

Under Seal; *Filing Acceptance Date*: October 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: November 4, 2024.

6. *Docket No(s)*.: MC2025–164 and K2025–162; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 541 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: November 4, 2024.

7. *Docket No(s)*.: MC2025–165 and K2025–163; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 542 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: November 4, 2024.

8. *Docket No(s)*.: MC2025–166 and K2025–164; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 409 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Christopher Mohr; *Comments Due*: November 4, 2024.

9. *Docket No(s)*.: MC2025–167 and K2025–165; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 410 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Samuel Robinson; *Comments Due*: November 4, 2024.

10. *Docket No(s)*.: MC2025–168 and K2025–166; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 543 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: November 4, 2024.

11. *Docket No(s)*.: MC2025–169 and K2025–167; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 544 to the Competitive Product

List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jana Slovinska; *Comments Due*: November 4, 2024.

12. *Docket No(s)*.: MC2025–170 and K2025–168; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 545 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: November 4, 2024.

13. *Docket No(s)*.: MC2025–171 and K2025–169; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 546 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Anaswar Jayakumar; *Comments Due*: November 4, 2024.

14. *Docket No(s)*.: MC2025–172 and K2025–170; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 547 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Anaswar Jayakumar; *Comments Due*: November 4, 2024.

15. *Docket No(s)*.: MC2025–173 and K2025–171; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 548 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: November 4, 2024.

### III. Summary Proceedings(s)

None. See section II for public proceedings.

This Notice will be published in the **Federal Register**.

**Erica A. Barker**,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101449; File No. SR–FINRA–2024–008]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving 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

October 28, 2024.

#### 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”) <sup>1</sup> and Rule 19b–4 thereunder, <sup>2</sup> 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 a partial amendment (“Partial Amendment No. 1”), would address the applicability of the lists of documents that are presumed to be discoverable in regular arbitrations between a customer and a member or associated person (“Document Production Lists”) <sup>3</sup> to simplified customer arbitrations administered under FINRA Rule 12800. <sup>4</sup>

The proposed rule change was published for public comment in the **Federal Register** on May 28, 2024. <sup>5</sup> The public comment period closed on June 18, 2024. The Commission received comment letters related to this filing. <sup>6</sup> On July 8, 2024, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 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.

<sup>4</sup> Simplified customer 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. See FINRA Rule 12800(a).

<sup>5</sup> See Exchange Act Release No. 100204 (May 21, 2024), 89 FR 46210 (May 28, 2024) (File No. SR–FINRA2024–008) (“Notice”).

<sup>6</sup> The comment letters are available at <https://www.sec.gov/comments/sr-finra-2024-008/srfinra2024008.htm>.

approve or disapprove the proposed rule change to August 26, 2024.<sup>7</sup> On August 7, 2024, FINRA responded to the comment letters received in response to the Notice and filed Partial Amendment No. 1 to modify the proposed rule change.<sup>8</sup>

On August 27, 2024, the Commission published a notice of filing of Partial Amendment No. 1 and an order instituting proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1.<sup>9</sup> The Commission received additional comment letters in response to the OIP.<sup>10</sup> This order approves 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<sup>11</sup> to help guide the parties and arbitrators through the discovery process in customer arbitrations.<sup>12</sup> The Document Production Lists, which are included in the Discovery Guide, outline presumptively discoverable documents that the parties should exchange,

<sup>7</sup> 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>.

<sup>8</sup> 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>.

<sup>9</sup> See Exchange Act Release No. 34–100787 (Aug. 21, 2024), 89 FR 68686, (Aug. 27, 2024), File No. SR–FINRA–2024–008 (“OIP”).

<sup>10</sup> The comment letters received in response to the OIP are available at <https://www.sec.gov/comments/sr-finra-2024-008/srfinra2024008.htm>.

<sup>11</sup> <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

<sup>12</sup> See Notice at 46210. In addition to describing the Document Production Lists, the Discovery Guide includes information about the circumstances under which the parties may object to the production of documents on the Document Production Lists, the parties’ ability to request additional documents other than those included on the Document Production Lists, the process for obtaining the production of documents from non-parties, the forms that the production of documents should take, and the parties’ right to object to the production of documents based on confidentiality and privilege concerns. See Notice at 46211. 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.

without arbitrator or DRS staff intervention.<sup>13</sup>

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.<sup>14</sup> List 1 outlines the documents that member firms and associated persons shall produce; List 2 outlines the documents that customers shall produce.<sup>15</sup> The proposed rule change would affect the applicability of the Document Production Lists in simplified customer arbitrations.

