represented party may strike arbitrators from the list(s) of arbitrators "by crossing through the names of the arbitrators."[74] FINRA stated that, in practice, parties generally use a web-based system, the Party Portal, to complete arbitrator list selection electronically.[75] FINRA stated that the proposed rule change would align the Codes with this

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70 Id.

71 Notice at 106638.

72 Id. (emphasis in original); proposed Rule 12403(c)(1)(A).

73 Notice at 106638.

74 FINRA Rules 12402(d)(1), 12403(c)(1)(A), 12403(c)(2)(A), 13404(a), 13404(b).

75 Notice at 106639. The term "Party Portal" means "the web-based system that is accessible by arbitration and mediation parties and their representatives. The Party Portal allows invited participants to access a secure section of FINRA's website to submit documents and view their arbitration and mediation case information and documents." See FINRA Rules 12100(v), 13100(t).

practice by amending FINRA Rules 12402(d)(1), 12403(c)(1)(A), 12403(c)(2)(A), and 13404(a) and (b) to delete the phrase "by crossing through the names of the arbitrators."[76]

f. Extensions of Time to Complete Ranked Lists

FINRA rules currently provide that after striking and ranking the arbitrators on the arbitrator lists, each separately represented party must return their ranked lists to the DRS Director "either within 20 days or no more than 20 days after the date upon which the Director sent the lists to the parties."[77] FINRA stated that "parties frequently file requests with the Director to extend the 20-day deadline only after it has elapsed."[78] FINRA rules *permit* the Director to extend or modify the deadline for good cause;[79] FINRA stated that, in practice, the Director typically denies requests made after the deadline has expired absent a showing of extraordinary circumstances.[80] The proposed rule change would codify current practice by expressly providing that, "[a]bsent extraordinary circumstances, the Director will not grant a party's request for an extension to complete the ranked list[s] that is filed after the deadline has elapsed.[81] FINRA stated that a showing of extraordinary circumstances is appropriate, as the lesser standard of good cause "could lead to unnecessary delays in the appointment of arbitration panels and arbitration proceedings."[82] FINRA also stated that the proposed rule change would

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76 Notice at 106639. FINRA stated that some *pro se* claimants choose not to use the Party Portal, but it stated that the rules, as amended, would still be "broad enough to appropriately instruct *pro se* customers on how to strike arbitrators manually from hard copy lists." Id.

77 Id.; see FINRA Rules 12402(d)(3), 12403(c)(3), 12404(a), 13404(d), 13407(a).

78 Notice at 106639.

79 FINRA Rules 12207(c), 13207(c).

80 Notice at 106639.

81 Id.; see proposed Rules 12402(d)(3), 12403(c)(3), 12404(a), 13404(d), 13407(a).

82 Notice at 106639.

codify current practice, help ensure that parties are aware of the deadline, and encourage parties to complete their ranked lists or request an extension prior to that deadline.[83]

g. Agreements to Remove Arbitrators

Current FINRA guidance states that parties may agree to remove an arbitrator.[84] The proposed rule change would codify this guidance by amending FINRA Rules 12407 and 13410 to expressly 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."[85] FINRA stated that the proposed rule change would "help ensure that parties are aware of the ability to remove an arbitrator upon party agreement."[86]

However, the proposed rule change also would provide that "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" for cause any arbitrator selected pursuant to FINRA Rule 12407(a)(1) or (b) or FINRA Rule 13410(a)(1) or (b).[87] FINRA stated that this proposed rule change is consistent with recent changes it made to the expungement process.[88] Specifically, FINRA stated that this proposed rule change would align with FINRA Rule 12800(d) by "prohibiting the parties from agreeing to remove an arbitrator if there is a

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83 Id.

84 Id. FINRA stated that it "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." Id. FINRA also stated that Notice to Members 01-13 describes how arbitrators may be removed when "all the parties agree that the arbitrator should be removed." Id. (quoting NASD Notice to Members 01-13 at 2 (March 2001), https://www.finra.org/sites/default/files/NoticeDocument/p003916.pdf).

85 Id.; proposed Rules 12407(d)(1), 13410(d)(1). FINRA stated that "[r]equests to remove an arbitrator may not be granted when there are extraordinary circumstances which make removal inappropriate (e.g., requests based on discriminatory grounds)." Notice at 106639 n.35.

86 Id. at 106639.

87 Id.; see Proposed Rules 12407(d)(2), 13410(d)(2).

88 Notice at 106639-40.

request to expunge customer dispute information during a simplified investment-related, customer-initiated arbitration ("simplified arbitration") under FINRA Rule 12800."[89] FINRA stated that the proposed rule change would also align with FINRA Rule 13806, which prohibits striking, or stipulating to the removal of, any arbitrators selected by the list selection algorithm in a straight-in request absent a challenge for cause.[90] FINRA stated that the proposed rule change would align FINRA rules to "help ensure that the expungement process operates efficiently and as intended."[91]

h. Prohibition on the Disclosure of Party-Initiated Challenges to Remove Arbitrators

FINRA Rules 12407 and 13410 permit parties to challenge arbitrators for cause.[92] Current DRS guidance advises the parties that "they may not inform the panel of an opposing party's causal challenge."[93] The proposed rule change would codify this guidance by expressly providing that "a party may not inform the panel or arbitrator of another party's request to remove an arbitrator for cause."[94] FINRA stated that the disclosure of a party's challenge to remove an arbitrator "could prejudice the arbitrator or create the appearance of bias against the requesting party."[95] FINRA also stated that codifying existing guidance "would more effectively

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89 Id. at 106640 (stating that, 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).

