KPMG

Report on the FINRA Arbitrator List Selection Process and Technology

October 2023

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1. Executive Summary

KPMG LLP ("KPMG") has performed the procedures enumerated below solely to assist FINRA in evaluating that arbitrators are selected in accordance with FINRA's defined business rules as of October 2023. This report ("Report") outlines the procedures performed and the findings as a result of those procedures. This Report, dated October 2023, has been prepared by KPMG solely for the purpose(s) of FINRA's evaluation of its arbitrator selection algorithm and should be read and interpreted in its entirety.

KPMG's services constitute an advisory engagement conducted under the American Institute of Certified Public Accountants (AICPA) Standards for Consulting Services. Such services are not intended to be an audit, examination, attestation, special report, or agreed-upon procedures engagement as those services are defined in AICPA literature applicable to such engagements conducted by independent auditors. Accordingly, these services do not constitute a written communication to third parties by KPMG providing a conclusion or any other form of assurance. Additional information regarding this Report is described herein and at the conclusion of this Report[i].

2. Background

As per information provided on FINRA's website, FINRA is a not-for-profit organization that works under the supervision of the SEC by actively engaging with and providing essential tools for investors, member firms and policymakers. It enables investors and firms to participate in the market with confidence by safeguarding its integrity. Additionally, FINRA operates the largest securities dispute resolution forum in the United States, and has extensive experience in providing a fair, efficient and effective venue to handle a securities-related dispute. The resolution of problems and disputes is accomplished through two non-judicial proceedings: arbitration and mediation. The scope of our services focused only on arbitration and does not consider mediation.

As noted in FINRA's internal documentation, FINRA administers between 3,500 and 8,500 arbitrations and numerous mediations annually. FINRA maintains a roster of over 8,400

arbitrators and 270 mediators. FINRA DRS provides a process to all parties involved in a dispute resolution forum which is encapsulated in the arbitrator appointment process. FINRA's arbitrator appointment process is performed using a random arbitrator selection algorithm that generates lists of arbitrators from FINRA's rosters to appoint a panel. In most cases, three lists of arbitrators are sent to each party to strike and rank. DRS will then combine the ranked lists to appoint the highest rated arbitrators from each list.

The scope of services related to FINRA's arbitrator selection process and this report describes the procedures KPMG performed, and the results of KPMG's procedures to test the arbitrator selection algorithm based of FINRA's documented procedures.

3. Description of Process

As per FINRA's defined policies and procedures, the MATRICS System randomly generates lists of arbitrators from FINRA's arbitration database for FINRA proceedings using the list selection algorithm. There are multiple factors that determine the total number and what different types of lists are required for the case. The factors include:

- Case number
- Case panel size (single arbitrator or panel of three);
- Case panel type (public or nonpublic);
- Whether this is an injunctive case, and if it is public or nonpublic;
- Whether this is a statutory employment case;
- Case site (primary hearing location); and
- Any secondary hearing locations (HLCs) that may be needed to have enough names for the list.

The list selection algorithm automatically excludes arbitrators from the lists based upon known conflicts of interest with member firms, such as when the arbitrator is currently employed by or currently has a securities account with a member firm that is a party to the case. The goal of list selection is to have up to three lists of arbitrators for parties to strike and rank. The list selection algorithm will randomly pull arbitrators from the pool and create sub-lists.

Sub-List's are generated in accordance with the table below:

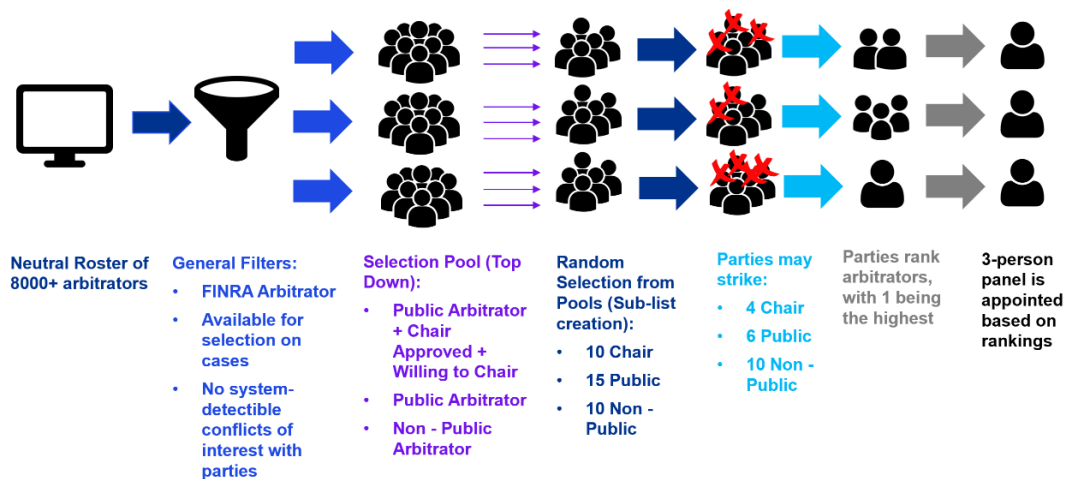| Case Panel Type	Special List Type	Case Panel Size	Sub-Lists Produced
Public	None	1	Public Chairpersons
	Statutory Employment	1	Employment Qualified Chairpersons
	None	3	Public Chairpersons, Public Arbitrators, Non-Public Arbitrators
	Injunctive	3	Public Arbitrators, Non-Public arbitrators
	Statutory Employment	3	Employment Qualified Chairpersons, Public Arbitrators
	15 Name Public Panel	3	Public Chairpersons, Public Arbitrators, Non-Public Arbitrators
	Special Expungement Panel	3	Special Expungement Qualified Public Chairpersons

Non-Public	None	1	Non-Public Chairpersons
	None	3	Non-Public Chairpersons, Non-Public Arbitrators
	Injunctive	3	Non-Public arbitrators

The completed sub-lists of arbitrators are then sent to parties for striking and ranking. Each party will be given a maximum number of strikes depending on the case type.

After each party completes the ranking form, the lists are inputted into MATRICS for the Rank Consolidation Process. MATRICS will apply the consolidation rules specific in the code and return ranked lists of the arbitrators which form the basis from which arbitrators are paneled for service on the case.

Here is an example case of the arbitration selection process:

List Selection High-Level Diagram
Arbitrator Selection Process for Customer Cases (>$100,000)

Neutral Roster of 8000+ arbitrators

General Filters:
- FINRA Arbitrator
- Available for selection on cases
- No system-detectible conflicts of interest with parties

Selection Pool (Top Down):
- Public Arbitrator + Chair Approved + Willing to Chair
- Public Arbitrator
- Non - Public Arbitrator

Random Selection from Pools (Sub-list creation):
- 10 Chair
- 15 Public
- 10 Non - Public

Parties may strike:
- 4 Chair
- 6 Public
- 10 Non - Public

Parties rank arbitrators, with 1 being the highest

3-person panel is appointed based on rankings

4. Testing Scope, Methodology, and Results

a. Scope

The scope of services included testing key components of the Arbitrator Selection Process at FINRA. Specific aspects of this process include testing that the pools meet certain criteria, selection pools are applied to the Neutral Roster, the randomization algorithm provides each arbitrator an equal opportunity to be selected, and the list selection process aggregates the final list after ranking/striking.

b. Testing Attributes

1. Without regard to the case type, all arbitrators in every selection pool should meet the following attributes:
   a. They must be a "FINRA Arbitrator";
   b. They must be "Available" for selection on cases; and

     c.   They must have no obvious (to the system) conflicts with any party to the case.

2. Selection pool filters are applied to the Neutral Roster once the attributes in Section 4.b.1. are all met based on the "FINRA Codes of Arbitration Procedure".
3. A random pool management algorithm is used such that each arbitrator in the pool has the same opportunity to appear on a list as all other arbitrators in that pool.
4. The list selection process aggregates the final consolidated list in alignment with claimant and respondents' rankings/striking.

c. Methodology and Results

The following activities were performed to test the above Testing Attributes. The activities test that the arbitrator selection process followed by FINRA includes a randomized selection algorithm and identifies conflicts of interest without partiality, bias, or arbitrary judgment.

Activities were tested against the four Testing Attributes listed below. This process included assessing the pools created based on the type of case, that the list selection algorithm is random, and the strike/rank process executed in MATRICS.

