

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100787; File No. SR-FINRA-2024-008)

August 21, 2024

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, to Amend FINRA Rule 12800 (Simplified Arbitration) to Clarify and Amend the Applicability of the Document Production Lists

I. Introduction

On May 13, 2024, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change (SR-FINRA-2024-008) to amend FINRA Rule 12800 (Simplified Arbitration) of the FINRA Code of Arbitration Procedure for Customer Disputes (“Customer Code”). The proposed rule change, as subsequently modified by Partial Amendment No. 1, would address the applicability of the Document Production Lists³ to simplified customer arbitrations administered under FINRA Rule 12800.

The proposed rule change was published for public comment in the Federal Register on May 28, 2024.⁴ The public comment period closed on June 18, 2024. The Commission received comment letters related to this filing.⁵ On July 8, 2024, FINRA consented to an extension of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ FINRA Rule 12506 (Document Production Lists) describes the documents that are presumed to be discoverable in all arbitrations between a customer and a member firm or associated person.

⁴ See Exchange Act Release No. 100204 (May 21, 2024), 89 FR 46210 (May 28, 2024) (File No. SR-FINRA2024-008) (“Notice”).

⁵ The comment letters are available at <https://www.sec.gov/comments/sr-finra-2024-008/srfinra2024008.htm>.

time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to August 26, 2024.⁶ On August 7, 2024, FINRA responded to the comment letters received in response to the Notice and filed a partial amendment to modify the proposed rule change (“Partial Amendment No. 1”).⁷

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act⁸ to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1, and to institute proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter referred to as the “proposed rule change” unless otherwise specified).

II. Description of the Proposed Rule Change

A. Background

FINRA Dispute Resolution Services (“DRS”) provides a Discovery Guide to help guide the parties and arbitrators through the discovery process in customer arbitrations.⁹ The Document Production Lists, which are included in the Discovery Guide and described in FINRA

⁶ See letter from Carissa Laughlin, Principal Counsel, Office of General Counsel, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel, Division of Trading and Markets, Commission, dated July 8, 2024, <https://www.finra.org/sites/default/files/2024-07/SR-FINRA-2024-008-extension1.pdf>.

⁷ See letter from Carissa Laughlin, Principal Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated August 7, 2024, <https://www.sec.gov/comments/sr-finra-2024-008/srfinra2024008-503775-1470022.pdf> (“FINRA Response Letter”); see also Partial Amendment No. 1, <https://www.finra.org/sites/default/files/2024-08/SR-FINRA-2024-008-Partial-A-1.pdf>.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See Notice at 46210; see also <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>. The FINRA Discovery Guide and Document Production Lists do not apply to arbitrations administered under the Code of Arbitration Procedure for Industry Disputes. See Notice at 46210 n.3.

Rule 12506, outline presumptively discoverable documents that the parties should exchange, without arbitrator or DRS staff intervention.¹⁰

Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member firm or associated person except in simplified customer arbitrations as explained below.¹¹ List 1 outlines the documents that member firms and associated persons shall produce; List 2 outlines the documents that customers shall produce.¹² The proposed rule change would affect the applicability of the Document Production Lists in simplified customer arbitrations.

Simplified arbitrations are arbitrations in which the dispute between a customer and member firm or associated person involves \$50,000 or less, exclusive of interest and expenses.¹³ There are three types of simplified customer arbitrations. If the customer does not request a hearing, the arbitrator will render an award based on the pleadings and other materials submitted by the parties (“paper cases”).¹⁴ If the customer requests a hearing, the customer must select between one of two hearing options.¹⁵ If the customer requests an Option One hearing under FINRA Rule 12800(c)(3)(A), the regular provisions of the Customer Code relating to prehearings and hearings, including all fee provisions, apply (“regular hearing”).¹⁶ The customer

¹⁰ See Notice at 46210.

¹¹ Id.; see also FINRA Rule 12506(a).

¹² See Notice at 46210; see also <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

¹³ See FINRA Rule 12800(a).

¹⁴ See Notice at 46210; see also FINRA Rule 12800(c)(2).

¹⁵ See Notice at 46210; see also FINRA Rule 12800(c)(3).

¹⁶ See Notice at 46210; see also FINRA Rule 12800(c)(3)(A).

may also request an Option Two special proceeding, an abbreviated hearing, under FINRA Rule 12800(c)(3)(B) (“special proceeding”).¹⁷

Currently, the Document Production Lists do not apply in paper cases and special proceedings.¹⁸ However, under FINRA Rule 12800(g)(1), the arbitrator may exercise discretion to choose to use relevant portions of the Document Production Lists in paper cases and special proceedings “in a manner consistent with the expedited nature of simplified proceedings.”¹⁹ Absent such an exercise of discretion by the arbitrator, to obtain discovery in paper cases and special proceedings, the parties must request documents and other information from each other pursuant to FINRA Rule 12800(g)(2).²⁰ Therefore, under the current Customer Code, no documents or information are presumptively discoverable in paper cases and special proceedings.²¹

The Document Production Lists do, however, apply in simplified customer arbitrations in which the customer requests a regular hearing.²² As noted above, if the customer requests a regular hearing during the simplified customer arbitration, FINRA Rule 12800(c)(3)(A) states that the “regular provisions” of the Customer Code “relating to prehearings and hearings” apply.²³ FINRA has issued guidance clarifying this language to mean that the Document

¹⁷ See Notice at 46210; see also FINRA Rule 12800(c)(3)(B).