90 Id. FINRA stated that a "straight-in request" refers to an arbitration proceeding in which "an associated person requests expungement of customer dispute information separate from a customer arbitration." Id. at 106640 n.39.

91 Id.

92 FINRA Rules 12407, 13410.

93 Notice at 106640. FINRA stated that this guidance is conveyed in two letters it sends to the parties: one is sent with the list of arbitrators; the second advises the parties of the panel composition. Id.

94 Id.; proposed Rules 12407(e)(1); 13410(e)(1).

95 Notice at 106640.

curb the disclosure of a party's request to remove an arbitrator because parties will be incented to comply with the Codes."[96]

The proposed rule change would also create a remedy if a party discloses to the arbitrator or panel an opposing party's request to remove an arbitrator for cause.[97] Specifically, the proposed rule change would provide that the party that requested removal of the arbitrator "may file with the Director within five days of being made aware of the disclosure a written motion for removal of the arbitrator."[98] The proposed rule change also would provide that "[i]f the requesting party does not file a motion for removal of the arbitrator within five days of being made aware of the disclosure, then the requesting party shall forfeit the opportunity to request removal of the arbitrator because of the disclosure."[99] In addition, the proposed rule change would provide that, absent extraordinary circumstances, the DRS Director shall grant such a motion if the party that made the request to remove the arbitrator timely files the motion.[100] FINRA stated that this 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."[101]

i. Updating Cross-References

FINRA Rules 13406(c) and 13411(d) cross-reference FINRA Rule 13100(r)(2) and (r)(3) to incorporate the definition of "non-public arbitrator."[102] FINRA stated that prior to 2017,

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96 Id.

97 Id.

98 Proposed Rule 12407(e)(2), 13410(e)(2).

99 Id.

100 Id.

101 Notice at 106640.

102 FINRA Rules 13406(c), 13411(d).

FINRA Rule 13100(r)(1), (r)(2), (r)(3), and (r)(4) "listed the specific criteria for inclusion on FINRA's non-public arbitrator roster."[103] FINRA stated that due to a rule change in 2017 that eliminated those four sub-sections, the aforementioned cross-references to FINRA Rule 13100(r) are outdated.[104] The proposed rule change would update FINRA Rules 13406(c) and 13411(d) with correct cross-references to FINRA Rule 13100(x)(2) through (11).[105]

III. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[106] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules 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.[107]

A. Generating Public Lists in Cases with Three Arbitrators

As stated above, the proposed rule change would amend the list-selection algorithm in certain cases in which the three-arbitrator panel includes two public arbitrators to increase the chance that non-chair-qualified public arbitrators appear on the public arbitrator list.[108]

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103 Notice at 106641.

104 See id.

105 Notice at 106641; proposed FINRA Rules 13406(c), 13411(d).

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

107 15 U.S.C. 78o-3(b)(6).

108 See Notice at 106636.

Specifically, the proposed rule change would provide that, "[i]n preparing the public list, the list selection algorithm will provide two chances for selection to public arbitrators that are not chair-qualified, and will [continue to] provide one chance for selection to chair-qualified public arbitrators."[109] Although non-chair-qualified public arbitrators would have two chances for selection to the public list, such an arbitrator could only be selected once for the public list in the same case.[110]

Several commenters generally supported the proposed rule change.[111] One of these commenters identified himself as a non-chair-qualified public arbitrator who has considered withdrawing as an arbitrator due to a lack of case assignments, and he expressed hope that this proposed rule change would result in broader participation by all public arbitrators.[112] Another commenter stated that the proposed rule change may increase opportunities for non-chair-qualified public arbitrators to serve on panels, which could help to attract arbitrator applicants, retain existing arbitrators, and provide opportunities for arbitrators to secure the experience necessary to become chairpersons.[113] Two commenters emphasized that the proposed rule change should increase the number of local chairpersons across hearing locations by providing

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109 Proposed Rules 12403(a)(3), 13403(b)(4).

