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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2018–15 and should be submitted on or before June 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–10975 Filed 5–22–18; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83276; File No. SR–FINRA–2018–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Simplified Arbitration

May 17, 2018.

I. Introduction

On January 29, 2018, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') and Rule 19b–4 thereunder, proposed amendments to FINRA Rules 12600 and 12800 of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and 13600 and 13800 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code,'' and together with the Customer Code, the ''Codes''), to amend the hearing provisions to provide an additional hearing option for parties in arbitration with claims of $50,000 or less, excluding interest and expenses.

The proposed rule change was published for comment in the **Federal Register** on February 16, 2018.[1] The public comment period closed on March 9, 2018. On March 28, 2018, FINRA extended 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 approve or disapprove the proposed rule change to May 17, 2018. The Commission received 12 comment letters in response to the Notice.[2] On May 7, 2018, FINRA responded to the comment letters received in response to the Notice.[3]

This order approves the proposal.

II. Description of the Proposed Rule Change

The Codes provide two methods for administering arbitration cases with claims involving $50,000 or less, excluding interest and expenses. The default method is a decision by a single arbitrator based on the parties' pleadings and other materials submitted by the parties. The alternative method involves a full hearing with a single arbitrator. Under the Customer Code, a customer may request a hearing (regardless of whether the customer is a claimant or respondent),[4] and under the Industry Code, the claimant may request a hearing.[5] If a hearing is requested, it is generally held in-person, and there are no limits on the number of hearing sessions that can take place.

FINRA believes that forum users with claims involving $50,000 or less would benefit by having an additional, intermediate form of adjudication that would provide them with an opportunity to argue their cases before an arbitrator in a shorter, limited telephonic hearing format. Therefore, FINRA is proposing to amend the Codes to include a Special Proceeding for Simplified Arbitration (''Special Proceeding''). The Special Proceeding would be limited to two hearing sessions, exclusive of prehearing conferences,[6] with parties being given time limits for their presentations. As discussed above, parties with claims involving $50,000 or less are currently limited to a decision based on the pleadings and other materials submitted by the parties, or a full hearing that typically takes place in-person and is not limited in duration. While a party might wish for an opportunity to present his or her case to an arbitrator, the travel and expenses associated with a full hearing might prevent that party from requesting one. In addition, the prospect of cross-examination by an opposing party might act as a deterrent for parties seeking to avoid a direct confrontation with their opponents. FINRA noted that these concerns particularly impact *pro se,* senior, and seriously ill parties.

The suggestion to propose an intermediate form of adjudication originated from the FINRA Dispute Resolution Task Force (''Task Force'').[7] The Task Force observed that customers whose cases were decided on the papers were the least satisfied of any group of forum users. They also noted that, from the arbitrator's perspective, it is more

[1] *See* Exchange Act Release No. 34–82693 (February 12, 2018), 83 FR 7086 (February 16, 2018) (''Notice'').

[2] *See* Letters from Steven B. Caruso, Maddox Hargett & Caruso, P.C., dated February 13, 2018 (''Caruso Letter''); Andrew Stoltmann, President, Public Investors Arbitration Bar Association, dated March 6, 2018 (''PIABA Letter''); Eric Duhon and Paige Foley, Student Attorneys, Investor Protection Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas, dated March 6, 2018 (''UNLV Letter''); Katherine Kokotos, Amrita Maitlall, and Sumaya Restagno, Legal Interns, and Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, St. John's University School of Law, dated March 6, 2018 (''SJU Letter''); Daniel P. Guernsey, Student Intern and Teresa J. Verges, Director, University of Miami School of Law Investor Rights Clinic, dated March 6, 2018 (''MIRC Letter''); Jill I. Gross, Professor of Law, Elisabeth Haub School of Law, Pace University, dated march 8, 2018 (''Gross Letter''); William A. Jacobson, Clinical Professor of Law and Director, Cornell Securities Law Clinic, and Sam Wildman, Cornell University Law School, dated March 8, 2018 (''Cornell Letter''); Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated March 8, 2018 (''SIFMA Letter''); Barbara Black, Professor of Law, University of Cincinnati College of Law (Retired), dated March 8, 2018 (''Black Letter''); John Ripoli, Simon Halper, and Mark Sarno, Student Interns, and Elissa Germaine, Director, Investor Rights Clinic at the Elisabeth Haub School of Law, Pace University, dated March 8, 2018 (''PIRC Letter''); Abigail Howd, Eric Peters, and Dowdy White, Student Interns, and Nicole G. Iannarone, Assistant Clinical Professor, Investor Advocacy Clinic, Georgia State University College of Law, dated March 9, 2018 (''GSU Letter''); and Mark D. Norych, President and General Counsel, Arbitration Resolution Services, Inc., dated March 9, 2018 (''ARS Letter'').

