

## Arbitrator Selection

### Increase in Number of Arbitrators Available for Review When Parties Choose Arbitration Panels

Effective Date: September 27, 2010

#### Executive Summary

Effective September 27, 2010, FINRA will increase the number of proposed arbitrators available for review when parties choose arbitration panels from lists generated randomly by the Neutral List Selection System (NLSS).<sup>1</sup> The amendments to the Customer and Industry Codes of Arbitration Procedure (Codes) will apply to lists generated on or after the effective date. The text of the amendments is set forth in Attachment A.

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#### Background & Discussion

NLSS is a computer system that generates, on a random basis, lists of proposed arbitrators from FINRA's rosters of arbitrators (*i.e.*, public, non-public and chairperson rosters) for each arbitration case. The parties select their panel through a process of striking and ranking the arbitrators on the lists.

Currently, FINRA sends parties lists of available arbitrators, along with detailed biographical information. In a single arbitrator case, the parties receive a list of eight chairperson arbitrators.<sup>2</sup> In a three-arbitrator case, other than a dispute involving only FINRA firms, the parties receive three

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##### Notice Type

- Rule Amendment

##### Suggested Routing

- Compliance
- Legal
- Registered Representatives
- Senior Management

##### Key Topics

- Arbitration
- Code of Arbitration Procedure
- Generating and Sending Lists
- Neutral List Selection System

##### Referenced Rules & Notices

- FINRA Rule 12403
- FINRA Rule 12404
- FINRA Rule 13403
- FINRA Rule 13404

lists—one public, one public chairperson and one non-public—each containing eight arbitrator names. In a three-arbitrator case involving only firms, the panel consists of non-public arbitrators, so the parties receive a list of 16 arbitrators from the non-public roster and a list of eight arbitrators from the non-public chairperson roster.

Each party is permitted to strike up to four of the eight names on each list and rank the remaining names in order of preference. FINRA appoints the panel from the names remaining on the parties' lists. When there are no names remaining on a list because all of them have been struck by the parties, or when no mutually acceptable arbitrator is able to serve, FINRA uses NLSS to "extend the list" by randomly selecting an additional arbitrator to complete the panel.<sup>3</sup> Parties may only challenge an extended-list arbitrator for cause.

Parties in arbitration cases have expressed concerns about extended-list appointments because they are not able to strike arbitrators from these lists. To address these concerns, FINRA is amending the Codes to increase the number of arbitrators on the initial lists generated by NLSS from eight to 10 (or from 16 to 20, depending on the type of case), while retaining the current limitation on strikes.

The amendments provide parties with more control in the arbitrator selection process because of the increased likelihood that arbitrators from each initial list will remain on the list after the parties complete the striking and ranking process. Having additional arbitrator names on the list will also reduce the need for extended-list appointments if vacancies occur in a panel later in a case. FINRA believes the amendments will enhance the arbitration process.

### Customer Disputes

FINRA Rule 12403 of the Customer Code of Arbitration Procedure is amended to expand the number of arbitrators on each list (public, public chairperson and non-public) generated through NLSS from eight arbitrators to 10 arbitrators, while keeping the number of available strikes at four per party.<sup>4</sup> The new procedure will ensure that in most cases at least two proposed arbitrators will remain on each list of 10 potential arbitrators—thus significantly increasing the likelihood that the parties will get panelists they chose and ranked, as opposed to extended list appointments.

### Firm and Associated Person Disputes

FINRA is also amending FINRA Rule 13403 of the Industry Code of Arbitration Procedure to expand the number of arbitrators on lists generated through NLSS. For disputes between firms, FINRA is expanding the number of arbitrators on the non-public chairperson list from eight arbitrators to 10 arbitrators and the number of arbitrators on the non-public list from 16 arbitrators to 20 arbitrators.

For disputes between associated persons or between or among firms and associated persons, FINRA is expanding the number of arbitrators on each list (public, public chairperson and non-public) from eight arbitrators to 10 arbitrators. FINRA is not expanding the number of allowable strikes for each party.<sup>5</sup>

## Effective Date

Before implementing the amendments, FINRA needs to make programming changes to its case management computer system, MATRICS. Therefore, the amendments become effective on September 27, 2010, for lists generated on or after that date. The amendments apply to cases in which FINRA has not yet generated lists, and cases which require a new list on or after the effective date. In pending cases, however, FINRA will honor any joint request of the parties to wait until September 27, 2010, to generate lists.