110 Id.

111 Letters from Leslie Van Buskirk, President, North American Securities Administrators Association, Inc., at 1 (dated Jan. 21, 2025), https://www.sec.gov/comments/sr-finra-2024-022/srfinra2024022-558715-1603262.pdf ("NASAA Letter"); Matthew Kearney at 1 (dated Jan. 13, 2025), https://www.sec.gov/comments/sr-finra-2024-022/srfinra2024022-1595482.htm ("Kearney Letter"); Michael Bixby, Executive Vice President, Public Investor Advocate Bar Association, at 1 (dated Jan. 21, 2025), https://www.sec.gov/comments/sr-finra-2024-022/srfinra2024022-558935-1603442.pdf ("PIABA Letter"); Elissa Germaine et al., Securities Arbitration Clinic, St. John's University School of Law, at 1 (dated Jan. 21, 2025), https://www.sec.gov/comments/sr-finra-2024-022/srfinra2024022-558995-1603582.pdf ("St. John's Letter I"); Elissa Germaine et al., Securities Arbitration Clinic, St. John's University School of Law, at 1 (dated Apr. 4, 2025), https://www.sec.gov/comments/sr-finra-2024-022/srfinra2024022-587677-1698422.pdf ("St. John's Letter II").

112 Kearney Letter at 1.

113 St. John's Letter I at 2.

greater opportunities for otherwise qualified public arbitrators to secure the requisite experience to become chairpersons.[114] As a result, one commenter stated that the proposed rule change would "enhance investor confidence in the FINRA arbitration process, increase the efficiency of the arbitration process, and result in fewer delays or postponements."[115]

One commenter opposed this proposed rule change, stating that their clients generally prefer chair-qualified public arbitrators over non-chair qualified arbitrators for two reasons.[116] First, the commenter stated that panels with two non-chair qualified arbitrators are more likely to commit errors that would form the basis for a motion to vacate in court because non-chair qualified arbitrators are often not as experienced as chair-qualified arbitrators.[117] This is especially problematic for the commenter's clients because they generally do not have the means to pursue vacatur in court.[118] Second, the commenter's clients prefer chair-qualified public arbitrators because they are more likely to have a record of prior decisions or legal practice that would inform their ranking and striking decisions.[119]

The opposing commenter acknowledged, however, the need for more chair-qualified public arbitrators and offered three alternatives.[120] First, the commenter suggested allowing

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114 See St. John's Letter I at 3 (stating that non-local chairpersons may be unfamiliar with local customs, are more likely to cause delays because of travel difficulties, and are financially inefficient, as FINRA must bear the cost of their travel, meals, and lodging); PIABA Letter at 2.

115 PIABA Letter at 2.

116 Letter from Alice Stewart et al., Securities Arbitration Clinic, University of Pittsburgh School of Law, at 2 (dated Jan. 21, 2025), https://www.sec.gov/comments/sr-finra-2024-022/srfinra2024022-558795-1603302.pdf ("Pittsburgh Letter").

117 See id. at 2.

118 Id. This commenter stated that "the negative consequences of these amendments would fall the hardest on [its] economically disadvantaged and elderly clients." Id. at 4.

119 Id. at 2-3.

120 Id. at 3-4.

arbitrators with a law degree to immediately serve as chairpersons.[121] The commenter stated that arbitrators with a law degree are generally more knowledgeable about securities law, arbitration procedure, and rules of evidence than those without such a degree, and they typically have a record of legal practice that may offer insights to the parties during the arbitrator-selection process.[122] Second, the commenter recommended that FINRA increase the honorarium for serving on a panel.[123] The commenter stated that larger honoraria would likely increase the roster of arbitrators and decrease the number of arbitrators who leave the roster.[124] Third, the commenter recommended that the proposed rule change, if adopted, should expire once the "percentage of public arbitrators who are chair-qualified increases to a proportion with relative parity to their appearances on the public lists."[125] The commenter stated that at that point, FINRA should revert to the current rule text in recognition of parties' preference for "experienced public arbitrators with a record of award outcomes."[126]

In response, FINRA recognized that certain parties may prefer chair-qualified public arbitrators, and the proposed rule change would – for this reason – still permit chair-qualified public arbitrators to appear on the list of public arbitrators.[127] FINRA also stated that the proposed rule change would not limit a party's ability to strike and rank the chair- and non-chair-qualified public arbitrators that appear on a public list.[128] In addition, FINRA stated that the

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121 Id. at 3.

122 Id.

123 Id.

124 Id.

125 Id. at 4. This commenter contemplated that FINRA could either engineer the proposed rule change to expire upon achievement of a specified benchmark, or, in the alternative, conduct annual reviews to determine when to sunset the proposed rule change. Id.

126 Id.

127 See FINRA Response Letter at 2-3.

128 Id. at 3.

proposed rule change may help to address party preferences by increasing the number of chair-qualified public arbitrators on FINRA's rosters.[129]

FINRA also responded to the commenter's proposed alternatives. First, FINRA stated that a law degree (but no experience serving as an arbitrator through award in at least one arbitration in which hearings were held) may not equip an arbitrator with the experience necessary to serve as a chairperson.[130] FINRA stated that the hearing requirement helps to ensure that chairpersons have the experience necessary to effectively fulfill their responsibilities, which may include facilitating prehearing conferences, deciding discovery-related motions, and writing explained decisions.[131] Second, FINRA stated than an increased honorarium could help retain arbitrators, but it would not address FINRA's primary concern – "the current imbalance in arbitrator list selection."[132] FINRA stated that an increased honorarium would not improve the opportunity for non-chair-qualified public arbitrators to be selected for a public list.[133] Third, in response to the commenter's request that the proposed rule change expire once its goals are met, FINRA stated that it would monitor the impact of the proposed rule change and "continue to

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129 Id.