[3] *See* Letter from Margo A. Hassan, Associate Chief Counsel, FINRA Office of Dispute Resolution, to the Commission, dated May 7, 2018 (''FINRA Letter''). The FINRA Letter is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA, at the Commission's website at *https://www.sec.gov/comments/sr-finra-2018-003/finra2018003-3590730-162342.pdf,* and at the Commission's Public Reference Room.

[4] *See* FINRA Rule 12800(c).

[5] *See* FINRA Rule 13800(c).

[6] *See* FINRA Rules 12100 and 13100 (Definitions). Under these rules, ''hearing'' means the hearing on the merits of an arbitration and a ''hearing session'' is defined as any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference.

[7] The Task Force was formed in 2014 to suggest strategies to enhance the transparency, impartiality, and efficiency of FINRA's securities dispute resolution forum. On December 16, 2015, the Task Force issued its Final Report and Recommendations, available at *http://www.finra.org/sites/default/files/Final-DR-task-force-report.pdf.*

difficult to assess crucial issues of credibility when deciding cases on the papers. The Task Force recommended that the goal of the intermediate process should be to give the claimant personal contact with the arbitrator deciding the case and to give each party the opportunity to argue its case, to ask questions, and to respond to contentions from the other side. The Task Force also recommended that the intermediate process should allow the arbitrator to probe contentions in the papers in an interactive format.[8]

FINRA considered the Task Force's recommendations and questions in developing the format for an intermediate form of adjudication.[9] Accordingly, FINRA is proposing to amend Rules 12800(c) and 13800(c) to provide that parties that opt for a hearing must select between two hearing options. Option One would be the current hearing option that provides for the regular provisions of the Codes relating to prehearings and hearings, including all fee provisions. If the parties choose Option One, they would continue to have in-person hearings without time limits, and they would continue to be permitted to question opposing parties' witnesses.

Option Two would be the new Special Proceeding subject to the regular provisions of the Code relating to prehearings and hearings, including all fee provisions, with several limiting conditions. The conditions are intended to ensure that the parties have an opportunity to present their case to an arbitrator in a convenient and cost effective manner without being subject to cross-examination by an opposing party.

Specifically:

- A Special Proceeding would be held by telephone unless the parties agree to another method of appearance; [10]
- the claimants, collectively, would be limited to two hours to present their case and ½ hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions;
- the respondents, collectively, would be limited to two hours to present their case and ½ hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions;
- notwithstanding the abovementioned conditions, the arbitrator would have the discretion to cede his or her allotted time to the parties;
- in no event could a Special Proceeding exceed two hearing sessions, exclusive of prehearing conferences, to be completed in one day;
- the parties would not be permitted to question the opposing parties' witnesses;
- the Customer Code would provide that a customer could not call an opposing party, a current or former associated person of a member party, or a current or former employee of a member party as a witness, and members and associated persons could not call a customer of a member party as a witness; and
- the Industry Code would provide that members and associated persons could not call an opposing party as a witness.

Except for the two hearing session time limit for a Special Proceeding, FINRA would not impose any restrictions on the arbitrator's ability to ask the parties questions and has incorporated a substantial amount of time for arbitrator questions. Specifically, since FINRA would limit the parties' combined presentations to five hours, the arbitrator would have up to three hours to ask questions. In addition, under the proposed rule change FINRA would not prohibit the arbitrator from allowing parties additional time for their presentations or witness testimonies, so long as the hearing on the merits is completed within the two hearing session limit.[11]

FINRA is further proposing to amend Rule 12800(a) to add clarity to the rule by explaining the customer's options earlier in the rule text. FINRA is proposing to amend the sentence in Rule 12800(c) that states that ''[I]f no hearing is held, no initial prehearing conference or other prehearing conference will be held, and the arbitrator will render an award based on the pleadings and other materials submitted by the parties.'' FINRA would replace the first ''held'' in the sentence with the term ''requested'' to better reflect that a hearing would only occur if the customer requested it. FINRA believes the amendment would add clarity to the rule text. FINRA is further proposing to amend Rule 12600(a) that discusses exceptions to when required hearings will be held to specify Rule 12800(c) as one of the exceptions.

