

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80634; File No. SR-FINRA-2017-009)

May 9, 2017

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Expediting List Selection in Arbitration

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 26, 2017, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“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 FINRA Rules 12402 and 12403 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and FINRA Rule 13403 of the Code of Arbitration Procedure for Industry Disputes (“Industry Code,” and together with the Customer Code, the “Codes”), to provide that the Director of FINRA’s Office of Dispute Resolution (“ODR Director”) will send the list or lists generated by the Neutral List Selection System (“NLSS”)³ 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NLSS is a computer system that generates, on a random basis, a list or lists of arbitrators from FINRA’s rosters of arbitrators for the selected hearing location for each arbitration proceeding. The parties will select their panel through a process of striking and ranking the arbitrators on a list or lists generated by NLSS.

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

Background

Under the Codes, a party must serve an answer on each other party to an arbitration within the timeframes specified under the applicable provisions of the Codes. For example, FINRA Rule 12303 requires a respondent to serve an answer specifying the relevant facts and available defenses to the statement of claim on each other party to the arbitration within 45 days of receipt of the statement of claim (the "answer due date").⁴ If there are multiple respondents to an arbitration, and the respondents are added at different times, each respondent would have a different answer due date.⁵ The Codes require the ODR Director⁶ to wait until after the last

⁴ See also FINRA Rule 13303.

⁵ If an amended claim adds a new party to the arbitration, the new party would be required to serve an answer on all other parties within 45 days of receipt of the claim. See FINRA Rules 12306, 12310, 13306, and 13310.

answer is due⁷ to send the list or lists of arbitrators generated by NLSS to the parties.

Specifically, the Codes provide that the ODR Director must send the list or lists of arbitrators to all parties at the same time within approximately 30 days after the last answer is due.⁸

Currently, when parties to an arbitration agree to extend the deadline for when an answer is due, the ODR Director uses that new, agreed-upon extended answer due date as the last answer due date for sending the arbitrator list or lists to the parties.⁹ FINRA believes that by sending the arbitrator list or lists after the original due date for the last answer, regardless of any extension, it can shorten the time it takes for an arbitration to conclude in those instances. Party agreements to extend answer due dates would no longer affect the timing of providing the arbitrator list or lists to the parties.

Proposed Rule Change

FINRA is proposing to amend FINRA Rules 12402(c)(1), 12403(b)(1), and 13403(c)(1) to provide that the ODR Director will send the list or lists generated by NLSS 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.

⁶ Unless the Codes provide that the ODR Director may not delegate a specific function, the term includes FINRA staff to whom the ODR Director has delegated authority. See FINRA Rules 12100(k) and 13100(k). See also FINRA Rules 12103 and 13103.

⁷ The answer due date for the last respondent added to the arbitration would be when the last answer is due for purposes of the Codes.

⁸ The Codes also state that the parties will receive employment history for the past 10 years and other background information for each arbitrator listed. See FINRA Rules 12402, 12403, and 13403.

⁹ In 2015, parties requested an extension to answer in approximately 65 percent of arbitration cases served; in 2016, the figure was approximately 62 percent.

As parties must return the ranked arbitrator list or lists to the ODR Director no more than 20 days after the date upon which the ODR Director sent the list or lists to the parties,¹⁰ sending the list or lists after the original due date for the last answer would give all parties the same amount of time to create their ranked arbitrator list or lists. Further, FINRA believes that sending the list or lists at this time would result in earlier arbitrator appointment and, therefore, an earlier initial prehearing conference at which the hearings are scheduled.¹¹ In the many instances in which the parties agree to extend an answer due date, FINRA believes the proposed rule change would help arbitrations conclude in less time than they do under current rules.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the Regulatory Notice announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with Section 15A(b)(6) of the Act. The proposal would enable the parties, or their counsel, to evaluate and rank the arbitrator list or lists at the same time that they prepare their responses in those circumstances where the parties request an extension to answer. Thus,

¹⁰ See FINRA Rules 12402(d)(3), 12403(c)(3), and 13404(d).

¹¹ See FINRA Rules 12500(c) and 13500(c).

¹² 15 U.S.C. 78o-3(b)(6).

the proposal would shorten the time it takes for such arbitrations to conclude and, thereby, make the forum more efficient and the case administration process more expeditious for investors.

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. Where parties agree to an extension or modification of any deadline for serving answers, the proposal would likely result in parties, or their counsels, evaluating the arbitrator list or lists and ranking their selections, while simultaneously preparing their responses. Currently, these activities occur serially. However, FINRA notes that parties often jointly request that the ODR Director send the list or lists before the last answer due date deadline. Therefore, FINRA believes that the proposed rule change would not be burdensome. As noted, the benefit to parties arises from concluding arbitrator selection earlier, thereby expediting the arbitration process. FINRA anticipates that this proposal would impose no significant costs to forum users.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2017-009 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-2017-009. 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 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. All comments received will be posted without change; the Commission does

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2017-009 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

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Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).