130 Id. at 3-4.

131 Id.

132 Id. at 4. FINRA stated that public arbitrators must first appear on a public list to have a chance to be selected by the parties. Id. Only after selection, appointment to a panel of arbitrators, and presiding over the arbitration case would an arbitrator receive an honorarium. Id. For this reason, an increased honorarium would not impact the chances that a non-chair-qualified public arbitrator would appear on a public list. Id.

133 Id.

consider if additional changes are warranted."[134] For these reasons, FINRA declined to adopt the commenter's suggested alternatives.[135]

The proposed rule change is reasonably designed to improve non-chair-qualified public arbitrator retention, increase the size of FINRA's public chairperson roster, and improve the availability of public chairpersons at local hearing locations across the country. Currently, the list-selection algorithm gives chair-qualified public arbitrators twice as many chances as non-chair-qualified public arbitrators to appear on an arbitrator list, and parties' apparent preference for chair-qualified public arbitrators makes it less likely that non-chair qualified arbitrators make it past the striking and ranking process. Thus, the arbitrator list-selection process is not optimized to provide opportunities for non-chair-qualified public arbitrators to serve on panels and secure the experience they need to qualify as chairpersons. This has, in part, led to a shortage of chair-qualified public arbitrators serving in certain hearing locations, limiting the choices of arbitrators for parties bringing claims in those hearing locations.

In recognition of parties' preferences for chair-qualified public arbitrators, the proposed rule change would not prohibit chair-qualified public arbitrators from filling the public arbitrator spot on a panel. Nor would the proposed rule change limit a party's ability to strike and rank arbitrators on the public list. The proposed rule change instead takes a more tailored approach – the list-selection algorithm would provide two chances for each non-chair-qualified public arbitrator to be selected for the public list. FINRA reasonably concluded that a greater opportunity for selection to a public list may result in increased participation among, and retention of, non-chair-qualified public arbitrators, and a corresponding increase in public

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134 Id. at 5.

135 Id. at 3-5.

arbitrators who are eligible to serve as chairpersons, including in locations with a present shortage of chair-qualified public arbitrators. As such, the proposed rule change should facilitate opportunities for non-chair-qualified public arbitrators to gain experience, result in greater fairness to investors in areas with a current shortage of chair-qualified public arbitrators, and provide a more fair and balanced arbitration selection process and pool.

FINRA reasonably declined to amend the proposed rule change in response to the commenter's recommendations. First, extending chairperson eligibility to any arbitrators with a law degree, regardless of experience serving on an arbitration panel, may result in chairpersons who lack practical experience in efficient case management and deciding disputed issues of law and fact. Second, while increasing the honorarium for serving on a panel might improve arbitrator recruitment and retention, it would not address the circumstances that make it more difficult for non-chair-qualified public arbitrators to be selected to serve on a panel. Third, setting an expiration date may be impractical, as it is unclear how long it would take for the proposed rule change to mitigate the issues FINRA identified. FINRA stated, however, that it would monitor the impact of the proposed rule change and consider whether additional changes are required.[136]

For these reasons, the proposed rule change is reasonably 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.

B. Other Proposed Rule Changes

As stated above, the proposed rule changes would also, among other things: codify certain current practices to increase transparency; establish new timeframes for objecting to

136 Id.

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.[137] The Commission describes each proposed rule change, and any corresponding comments, in turn.

1. Sending Arbitrator Lists to the Parties

The Codes currently provide that the DRS Director will send the list(s) 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."[138] In practice, however, FINRA stated that DRS sends the arbitrator lists to the parties "well within the 30-day timeframe provided by the rules."[139] FINRA stated that the proposed rule change would codify current practice by amending FINRA Rules 12402(c)(1), 12403(b)(1), and 13403(c)(1) to replace the 30-day timeline with a 20-day timeline.[140] One commenter supported this proposed rule change, characterizing it as a measure that would increase efficiency.[141]

The proposed rule change is reasonably designed to improve transparency of the list selection process. The Codes presently provide that DRS will send the arbitrator lists to the parties within approximately 30 days after the last answer is due.[142] However, this deadline overestimates the time it actually takes for DRS to deliver the lists to the parties. The proposed rule change would enhance transparency by codifying a DRS practice that may have been

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137 Notice at 106637.

138 FINRA Rules 12402(c)(1), 12403(b)(1), 13403(c)(1).

139 Notice at 106637.

140 See proposed Rules 12402(c)(1), 12403(b)(1), 13403(c)(1).

141 PIABA Letter at 2.

142 FINRA Rules 12402(c)(1), 12403(b)(1), 13403(c)(1).

unknown to some parties, especially those without significant experience in the forum. For these reasons, the proposed rule change is reasonably 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.

