For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Codes of Arbitration Procedure To Adopt FINRA Rules 12808 and 13808 (Accelerated Processing) To Accelerate the Processing of Arbitration Proceedings for Parties Who Qualify Based on Their Age or Health Condition

December 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2024, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') (together, ''Codes'') to add new FINRA Rules 12808 and 13808 (Accelerated Processing) to accelerate the processing of arbitration proceedings for parties who qualify based on their age or health condition.

The text of the proposed rule change is available on FINRA's website at *https://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

I. Background

FINRA currently offers a program to expedite arbitration proceedings in the forum administered by FINRA Dispute Resolution Services (''DRS'') for parties who have a serious health condition or are at least 65 years old (''current program'').[3] When an eligible party makes a request to expedite the proceedings under the current program, DRS staff will expedite the case-related tasks that they can control, such as completing the arbitrator selection process, scheduling the initial prehearing conference, and serving the final award.[4] In addition, the current program ''encourage[s]'' arbitrators to be sensitive to the needs of parties who are seniors or seriously ill when making scheduling decisions and setting deadlines.[5] Critically, however, the current program does not provide for shortened, rule-based deadlines for parties or provide arbitrators with direction on how quickly the arbitration should be completed.

Although the intent of the current program is to shorten case processing times for parties that qualify based on their age or health condition, cases that qualify for the current program close only marginally more quickly than cases that are not in the current program. While the median time for customer arbitrations that are not in the current program to close is approximately 15.7 months, the median time for customer arbitrations that are in the current program to close is approximately 13.7 months, a difference of just two months.[6]

FINRA believes that it would protect investors and the public interest to materially shorten case processing times for those parties who may be unable to meaningfully participate in a lengthy arbitration because of their age or health condition. As is discussed more fully below, when a party is unable to meaningfully participate in an arbitration—for example, if they become ill and are unable to testify—the outcome of the proceeding may be affected. This potentially harms not only the immediate parties to the arbitration but also the broader investing public because the resolution of the arbitration may not accurately reflect the underlying merits of the case.

Accordingly, FINRA is proposing to add a new rule to the Codes that would help to accelerate the arbitration process for those parties who qualify based on their age or health condition. Unlike the current program, the proposed rule change would establish shortened case-processing deadlines for the parties, including the time to respond to discovery deadlines, and provide direction to arbitrators regarding how quickly the proceeding should be completed. By codifying these shortened deadlines and providing additional direction to arbitrators, FINRA believes that the length of the proceedings subject to the proposed rule change would shorten by approximately six months, which would make a meaningful difference for older parties or those suffering from a serious health condition.[7] The proposed rule change would be more likely than the current program, which does not provide for shortened, rule-based deadlines for parties or provide arbitrators with direction on how quickly the arbitration should be completed, to accelerate the proceedings for those parties who may not be able to meaningfully participate throughout the course of a lengthy arbitration. If the Commission approves the proposed rule change, the requirements of the new rule would apply to those who qualify and request accelerated processing, thereby replacing the current program. In addition, for those parties who may benefit from shortened proceedings but do not meet the eligibility requirements of the proposed rule change, the proposed rule change would allow the parties to request that the panel consider other factors, including their

[58] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* FINRA, Expedited Proceedings for Senior or Seriously Ill Parties, *https://www.finra.org/arbitration-mediation/rules-case-resources/special-procedures/expedited-proceedings-seniors-seriously-ill.*

[4] *See supra* note 3.

[5] *See supra* note 3.

[6] *See infra* Item II.B.2 (discussing *Economic Baseline*).

[7] *See infra* Item II.B.3 (discussing *Economic Impacts*).

age and health, when scheduling hearings and discovery, briefing, and motion deadlines. Thus, although these proceedings would not be subject to the shortened, rule-based deadlines of the proposed rule change, the panel may determine at a party's request, to expedite the proceedings based on the party's particular circumstances, including developing a serious health condition during the arbitration proceeding.

II. Proposed Rule Change

A. Requesting Accelerated Case Processing

Under the proposed rule change, parties would be able to request accelerated processing if they meet one of two eligibility requirements, based on their age or their health condition.[8] FINRA addresses each of these eligibility requirements in turn below.