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”).<sup>16</sup> If the customer requests a hearing, the customer must select between one of two hearing options, known as an Option One hearing and an Option Two hearing.<sup>17</sup> If the customer requests an Option One hearing, the regular provisions of the Customer Code relating to prehearings and hearings apply (“regular hearing”), including the Document Production Lists.<sup>18</sup> Alternatively, the customer may request an Option Two special proceeding, which is an abbreviated hearing (“special proceeding”).<sup>19</sup>

Currently, the Document Production Lists do not apply in paper cases and special proceedings.<sup>20</sup> Accordingly, the parties in such proceedings must request documents and other

<sup>13</sup> See Notice at 46210; see also FINRA Rule 12506.

<sup>14</sup> *Id.*; see also FINRA Rule 12506(a).

<sup>15</sup> See Notice at 46210; see also <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

<sup>16</sup> See Notice at 46210; see also FINRA Rule 12800(c)(2).

<sup>17</sup> See Notice at 46210; see also FINRA Rule 12800(c)(3).

<sup>18</sup> See Notice at 46210; see also FINRA Rule 12800(c)(3)(A); 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; see also *infra* note 24.

<sup>19</sup> See Notice at 46210; see also FINRA Rule 12800(c)(3)(B).

<sup>20</sup> 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.

information from each other, pursuant to FINRA Rule 12800(g)(2). However, an arbitrator may exercise discretion 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.”<sup>21</sup> Absent such an exercise of discretion by the arbitrator, in order to obtain discovery in these proceedings, the parties must request documents and other information from each other without the benefit of the Document Production Lists.<sup>22</sup> As a result, no documents or information are presumptively discoverable in paper cases and special proceedings, but they are presumptively discoverable in simplified customer arbitrations in which the customer requests a regular hearing as noted above.<sup>23</sup>

### B. Proposed Rule Change

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.<sup>24</sup>

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’

<sup>21</sup> Notice at 46210; see FINRA Rule 12800(g)(1).

<sup>22</sup> See Notice at 46210; see also FINRA Rule 12800(g)(2) (providing 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).

<sup>23</sup> See Notice at 46210.

<sup>24</sup> See *id.* at 46211. The proposed rule change also would make technical changes to Rule 12800. Currently, FINRA Rule 12800(c)(3)(A) states that, when a customer requests a regular hearing, the “regular provisions” of the Customer Code relating to prehearings and hearings apply. As noted 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. See Notice at 46212; see also *supra* note 18. The proposed rule change would codify this guidance. See Notice at 46212. 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.”

agreement to extend any answer due date.<sup>25</sup>

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 continue to permit an arbitrator to exercise discretion to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified customer arbitrations. Additionally, proposed Rule 12800(g)(2) would continue to permit the parties to request documents and information from each other.<sup>26</sup>

### III. Discussion of Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>27</sup> Specifically, as explained in more detail below, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>28</sup> The Commission addresses the proposed rule change's specific provisions, and any related comments, in turn.

Currently, the Document Production Lists do not apply in paper cases or in special proceedings. Accordingly, the parties in such proceedings must request documents and other information from each other, pursuant to FINRA Rule 12800(g)(2).<sup>29</sup> The proposed rule change would amend FINRA Rule 12800(g)(1) to give customers in paper cases and special

proceedings the option to elect at the time that they initiate an arbitration or, if they are a respondent, no later than the answer due date, whether they want the Document Production Lists to apply to all parties.<sup>30</sup> If such an election is made, all parties would be required to produce the documents on the Document Production Lists, explain why the documents cannot be produced, or object to the production of the documents within the timeframes set forth in FINRA Rule 12506.<sup>31</sup>

Commenters supported the proposed rule change.<sup>32</sup> For example, commenters

