

Chairperson Eligibility Requirements

SEC Approves a Proposed Rule Change to Amend the Chairperson Eligibility Requirements in the Arbitration Codes for Customer and Industry Disputes

Effective Date: September 22, 2008

Executive Summary

An amendment to the chairperson eligibility requirements of the Code of Arbitration Procedure for Customer Disputes and Industry Disputes that removes the alternative “substantially equivalent training or experience” criterion¹ is effective September 22, 2008.

The text of the amendment is set forth in Attachment A. It will apply to chairperson lists generated according to Rules 12403 or 13403 on or after September 22, 2008, and to arbitrators appointed by the Director of Arbitration according to Rules 12406, 12411, 13406 or 13411 on or after September 22, 2008, when an insufficient number of names remain on the consolidated list.

Questions concerning this *Notice* should be directed to Barbara L. Brady, Vice President and Director of Neutral Management, at (212) 858-4352 or barbara.brady@finra.org; or Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, at (202) 728-8151 or mignon.mclemore@finra.org.

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Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal

Key Topic(s)

- Arbitration
- Chairperson Selection
- Code of Arbitration Procedure
- Dispute Resolution

Referenced Rules & Notices

- Rule 12400(c)
- Rule 13400(c)



Background and Discussion

Under Rules 12400(c) and 13400(c) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and the Code of Arbitration Procedure for Industry Disputes (Industry Code) (the Codes), arbitrators are eligible for the chairperson roster if they have completed FINRA's chairperson training course (chair training) or have substantially equivalent training or experience, and have served as arbitrators through award in three cases (two cases for attorneys).² For purposes of these rules, FINRA anticipated that substantially equivalent training or experience might include service as a judge or administrative hearing officer, or chairperson training offered by another recognized dispute resolution forum.

In the year since these rules have been in effect,³ all arbitrators currently classified as chairpersons have completed FINRA's chair training, and the chair training requirement has never been waived for an arbitrator claiming to satisfy the "substantially equivalent" criterion. Thus, FINRA has determined that the "substantially equivalent" criterion has not been essential to arbitrators in establishing their eligibility for the chairperson roster and FINRA is, therefore, removing this criterion from the rules.

As a result of this change, FINRA will require all arbitrators wishing to qualify as chairpersons to take FINRA chair training before they can become eligible for the chairperson roster.⁴ The chair training builds on the basic arbitrator training and instructs arbitrators on the added responsibilities they assume in the essential role of chairperson in the FINRA forum. These responsibilities include overseeing the discovery process, ruling on motions and objections, and managing hearings. Once arbitrators have taken the chair training,⁵ FINRA staff will review their qualifications to determine their eligibility for the chairperson roster.

Since FINRA staff will no longer assess arbitrators' prior experience or training to determine whether it was substantially equivalent to FINRA chair training, Rules 12400(c) and 13400(c), as amended, will reduce staff discretion, making chair eligibility determinations more objective, and will provide investors with access to well-trained and well-qualified arbitrators.

Effective Date Provisions

The amendment will become effective on September 22, 2008, and will apply to chairperson lists generated according to Rules 12403 or 13403 on or after September 22, 2008, and to arbitrators appointed by the Director of Arbitration according to Rules 12406, 12411, 13406 or 13411 on or after September 22, 2008, when an insufficient number of names remain on the consolidated list.

Endnotes

- 1 Exchange Act Release No. 58004 (June 23, 2008), 73 Federal Register 36579 (June 27, 2008) (File No. SR-NASD-2008-009).
- 2 Rule 12400(c) of the Customer Code and Rule 13400(c) of the Industry Code.
- 3 When the SEC approved the Code Revision in January 2007, Rules 12400 and 13400 were adopted to improve the arbitrator selection process by creating and maintaining a new roster of arbitrators who are qualified to serve as chairpersons. See Securities Exchange Act Release No. 55158 (January 24, 2007); 72 FR 4574 (January 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011).
- 4 The online Chairperson training course is \$50 and is available at www.finra.org/ArbitrationMediation/ResourcesforArbitratorsandMediators/ArbitratorTraining/ArbitratorTrainingPrograms/index.htm.
- 5 In addition to Basic Arbitrator Training and Chair Training, FINRA provides voluntary modules on specific arbitration topics, such as disclosure, discovery abuse and sanctions, and understanding the pre-hearing stage. These courses are also available on FINRA's Web site for a nominal fee. See note 4 for link to Arbitrator Training Programs.

Attachment A

Deleted language is in brackets.

Code of Arbitration Procedure for Customer Disputes

and

Code of Arbitration Procedure for Industry Disputes

* * *

Customer Code

12400. Neutral List Selection System and Arbitrator Rosters

(a) - (b) No change.

(c) Eligibility for Chairperson Roster

In customer disputes, chairpersons must be public arbitrators. Arbitrators are eligible for the chairperson roster if they have completed chairperson training provided by NASD [or have substantially equivalent training or experience] and:

{Remainder of the rule unchanged.}

* * *

Industry Code

13400. Neutral List Selection System and Arbitrator Rosters

(a) - (b) No change.

(c) Eligibility for Chairperson Roster

Arbitrators are eligible to serve as chairperson of panels submitted for arbitration under the Code if they have completed chairperson training provided by NASD [or have substantially equivalent training or experience] and:

{Remainder of rule – no change.}

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