¹⁸ See Notice at 46210. FINRA Rule 12800(g)(1) provides that the Document Production Lists “do not apply to arbitrations subject to this rule” (i.e., paper cases and special proceedings). Notice at 46210.

¹⁹ See Notice at 46210.

²⁰ Id. FINRA Rule 12800(g)(2) provides that all production requests must be served on all other parties and filed with the Director within 30 days from the date that the last answer is due; any response or objection to a production request must be served on all other parties and filed with the Director within 10 days of the receipt of the request.

²¹ See Notice at 46210.

²² Id.

²³ Id.

Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing.²⁴

B. The Proposed Rule Change

1. Applying the Document Production Lists in Paper Cases and Special Proceedings

The proposed rule change would amend FINRA Rule 12800(g)(1) to give customers in paper cases and special proceedings the option to elect whether they want the Document Production Lists to apply to all parties.²⁵ Specifically, proposed Rule 12800(g)(1)(B) states that the Document Production Lists described in FINRA Rule 12506 would not apply in paper cases or special proceedings unless: (1) the customer requests that they apply at the time he or she initiates an arbitration pursuant to Rule 12302 (Filing and Serving an Initial Statement of Claim) or, (2) if the customer is a respondent, he or she requests that they apply no later than the answer due date pursuant to Rule 12303 (Answering the Statement of Claim), regardless of the parties' agreement to extend any answer due date.²⁶

If the customer does not timely elect to apply the Document Production Lists to all parties as provided, proposed Rule 12800(g)(1)(B) would retain the current provision in the rule that the arbitrator has the discretion to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified customer arbitrations. Additionally,

²⁴ See Notice at 46210; see also FINRA DRS Party's Reference Guide, p. 31, <https://www.finra.org/sites/default/files/Partys-Reference-Guide.pdf> (explaining that "[t]he Document Production Lists in the Discovery Guide as described in FINRA Rule 12506 do not apply to simplified [customer] arbitrations decided on the papers or decided by special proceeding. However, the Discovery Guide does apply to simplified cases in which a customer requests a regular hearing."). See also <https://www.finra.org/arbitration-mediation/simplified-arbitrations>. See Notice at 46210 n.11 and accompanying text.

²⁵ See Notice at 46211.

²⁶ Id. FINRA Rule 12303 provides that respondent(s) must serve each other party with an answer to the statement of claim within 45 days of receipt of the statement of claim. FINRA Rule 12207(a) provides that the parties may agree in writing to extend or modify the deadline for serving an answer.

proposed Rule 12800(g)(2) would retain the current provision in the rule that would permit the parties to request documents and information from each other.²⁷

2. Clarifying the Applicability of the Document Production Lists in Simplified Customer Arbitrations

Currently, FINRA Rule 12800(c)(3)(A) states that, when a customer requests a regular hearing (i.e., an “Option One” hearing), the “regular provisions” of the Customer Code relating to prehearings and hearings apply. As stated above, DRS has issued guidance clarifying this language to mean that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing.²⁸ The proposed rule change would codify that the Document Production Lists apply to simplified customer arbitrations in which the customer requests a regular hearing.²⁹ Specifically, proposed Rule 12800(g)(1)(A) would provide that “[t]he Document Production Lists, described in Rule 12506, apply to arbitrations in which the customer requests an Option One hearing.”

Further, to clarify the proposed rule text, Partial Amendment No. 1 would modify proposed Rule 12800(g)(1)(B) to mirror the language in proposed Rule 12800(g)(1)(A) so that both provisions begin with “The Document Production Lists, described in Rule 12506...”³⁰

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2024-008 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change, as modified by Partial

²⁷ Nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide. FINRA encourages the parties to agree to the voluntary exchange of documents and to stipulate to various matters. See Notice at 46211 n.19; see also <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

²⁸ See Notice at 46212; see also supra note 24.

²⁹ See Notice at 46212.

³⁰ See Partial Amendment No. 1 and FINRA Response Letter at 2-3.

Amendment No. 1, should be approved or disapproved.³¹ Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as modified by Partial Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, as modified by Partial Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission is providing notice of the grounds for disapproval under consideration.³² The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change, as modified by Partial Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.³³

³¹ 15 U.S.C. 78s(b)(2)(B).

³² Id.

³³ Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding – either oral

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Partial Amendment No. 1, should be approved or disapproved by [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FINRA-2024-008 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-FINRA-2024-008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as modified by Partial Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified

or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

by Partial Amendment No. 1, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-FINRA-2024-008 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. If comments are received, any rebuttal comments should be submitted on or before [INSERT DATE 35 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Sherry R. Haywood,
Assistant Secretary.

³⁴ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).