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November 20, 2026

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: File No. SR-FINRA-2026-017 (Proposed Rule Change to Amend the Codes of Arbitration Procedure to Make Changes to Certain Provisions Relating to Arbitrator List Selection) – Response to Comments

Dear Ms. Countryman:

The Financial Industry Regulatory Authority, Inc. ("FINRA") submits this letter in response to comments received by the Securities and Exchange Commission ("SEC" or "Commission") on the above-referenced proposed rule change.[1] The Proposal would amend the FINRA Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the FINRA Code of Arbitration Procedure for Industry Disputes ("Industry Code") (together, "Codes") to provide parties with greater input into arbitrator selection at initial panel appointment and when replacing arbitrators after initial panel appointment.

The Commission published the Proposal for public comment in the Federal Register on August 28, 2026, and received five comments in response.[2] All commenters expressed

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1 See Securities Exchange Act Release No. 106183 (August 25, 2026), 91 FR 55637 (August 28, 2026) (Notice of Filing of File No. SR-FINRA-2026-017) ("Proposal").

2 See Letter from Jessica R. Giroux, Chief Legal Officer, American Securities Association, to Vanessa A. Countryman, Secretary, SEC, dated September 17, 2026 ("ASA"); letter from William A. Jacobson, Clinical Professor of Law and Director, Cornell Securities Law Clinic, John Corey, Cornell Law School, Class of 2027, Hugo Duque, Cornell Law School, Class of 2028, & Howard Yuwen, Cornell Law School, Class of 2028, to Vanessa A. Countryman, Secretary, SEC, dated September 18, 2026 ("Cornell"); letter from Marni Rock Gibson, President, North American Securities Administrators Association, Inc., to Sherry R. Haywood, Assistant Secretary, SEC, dated September 18, 2026 ("NASAA"); letter from Michael C. Bixby, President, Public Investors Advocate Bar Association, to Sherry R. Haywood, Assistant Secretary, SEC, dated September 18, 2026 ("PIABA"); and letter from Kevin L. Petrasic, Managing Director, Legal and

general support for the Proposal, with some commenters also suggesting modifications or clarifications.

The following are FINRA's responses to the commenters' material concerns.

I. Proposed Amendments to List Selection at Initial Panel Appointment

The Proposal would amend the Codes to provide that if an insufficient number of arbitrators remains available from the combined ranked lists to fill the initial panel, a new list of arbitrators of the required classification would be generated randomly by the list selection algorithm and provided to the parties, with the same selection and participation rights they exercise during the initial arbitrator selection process.[3] Two commenters raised concerns related to this aspect of the Proposal.

Cornell expressed concern that under the existing list selection process, separately represented parties on the same side of a matter may collectively exercise a greater number of strikes. Cornell stated that this may give those parties "more influence on arbitrator selection," "create the appearance of unfairness," and "increase the likelihood of an empty arbitrator position." Cornell therefore recommended that Rule 12403 "be amended to cap aggregate strikes exercised by aligned parties."

Schwab expressed concern that the "principal trade-off of regenerating lists is delay," which could undermine arbitration's "speed, finality, and efficiency." Schwab recommended establishing "a reasonable limit on the number of successive new-list rounds before the Director's backstop authority applies," so that a case cannot cycle indefinitely.

The Proposal would provide parties with greater input into arbitrator selection at initial panel appointment while continuing to use the existing list selection procedures under the Codes when parties receive a new list.[4] FINRA believes this approach appropriately preserves party participation in arbitrator selection and is not proposing to modify these existing procedures as part of this Proposal. However, FINRA will monitor the impact of the Proposal if approved by the Commission, including use of successive new lists and any exhaustion of lists by strikes, and will consider whether additional changes are warranted.

Government Affairs, Charles Schwab & Co., Inc., to Vanessa A. Countryman, Secretary, SEC, dated September 23, 2026 ("Schwab").