<sup>30</sup> A commenter suggested a technical amendment to proposed Rule 12800(g)(1)(B) to make clear that the Document Production Lists are found in Rule 12506 so that a *pro se* investor is not confused about the applicability of the Document Production Lists when pursuing a paper case or special proceeding. See letter from Nikki Junda, Student Intern, Elissa Germaine, Supervising Attorney, and Christine Lazaro, Supervising Attorney, Securities Arbitration Clinic of St. John's University School of Law, dated June 17, 2024, <https://www.sec.gov/comments/sr-finja-2024-008/srfinja2024008-477251-1366154.html> ("St. John's Letter I") at 2. FINRA agreed by filing Partial Amendment No. 1 to modify proposed Rule 12800(g)(1)(B) to mirror the language in proposed Rule 12800(g)(1)(A) such that both provisions begin with "The Document Production Lists, described in Rule 12506 . . .". See Partial Amendment No. 1 and FINRA Response Letter at 2–3.

<sup>31</sup> See FINRA Rule 12506(b)(1).

<sup>32</sup> See letter from Elissa Germaine, Supervising Attorney, and Christine Lazaro, Supervising Attorney, Securities Arbitration Clinic of St. John's University School of Law, dated September 17, 2024, <https://www.sec.gov/comments/sr-finja-2024-008/srfinja2024008-521575-1498402.pdf> ("St. John's Letter II"); letter from Jenice Malecki, Jacqueline Candella, Adam G. Schreck, and Claire Sterin, Intern, Malecki Law, dated September 17, 2024, <https://www.sec.gov/comments/sr-finja-2024-008/srfinja2024008-521595-1498462.pdf> ("Malecki Letter"); letter from Joseph C. Peiffer, President, Public Investor Advocate Bar Association, dated September 17, 2024, <https://www.sec.gov/comments/sr-finja-2024-008/srfinja2024008-521555-1498322.pdf> ("PIABA Letter I"); letter from William A. Jacobson, Clinical Professor of Law, Director of the Cornell Securities Law Clinic, Noah Moreano, Cornell Law Student, Cornell Securities Law Clinic, Cornell Law School, dated September 16, 2024, <https://www.sec.gov/comments/sr-finja-2024-008/srfinja2024008-520935-1497242.pdf> ("Cornell Letter"); letter from Nicole G. Iannarone, Associate Professor of Law, Drexel University School of Law, dated June 18, 2024, <https://www.sec.gov/comments/sr-finja-2024-008/srfinja2024008-483631-1383094.pdf> ("Iannarone Letter"); letter from Clare M. Farrelly, MBA, Student Intern, Fairbridge Investor Rights Clinic, Elisabeth Haub School of Law, Pace University, dated June 18, 2024, <https://www.sec.gov/comments/sr-finja-2024-008/srfinja2024008-483651-1383114.pdf> ("Pace Letter"); letter from Jill I. Gross, Vice Dean for Academic Affairs and Professor of Law, Elisabeth Haub School of Law, Pace University, dated June 18, 2024, <https://www.sec.gov/comments/sr-finja-2024-008/srfinja2024008-1382774.htm> ("Gross Letter"); letter from Scott Eichhorn, Director, and Melanie S. Cherdack, Associate Director, Investor Rights Clinic, University of Miami School of Law, dated June 18, 2024, <https://www.sec.gov/comments/sr-finja-2024-008/srfinja2024008-483571-1382814.pdf> ("Miami Letter"); letter from Joseph C. Peiffer,

stated that applying the Document Production Lists to paper cases and special proceedings would generally protect investors,<sup>33</sup> enhance the fairness of the proceedings and arbitration process,<sup>34</sup> balance the need for efficiency and fairness,<sup>35</sup> and enhance fairness without unduly raising costs.<sup>36</sup> In addition, multiple commenters stated that the proposed changes would enhance *pro se* customers' awareness and understanding of the discovery process and support them in seeking material evidence necessary to their claims.<sup>37</sup> Some commenters also suggested additional changes.