To add clarity on how arbitrators are paid in cases where the customer requests a hearing, FINRA is proposing to amend Rule 12800(f) to clarify that the regular provisions of the Code relating to arbitrator honoraria would apply in such cases. Since the Special Proceeding would be a new form of adjudication at the forum, FINRA intends to provide substantial training to arbitrators including, but not limited to, updating FINRA's written training materials for arbitrators, posting a Neutral Workshop video on the FINRA website for arbitrators to view on-demand, and including discussions about the Special Proceeding in FINRA's publication for arbitrators and mediators, *The Neutral Corner.* FINRA would instruct arbitrators that the arbitrator's role in a Special Proceeding might be different than it is in a full hearing because parties would not be permitted to question opposing parties' witnesses. FINRA would emphasize that in a Special Proceeding the arbitrator might need to ask more questions than he or she would ask in a regular hearing to gain clarity on issues and to assess witness credibility.

III. Comment Summary and FINRA's Response

As noted above, the Commission received 12 comment letters on the proposed rule change and a response letter from FINRA. As discussed in more detail below, 11 commenters supported the proposed rule change, although seven commenters supported it with suggested modifications.[12] Commenters

[8] *Id.* at 29.

[9] The Task Force provided the following questions for FINRA to consider in developing an intermediate form of adjudication: (1) Whether parties appearing should be able to amplify positions taken in their papers and to answer questions posed by the arbitrator; (2) whether fact witnesses should be permitted to tell their stories to the arbitrator; (3) whether there should be a clear boundary between the informal, expedited adjudication and a full-blown hearing; (4) whether witnesses should be subject to cross-examination by adverse counsel; (5) whether parties should be able to compel the attendance of particular witnesses, and if so, should there be a limit; (6) what arrangements should be made for parties who are not appearing in person; and (7) whether arbitrators should use the session as an opportunity to press the parties to settle.

[10] The Task Force recommended allowing parties with claims involving $50,000 or less to be able to appear in whatever manner they prefer: In person, by phone or by videoconference. FINRA determined that it is in the best interest of the parties to hold hearings by telephone because this method is the most expeditious and inexpensive format for hearings. As stated above, FINRA is proposing that parties can agree to other methods of appearance, including appearing in person or by videoconference.

[11] The Task Force recommended a shorter time limit on each case to enable an arbitrator to hear several cases in a hearing day and to limit the time commitment of the parties. FINRA was concerned that a period shorter than the proposed two hearing session time limit would restrict the parties' presentations and their ability to answer questions posed by the arbitrator.

[12] *See* ARS Letter, PIABA Letter, SJU Letter, MIRC Letter, Black Letter, PIRC Letter, and GSU Letter. ARS proposed the creation of a pilot whereby parties could opt in to voluntary expedited online arbitration at its forum. This comment is outside the scope of the proposed rule change.

who supported the proposed rule change stated, among other things, that it would: (1) Facilitate fairness and efficiency in the arbitration forum; [13] (2) provide access to justice for *pro se* claimants; [14] (3) provide an additional option for investors; [15] (4) result in lower costs, increased representation rates of claimants, and greater participant satisfaction with the arbitration process; [16] (5) lead to more investor trust in the process; [17] and (6) improve both procedural and substantive justice.[18] One commenter did not expressly support or oppose the proposed rule change.[19] However, one commenter asserted objections to specific aspects of the proposed rule change and made recommendations for modifications.[20] As referenced above, several commenters suggested modifications to the proposed rule change.

