



Financial Services Employment Blog

FINRA Proposes Rule Changes to Expedite Arbitrator Selection

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Seyfarth Synopsis: The Financial Industry Regulatory Authority (“FINRA”) filed proposed rule changes with the Securities Exchange Commission (“SEC”). If approved, the revised rules would require that FINRA send arbitrator lists to the parties within 30 days after the last answer is originally due, regardless of the parties’ agreement to extend any deadline to answer.

FINRA’s Board of Directors has been trying to expedite and simplify FINRA arbitration for some time. By way of background, FINRA Rule 13303 requires a respondent to answer the statement of claim by the “answer date,” which is within 45 days of receipt of the statement of claim. See also FINRA Rule 12303. If there are multiple respondents to an arbitration, and the respondents are added at different times, each respondent would have a different answer date.

Under the current FINRA rules, the Director must wait until the last parties’ answer is due to issue arbitrator lists, unless the parties affirmatively ask that arbitrator lists be issued earlier. If the parties agree to extend respondent’s deadline to answer, the Director uses the revised answer due date as the date triggering issuance of arbitrator lists. In 2015, parties requested an extension of time to answer the statement of claim in approximately 65% of arbitration cases.

However, under the [proposed changes](#) to Rules 12402 and 12403 of the Customer Code and Rule 13403 of the Industry Code, the Director would send arbitrator lists to all parties at the same time, within approximately 30 days after the last answer is originally due, *regardless of the parties’ agreement to extend any answer deadline*. Essentially, party agreements to extend answer due dates would no longer affect the timing when FINRA provides the arbitrator list to the parties. Once the parties receive the arbitrator list, they will continue to have 20 days to strike and rank arbitrators. FINRA believes that the proposed changes will lead to earlier appointment of arbitrators and earlier Initial Prehearing Conferences, which they hope will expedite FINRA arbitrations.

Outlook

If the SEC approves the proposed rule change, FINRA will announce the effective date in a Regulatory notice within 60 days of the SEC’s approval. The proposed rules would likely not have a significant impact on the FINRA arbitration procedures, but they may have some practical implications for employers. Currently, employers can take time to conduct a fact investigation and become familiar with their case before submitting an answer and can then assess potential arbitrators based on that fact investigation. However, under the proposed rules, if the parties agree to extend the time to answer, employers might have to prepare their answer and analyze their potential arbitrators simultaneously. Parties

who seek extension of the answer deadline can expect to get their arbitrator list, panel, and conduct the Initial Prehearing Conference earlier under the proposed rules. As always, we will continue to track changes in FINRA's rules and provide updates accordingly.

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