One commenter suggested changes to proposed Rule 12800(g)(1)(B) to give a customer who is a respondent more time to request application of the Document Production Lists. As proposed, if the customer is a respondent, he or she must request that the Document Production Lists apply no later than the date he or she must answer a statement of claim pursuant to Rule 12303, regardless of the parties' agreement to extend any answer due date. The commenter suggested that when a customer respondent obtains an extension of time to answer, the customer should be allowed to opt in to the Document Production Lists when the customer files the answer pursuant to an agreed deadline extension, rather than on the original due date for the answer.<sup>38</sup>

In response, FINRA stated that the proposed rule change "balances the expedited nature of simplified customer arbitrations and the ability of customer respondents to make an informed decision regarding whether to use the Document Production Lists."<sup>39</sup> For example, if a customer could request that the Document Production Lists apply when the customer respondent files the answer and the answer is not filed until just before the special proceeding hearing date, then "this would require the arbitrator and parties to reschedule the hearing date to a date

President, Public Investor Advocate Bar Association, dated June 18, 2024, <https://www.sec.gov/comments/sr-finja-2024-008/srfinja2024008-483331-1382594.pdf> ("PIABA Letter I"); St. John's Letter I; and letter from Steven B. Caruso, dated May 24, 2024, <https://www.sec.gov/comments/sr-finja-2024-008/srfinja2024008-477251-1366154.html> ("Caruso Letter").

<sup>33</sup> See PIABA Letter I at 1.

<sup>34</sup> See Gross Letter at 1.

<sup>35</sup> See Pace Letter at 1.

<sup>36</sup> *Id.* at 2.

<sup>37</sup> See Caruso Letter at 1; PIABA Letter I at 1–2; Pace Letter at 3; St. John's Letter I at 1–2; Cornell Letter at 2; St. John's Letter II at 1; and Malecki Letter at 2–3.

<sup>38</sup> See Pace Letter at 3–4.

<sup>39</sup> FINRA Response Letter at 3.

<sup>25</sup> *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." See Notice at 46211 n.13.

<sup>26</sup> 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 stated that it encourages 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/394527.pdf>.

<sup>27</sup> In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>28</sup> 15 U.S.C. 78o–3(b)(6).

<sup>29</sup> See *supra* note 22.

at least two months later than originally scheduled to allow parties adequate time to respond to the Document Production Lists.”<sup>40</sup> Similarly, allowing customer respondents to request that the Document Production Lists apply when filing the answer in a papers case rather than by the answer due date could significantly delay the conclusion of such cases, which are generally the most expedited form of arbitration case.<sup>41</sup> Furthermore, FINRA stated that to the extent a customer respondent does not timely elect to apply the Document Production Lists to all parties, proposed Rule 12800(g)(1)(B) continues to allow the arbitrator discretion to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified customer arbitrations.<sup>42</sup> In addition, the parties can still request documents and information from each other pursuant to FINRA Rule 12800(g)(2).<sup>43</sup> For these reasons, FINRA did not accept the suggested change.

Another commenter suggested that FINRA add a hyperlink or cross reference to the Discovery Guide within the rules whenever the Document Production Lists are mentioned to help investors locate and use FINRA guidance.<sup>44</sup> This commenter also suggested that FINRA make guidance on its website easier to locate for parties in simplified arbitrations.<sup>45</sup> Another commenter recommended that FINRA provide parties a “plain language explanation of the discovery process and how it will differ with use of the Discovery Guide.”<sup>46</sup>

In response to the commenters’ suggestions, FINRA: (1) updated the “Related Links” section of the web pages for FINRA Rules 12506, 12507, 12508, and 12800 to include a hyperlink to the Discovery Guide web page;<sup>47</sup> (2) updated the FINRA Rule 12800 web page by adding hyperlinks to any cross-referenced FINRA Rules;<sup>48</sup> and (3) updated its “Overview of Arbitration & Mediation” web page by adding a hyperlink to cross-reference its “Simplified Arbitrations” web page.<sup>49</sup> In addition, FINRA stated that it would develop and publish guidance about discovery that will be available to all parties in simplified arbitration and

would, among other things, direct parties to the Discovery Guide.<sup>50</sup>

Finally, one commenter recommended providing and requiring more arbitrator training, including providing arbitrators greater discretion to award sanctions for discovery violations.<sup>51</sup> Specifically, this commenter stated that enhanced training should provide arbitrators with sufficient detail on: (1) the requirements of parties when asserting objections; (2) the adequate bases for objections to overcome the presumption of discoverability; (3) how objections may lead to the risk that arbitrators do not have relevant documents and information to decide the case; and (4) the circumstances under which an arbitrator may award sanctions against parties who assert boilerplate objection.<sup>52</sup>