## Endnotes

- 1 Exchange Act Release No. 62480 (July 9, 2010) 75 Federal Register 41262 (July 15, 2010) (File No. SR-FINRA-2010-022).
- 2 In a case involving only FINRA member firms, the parties receive a list of eight arbitrators from the non-public chairperson roster. In all other cases, the parties receive a list of eight arbitrators from the public chairperson roster.
- 3 The Codes provide that each separately represented party may strike up to four of the arbitrators from each list for any reason. If, for example, a case involves a customer, a firm and an associated person, and each party is separately represented, all eight arbitrators on a list may be stricken. In such a case, FINRA uses NLSS to extend the list by generating additional arbitrator names.
- 4 Currently, FINRA Rule 12404 provides that each separately represented party may strike up to four of the arbitrators from each eight arbitrator list and that at least four names must remain on the list. FINRA is making a conforming change to FINRA Rule 12404 to reflect that at least six names must remain on each 10 arbitrator list.
- 5 Currently, FINRA Rule 13404 provides that each separately represented party may strike up to four of the arbitrators from each eight arbitrator list and eight arbitrators from each 16 arbitrator list. FINRA is making conforming changes to FINRA Rule 13404 to reflect that at least six names must remain on each list of 10 arbitrators and that at least 12 names must remain on a list of 20 arbitrators.

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## Attachment A

New language is underlined; deleted language is in brackets.

Code of Arbitration Procedure for Customer Disputes

And

Code of Arbitration Procedure for Industry Disputes

Customer Code

### 12403. Generating and Sending Lists to the Parties

#### (a) Generating Lists

(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of [eight] 10 public arbitrators from the FINRA chairperson roster.

(2) If the panel consists of three arbitrators, the Neutral List Selection System will generate:

- A list of [eight] 10 arbitrators from the FINRA non-public arbitrator roster;
- A list of [eight] 10 arbitrators from the FINRA public arbitrator roster; and
- A list of [eight] 10 public arbitrators from the FINRA chairperson roster.

(3) – (4) No change.

(b) No Change.

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### 12404. Striking and Ranking Arbitrators

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

(b) – (c) No Change.

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Industry Code

### **13403. Generating and Sending Lists to the Parties**

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

#### **(a) Lists Generated in Disputes Between Members**

(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of [eight] 10 non-public arbitrators from the FINRA non-public chairperson roster.

(2) If the panel consists of three non-public arbitrators, the Neutral List Selection System will generate:

- A list of [16] 20 arbitrators from the FINRA non-public roster; and
- A list of [eight] 10 non-public arbitrators from the FINRA non-public chairperson roster.

(3) – (4) No change.

#### **(b) Lists Generated in Disputes Between Associated Persons or Between or Among Members and Associated Persons**

(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of [eight] 10 public arbitrators from the FINRA public chairperson roster.

(2) If the panel consists of three arbitrators, the Neutral List Selection System will generate:

- A list of [eight] 10 arbitrators from the FINRA non-public arbitrator roster;
- A list of [eight] 10 arbitrators from the FINRA public arbitrator roster; and
- A list of [eight] 10 public arbitrators from the FINRA public chairperson roster.

(3) – (4) No change.

(c) No change.

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#### 13404. Striking and Ranking Arbitrators

(a) Except for lists generated pursuant to Rule 13403(a)(2), each separately represented party may strike up to four of the arbitrators from each list for any reason by crossing through the names of the arbitrators. At least ~~four~~ six names must remain on each list.

(b) For lists generated pursuant to Rule 13403(a)(2), each separately represented party may strike up to eight of the arbitrators from the non-public list and up to four of the arbitrators from the non-public chairperson list for any reason by crossing through the names of the arbitrators. At least ~~eight~~ 12 names must remain on the non-public list and at least ~~four~~ six names must remain on the non-public chairperson list.

(c) – (d) No change.

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