1. Eligibility Based on Age

The first way for a party to qualify for accelerated processing under the proposed rule change would be based on their age. Under proposed Rules 12808(a)(1)(A) and 13808(a)(1)(A), a party may request accelerated processing of a case when initiating an arbitration or filing an answer provided that the party making the request is at least 70 years of age at the time of the request.[9]

FINRA believes it is appropriate for parties who are 70 years of age and older to qualify for accelerated processing because these parties are more likely than younger individuals to become seriously ill or experience an adverse health condition during the course of an arbitration.[10] Because of their age, it is also more likely that parties who are at least 70 years of age may not live to see the outcome of the arbitration proceedings.[11] For these reasons, these parties may not be able to meaningfully participate throughout the course of a lengthy arbitration proceeding. For example, as forum users have noted, elderly parties may be unable to consult with their counsel or otherwise assist in the preparation of the case.[12] These parties also may be unable to testify.[13] This, in turn, could affect the outcome of the proceedings. For example, if a party is unavailable to testify because they are deceased or suffering from an adverse health condition, the arbitrators would have no opportunity to observe the party's demeanor and, thus, may be unable to assess their credibility. By shortening the length of the arbitration for individuals who are at least 70 years of age, the proposed rule change would make it more likely that these parties are able to meaningfully participate for the duration of the arbitration proceedings. This, in turn, would help ensure that the outcomes of the cases accurately reflect the underlying merits.

Further, as is discussed in more detail below, a party younger than 70, but who has an eligible health condition, still would be able to request accelerated processing under proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B) provided that the party making the request certifies, in the manner and form required by the Director, that (i) the party has received a medical diagnosis and prognosis and (ii) based on that medical diagnosis and prognosis, the party has a reasonable belief that accelerated processing of the case is necessary to prevent prejudicing the party's interest in the arbitration.

FINRA understands that, under the proposed rule change, some younger parties would not be eligible to request accelerated processing based on either their age or their health condition. Although some of these parties might benefit if their arbitrations were completed more quickly, as discussed in more detail below,[14] FINRA does not believe that a lower age cutoff, such as an age cut off of 65 (consistent with the current program), would be appropriate.

First, under proposed Rules 12808(a)(3) and 13808(a)(3), parties who would not qualify for accelerated processing based on either their age or health condition still would be able to request, once the panel is appointed, that the panel consider other factors, including their age or a change in their health condition during the arbitration proceeding, when scheduling hearings and discovery, briefing, and motion deadlines. Thus, although these proceedings would not be subject to the shortened, rule-based deadlines of the proposed rule change, the panel may determine at a party's request, to expedite the proceedings based on the party's particular circumstances.

Second, due to the increase in the number of customer claimants who would qualify for accelerated processing,[15] a lower age cutoff might make it difficult for arbitrators—many of whom might have to serve concurrently on more than one arbitration [16]—to comply with their obligations under proposed Rules 12808(b)(2)(B), 12808(b)(2)(C), 13808(b)(2)(B), and 13808(b)(2)(C) to endeavor to hold hearings and render an award within 10 months or less in accelerated proceedings.[17]

Third, a lower age cut off may have a negative impact on non-accelerated customer arbitrations. Arbitrators and industry parties and their counsel are often involved in more than one arbitration at the same time and may seek to extend the case processing times of their concurrent, non-accelerated arbitrations in order to meet the shortened deadlines that would apply to their accelerated arbitrations.[18]

Based on these considerations, FINRA believes that an age cutoff of 70 would help ensure that the proposed rule change is effective at helping those parties who would benefit most from accelerated processing. That said, if the Commission approves the proposed rule change, FINRA would monitor the program to determine if adjustments to the age cutoff for qualifying for accelerated processing are warranted.

2. Eligibility Based on Health

In addition to allowing parties to qualify for accelerated processing based on their age, the proposed rule change separately would allow parties to qualify based on their health condition.

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[8] *See* proposed Rules 12808(a)(1) and 13808(a)(1).

[9] *See* proposed Rules 12808(a)(1)(A) and 13808(a)(1)(A).

[10] *See infra* Item II.B.3 (discussing *Economic Impacts*).

[11] *See infra* Item II.B.3 (discussing *Economic Impacts*).

[12] In *Regulatory Notice* 22–09 (March 2022) (''Notice''), FINRA sought comment on a proposed rule change to accelerate arbitration proceedings for those parties who may not be able to meaningfully participate in lengthy proceedings. *See infra* Item II.C. (discussing the *Notice* and summarizing the comments).

[13] *See infra* Item II.C.1 (discussing comments to the *Notice* addressing the need for the proposed rule change).

[14] *See infra* Item II.B.4 (discussing *Alternatives Considered*).