Cross-Examination

One commenter stated that FINRA should permit cross-examination on fairness and due process grounds asserting, among other matters, that ''members and associated persons should have the right to explore, identify, examine, and highlight errors, omissions, and misstatements that bear upon the credibility, accuracy and completeness of a claimant's or witness's testimony.'' [21] Another commenter urged FINRA to allow limited cross-examination of one or two key witnesses stating that ''cross examination is often one of the most effective means of eliciting evidence during a hearing.'' [22] Several commenters supported FINRA's prohibition on cross-examination in a Special Proceeding.[23] Two commenters asserted that trained and experienced FINRA arbitrators have the knowledge and judgment to ask questions and obtain much of the same information that would have been revealed through cross-examination.[24] Moreover, one of those two commenters stated that ''because formal rules of evidence do not apply in arbitration, cross-examination rarely yields the 'gotcha' moment we might see dramatized on television.'' [25]

FINRA noted in the FINRA Letter that the absence of cross-examination is one of the main features that distinguishes a Special Proceeding from the full hearing option.[26] FINRA believes that the ability to present a case without cross-examination would benefit parties whose testimony could be intimidated by a direct confrontation.[27] FINRA also believes that the broader role of arbitrators in a Special Proceeding in asking questions of the parties would serve a similar function to cross-examination, such as gaining clarity on issues and assessing witness credibility, but within a potentially less intimidating environment.[28] Moreover, FINRA is not eliminating the cross-examination feature in the full hearing option. A customer (under the Customer Code), or a claimant (under the Industry Code), would continue to have the option of electing a full hearing if the party believes that cross-examination would be beneficial in a particular case.

The Right To Request a Special Proceeding Under the Codes

One commenter asserted that FINRA should allow firms and their associated persons to request a Special Proceeding.[29] The FINRA Letter notes that, currently, no hearing will be held in simplified cases unless the customer (under the Customer Code), or a claimant (under the Industry Code), requests a hearing.[30] FINRA stated that, in developing the proposal, it considered whether to expand the right of firms and associated persons under the Customer Code, and respondents under the Industry Code, to request a Special Proceeding.[31] FINRA decided not to change the rights of the parties under the Codes relating to the ability to elect a hearing option.[32] FINRA believes it is in the best interest of investors to continue to allow them to determine how they want to proceed in arbitration. FINRA further believes that giving the firm, generally the party with the most resources, the ability to determine the arbitration method, could create an inappropriate barrier for some investors, particularly if the firm chooses the most expensive arbitration method.[33]

Additional Mechanisms for Firms and Associated Persons

One commenter asserted that in a Special Proceeding, FINRA should allow firms and their associated persons to file a motion to dismiss for failure to state a claim, and if granted, the case should be decided on the papers.[34] That same commenter stated that because FINRA does not allow motions to dismiss for failure to state a claim in instances where a statement of claim lacks specificity or is drafted poorly, respondents cannot adequately prepare to defend themselves at a hearing.[35] That commenter also stated that in a Special Proceeding, the claimant should be precluded from raising new issues, claims or evidence not previously raised or referenced in the statement of claim.[36] FINRA believes that motions to dismiss should be narrowly confined to the grounds outlined in Rules 12504 and 13504,[37] and notes that parties can

[13] *See, e.g.* Caruso Letter, stating that ''the proposed amendments . . . would be a fair, equitable and reasonable approach that would facilitate the fairness and efficiency of the investor participants experience in the FINRA arbitration forum.''

[14] *See, e.g.* Gross Letter, stating that ''This simpler, lower cost and faster process provides access to justice especially for *pro se* claimants, as well as the elderly and disabled.''

[15] *See, e.g.* PIABA Letter, stating that ''it is important to have additional options related to simplified arbitration.''

[16] *See, e.g.* UNLV Letter, stating that ''Special Proceedings will result in lower costs, increased representation rates of claimants, and greater participant satisfaction with the arbitration process.'' The UNLV Letter also states that ''[a]t present, the private bar may provide less representation in [cases with less than $50,000 in dispute] because of the time required to prepare adequate pleadings or conduct an in-person hearing. An attorney may incur significant costs preparing for and traveling to an in-person arbitration, including the opportunity costs associated with foregoing work on other matters. The proposed Special Proceedings would substantially reduce or even eliminate many of these costs.''

[17] *See* MIRC Letter, stating that ''simplifying the hearing process and allowing investors to tell their story gives investors a sense of participation that they do not get when their case is decided on the papers . . . and therefore can lead to more investor trust in the process.''

[18] *See* Gross Letter, stating that ''[N]ot only does the proposal offer more choices to small claim claimants, but it also designs a small claims arbitration process that improves both procedural and substantive justice by providing a viable option for disputants to voice their grievances out loud to a third-party neutral.''

[19] *See* SIFMA Letter.