2. Arbitrator-Disclosure Reports

The Codes currently provide that the parties will receive "employment history for the past 10 years" and other background information for each arbitrator on an arbitrator list.[143] In practice, however, FINRA stated that it requests each arbitrator's *full* post-education employment history and sends it, along with other background information, to the parties in a disclosure report.[144] The proposed rule change would codify existing practice by amending rules governing arbitrator-disclosure reports to remove "for the past 10 years" from the relevant rules and clarify that employment history and background information will be provided in a disclosure report.[145] The Commission received no comment on this proposed rule change.

The proposed rule change is reasonably designed to improve the transparency of the arbitrator selection process. Although the Codes provide that parties will receive "employment history for the past 10 years,"[146] in practice FINRA requests each arbitrator's full post-education employment history and provides each party a disclosure report with that employment history and other background information. Therefore, absent this proposed rule change, parties and arbitrators – especially those without significant experience in the forum – may be unaware of

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143 FINRA Rules 12402(c)(1), 12403(b)(1), 12404(a), 13403(c)(1), 13407(a), 13804(b)(3)(A)(i), 13804(b)(3)(B)(i).

144 Notice at 106637.

145 See id.; proposed Rules 12402(c)(1), 12403(b)(1), 12404(a), 13403(c)(1), 13407(a), 13804(b)(3)(A)(i), 13804(b)(3)(B)(i).

146 FINRA Rules 12402(c)(1), 12403(b)(1), 12404(a), 13403(c)(1), 13407(a), 13804(b)(3)(A)(i), 13804(b)(3)(B)(i).

what information appears in an arbitrator-disclosure report. For these reasons, the proposed rule change is reasonably 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.

3. Requests for Additional Information about Arbitrators

As stated above, the proposed rule change would make three changes related to the process by which parties may request additional information about arbitrators. First, the proposed rule change would codify current practice by expressly providing that a party may request additional information about an arbitrator "at any stage of the proceeding" by filing such request with the Director and serving it upon all other parties.[147] Second, the proposed rule change would codify current practice by amending FINRA Rules 12402, 12403, and 13403 to provide that a request for additional information about an arbitrator "may omit any information that would reveal the identity of the party making the request."[148] The proposed rule change also would provide that "[i]f no opposing party objects to the request for additional information, the [DRS] Director and the parties shall not disclose the identity of the requesting party" to the arbitrator or the panel.[149] Third, the proposed rule change would amend FINRA Rules 12402, 12403, and 13403 to provide that an opposing party may object to a request for additional information by filing its objection with the Director and serving it upon all other parties "[w]ithin ten days of receipt of the request" for additional information.[150] The proposed rule change also would provide that the Director will forward the request for additional information along with

147 Proposed Rules 12402(c)(2)(A), 12403(b)(2)(A), 13403(c)(2)(A); Notice at 106638.

148 Id.

149 Proposed Rules 12402(c)(2)(C), 12403(b)(2)(C), 13403(c)(2)(C).

150 Proposed Rules 12402(c)(2)(B), 12403(b)(2)(B), 13403(c)(2)(B).

any objections to the relevant arbitrator "[a]fter five days have elapsed from the service of any objections and provided that the request for additional information has not been withdrawn."[151]

One commenter supported these proposed rule changes, characterizing the codification of FINRA's current practice as a measure that increases transparency.[152] A second commenter supported these proposed rule changes, stating that they would permit parties in an arbitration proceeding to conduct greater due diligence on prospective arbitrators without prejudicing their case (provided no other party objects to the request).[153] This second commenter, however, also recommended modifications to the proposed rule change to establish stronger sanctions for the disclosure of the identity of a party requesting additional information.[154] Specifically, this commenter requested that proposed Rules 12402(c)(2)(C), 12403(b)(2)(C), and 13403(c)(2)(C) also provide that "[a]ny violation . . . by a party or party's representative at any point in an arbitration proceeding shall constitute a failure to comply with discovery provisions of the Code within the meaning of" FINRA Rules 12511(a) or 13511(a) (Discovery Sanctions), as applicable.[155] This commenter stated that the invocation of FINRA's Discovery Sanctions Rules would help to discourage parties from violating this prohibition and provide "appropriate context for crafting equitable remedies."[156]

In response, FINRA stated that it would be inappropriate to apply the Discovery Sanctions Rules to such a violation when it does not involve a failure to comply with discovery

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151 Id.

