

Arbitrator Chairperson Eligibility

SEC Approves Amendments to the Customer and Industry Codes of Arbitration Procedure Broadening Chairperson Eligibility in Arbitration

Effective Date: January 9, 2017

Summary

The Securities and Exchange Commission (SEC) approved¹ amendments to FINRA Rules 12400 and 13400 (Neutral List Selection System and Arbitrator Rosters) of the Customer and Industry Codes of Arbitration Procedure (Codes) to provide that an attorney arbitrator is eligible for the chairperson roster if he or she has completed chairperson training provided by FINRA and served as an arbitrator through award on at least one arbitration (instead of two arbitrations) administered by a self-regulatory organization (SRO) in which hearings were held.

The amendments apply to all chairperson applicants and are effective on January 9, 2017.

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

Questions concerning this *Notice* should be directed to:

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Notice Type

- ▶ Rule Amendment

Suggested Routing

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

Key Topics

- ▶ Arbitration
- ▶ Chairperson Eligibility
- ▶ Codes of Arbitration Procedure

Referenced Rules & Notices

- ▶ FINRA Rule 12400
- ▶ FINRA Rule 13400

Background & Discussion

FINRA rules require chairpersons, who play a vital role in the administration of arbitration cases, to have arbitrator experience and training to ensure the quality and efficiency of arbitrations. FINRA Rules 12400 and 13400 provide, among other things, that an arbitrator is eligible for the chairperson roster if he or she has completed chairperson training provided by FINRA and:

- ▶ has a law degree and is a member of a bar of at least one jurisdiction and has served as an arbitrator through award on at least two arbitrations administered by an SRO in which hearings were held (an attorney arbitrator); or
- ▶ has served as an arbitrator through award on at least three arbitrations administered by an SRO in which hearings were held.

In addition, in customer disputes or any dispute involving associated persons, chairpersons must be public arbitrators. In 2015, FINRA amended the public arbitrator definition, by adding disqualifications relating to, among other things, affiliations with the securities industry concerning an arbitrator's family member or place of employment.² As a result of the amendments, FINRA removed approximately 14 percent of its public arbitrators from the roster. Many of these arbitrators were chair-qualified. To ensure that FINRA has a sufficient number of public chairperson arbitrators to serve in each of its 71 arbitration hearing locations, FINRA asks many public chairpersons to travel to nearby hearing locations where there is a need for additional chair-qualified arbitrators. FINRA reimburses these chairpersons for their travel, lodging, and meals. However, forum users have complained that it is inconvenient to schedule hearings with out-of-town arbitrators. Moreover, during inclement weather, arbitrators may not be able to travel to the hearing location, which then requires parties to reschedule and incur additional costs. In addition, some forum users have raised concerns that these arbitrators lack familiarity with local venue customs and procedures.

To expand the roster of arbitrators who might be eligible to serve as public chairpersons in each hearing location, FINRA has amended Rules 12400 and 13400 to provide that an attorney arbitrator is eligible for the chairperson roster if he or she has completed chairperson training and served as an arbitrator through award on at least one arbitration, instead of two arbitrations, administered by an SRO in which hearings were held. The amendments should provide parties with a greater selection of local chairpersons, without negatively impacting the quality of the chairperson rosters.

Effective Date

The amendments apply to all chairperson applicants and are effective on January 9, 2017.

Endnotes

1. See Securities Exchange Act Release No. 79455 (December 2, 2016), 81 FR 88720 (December 8, 2016) (Order Approving File No. SR-FINRA-2016-033).
2. See Securities Exchange Act Release No. 74383 (February 26, 2015), 80 FR 11695 (Order Approving Filing No. SR-FINRA-2014-028).

Attachment A

New language is underlined; deletions are in brackets

Customer Code

12400. Neutral List Selection System and Arbitrator Rosters

(a) No change.

(b) Arbitrator Rosters

FINRA maintains the following roster of arbitrators:

[•] (1) A roster of non-public arbitrators as defined in Rule 12100(p);

[•] (2) A roster of public arbitrators as defined in Rule 12100(u); and

[•] (3) A roster of arbitrators who are eligible to serve as chairperson of a panel as described in paragraph (c). Arbitrators who are eligible to serve as chairperson will also be included in the roster of public arbitrators, but will only appear on one list in a case.

(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 FINRA and:

[•] (1) Have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least [two] one arbitration[s] administered by a self-regulatory organization in which hearings were held; or

[•] (2) Have served as an arbitrator through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held.

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Industry Code**13400. Neutral List Selection System and Arbitrator Rosters**

(a) No change.

(b) Arbitrator Rosters

FINRA maintains the following roster of arbitrators:

[•] (1) A roster of non-public arbitrators as defined in Rule 13100(p);

[•] (2) A roster of public arbitrators as defined in Rule 13100(u); and

[•] (3) A roster of arbitrators who are eligible to serve as chairperson of a panel as described in paragraph (c). Arbitrators who are eligible to serve as chairperson will also be included in the roster of non-public or public arbitrators, depending on composition of the panel under Rule 13402, but will only appear on one list in a case.

(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 FINRA and:

[•] (1) Have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least [two] one arbitration[s] administered by a self-regulatory organization in which hearings were held; or

[•] (2) Have served as an arbitrator through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held.