

## Arbitration Panel Selection

### SEC Approves Amendments to the Customer Code of Arbitration Procedure Regarding Panel Selection in Cases with Three Arbitrators

Effective Date: January 3, 2017

#### Executive Summary

The Securities and Exchange Commission (SEC) approved<sup>1</sup> amendments to FINRA Rule 12403 (Cases with Three Arbitrators) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) to increase the number of arbitrators on the public arbitrator list that FINRA sends to parties during the arbitration panel selection process from 10 to 15. The amendments also increase the number of strikes to the public arbitrator list from four to six, so that the proportion of strikes is the same under the amended rule as it is under the current rule.

The amendments will become effective for all arbitrator lists FINRA sends to parties on or after January 3, 2017, for panel selection in customer cases with three arbitrators.

The text of the amendments is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

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#### Background & Discussion

FINRA allows parties to participate in selecting the arbitrators who serve on their cases. Parties select their arbitration panel from computer-generated lists of arbitrators that FINRA sends them. Under FINRA Rule 12403(a), in customer cases with three arbitrators, FINRA sends the parties three lists: a list of 10 chair-qualified public arbitrators, a list of 10 public arbitrators and a list of 10 non-public arbitrators. The parties select their panel through a

December 2016

#### Notice Type

- ▶ Rule Amendment

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Registered Representatives
- ▶ Senior Management

#### Key Topics

- ▶ Arbitration
- ▶ Customer Code of Arbitration Procedure
- ▶ Panel Selection

#### Referenced Rules & Notices

- ▶ FINRA Rule 12403

process of striking and ranking the arbitrators on the lists. Under Rule 12403(c)(2), each party is allowed to strike up to four arbitrators on the chair-qualified public list and four arbitrators on the public list. At least six names must remain on each list. However, Rule 12403(c)(1) provides for unlimited strikes on the non-public list so that any party may select a panel of all public arbitrators in a customer case.

When parties collectively strike all of the non-public arbitrators from the list, FINRA fills all three panel seats from the two 10-person lists of public arbitrators. Specifically, the Customer Code provides that when parties collectively strike all of the arbitrators appearing on the non-public list, FINRA returns to the public list to select the next highest ranked available arbitrator to fill the seat. If no public arbitrators remain available to fill the vacancy, FINRA returns to the chair-qualified public list to select the next highest ranked public chair. In doing so, there is a likelihood that FINRA will appoint an arbitrator who the parties accepted, but who is ranked lower on the public or chair-qualified public lists.

FINRA believes that parties should have a greater choice of public arbitrators during the panel selection process. Therefore, FINRA amended Rule 12403(a)(1) to increase the number of arbitrators on the public arbitrator list FINRA sends to parties during the arbitration panel selection process from 10 to 15. FINRA also amended Rule 12403(c)(2) to increase the number of strikes to the public arbitrator list from four to six, so that the proportion of strikes is the same under the amended rule as it is under the current rule.

## Effective Date

The amendments will become effective for all arbitrator lists FINRA sends to parties on or after January 3, 2017 for panel selection in customer cases with three arbitrators.

## Endnotes

1. See Securities Exchange Act Release No. 78836 (September 14, 2016), 81 FR 64564 (September 20, 2016) (Order Approving File No. SR-FINRA-2016-022).

## Attachment A

New language is underlined; deletions are in brackets.

### 12403. Cases with Three Arbitrators

#### Composition of Panels

##### (a) Generating Lists

(1) The Neutral List Selection System will generate:

- (A) A list of 10 arbitrators from the FINRA non-public arbitrator roster;
- (B) A list of [10] 15 arbitrators from the FINRA public arbitrator roster; and
- (C) A list of 10 public arbitrators from the FINRA chairperson roster.

(2) The Neutral List Selection System will generate the chairperson list first. Chair-qualified arbitrators who were not selected for the chairperson list will be eligible for selection on the public list. An individual arbitrator cannot appear on both the chairperson list and the public list for the same case.

(3) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(b) No change.

##### (c) Striking and Ranking Arbitrators

(1) Non-Public Arbitrator List

(A) Each separately represented party may strike any or all of the arbitrators from the non-public arbitrator list by crossing through the names of the arbitrators.

(B) If any names remain on the non-public arbitrator list, each separately represented party shall rank all remaining arbitrators in order of preference, with a “1” indicating the party’s first choice, a “2” indicating the party’s second choice, and so on.

(2) Chairperson and Public Lists

(A) Each separately represented party may strike up to four of the arbitrators from the chairperson list and up to [four] six of the arbitrators from the public arbitrator list for any reason by crossing through the names of the arbitrators. At least six names must remain on [each list] the chairperson list and nine names must remain on the public arbitrator list.

(B) Each separately represented party shall rank all remaining arbitrators on the lists in order of preference, with a “1” indicating the party’s first choice, a “2” indicating the party’s second choice, and so on. Each list of arbitrators must be ranked separately.

(3) The ranked lists must be returned to the Director no more than 20 days after the date upon which the Director sent the lists to the parties. If the Director does not receive a party’s ranked lists within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators. A party’s failure to comply with the 20-day timeframe may result in the appointment of a panel consisting of two public arbitrators and one non-public arbitrator.

(4) Parties are not required to send a copy of their ranking list to the opposing parties.

**(d) – (h)** No change.