152 PIABA Letter at 2.

153 See NASAA Letter at 3.

154 Id. at 3-4.

155 Id.

156 Id. 3 n.11, 3-4. If FINRA declines to accept this proposed modification, this commenter suggested that FINRA consider referencing the General Sanctions Rules and providing guidance on how seriously arbitrators must treat violations of these prohibitions. Id. at 3 n.11. In its response letter, FINRA declined

rules or a frivolous objection to the production of documents or information.[157] In addition, FINRA stated that the General Sanctions Rules already provide "a panel with broad discretion in addressing a party's failure to comply with any provision of the Codes" or any order of the panel.[158] Therefore, a panel would not need any additional authority to sanction a party for disclosing a party's request for additional information about an arbitrator in violation of this proposed rule.[159] For these reasons, FINRA declined to modify this proposed rule change to reference either the General or Discovery Sanctions Rules.[160]

The proposed rule change is reasonably designed to improve efficiency in the arbitration forum and the transparency of the process for requesting additional information about an arbitrator. By codifying current practice, the proposed rule change helps to ensure that parties – especially those without significant experience in the forum – understand that they may, subject to certain conditions, anonymously[161] request additional information about arbitrators at any stage of the arbitration proceeding. This helps to ensure the integrity of arbitration awards, as the requests for additional information may uncover information suggesting an arbitrator's partiality or conflict of interest, which could prompt a party to request that arbitrator's removal. In addition, the proposed rule change's timelines for requests and corresponding objections would

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the commenter's suggested alternative but stated that it would monitor the impact of the proposed rule change and consider whether additional changes are warranted. FINRA Response Letter at 5.

157 FINRA Response Letter at 7.

158 Id. at 6-7 (citing FINRA Rules 12212, 13212) (stating that sanctions could include, but are not limited to: monetary penalties; evidentiary exclusions; adverse inferences; fee, costs, or expense assessments; disciplinary referrals; and dismissals).

159 Id. at 7.

160 See id. at 6-7.

161 Where the request for additional information is unopposed, the proposed rule change would preserve the anonymity of the requester. Proposed Rules 12402(c)(2), 12403(b)(2), 13403(c)(2). Where the request is opposed, however, the proposed rule change reasonably would permit the identification of the requesting party to address concerns that, absent such an identification, the arbitrator(s) may reach erroneous and prejudicial conclusions about the requester's identity. Notice at 106638.

improve efficiency by helping to ensure that such requests do not cause unreasonable delays in arbitration cases.

FINRA reasonably declined to amend the proposed rule change in response to the commenter's recommendations. First, given that the Discovery Sanctions Rules typically apply only in connection with a party's violation of FINRA's discovery rules or frivolous objections to requests for the production of documents or other information, a reference to them in the proposed rule change would be inappropriate.[162] Second, given that the General Sanctions Rules already empower a panel to sanction any violation of the Codes,[163] and the proposed rule change would become part of the Codes, expressly referencing the General Sanctions Rules would be unnecessary. Third, although FINRA does not currently provide guidance on how seriously arbitrators should treat violations of this proposed rule change,[164] FINRA stated that it would monitor the impact of the proposed rule change and whether additional changes are necessary.[165]

For these reasons, the proposed rule change is reasonably 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.

4. Striking Arbitrators for Any Reason

As stated above, 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

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162 FINRA Rules 12511(a), 13511(a).

163 FINRA Rules 12212, 13212.

164 NASAA Letter at 3 n.11.

165 FINRA Response Letter at 5.

from the Non-Public List *for any reason*."[166] The Commission received no comment on this proposed rule change.

The proposed rule change is reasonably designed to improve the transparency of the arbitrator list striking process and consistency in the arbitration forum. Because similarly situated rules expressly provide that a party may strike arbitrators from the list "for any reason,"[167] parties could erroneously conclude that FINRA Rule 12403(c)(1)(A) does not authorize strikes in the same manner. The proposed rule change enhances consistency by expressly aligning FINRA Rule 12403(c)(1)(A) with other, similar FINRA rules, and it increases transparency by clarifying that parties may strike an arbitrator for any reason. For these reasons, the proposed rule change is reasonably 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.

5. Electronic List Selection

As stated above, FINRA Rules 12402(d)(1), 12403(c)(1)(A), 12403(c)(2)(A), and 13404(a) and (b) currently provide that each separately represented party may strike arbitrators from the list(s) of arbitrators "by crossing through the names of the arbitrators."[168] The proposed rule change would amend these rules to align with parties' use of the web-based Party Portal to strike arbitrators. Specifically, the proposed rule change would amend FINRA Rules 12402(d)(1), 12403(c)(1)(A), 12403(c)(2)(A), and 13404(a) and (b) to delete the phrase "by

166 Notice at 106638 (emphasis in original); proposed Rule 12403(c)(1)(A).

167 FINRA Rules 12402(d)(1), 12403(c)(2)(A), 13404(a), 13404(b).

168 FINRA Rules 12402(d)(1), 12403(c)(1)(A), 12403(c)(2)(A), 13404(a), 13404(b).

crossing through the names of the arbitrators."[169] The Commission received no comment on this proposed rule change.

The proposed rule change is reasonably designed to improve the transparency of the arbitrator list striking process. Because parties do not cross through names of arbitrators on the web-based Party Portal, the Codes' present reference to that action could cause confusion. The proposed rule change would help to reduce such confusion by deleting this reference. For *pro se* parties who decline to use the Party Portal, the relevant rules, as amended, would still indicate that parties may "strike" arbitrators from the list. This language is sufficiently clear to equip a *pro se* party to understand how to communicate their strikes on paper. For these reasons, the proposed rule change is reasonably 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.