[20] *Id.*

[21] *See* SIFMA Letter at 2.

[22] *See* PIABA Letter at 2.

[23] *See* Gross Letter, UNLV Letter, SJU Letter, MIRC Letter, Black Letter, and PIRC Letter.

[24] *See* UNLV Letter at 2 and Gross Letter at 5.

[25] *See* Gross Letter at 5.

[26] *See* FINRA Letter at 3.

[27] *Id.*

[28] *See Id.*

[29] *See* SIFMA Letter at 2.

[30] *See* FINRA Letter at 3.

[31] *See Id.*

[32] *See Id.*

[33] *See Id.*

[34] *See* SIFMA Letter at 3.

[35] *See Id.*

[36] *See Id.*

[37] *See* FINRA Letter at 3. FINRA Rules 12504(a) and 13504(a) (Motions to Dismiss Prior to Conclusion of Case in Chief) provide that: ''The panel cannot act upon a motion to dismiss a party or claim under paragraph (a) of this rule, unless the panel determines that:

(A) The non-moving party previously released the claim(s) in dispute by a signed settlement agreement and/or written release;

(B) the moving party was not associated with the account(s), security(ies), or conduct at issue; or

(C) the non-moving party previously brought a claim regarding the same dispute against the same party that was fully and finally adjudicated on the merits and memorialized in an order, judgment, award, or decision.''

Continued

use the discovery process to explore the substance of their opponent's case.[38] Moreover, under the Codes, FINRA requires parties to provide all other parties with copies of all documents and other materials that they intend to use at the hearing that were not already produced as well as a copy of the parties' witness lists.[39] FINRA stated that it will monitor how the process is working to determine whether it should modify the program in any way.[40]

Clarify the Structure of the Special Proceedings

One commenter stated that FINRA should allow parties to give their closing statements after each party presents its case and the arbitrator concludes his or her questioning.[41] FINRA responded by noting that it provides arbitrators with hearing scripts to ensure that parties understand how the hearing will progress.[42] FINRA stated that it will provide a new hearing script specific to Special Proceedings which will state that absent circumstances indicating the need to hold the hearing in a different order, parties will be allowed to give their closing statements after each party presents its case and the arbitrator concludes his or her questioning.[43] In addition, FINRA will explain in the *Regulatory Notice* announcing approval of the proposed rule change, and in its arbitrator training materials, how the hearing will be conducted, including when parties are allowed to make closing statements.[44]

Another commenter objected to the time allotments in the rule proposal and recommended allotments made on a percentage or other basis.[45] According to FINRA, the conditions outlined in the proposed rule change are intended to ensure that the parties have an opportunity to present their case to an arbitrator in a convenient and cost-effective manner.[46] The time frames are specific and straightforward. FINRA believes that the time frames will help arbitrators and parties stay within the two session maximum for a Special Proceeding.[47] FINRA stated that it will clearly articulate the time frames in its hearing script.[48] Moreover, through correspondence and written materials, FINRA currently reminds arbitrators to stay on schedule during the arbitration hearing and avoid reducing the allotted time by starting late or ending early. In addition, FINRA stated that it would emphasize during the arbitrator training on Special Proceedings the importance of ensuring that arbitrators are mindful of the time frames outlined in the rule text.[49]

Other Methods of Appearance

One commenter stated that FINRA should encourage the use of videoconferencing because this technology affords the arbitrator a chance to better assess the credibility of witnesses.[50] Another commenter stated that FINRA should allow customers to choose a hearing by videoconference or in person.[51] FINRA responded by noting that the proposed rule change allows the parties to agree to other methods of appearance, including appearing in person or by videoconference. FINRA determined that it is in the best interest of the parties to make telephonic hearings the default hearing type because this method is the most widely available, expeditious and inexpensive format for hearings.[52]

Raise the Dollar Limits on Simplified Arbitration

One commenter stated that FINRA should raise the current dollar limit on simplified arbitration from $50,000 to $75,000 and increase the dollar limit of the rule proposal to $100,000.[53] FINRA stated that it will consider the feasibility of increasing the dollar limits on simplified arbitration after it has gained experience with Special Proceedings.[54]

