

Alerts

FINRA Proposes Rule Change to Selection Process for Customer Arbitration

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On June 13, 2013, FINRA filed a request with the SEC to modify the method of selecting arbitrators in customer arbitration.¹ The proposed modification would change FINRA Rule 12403 to avoid the two step process in selecting an arbitration panel. The amended rule would no longer require a customer to separately elect a public arbitration panel. The new rule provides that all parties receive separate lists of public chair arbitrators, public arbitrators and industry arbitrators. Parties would be allowed to strike 4 proposed arbitrators from each of the chairmen and public arbitrator lists. However, a party may strike all of the proposed arbitrators on the industry arbitrator list, thereby electing an all Public Arbitration Panel. FINRA would then appoint a third public arbitrator.

The current practice under Rule 12403 proceeds along a two step process for an all Public Arbitration Panel. The default panel is a Majority Public panel, consisting of a public chair arbitrator, another public arbitrator, and an industry arbitrator. In order for an all Public Arbitration Panel to decide the controversy, the customer must affirmatively elect the all Public Arbitration Panel.

FINRA statistics indicate that the proposed amendments will make the arbitration selection process fairer to the customer, and could potentially lead to a higher percentage of awards in favor of customers. It is, however, suggested that FINRA seeks to modify the arbitration process in anticipation of the SEC addressing whether mandatory customer arbitration is appropriate. The new amendments to Rule 12403 will take effect 45 days after the proposed amendment is published in the Federal Register, unless extended to 90 days by the SEC.

¹ SEC Release No. 34-69762; Self-Regulatory Organizations; Financial Industry Regulation Authority; Notice of Filing of Proposed Rule Change Relating to Amendments to the Code of Arbitration Procedure for Customer Disputes Concerning Panel Composition.

Related Attorneys

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