

Expedited Arbitrator List Selection

SEC Approves Amendments to the Codes of Arbitration Procedure Regarding Expedited List Selection

Effective Date: September 18, 2017

Summary

The Securities and Exchange Commission (SEC) approved¹ amendments to FINRA customer and industry arbitration rules to provide that the Director of FINRA's Office of Dispute Resolution (ODR Director)² will send lists of arbitrators 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 amendments are effective for cases filed on or after September 18, 2017.

Questions concerning this *Notice* should be directed to:

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Background & Discussion

Under the Codes of Arbitration Procedure for Industry and Customer Disputes (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).³ If there are multiple respondents to an arbitration, and the respondents are added to the case at different times, each respondent would have a different answer due date.⁴ The Codes

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Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal

Key Topics

- ▶ Arbitration
- ▶ Codes of Arbitration Procedure
- ▶ Generating Lists
- ▶ Neutral List Selection System
- ▶ Sending Lists

Referenced Rules & Notices

- ▶ FINRA Rule 12402
- ▶ FINRA Rule 12403
- ▶ FINRA Rule 13403

also require the ODR Director to wait until after the last answer is due⁵ to send the list or lists of arbitrators generated by the Neutral List Selection System (NLSS)⁶ 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.⁷ 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.

FINRA has amended FINRA Rules 12402(c), 12403(b) and 13403(c) to provide that the ODR Director will send the list or lists generated by the 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. Under the amendments, party agreements to extend answer due dates will no longer affect the timing of providing the arbitrator list or lists to the parties.

Effective Date

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Endnotes

1. See Securities Exchange Act Release No. 80973 (June 19, 2017), 82 *Federal Register* 28724 (June 23, 2017) (Order Approving File No. SR-FINRA-20176-009).
2. Unless the rules 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.
3. See also FINRA Rule 13303.
4. 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.
5. 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.
6. The 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 the system.
7. 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.

Attachment A

Customer Code

12402. Cases with One Arbitrator

(a) - (b) No change.

(c) Sending Lists to Parties

(1) The Director will send the list generated by the Neutral List Selection System 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 parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

(2) No change.

(d) - (g) No change.

12403. Cases with Three Arbitrators

(a) No change.

(b) Sending Lists to Parties

(1) The Director will send the lists generated by the Neutral List Selection System 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 parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

(2) No change.

(c) - (h) No change.

Industry Code

13403. Generating and Sending Lists to the Parties

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) - (b) No change.

(c) Sending Lists to Parties

(1) The Director will send the lists generated by the Neutral List Selection System 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 parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

(2) No change.