Abridged Discovery Guide

Currently, the Customer Code provides that Document Production Lists do not apply to simplified cases. Two commenters recommended that FINRA provide a Discovery Guide (''Guide'') containing a shorter Document Production List for the exchange of documents in all simplified cases.[55] One of those two commenters further stated that FINRA should provide parties with some additional time for discovery exchange.[56] FINRA responded by noting that staff is currently studying potential enhancements to the discovery process in simplified arbitration generally that would not impede the expedited nature of simplified cases,[57] and that FINRA would consider whether any such enhancements would also apply to the Special Proceedings.[58]

Specially-Qualified Arbitrator Roster and Mandatory Training

Two commenters supported FINRA's intent to provide additional arbitrator training on Special Proceedings.[59] Two other commenters stated that FINRA should make arbitrator training on Special Proceedings a requirement.[60] One of those commenters recommended in-person training and also stated that FINRA should require specialized expertise for arbitrators presiding over Special Proceedings.[61] Two commenters

Under FINRA Rules 12504(c) and 13504(c) (Motions to Dismiss Based on Eligibility), the panel cannot act upon a motion to dismiss a claim under Rule 12206 (Time Limits), unless the panel determines that the claim is not eligible for arbitration where six years have elapsed from the occurrence or event giving rise to the claim.

[38] FINRA Rules 12800(d) and 13800(d) (Discovery and Additional Evidence) provide that: ''The parties may request documents and other information from each other. All requests for the production of documents and other information must be servced 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 discovery request must be served on all other parties and filed with the Director within 10 days of the receipt of the requests. The parties receiving the request must produce the requested documents or information to all other parties by serving the requested documents or information by first-class mail, overnight delivery service, hand delivery, email or facsimile. Parties must not file the documents with the Director. The arbitrator will resolve any discovery disputes.

[39] FINRA Rules 12514(a) and 13514(a) (Documents and Other Materials) provide that: ''At least 20 days before the first scheduled hearing date, all parties must provide all other parties with copies of all documents and other materials in their possession or control that they intend to use at the hearing that have not already been produced. The parties should not file the documents with the Director or the arbitrators before the hearing.''

FINRA Rules 12514(b) and 13514(b) (Witness Lists) provide that: ''At least 20 days before the first scheduled hearing date, all parties must provide each other party with the names and business affiliations of all witnesses they intend to present at the hearing. All parties must file their witness lists with the Director.''

[40] *See* FINRA Letter at 4.

[41] *See* GSU Letter at 2.

[42] *See* FINRA Letter at 4.

[43] *See* FINRA Letter at 4.

[44] *See Id.*

[45] *See* SIFMA Letter at 3.

[46] *See* FINRA Letter at 5.

[47] *See Id.*

[48] *See Id.*

[49] *See* FINRA Letter at 5.

[50] *See* MIRC Letter at 2.

[51] *See* PIRC Letter at 2.

[52] *See* FINRA Letter at 5.

[53] *See* SJU Letter at 2.

[54] *See* FINRA Letter at 5.

[55] *See* MIRC Letter at 3, GSU Letter at 3. The Guide supplements the discovery rules contained in the Customer Code. It includes an introduction which describes the discovery process generally, and explains how arbitrators should apply the Guide in arbitration proceedings. The introduction is followed by two Document Production Lists, one for firms and associated persons, and one for customers, which enumerate the documents that are presumptively discoverable in customer cases. As presumptively discoverable, parties do not have to expressly request the documents. FINRA expects the parties to exchange the documents without arbitrator or staff intervention. The Guide only applies to customer arbitration proceedings, not to intra-industry cases.

[56] *See* MIRC Letter at 3.

[57] *See* FINRA Letter at 5.

[58] *See* FINRA Letter at 6.

[59] *See* SJU Letter at 2, Cornell Letter at 2.

[60] *See* Black Letter at 1, GSU Letter at 1.