6. Extensions of Time to Complete Ranked Lists

FINRA rules currently provide that after striking and ranking the arbitrators on the arbitrator lists, each separately represented party must return their ranked lists to the DRS Director "either within 20 days or no more than 20 days after the date upon which the Director sent the lists to the parties."[170] Currently, FINRA rules *permit* the Director to extend or modify the deadline for good cause;[171] in practice, the Director typically denies extension requests made after the deadline absent a showing of extraordinary circumstances.[172] The proposed rule change would codify current practice by expressly providing that, absent extraordinary circumstances,

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169 Proposed Rules 12402(d)(1), 12403(c)(1)(A), 12403(c)(2)(A), 13404(a), 13404(b).

170 FINRA Rules 12402(d)(3), 12403(c)(3), 12404(a), 13404(d), 13407(a).

171 FINRA Rules 12207(c), 13207(c).

172 Notice at 106639.

the DRS Director will not grant a party's request for an extension to complete the ranked list(s) that is filed after the deadline has elapsed.[173] The Commission received no comment on this proposed rule change.

The proposed rule change is reasonably designed to improve efficiency in the arbitration forum and the transparency of the ranking and striking process. Because provisions in the Codes *permit* the DRS Director to extend or modify a deadline for good cause,[174] parties – especially those without significant experience in the forum – may conclude that they can file untimely requests for extensions and secure that relief upon a showing of good cause. The proposed rule change would help to avoid such confusion by expressly codifying that the Director will not grant an untimely request to extend the deadline for a party to return their ranked lists absent extraordinary circumstances. In addition, the proposed rule change should help to improve efficiency in the forum by encouraging parties to file their ranked lists or seek an extension prior to the deadline. For these reasons, the proposed rule change is reasonably 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.

7. Agreements to Remove Arbitrators

As stated above, current FINRA guidance states that parties may agree to remove an arbitrator.[175] The proposed rule change would codify this guidance by amending FINRA Rules 12407 and 13410 to expressly 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

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173 See proposed Rules 12402(d)(3), 12403(c)(3), 12404(a), 13404(d), 13407(a).

174 FINRA Rules 12207(c), 13207(c).

175 See supra note 84.

removal."[176] The proposed rule change also would provide, however, that "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 . . . ."[177] The Commission received no comment on this proposed rule change.

The proposed rule change is reasonably designed to improve the transparency of the arbitrator removal process and help ensure that the expungement process operates as intended. Although FINRA's arbitrator training and public guidance have made clear that parties may agree to remove arbitrators,[178] the Codes do not presently reflect that guidance. The proposed rule change would increase the transparency of the arbitrator removal process by codifying that pre-existing guidance. In addition, the proposed rule change would promote consistency with expungement-related rules[179] by making clear that – absent a challenge for cause – parties may not agree to remove an arbitrator who is considering a request to expunge customer dispute information. For these reasons, the proposed rule change is reasonably designed to prevent

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176 Proposed Rules 12407(d)(1), 13410(d)(1).

177 Proposed Rules 12407(d)(2), 13410(d)(2); Notice at 106639. The proposed rule change would not restrict a party's ability to challenge any arbitrator for cause pursuant to FINRA Rule 12407(a)(1) or (b) or FINRA Rule 13410(a)(1) or (b). See Notice at 106639.

178 See supra note 84.

179 See FINRA Rules 12800(d) (stating that the arbitrator who has considered the merits of the customer dispute in the simplified arbitration would also decide the expungement request), 13806 (prohibiting striking, or stipulating to the removal of, any arbitrators selected by the list selection algorithm in a straight-in request absent a challenge for cause).

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

8. Prohibition on the Disclosure of Party-Initiated Challenges to Remove Arbitrators

As stated above, current DRS guidance advises the parties that "they may not inform the panel of an opposing party's causal challenge."[180] The proposed rule change would codify this existing guidance by expressly providing that "[a] party may not inform the arbitrator or panel of another party's request to remove an arbitrator" for cause.[181] The proposed rule change would also create a remedy for the disclosure of a party's challenge to remove an arbitrator.[182] Specifically, the proposed rule change would provide that the requesting party "may file with the Director within five days of being made aware of the disclosure a written motion for removal of the arbitrator."[183] The proposed rule change also would provide that the requesting party would forfeit the ability to request removal of the arbitrator because of the disclosure if such motion is not filed within five days.[184] In addition, the proposed rule change would provide that, absent extraordinary circumstances, the DRS Director shall grant such a motion if it is timely filed.[185]

One supportive commenter asked FINRA to consider further modifications to the proposed rule text. Specifically, this commenter requested that the proposed rule change also provide that "[a]ny violation . . . by a party or party's representative at any point in an arbitration proceeding shall constitute a failure to comply with discovery provisions of the Code[s] within

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180 Notice at 106640; see supra note 93.