In response, FINRA stated that it currently provides mandatory training and various other resources to arbitrators regarding the discovery process.<sup>53</sup> For example, arbitrators must pass FINRA’s Basic Arbitrator Training Program in order to serve on FINRA arbitration cases.<sup>54</sup> The Basic Arbitrator Training Program includes a module dedicated to the discovery process.<sup>55</sup> FINRA stated that this module also reminds arbitrators that *pro se* parties “may need more procedural direction and specific deadlines for discovery requests and responses.”<sup>56</sup> Moreover, in order to qualify as a chairperson, arbitrators must complete training containing three modules with information about the discovery process and issues, including motions to compel discovery.<sup>57</sup> In addition, DRS also offers voluntary, subject-specific training modules, including an online course titled “Discovery, Abuses and Sanctions” that focuses on the

respective duties of arbitrators and parties in the discovery process.<sup>58</sup> Further, FINRA stated that it also provides updates and reminders to arbitrators regarding discovery procedures via its Neutral Workshops and a quarterly newsletter,<sup>59</sup> as well as the DRS Arbitrator’s Guide, which dedicates two sections to discovery and motions.<sup>60</sup> FINRA stated that in light of these available resources, it “does not anticipate providing additional arbitrator training on the discovery process at this time.”<sup>61</sup>

Giving customers in paper cases and special proceedings the option to elect whether they want the Document Production Lists to apply to all parties at the time that they initiate an arbitration or, if they are a respondent, no later than the answer due date, should increase the efficiency of simplified arbitration proceedings while maintaining their expedited nature. By opting to use the Document Production Lists, parties should receive those documents and information that are relevant to the dispute without the need to make production requests or engage in motion practice, which should help expedite the discovery process. Furthermore, increased access to relevant documents and other information should result in outcomes (*i.e.*, awards and settlements) in paper cases or special proceedings that are more consistent with the merits of the case.

In addition, the proposed rule change should help facilitate the discovery process in arbitration cases. Because many of the customers who appear in simplified arbitration cases are *pro se*, they are more likely than customers in regular arbitration cases to lack familiarity with the discovery process. Giving customers in paper cases and special proceedings the option to elect whether they want the Document Production Lists to apply to all parties is, therefore, a reasonable approach to facilitating the discovery process for customers. FINRA also reasonably determined to decline giving customer respondents more time to request

<sup>40</sup> *Id.*; see also Notice at 46211.

<sup>41</sup> See Miami Letter at 3–4.

<sup>42</sup> *Id.*

<sup>43</sup> See FINRA Response Letter at 6.

<sup>44</sup> *Id.* (citing Arbitrator Training, <https://www.finra.org/arbitration-mediation/rules-case-resources/arbitrator-training> (discussing how an arbitrator candidate must complete the comprehensive Basic Arbitrator Training Program to become eligible to serve on arbitration cases)).

<sup>45</sup> *Id.* (citing FINRA DRS Basic Arbitrator Training Program Transcript, p. 21, <https://www.finra.org/sites/default/files/2024-05/FINRA-Basic-Arbitrator-and-Expungement-Training-Full-Course-Transcript.pdf>). The training includes, among other things: (1) understanding the discovery process and timelines; (2) ruling on discovery requests based on the papers; and (3) imposing discovery sanctions when a party fails to provide sufficient information or documents. See *id.*

<sup>46</sup> *Id.* at 6.

<sup>47</sup> See *id.* (citing FINRA DRS Chairperson Training Transcript, pp. 4–6, 9–15, 17–21, [https://www.finra.org/sites/default/files/2024-05/FINRA\\_Chair-Training-Full-Transcript.pdf](https://www.finra.org/sites/default/files/2024-05/FINRA_Chair-Training-Full-Transcript.pdf)).