3 See Proposal, 91 FR 55637, 55639.

4 See Proposal, 91 FR 55637, 55641-42.

II. Proposed Amendments to Replace Arbitrators After Initial Panel Appointment

A. Deadlines for Returning Short Lists

The Proposal would amend the Codes to codify the current voluntary Short List Option as the default method for selecting replacement arbitrators after initial panel appointment ("Proposed Short List Option").[5] The Proposal provides that parties would have no more than five days after the Director sends a short list of five arbitrators to return their ranked short list through the Party Portal.[6] For a short list of three arbitrators, parties would have no more than two days after the Director sends the short list to return their ranked short list through the Party Portal.[7]

Schwab, Cornell, and ASA commented on the proposed deadlines for returning ranked short lists. Schwab recommended "firm, certain, and short (measured in business days)" deadlines for parties to strike and rank the lists. Cornell recommended that the response periods run from receipt of the short list, be measured in business days, and account for delivery to *pro se* customers who have opted out of the Party Portal. ASA recommended providing at least three business days to respond to a three-arbitrator short list or, alternatively, clarifying how weekends and holidays would be treated, citing the burden that the proposed timeframe could impose on smaller and mid-size firms.

After considering the comments, FINRA is filing Partial Amendment No. 1 to extend the timeframe for parties to return a ranked short list from two days to three days when the short list contains three arbitrators.[8] The three-day period would provide parties with additional time to review and return their ranked short lists while allowing time for FINRA Dispute Resolution Services ("DRS") to complete the replacement process and for the replacement arbitrator to conduct the required review of the existing case record before participating in the hearing.[9]

The response periods would continue to be measured in calendar days from the date the Director sends the short list to the parties. However, if a deadline falls on a Saturday, Sunday, or

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5 See Proposal, 91 FR 55637, 55639.

6 See id.; proposed FINRA Rules 12402(h)(3)(A)(ii), 12403(g)(3)(A)(ii), and 13411(f)(3)(A)(ii).

7 See supra note 5; proposed FINRA Rules 12402(h)(3)(B)(ii), 12403(g)(3)(B)(ii), and 13411(f)(3)(B)(ii).

8 See Partial Amendment No. 1; proposed FINRA Rules 12402(h)(3)(B)(ii), 12403(g)(3)(B)(ii), and 13411(f)(3)(B)(ii). The five-day response period for a five-arbitrator short list would remain unchanged.

9 The extension to three days would also help address ASA's concern regarding the burden of the two-day response period on smaller and mid-size firms.

any FINRA holiday, the deadline would extend to the next *business* day, consistent with the definition of "day" under the Codes.[10]

The tables below illustrate the impact of a three-calendar day versus business day response period if an arbitrator were to withdraw or be removed from a panel 10 days before a scheduled hearing date. The examples assume the parties have not agreed to proceed with the remaining two arbitrators and, therefore, would receive a short list of three arbitrators to strike and rank. Under the Proposal, 10 days before a scheduled hearing would be the closest day to the hearing where the parties could still receive a short list of arbitrators if an arbitrator withdraws or is removed from a panel.

Table 1: Calendar Days

Date	Day	Time to Hearing	Action
May 25, 2027	Tuesday	Day 10	Arbitrator withdraws or is removed from panel.
May 26, 2027	Wednesday	Day 9	DRS starts the replacement process and contacts arbitrators for availability.
May 27, 2027	Thursday	Day 8	DRS completes the three-arbitrator short list and the Director sends the three-arbitrator short list to the parties.
May 28, 2027	Friday	Day 7	First day of the ranking period.
May 29, 2027	Saturday	Day 6	Second day of the ranking period.
May 30, 2027	Sunday	Day 5	Third day of the ranking period. Because the deadline falls on Sunday, a weekend, the deadline extends to the next business day.
May 31, 2027	Monday	Day 4	Because the extended deadline falls on Memorial Day, a FINRA holiday, the deadline extends to the next business day.
June 1, 2027	Tuesday	Day 3	The parties' ranked short lists are due.
June 2, 2027	Wednesday	Day 2	DRS begins processing the parties' rankings and contacts the highest-ranked available arbitrator to confirm acceptance of the case.

[10] See FINRA Rules 12100(l) and 13100(l) (defining "day" to mean calendar day, except as otherwise provided, and providing that a deadline specified in the Code that falls on a Saturday, Sunday, or any FINRA holiday is extended until the next business day).

Date	Day	Time to Hearing	Action
June 3, 2027	Thursday	Day 1	The replacement arbitrator conducts the required review of the existing case record before the hearing begins.[11]
June 4, 2027	Friday	Day 0	Hearing begins. Replacement arbitrator participates in the hearing.