181 Notice at 106640; proposed Rules 12407(e)(1); 13410(e)(1).

182 Notice at 106640.

183 Proposed Rule 12407(e)(2), 13410(e)(2).

184 Id.

185 Id.

the meaning of" FINRA Rules 12511(a) or 13511(a), as applicable.[186] This commenter stated that such a modification would provide greater flexibility to aggrieved parties, some of whom may prefer a sanction or remedy less severe than removal of the subject arbitrator.[187] This commenter also stated that a reference to the Discovery Sanctions Rules is more appropriate than the General Sanctions Rules, as the Discovery Sanctions Rules would provide a better framework for arbitrators to evaluate and redress a violation.[188]

In response, FINRA stated that it would be inappropriate to apply the Discovery Sanctions Rules to such a violation when it does not involve a failure to comply with discovery rules or a frivolous objection to the production of documents or information.[189] In addition, FINRA stated that the General Sanctions Rules already provide "a panel with broad discretion[190] in addressing a party's failure to comply with any provision of the Codes" or any order of the panel.[191] For this reason, the proposed rule change need not cross-reference the General Sanctions Rules.[192] Separately, FINRA stated that allowing an aggrieved party to file a motion to remove the subject arbitrator "would be the most appropriate remedy," but the proposed rule change would not require an aggrieved party to seek that remedy.[193] FINRA stated that, under

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186 NASAA Letter at 5-6.

187 Id. (stating that "if an improper disclosure were made near the end of a panel proceeding, an aggrieved party reasonably may not want to seek removal of the affected arbitrator (thereby either concluding the arbitration with just two panelists or delaying a conclusion until a replacement panelist can be appointed and prepped).").

188 Id. at 2-3, 3 n.11, 5.

189 FINRA Response Letter at 7.

190 FINRA stated that sanctions could include but are not limited to: monetary penalties; evidentiary exclusions; adverse inferences; fee, cost, or expense assessments; disciplinary referrals; and dismissals. Id. at 6-7.

191 Id. (citing FINRA Rules 12212, 13212).

192 Id.

193 Id. at 7.

the proposed rule change, an aggrieved party may proceed with the subject arbitrator, seek the arbitrator's removal under the proposed rule change's remedy provision, or seek other sanctions under the General Sanctions Rules.[194] For these reasons, FINRA declined to adopt the commenter's suggested alternative.[195]

The proposed rule change is reasonably designed to improve efficiency in the arbitration forum and the transparency of the process for requesting the removal of an arbitrator. By codifying current practice, the proposed rule change helps to ensure that parties – especially those without significant experience in the forum – understand their recourse where a party improperly discloses their request to remove an arbitrator for cause. This helps to ensure the integrity of arbitration awards by addressing any prejudice resulting from an unauthorized disclosure, as the aggrieved party may – at its discretion – file a motion to remove the subject arbitrator because of the unauthorized disclosure. In addition, the proposed rule change's timeline for making a request to remove an arbitrator improves efficiency in the arbitration forum by helping to ensure such requests do not cause unreasonable delays in arbitration cases.

In addition, FINRA reasonably declined to amend the proposed rule change in response to the commenter's recommendations. First, as FINRA explained, the Discovery Sanctions Rules typically apply only in connection with a party's violation of FINRA's discovery rules or frivolous objections to requests for the production of documents or other information; thus a reference to them in the proposed rule change would be inappropriate.[196] Second, in addition to an aggrieved party's ability to request the removal of the subject arbitrator, the General

194 Id.

195 See id. at 6-7.

196 FINRA Rules 12511(a), 13511(a).

Sanctions Rules already empower a panel to sanction any violation of the Codes.[197] Because the proposed rule change would become part of the Codes, expressly referencing the General Sanctions Rules would be unnecessary. Third, although FINRA does not currently provide guidance on how seriously arbitrators should treat violations of this proposed rule change,[198] FINRA stated that it would monitor the impact of the proposed rule change and whether additional changes are necessary.[199]

For these reasons, the proposed rule change is reasonably 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.

9. Updating Cross-References

As stated above, the proposed rule change would provide necessary clarification by updating FINRA Rules 13406(c) and 13411(d) with correct cross-references to FINRA Rule 13100(x)(2) through (11). The Commission received no comment on this proposed rule change.

The proposed rule change is reasonably designed to improve the transparency of the Codes by updating outdated cross-references. Absent this proposed rule change, parties – especially those without significant experience in the forum – could get confused by outdated cross-references in FINRA Rules 13406(c) and 13411(d). The proposed rule change would help eliminate any such confusion. For these reasons, the proposed rule change is reasonably

197 FINRA Rules 12212, 13212.

198 NASAA Letter at 3 n.11.

199 FINRA Response Letter at 5.

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.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.[200]

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Exchange Act[201] that the proposed rule change (SR-FINRA-2024-022), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[202]

Sherry R. Haywood,

Assistant Secretary.

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200 15 U.S.C. 78o-3(b)(6).

201 15 U.S.C. 78s(b)(2).

202 17 CFR 200.30-3(a)(12).