<sup>48</sup> See *id.* at 6–7 (citing Arbitrator Training, <https://www.finra.org/arbitration-mediation/rules-case-resources/arbitrator-training> (discussing the Discovery, Abuses and Sanctions advanced training course for arbitrators)). FINRA stated that this course: (1) explains the Discovery Guide; (2) discusses the need for orders of confidentiality; (3) helps arbitrators recognize and address discovery abuses; and (4) reviews possible sanctions if they become necessary. See *id.* at 7.

<sup>49</sup> See *id.* at 7.

<sup>50</sup> See *id.* at 7–8 (citing FINRA DRS Arbitrator’s Guide, <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf>).

<sup>51</sup> FINRA Response Letter at 8.

<sup>40</sup> *Id.* at 3–4.

<sup>41</sup> See FINRA Response Letter at 4.

<sup>42</sup> *Id.*; see also Notice at 46211.

<sup>43</sup> See FINRA Response Letter at 4; see also Notice at 46211.

<sup>44</sup> See St. John’s Letter I at 2.

<sup>45</sup> *Id.*

<sup>46</sup> Miami Letter at 3.

<sup>47</sup> See FINRA Response Letter at 5–6.

<sup>48</sup> *Id.* at 6.

<sup>49</sup> See FINRA Response Letter at 5.

application of the Document Production Lists. By requiring that a customer respondent request that the Document Production Lists apply no later than the answer due date pursuant to Rule 12303, rather than any extended answer due date agreed to by the parties, the proposed rule change reasonably balances providing respondent customers with time to determine whether to apply the Document Production Lists with the expeditious nature of simplified proceedings.

Further, in addition to the proposed rule change, FINRA has taken, and has stated that it will continue to take, measures that should further enhance awareness and transparency of the discovery process, as well as help customers evaluate whether to request application of the Document Production Lists. Specifically, FINRA updated its website to provide more direct access to FINRA guidance and rules related to simplified arbitration and the discovery process, including the Document Production Lists. In addition, FINRA stated that it will publish guidance about discovery that would assist customers in making informed decisions regarding whether to elect to use the Document Production Lists in their case. Moreover, the educational resources currently available to arbitrators should help ensure that arbitrators are well trained on the discovery process, including use of the Discovery Production Lists, so that they can foster simplified arbitration proceedings that are less susceptible to unsupported procedural objections regarding document production and that operate in a fair and expeditious manner. For these reasons, the proposed rule change is reasonably designed to protect investors and the public interest.

#### IV. Conclusion

The proposed rule change would provide customers in paper cases and special proceedings the option to elect whether they want the Document Production Lists to apply to all parties. In this way, the proposed rule change would facilitate discovery of the documents and information that are relevant to a customer's arbitration, and thereby enhance the arbitration process. The proposed rule change would also codify existing guidance stating that the Document Production Lists are applicable in simplified customer arbitrations in which the customer requests a regular hearing. Codifying this guidance would enhance parties' awareness and understanding of the discovery process in certain simplified customer arbitrations.

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.<sup>62</sup>

*It is therefore ordered* pursuant to Section 19(b)(2) of the Exchange Act<sup>63</sup> that the proposed rule change (SR-FINRA-2024-008), as modified by Partial Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>64</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

[FR Doc. 2024-25425 Filed 10-31-24; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101453; File No. SR-CboeBZX-2024-103]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 28, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 18, 2024, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

<sup>62</sup> 15 U.S.C. 78o-3(b)(6).

<sup>63</sup> 15 U.S.C. 78s(b)(2).

<sup>64</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/BZX/](http://markets.cboe.com/us/equities/regulation/rule_filings/BZX/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary discount on fees assessed to BZX Members ("Members")<sup>3</sup> and non-Members that purchase \$20,000 or more of ad hoc purchases of BZX Historical Depth Data ("Historical Depth Reports"), effective October 18, 2024 through December 31, 2024.

By way of background, the Exchange currently makes available for purchase Depth Data, which is a daily archive of the Exchange's depth of book real-time feed, which provides depth-of-book quotations and execution information based on equity orders entered into the System. The Exchange also offers Historical Depth Data, which offers such data on a historical basis, *i.e.*, T+1 or later. The Historical Depth Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the

<sup>3</sup> See Rule 1.5(n) ("Member"). The term "Member" shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.