

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-95871; File No. SR-FINRA-2022-026)

September 22, 2022

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Change References in the Codes of Arbitration Procedure from the Neutral List Selection System to the List Selection Algorithm

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 15, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 change references in the Codes of Arbitration Procedure (“Codes”) from the Neutral List Selection System to the list selection algorithm.

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

From November 1998 until October 2006, the Neutral List Selection System (“NLSS”) was the computer system that generated lists of arbitrators from FINRA Dispute Resolution Services’ (“DRS”) rosters of arbitrators for the selected hearing location for each arbitration proceeding. In October 2006, DRS replaced the NLSS with the Mediation and Arbitration Tracking and Retrieval Interactive Case System (“MATRICS”).<sup>4</sup> As a result, all of the information contained in the NLSS was transferred to MATRICS such that MATRICS now contains the list selection algorithm DRS uses to generate lists of arbitrators from its rosters of

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<sup>4</sup> MATRICS is an internal, web-based computer system used to manage all arbitration and mediation cases in the DRS arbitration forum and to maintain DRS’s rosters of arbitrators and mediators.

arbitrators.<sup>5</sup> However, the Codes refer to the NLSS as a computer system that governs arbitrator list selection in the DRS arbitration forum.<sup>6</sup>

FINRA is proposing to update the Codes by making technical, non-substantive changes to remove references to the NLSS from those rules describing arbitrator list selection and instead refer to the “list selection algorithm.”<sup>7</sup> The proposed rule change would provide greater transparency and consistency regarding arbitrator list selection, as the Codes would reflect and align with DRS’s existing practices, processes and systems relating to arbitrator list selection.

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<sup>5</sup> See Securities Exchange Act Release No. 51339 (March 9, 2005), 70 FR 12763 (March 15, 2005) (Order Approving File No. SR-NASD-2004-164); see also Notice to Members 07-07 (February 2007) (announcing the effective date of April 16, 2007 for the amendments discussed in File No. SR-NASD-2004-164).

<sup>6</sup> In February 2022, the Audit Committee of FINRA’s Board of Governors engaged Lowenstein Sandler LLP to provide an independent review and analysis in connection with a Fulton County (Georgia) Superior Court decision vacating an arbitration award in favor of Wells Fargo Clearing Services, LLC. See Order Granting Mot. to Vacate Arb. Award and Den. Cross Mot. to Confirm Arb. Award at 37, Leggett v. Wells Fargo Clearing Servs., LLC, No. 2019-CV-328949 (Ga. Super. Ct., January 25, 2022). In its report, Lowenstein Sandler made several recommendations to provide greater transparency and consistency in the arbitrator selection process, one of which was to make technical amendments to the Codes to clarify the automated system used by DRS for arbitrator selection. See <https://www.finra.org/sites/default/files/2022-06/report-independent-review-drs-arbitrator-selection-process.pdf>. Since publication of the report, the Fulton County (Georgia) Superior Court’s decision was reversed by the Court of Appeals of Georgia. See Wells Fargo Clearing Servs. v. Leggett, No. A22A1149, 2022 Ga. App. (Ct. App. August 2, 2022).

<sup>7</sup> See proposed Rules 12400 (List Selection Algorithm and Arbitrator Rosters), 12402 (Cases with One Arbitrator), 12403 (Cases with Three Arbitrators), 12404 (Additional Parties), 12800 (Simplified Arbitration), 12801 (Default Proceedings), 13400 (List Selection Algorithm and Arbitrator Rosters), 13403 (Generating and Sending Lists to the Parties), 13406 (Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List), 13407 (Additional Parties), 13411 (Replacement of Arbitrators), 13800 (Simplified Arbitration), 13801 (Default Proceedings) and 13803 (Coordination of Sexual Assault Claims, Sexual Harassment Claims or Statutory Employment Discrimination Claims Filed in Court and in Arbitration).

In the proposed rule change, FINRA is not proposing any changes to the list selection algorithm, or any of DRS's existing practices, processes and systems related to arbitrator list selection.<sup>8</sup>

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,<sup>9</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide greater transparency to members and the public regarding arbitrator list selection by updating FINRA rules to reflect and align with DRS's existing practices, processes and systems related to arbitrator list selection.

### 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 Exchange Act. The proposed rule change brings transparency and consistency to FINRA rules without adding any burden on member firms.

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<sup>8</sup> The proposed rule change would apply to all members, including members that are funding portals or have elected to be treated as capital acquisition brokers ("CABs"), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

<sup>9</sup> 15 U.S.C. 78q-3(b)(6).

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2022-026 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-2022-026. 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 10:00 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.

All submissions should refer to File Number SR-FINRA-2022-026 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.<sup>12</sup>

J. Matthew DeLesDernier,  
Deputy Secretary.

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<sup>12</sup> 17 CFR 200.30-3(a)(12).