[15] Lowering the proposed age cutoff from 70 to 65—the same age cutoff for the current program—would increase the total number of customer claimants who would qualify for accelerated processing from 20 percent to 26 percent. In 2023, with a proposed age cutoff of 65, customer claimants in 492 arbitrations (26 percent of 1,891 arbitrations where customers appeared as claimant) would qualify for accelerated processing. *See infra* Item II.B.4 (discussing *Alternatives Considered*). Although the proposed rule change would permit any party who is a natural person to request accelerated processing, FINRA anticipates, based on its experience with the current program, that most requests would come from customer claimants. *See infra* note 45 and accompanying text.

[16] *See infra* Item II.B.3 (discussing *Economic Impacts*).

[17] Although shortening the length of the proceedings for parties who qualify for accelerated processing is an important goal, FINRA understands that speed cannot come at the cost of procedural fairness. However, FINRA believes that 10 months should provide a reasonable and fair opportunity for discovery, motions, briefing, and hearings to be completed.

[18] *See infra* Item II.B.3 (discussing *Economic Impacts*).

Specifically, under proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B), a party may request accelerated processing of a case when initiating an arbitration or filing an answer provided that the party making the request certifies, in the manner and form required by the Director, that (i) the party has received a medical diagnosis and prognosis, and (ii) based on that medical diagnosis and prognosis, the party has a reasonable belief that accelerated processing of the case is necessary to prevent prejudicing the party's interest in the arbitration (''eligible health condition'').

FINRA believes it is appropriate to allow parties, regardless of age, to qualify for accelerated processing based on an eligible health condition. Parties who are suffering from an eligible health condition may be unable to meaningfully participate in a lengthy arbitration proceeding, which, in turn, could affect the outcome of the proceeding.

Unlike the proposed rule change, the current program does not require a certification to qualify for expedited proceedings based on a party's health condition. Under the current program, the Director determines whether the party qualifies for the program on the face of the information contained in the party's request at the outset of the case through the online claim filing form, statement of claim, or optional cover letter.[19] If it is not clear from the request whether the party qualifies for the current program, the Director may request additional information from the party.

FINRA believes that the proposed certification requirement is the most appropriate way to minimize unnecessary intrusions into a party's private health information while, at the same time, allowing FINRA to identify those individuals who could benefit most from accelerated processing because they are suffering from an eligible health condition.

FINRA understands the concerns of some forum users that, unless proof of their medical condition is required, parties may submit a false certification in order to qualify for accelerated processing.[20] However, FINRA has no evidence that parties have falsely claimed to be suffering from a serious health condition under the current program nor any reason to believe that this kind of misconduct is more likely under the proposed rule change. Moreover, FINRA believes that the threat of potential sanctions under existing FINRA Rules 12212 and 13212 should be sufficient to deter parties from falsely certifying that they have been diagnosed with an eligible health condition in order to qualify for accelerated processing.[21]

Finally, some forum users have expressed the concern that parties who request accelerated processing on the basis of an eligible health condition could be subject to discovery requests for the production of medical records or other private information about their health condition.[22] FINRA agrees with these forum users that in addition to raising privacy concerns, such discovery requests—or a requirement for additional proof of a party's health condition—could deter parties from making valid requests for accelerated processing and also unnecessarily delay the proceedings.[23] To address these concerns, the proposed rule change would make clear that a party does not open the door to discovery into their health condition merely by requesting accelerated processing.[24] Specifically, under proposed Rules 12808(a)(2) and 13808(a)(2), a party's certification of an eligible health condition shall not alone be sufficient grounds to compel the production of information concerning, or to allow questioning at any hearing about, the party's medical condition. The proposed rule change would not address a party's ability to request medical information for other appropriate reasons that are unrelated to the certification. For example, state law may allow a claimant's medical records to be discovered when a claimant places their medical condition at issue in their claim.[25]

Based on these considerations, FINRA believes that the proposed certification requirement and the threat of potential sanctions would be sufficient to protect against abuse of the process while, at the same time, minimizing unnecessary intrusions into a party's private medical information.

3. Requests by Other Parties for Accelerated Processing

Finally, as noted above, for those parties who may benefit from shortened proceedings but do not meet the eligibility requirements of the proposed rule change, proposed Rules 12808(a)(3) and 13808(a)(3) would allow those parties to request that the panel consider other factors, including their age or a change in their health condition during the arbitration proceeding, when scheduling hearings and discovery, briefing, and motions deadlines. Thus, although these proceedings would not be subject to the shortened, rule-based deadlines of the proposed rule change, the panel may determine at a party's request, to expedite the proceedings based on the party's particular circumstances.