Table 1 shows that a three-day response period provides time for the parties to strike and rank the three-arbitrator short list, for DRS to process the parties' rankings, contact the highest-ranked arbitrator to notify them of their selection and confirm their acceptance of the case, and for the replacement arbitrator to conduct the required review of the case record prior to commencement of the hearing.

Table 2 below illustrates how the same timeline would operate if the three-day ranking period were measured in business days rather than calendar days.

Table 2: Business Days

Date	Day	Time to Hearing	Action
May 25, 2027	Tuesday	Day 10	Arbitrator withdraws or is removed from panel.
May 26, 2027	Wednesday	Day 9	DRS starts the replacement process and contacts arbitrators for availability.
May 27, 2027	Thursday	Day 8	DRS completes the three-arbitrator short list and the Director sends the three-arbitrator short list to the parties.
May 28, 2027	Friday	Day 7	First day of the ranking period.
May 29, 2027	Saturday	Day 6	Weekend
May 30, 2027	Sunday	Day 5	Weekend
May 31, 2027	Monday	Day 4	Memorial Day, a FINRA holiday.
June 1, 2027	Tuesday	Day 3	Second day of the ranking period.

[11] See Proposal, 91 FR 55637, 55640 & n.48 (stating that the Proposal would expressly codify the current expectation that, immediately following panel appointment, replacement arbitrators review the case record); see also proposed FINRA Rules 12402(i)(1), 12403(h)(1), and 13411(g)(1).

Date	Day	Time to Hearing	Action
June 2, 2027	Wednesday	Day 2	Third day of the ranking period. The parties' ranked short lists are due.
June 3, 2027	Thursday	Day 1	DRS begins processing the parties' rankings and contacts the highest-ranked available arbitrator to confirm acceptance of the case.
June 4, 2027	Friday	Day 0	Hearing begins. Replacement arbitrator participates in the hearing.

Table 2 illustrates that while measuring the three-day ranking period in business days would provide the parties with additional time to strike and rank the three-arbitrator short list and time for DRS to complete the replacement process, it would not provide time for the replacement arbitrator to conduct the required review of the existing case record before the hearing. Thus, FINRA believes that three calendar days—subject to the treatment under the Codes of deadlines falling on weekends or holidays—appropriately balances providing parties with time to strike and rank the three-arbitrator short list with allowing time for DRS to complete the replacement process and for the replacement arbitrator to conduct the required review of the existing case record before participating in the hearing.[12] FINRA has determined to maintain the 10 calendar day approach to avoid additional case postponements and potentially significant delays while new hearing dates are scheduled.

With respect to Cornell's concern regarding delivery of short lists to *pro se* customers who have opted out of the Party Portal, if the *pro se* customer has provided an email address, consistent with current practice, the Director would send the short list by email, thereby permitting same-day receipt. Otherwise, typically, the Director would send the short list by overnight delivery service. Under the Proposal, a *pro se* customer who has opted out of the Party Portal may also return the ranked short list by email.[13] Thus, *pro se* customers can receive and return the short list electronically notwithstanding the customer's decision to opt out of the Party Portal.

If the Proposal is approved by the Commission, FINRA will monitor its impact, including the deadlines related to returning the ranked short lists and their impact on *pro se* customers, to determine if additional changes are warranted.

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12 In addition, FINRA notes that the parties may agree in writing to extend or modify the deadline for returning the ranked arbitrator list, provided that they notify the Director of the new deadline in writing. See FINRA Rules 12207(a) and 13207(a).

13 See Proposal, 91 FR 55637, 55640 nn.38, 40; proposed FINRA Rules 12402(h)(3)(A)(ii), (B)(ii), and 12403(g)(3)(A)(ii), (B)(ii).

B. Postponement Fees

The Proposal would clarify that the existing postponement fee provisions under the Codes apply when a hearing is scheduled to begin in fewer than 10 days and the parties agree to postpone the hearing to use the Proposed Short List Option.[14]

NASAA recommended that parties not be assessed postponement fees when they agree to postpone an imminent hearing to use the Proposed Short List Option. NASAA noted that the proposed rules would subject parties to fees when they agree to postpone a hearing scheduled within 10 days, but not when they do not agree to postpone. NASAA stated that parties should not be "penalized for cooperating with each other to avail themselves of an option that is offered to them under FINRA rules," particularly because "they do not control when an arbitrator becomes unavailable or unwilling to serve."