[61] *See* GSU Letter at 1.

recommended that FINRA establish a special roster of arbitrators to handle Special Proceedings.[62] One of those two commenters stated that the arbitrators should be chair-qualified and trained to work with *pro se* claimants.[63]

The FINRA Letter noted that all simplified cases are decided by a single chair-qualified public arbitrator who has fulfilled special eligibility requirements and completed chairperson training.[64] FINRA will provide arbitrator training in Special Proceedings through a Neutral Workshop video on the FINRA website for arbitrators to view on demand, and written training materials for arbitrators including, but not limited to, discussions about the Special Proceeding in FINRA's publication for arbitrators and mediators, *The Neutral Corner*.[65] In its training, FINRA would instruct arbitrators that the arbitrator's role in a Special Proceeding might be different than it is in a full hearing because parties would not be permitted to question opposing parties' witnesses.[66] FINRA would emphasize that in a Special Proceeding the arbitrator might need to ask more questions than he or she would ask in a regular hearing to gain clarity on issues and to assess witness credibility.[67] FINRA believes it needs time and experience with the new hearing option before it can consider additional qualifications and requirements for arbitrators.[68] While FINRA will strongly encourage arbitrators to avail themselves of training resources on Special Proceedings, FINRA is concerned about the potential negative impact that additional required training could have on the availability of arbitrators to serve on Special Proceedings.[69]

Change the Name of the Simplified Arbitration Process

One commenter recommended that FINRA change the name of the simplified arbitration process to ''small claims'' arbitration because their clients believe that their claims are not taken seriously due to the term ''simplified.''[70] The FINRA Letter noted the comment, but asserted that using the term ''simplified'' appropriately captures the process and helps distinguish it from the full hearing process.[71]

IV. Discussion and 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 proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[72] Specifically, the Commission finds that the rule change is consistent with Section 15A(b)(6) of the Exchange Act,[73] 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.

As stated in the Notice, FINRA believes that forum users with claims involving $50,000 or less would benefit by having an additional, intermediate form of adjudication that would provide them with an opportunity to argue their cases before an arbitrator in a shorter, limited telephonic hearing format.[74] The Commission notes that FINRA's proposal originated from a recommendation of the Task Force, which was charged with suggesting strategies to enhance the transparency, impartiality, and efficiency of FINRA's securities dispute resolution forum for all participants.[75] The Task Force recommendations were informed by input from individuals representing a broad range of interests in FINRA's dispute resolution forum along with public comments.[76] The Commission further notes that eleven of the twelve public comments received for this proposal were supportive, in part, because the proposed rule would provide an additional and helpful option for investors seeking arbitration.[77]

Taking into consideration the comment letters and the FINRA Letter, the Commission believes that the proposal is consistent with the Exchange Act. The Commission believes that the proposal will help protect investors and the public interest by providing an additional, intermediate form of adjudication that would provide arbitration users with an opportunity to argue their cases before an arbitrator in a convenient, time-efficient, and cost-effective manner without being subject to cross-examination by an opposing party. The Commission further believes that FINRA's response, as discussed in more detail above, appropriately addressed commenters' concerns about arbitrator training and adequately explained its reasons for how this additional, intermediate form of adjudication would better serve some arbitration forum users by leading to more investor trust in the arbitration process, providing greater access to justice for *pro se* claimants, and facilitating fairness and efficiency. Further, the Commission notes FINRA's intent to monitor how the process is working to determine whether it should consider modifying the program in any way, including by considering the feasibility of increasing the dollar limits on simplified arbitration, and by studying potential enhancements to the discovery process in simplified arbitration generally.

The Commission believes that the approach proposed by FINRA is appropriate and designed to protect investors and the public interest, consistent with Section 15A(b)(6) of the Exchange Act. For these reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2)[78] of the Exchange Act that the proposal (SR–FINRA–2018–003) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[79]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–10977 Filed 5–22–18; 8:45 am]

BILLING CODE 8011–01–P

[62] *See* MIRC Letter at 3, Black Letter at 1.

[63] *See* MIRC Letter at 3.

[64] *See* FINRA Letter at 6.

[65] *See Id.*

[66] *See Id.*

[67] *See Id.*

[68] *See Id.*

[69] *See* FINRA Letter at 6.

[70] *See* GSU Letter at 1.

[71] *See* FINRA Letter at 6.

[72] 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).

[73] 15 U.S.C. 78o–3(b)(6).

[74] Notice at 7087.

[75] *See Id.*

[76] *See* Final Report and Recommendations at 4, available at *http://www.finra.org/sites/default/files/Final-DR-task-force-report.pdf.*

[77] *See* ARS Letter, Black Letter, Cornell Letter, Caruso Letter, PIABA Letter, UNLV Letter, SJU Letter, MIRC Letter, Gross Letter, PIRC Letter, and GSU Letter.

[78] 15 U.S.C. 78s(b)(2).

[79] 17 CFR 200.30–3(a)(12).