

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80973; File No. SR-FINRA-2017-009)

June 19, 2017

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

I. Introduction

On April 26, 2017, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“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 provide that the Director of FINRA’s Office of Dispute Resolution (“ODR Director”) will send the list or lists or arbitrators generated by the Neutral List Selection System (“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.

The proposed rule change was published for comment in the Federal Register on May 15, 2017.³ The public comment period closed on June 5, 2017. The Commission received five comment letters in response to the Notice, all of which supported the proposed rule change.⁴ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 80634 (May 9, 2017), 82 FR 22363 (May 15, 2017) (File No. SR-FINRA-2017-009) (“Notice”).

⁴ See Letters from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated May 11, 2017 (“Caruso Letter”); Ryan K. Bakhtiari, Aidikoff, Uhl & Bakhtiari, dated May 15, 2017 (“Bakhtiari Letter”); Glenn S. Gitomer, McCausland Keen + Buckman, dated May 26, 2017 (“Gitomer Letter”); Marnie C. Lambert, President, Public Investors Arbitration Bar Association (“PIABA”), dated June 1, 2017 (“PIABA Letter”); Andres Gomez III, Esquire, Executive Principal, AG Consultants, dated June 4, 2017 (“Gomez Letter”). Comment letters are available at www.sec.gov.

II. Description of the Proposed Rule Change⁵

Under FINRA Rules 12402 (Cases with One Arbitrator) and 12403 (Cases with Three Arbitrators) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and FINRA Rule 13403 (Generating and Sending Lists to the Parties) of the Code of Arbitration Procedure for Industry Disputes (“Industry Code,” and together with the Customer Code, 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”).⁶ 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.⁷ The Codes currently require the ODR Director⁸ to wait until after the last answer is due⁹ to send the list or lists of arbitrators generated by NLSS to the parties.

⁵ The subsequent description of the proposed rule change is substantially excerpted from FINRA’s description in the Notice. See Notice, 82 FR at 22363-22364.

⁶ See also FINRA Rule 13303.

⁷ 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.

⁸ 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.

⁹ 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.

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.¹⁰

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.¹¹ 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.¹² Party agreements to extend answer due dates would no longer affect the timing of providing the arbitrator list or lists to the parties.

FINRA is therefore 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.¹³

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,¹⁴ 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

¹⁰ 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.

¹¹ FINRA stated that in 2015, parties requested an extension to answer in approximately 65 percent of arbitration cases served; in 2016, the figure was approximately 62 percent. See Notice at 22363 n.9.

¹² See Notice at 22363.

¹³ See id.

¹⁴ See FINRA Rules 12402(d)(3), 12403(c)(3), and 13404(d).

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.¹⁵ FINRA believes that in the many instances in which the parties agree to extend an answer due date, the proposed rule change would help arbitrations conclude in less time than they do under current rules.¹⁶ FINRA further notes that, currently, parties often jointly request that the ODR Director send the list or lists to the parties before the last answer is due.¹⁷

III. Comment Summary

As noted above, the Commission received five comment letters on the proposed rule change, all of which supported the proposal.¹⁸ One commenter described the proposal as “a fair, equitable and reasonable approach that would facilitate the fairness and efficiency of the participant experience in the FINRA arbitration forum and should, accordingly, be approved by the SEC on an expedited basis.”¹⁹ Another commenter called the proposal an “outstanding initiative.”²⁰ Two commenters expressed the view that the proposal would simply codify existing accepted practice.²¹ A majority of commenters expressed the view that the proposal would enhance and expedite the arbitration process,²² which, as one commenter noted, currently lasts for 14.4 months.²³

¹⁵ See FINRA Rules 12500(c) and 13500(c); see Notice at 22363.

¹⁶ See Notice at 22363.

¹⁷ See *id.* at 22364.

¹⁸ See Caruso Letter, Bakhtiari Letter; Gitomer Letter; PIABA Letter; Gomez Letter.

¹⁹ Caruso Letter.

²⁰ Gomez Letter.

²¹ See Gitomer Letter; PIABA Letter.

²² See Caruso Letter; Bakhtiari Letter; Gitomer Letter; PIABA Letter.

²³ PIABA Letter at 2.

IV. Discussion and Commission Findings

After careful review of the proposed rule change and the comment letters, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.²⁴ Specifically, the Commission finds that the rule change is consistent with Section 15A(b)(6) of the Exchange Act,²⁵ 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.

As stated in the Notice, 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.”²⁶ The Commission notes that FINRA believes that “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.”²⁷ The Commission also notes that currently, “parties often jointly request that the ODR Director send the list or lists before the last answer due date deadline.”²⁸ The Commission further notes that all five commenters were supportive of the proposal.²⁹

Taking into consideration FINRA’s views and the commenters’ unanimous support, the Commission believes that the proposal is consistent with the Exchange Act. Specifically, the

²⁴ 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).

²⁵ 15 U.S.C. 78o-3(b)(6).

²⁶ Notice at 22364.

²⁷ Id.

²⁸ Id.

²⁹ See Caruso Letter, Bakhtiari Letter; Gitomer Letter; PIABA Letter; Gomez Letter.

Commission believes that the proposal will help protect investors and the public interest by streamlining the arbitration process by concluding the arbitrator selection process at an earlier date. Accordingly, the Commission believes that the approach proposed by FINRA is appropriate and designed to protect investors and the public interest, consistent with Section 15A(b)(6) of the Exchange Act. For these reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

V. Conclusion

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Exchange Act³⁰ that the proposal (SR-FINRA-2017-009), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

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Assistant Secretary

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).