#	Testing Attributes	Activities	Results:
1	Without regard to the case type, all arbitrators in every selection pool should meet the following attributes: a. They must be a "FINRA Arbitrator"; b. They must be "Available" for selection on cases; and c. They must have no obvious (to the system) conflicts with any party to the case.	Within MATRICS, for an example case type, i.e., the Public + Special List Type (None) Case Type, generate the sub-lists 100 separate times, terminating the previous list after each iteration. For each produced sub-list, test that: a. All arbitrators remaining have a flag as "FINRA Arbitrators" b. All arbitrators remaining have a flag as "Available" c. None of the arbitrators remaining were employed with either the claimant or respondent CRD within the last 5 years d. None of the arbitrators remaining have any known conflicts with the parties, member firms or related member entities affiliated with the subject firm	No Exceptions Noted
2	Selection pool filters are applied to the Neutral Roster once criteria 1 the attributes in Section 4.b.1. are all met based on "FINRA Codes of Arbitration Procedure".	Additionally, in MATRICS generate the ten distinct case types (i.e., Public 1-Panel, Public 1-Panel Statutory Employment, Public 3-Panel, Public 3-Panel Injunctive, Public 3-Panel Statutory Employment, Public 3-Panel 15	No Exceptions Noted

		Name Public Panel, Public 3-Panel Special Expungement, Nonpublic 1-Panel, Nonpublic 3-Panel, and Nonpublic 3-Panel Injunctive) in the MATRICS system, each of them in the same location and with same case information for claimant and respondent. Test that each of the sub-list has the number of arbitrators that aligns with FINRA policies, and that each case type has the number and type of sub-lists that align with FINRA policies.	
3	A random pool management algorithm is used such that each arbitrator in the pool has the same opportunity to appear on a list as all other arbitrators in that pool.	Additionally, for each of the 100 iterations, 1st iteration in step 3, note the selected arbitrator names. Upon completion of the 100 iterations, test that there are no discernible patterns in the output of the arbitrators that were chosen.	No Exceptions Noted
4	The list selection process aggregates the final consolidated list in alignment with claimant and respondents' rankings/striking.	For the Public + Special List Type (None) Case Type, assign rankings using the portal procedures utilized by claimants and respondents, and test that the aggregated final combined ranking is in alignment with the claimant and respondent rankings and FINRA's methodology for combining list rankings.	No Exceptions Noted

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[i]This Report has been prepared solely for purpose(s) of FINRA's evaluation of its arbitrator selection algorithm. KPMG's role is limited to providing the objective analysis described in this Report. In presenting this Report, KPMG takes no view and does not and cannot undertake any role that could be fairly interpreted as public policy advocacy and KPMG's work is not intended to be used in that context. KPMG accepts no responsibility for its use in that regard.

This Report, any advice, recommendations, information, deliverables, or other work product provided to FINRA derived from such Report is for the exclusive use of FINRA and is not intended to be, and may not be, relied upon by any third party. No party other than FINRA is entitled to rely on this Report for any purpose whatsoever and KPMG accepts no responsibility, liability, or duty of care to any party other than FINRA with respect to this Report and any of its contents.

The scope of our work has been limited by the time, information, and explanations obtained from FINRA and certain third-party sources that are referenced in this Report. KPMG has neither sought to corroborate this information nor to assess its overall reasonableness. Further, any results from the analysis contained in this Report are reliant on the information available at the time of writing this Report. KPMG has not updated this Report since the conclusion of its work and this Report and should not be used in subsequent periods.

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The scope of our work was defined by FINRA and no other parties have agreed to or acknowledged the sufficiency or appropriateness of the scope for the intended purpose or any other purpose. The scope of work may not address all the items of interest to a reader of this Report and may not meet the needs of all readers of this Report and, as such, readers are responsible for determining whether the scope of work is sufficient and appropriate for their purposes. Consequently, KPMG makes no representation regarding the sufficiency or appropriateness of the scope of work either for the purpose for which this Report has been requested or for any other purpose. No representation or warranty, express or implied, is given and no responsibility or liability is or will be accepted by or on behalf of KPMG or by any of its partners, employees, or agents or any other person as to the accuracy, completeness, or correctness of the information contained in this Report or any oral information made available and any such liability is expressly disclaimed.

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