

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96298; File No. SR-FINRA-2022-024)

November 10, 2022

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change, as modified by Amendment No. 1, to Amend the Codes of Arbitration Procedure to Modify the Current Process Relating to the Expungement of Customer Dispute Information

I. Introduction

On July 29, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FINRA-2022-024 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to modify the current process relating to the expungement of customer dispute information.³ The proposed rule change was published for public comment in the Federal Register on August 15, 2022.⁴ On September 27, 2022, FINRA consented to an extension of 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 to November 11, 2022.⁵ On November 10, 2022, FINRA

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See infra note 4. “Customer dispute information” includes complaints, arbitration claims, and court filings made by customers against broker-dealers and their associated persons. Id. at 50172.

⁴ Exchange Act Release No. 34-95455 (August 9, 2022), 87 FR 50170 (August 15, 2022) (File No. SR-FINRA-2022-024) (“Notice”), available at <https://www.govinfo.gov/content/pkg/FR-2022-08-15/pdf/2022-17430.pdf>.

⁵ See letter from Mignon McLemore, Associate General Counsel, Office of General Counsel, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel, Division of Trading and

responded to the comment letters received in response to the Notice and filed an amendment to modify the proposed rule change (“Amendment No. 1”).⁶

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act⁷ to solicit comments on the proposed rule change, as modified by Amendment No. 1, and to institute proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

A. Background

The Central Registration Depository (“CRD”) is a licensing and registration system used by the Commission, state securities regulators, and self-regulatory organizations (“SROs”) as a source of regulatory information on, among other things, broker-dealers and their associated persons. Certain information on CRD is also released to the public through FINRA’s BrokerCheck system.⁸ FINRA stated that it publishes on BrokerCheck extensive disclosure information, including customer dispute information for associated persons who are currently or

Markets, Commission, dated September 27, 2022, available at <https://www.finra.org/sites/default/files/2022-09/sr-finra-2022-024-extension1.pdf>.

⁶ See letter from Mignon McLemore, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated November 10, 2022 (“FINRA Response”), available at <https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024.htm>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ A detailed description of the information made available through BrokerCheck is available at <http://www.finra.org/investors/about-brokercheck>. See Notice at note 22. The BrokerCheck website is available at brokercheck.finra.org.

were formerly registered with FINRA, to help investors make informed choices about the associated persons and broker-dealer firms with whom they may conduct business.⁹

FINRA rules allow broker-dealers and their associated persons to seek expungement of customer dispute information from the CRD and BrokerCheck systems in certain circumstances.¹⁰ An associated person may seek expungement of customer dispute information through the FINRA arbitration process or by going directly to court without first going to arbitration.¹¹

B. 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 modify the current process relating to the expungement of customer dispute information. The proposed rule change would impose requirements on expungement requests: (a) filed by an associated person during an investment-related, customer initiated arbitration (“customer arbitration”), or filed by a party to the customer arbitration on behalf of an associated person (“on-behalf-of request”), or (b) filed by an associated person separate from a customer arbitration (“straight-in request”).¹²

⁹ See Notice at 50172.

¹⁰ See, e.g., FINRA Rules 12805 (Expungement of Customer Dispute Information under Rule 2080), 13805 (Expungement of Customer Dispute Information under Rule 2080), and 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System).

¹¹ See id.; see also Notice at 50191.

¹² See Notice at 50170.

Specifically, the proposed rule change would: (1) require that a straight-in request be decided by a three-person panel that is randomly selected from a roster of experienced public arbitrators with enhanced expungement training;¹³ (2) prohibit parties to a straight-in request from agreeing to fewer than three arbitrators to consider their expungement requests, from striking any of the selected arbitrators, from stipulating to an arbitrator's removal, or from stipulating to the use of pre-selected arbitrators; (3) provide notification to state securities regulators of all expungement requests and a mechanism for state securities regulators to attend and participate in expungement hearings in straight-in requests; (4) impose time limits on the filing of straight-in requests; (5) codify and update the best practices in the Notice to Arbitrators and Parties on Expanded Expungement Guidance applicable to all expungement hearings, including amendments to establish additional requirements for expungement hearings, to facilitate customer attendance and participation in expungement hearings, and to codify the panel's¹⁴ ability to request any evidence relevant to the expungement request;¹⁵ (6) require the unanimous agreement of the panel to issue an award containing expungement relief; and (7) establish procedural requirements for filing expungement requests, including for on-behalf-of

¹³ Among other requirements, public arbitrators are not employed in the securities industry and do not devote 20 percent or more of their professional work to the securities industry or to parties in disputes concerning investment accounts or transactions or employment relationships within the financial industry. See FINRA Rules 12100(aa) and 13100(x). Notice at note 3.

¹⁴ Under the Codes, the term "panel" means the arbitration panel, whether it consists of one or more arbitrators. See FINRA Rules 12100(u) and 13100(s). Notice at note 4.

¹⁵ See FINRA Dispute Resolution Services, Notice to Arbitrators and Parties on Expanded Expungement Guidance, <https://www.finra.org/arbitration-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance> (last updated Sept. 2017).

requests. The proposed rule change would also amend the Customer Code to specify procedures for requesting expungement of customer dispute information during simplified arbitrations.¹⁶

Amendment No. 1 would modify the proposed rule change in three ways. First, it would amend proposed Rules 12805(c)(3)(A) and 13805(c)(3)(A) to state that all customers whose customer arbitrations, civil litigations or customer complaints are a subject of the expungement request are entitled to attend and participate in all aspects of the prehearing conferences and the expungement hearing. Second, it would modify proposed Rules 12805(c)(8)(C) and 13805(c)(9)(C) to state that a panel shall not give any evidentiary weight to a decision by a customer or an authorized representative not to attend or participate in an expungement hearing when making a determination of whether expungement is appropriate. Finally, Amendment No. 1 would modify the proposed rule change to provide that an associated person shall not file a claim requesting expungement of customer dispute information from the CRD system if the customer dispute information is associated with a customer arbitration or civil litigation in which a panel or court of competent jurisdiction previously found the associated person liable.¹⁷

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-024 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved.¹⁸ Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as modified by

¹⁶ See Notice at 50170.

¹⁷ See Amendment No. 1; see also FINRA Response.

¹⁸ 15 U.S.C. 78s(b)(2)(B).

Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹⁹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁰

¹⁹ Id.

²⁰ Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-FINRA-2022-024 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 No. SR-FINRA-2022-024. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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, as modified by Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified by Amendment No. 1, 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. If comments are received, any rebuttal comments should be submitted on or before [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier

Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).