The Proposal would not establish a new postponement fee when parties agree to postpone a hearing that is scheduled within 10 days. Rather, it would clarify that the Codes' existing provisions regarding postponements of hearings scheduled within 10 days apply when parties agree to postpone a hearing to use the Proposed Short List Option. These provisions are tied to the honoraria paid to arbitrators for late postponements and provide compensation to arbitrators who have reserved time for a scheduled hearing that is postponed on short notice.[15] Accordingly, FINRA does not believe that a separate exception to the postponement fee provisions is necessary.

C. Ability to Forgo the Proposed Short List Option

ASA requested confirmation that "parties remain free to voluntarily agree to forgo the Short List Option and proceed with the remaining panelists in appropriate cases" when they prioritize the prompt continuation of the proceeding over selecting a replacement arbitrator.

FINRA confirms that, as stated in the Proposal, in a case with three arbitrators, the Proposed Short List Option would not apply if the parties agree in writing to proceed with the remaining arbitrators.[16]

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14 See Proposal, 91 FR 55637, 55639 & n.32.

15 See generally Regulatory Notice 15-21 (June 2015) (discussing late cancellation and postponement fees and corresponding arbitrator honoraria).

16 See proposed FINRA Rules 12403(f)(2) and 13411(b)(1).

D. Conflict Screening, Disclosure, and Challenge Rights

Under current FINRA rules, the list selection algorithm automatically excludes arbitrators from the lists based on conflicts of interest identified through the algorithm.[17] In addition, DRS conducts a review for other conflicts not identified by the algorithm. If an arbitrator is removed due to such a conflict, the list selection algorithm generates a replacement arbitrator.

Schwab recommended that replacement arbitrators be subject to the same conflict screening, disclosure, and party challenge protections that apply to originally selected arbitrators and requested that "FINRA confirm expressly in the rule text or accompanying guidance that expanded input does not abbreviate the vetting, disclosure, or objection rights the parties would otherwise enjoy."

FINRA confirms that replacement arbitrators would remain subject to the applicable conflict screening, disclosure, and challenge protections. When parties receive a new list to select a replacement arbitrator, the Proposal provides that the list will be generated in accordance with the applicable list selection procedures under the Codes.[18] For the Proposed Short List Option, the Director would provide parties with information about the arbitrators, and parties would retain their rights to challenge the arbitrators under current FINRA rules.[19]

E. Implementation Guidance and Ongoing Data

Schwab recommended that FINRA provide clear effective date and transition guidance identifying which cases and lists would be subject to the Proposal and periodically publish data regarding the use of new lists and short lists and their effect on case duration.

As discussed in the Proposal, if the Commission approves the Proposal, FINRA will announce the effective date in a Regulatory Notice.[20] In addition, after FINRA gains experience with the amended rules, it will consider whether there is data that would be helpful to publish.

III. FINRA Rule Modernization Initiative

Several commenters recommended that FINRA consider broader changes relating to the arbitrator roster and the arbitrator selection process, noting they had raised similar issues in response to Regulatory Notice 26-06. For example, Schwab recommended that FINRA consider

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17 See Proposal, 91 FR 55637, 55638 & n.11.

18 See Proposal, 91 FR 55637, 55639; proposed FINRA Rules 12402(g)(1), 12403(f)(1), and 13411(a).

19 See Proposal, 91 FR 55637, 55639; proposed FINRA Rules 12402(h)(2), 12403(g)(2), and 13411(f)(2).

20 See Proposal, 91 FR 55637, 55640.

changes to arbitrator qualifications, compensation, and roster depth. ASA recommended that respondents added after the initial panel appointment be provided an opportunity to participate in arbitrator selection and that FINRA periodically review the $300 replacement arbitrator honorarium to ensure that it remains sufficient. FINRA appreciates these recommendations and will consider them as part of its broader rule modernization initiative.

IV. Conclusion

FINRA believes that the foregoing responds to the material concerns raised by the commenters on the Proposal. If you have any questions, please contact me at (212) 858-4106, or email Kristine.Vo@finra.org.

Best regards,

/s/ Kristine Vo

Kristine Vo
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