B. Determination of Eligibility

Under proposed Rules 12808(b)(1) and 13808(b)(1), the Director would be responsible for determining whether a requesting party qualifies for accelerated processing.[26] When assessing eligibility for accelerated processing, the Director would make an objective determination as to whether the requesting party is at least 70 years of age or has submitted the required certification regarding an eligible health condition. This determination would not require any assessment by the Director regarding the reasonableness of the requesting party's belief that accelerated processing is necessary.

C. Accelerating the Proceedings

Once the Director determines that an arbitration qualifies for accelerated processing, the proposed rule change would accelerate the proceedings in three ways. First, the proposed rule change would accelerate the arbitrator selection process by shortening the deadlines for the Director to send the list of potential arbitrators to the

[19] Under the Codes, the term ''Director'' means the Director of DRS. Unless the Codes provide that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority. *See* FINRA Rules 12100(m), 12103, 13100(m), and 13103.

[20] *See infra* note 80 and accompanying text.

[21] Under existing FINRA Rules 12212 and 13212, potential sanctions include, but are not limited to, monetary penalties, an adverse inference, or a preclusion order.

[22] *See infra* note 81 and accompanying text.

[23] *See infra* note 82 and accompanying text.

[24] *See* proposed Rules 12808(a)(2) and 13808(a)(2).

[25] *See, e.g., Hansen* v. *Combined Transp., Inc.,* Case No. 1:13–cv–01993, 2014 U.S. Dist. LEXIS 63490, at *6–9 (D. Or. May 8, 2014) (because plaintiff alleged emotional distress damages, court found that, under Oregon and Washington law, he had placed his psychological condition at issue and granted the defendants' motion to compel the production of any records of the plaintiff's treatment by a medical professional for emotional or psychological matters); *Kirk* v. *Schaeffler Group USA, Inc.,* No. 3:13–cv–05032, 2014 U.S. Dist. LEXIS 83963, at *2–9 (W.D. Mo. June 20, 2014) (plaintiff was required, under Missouri law, to produce medical records related to her autoimmune disorder because those records were relevant to her claim that her autoimmune disorder was caused by exposure to chemicals released from the defendants' manufacturing plant); *Desrosiers* v. *Hartford,* No. C 12–80104, 2012 U.S. Dist. LEXIS 64554, at *1–4 (N.D. Cal. May 8, 2012) (applying California law, the court compelled compliance with subpoenas that sought the production of the plaintiff's medical records where she alleged that her employer's actions caused her to suffer emotional and psychological injuries).

[26] *See supra* note 19.

parties.[27] Second, the proposed rule change would provide arbitrators with direction on how quickly the arbitration should be completed.[28] Third, the proposed rule change would shorten certain deadlines that apply to the parties.[29]

1. Accelerating the Arbitrator Selection Process

The first way that the proposed rule change would shorten the proceedings is by requiring that the Director send out the lists of potential arbitrators to the parties more quickly.[30] Currently, DRS is required to send a list of potential arbitrators to all parties at the same time, ''within approximately 30 days after the last answer is due,'' regardless of the parties' agreement to extend any answer due date.[31] By contrast, proposed Rules 12808(b)(2)(A) and 13808(b)(2)(A) would require the Director to send the arbitrator lists generated by the list selection algorithm to all parties ''as soon as practicable after the last answer is due.'' In practice, the Director generally sends the arbitrator lists to parties in fewer than 30 days after the last answer due date. By requiring that the Director send the arbitrator lists ''as soon as practicable'' after the last answer is due, it would signal that the lists shall be sent shortly after the last answer due date, but would retain some flexibility for the Director in sending the lists.

2. Guidance to Arbitrators Regarding Completion of the Arbitration

The second way that the proposed rule change would shorten the length of the proceedings is to provide arbitrators with direction as to how quickly the case should be completed. Specifically, under proposed Rules 12808(b)(2)(B) and 13808(b)(2)(B), the panel shall endeavor to render an award within 10 months of the date the Director determines that a case is subject to accelerated processing. In addition, under proposed Rules 12808(b)(2)(C) and 13808(b)(2)(C), the panel shall hold a prehearing conference at which it shall set discovery, briefing, and motions deadlines, and schedule hearing sessions, that are consistent with rendering an award within 10 months or less.

By providing arbitrators with specific guidance regarding how quickly they should endeavor to complete an arbitration, FINRA believes that the proposed rule change would be more likely than the current program—which does not provide arbitrators with any similar guidance—to significantly reduce the overall length of the proceedings in cases that qualify for accelerated processing.

FINRA also believes that 10 months is the appropriate timeframe within which arbitrators should endeavor to render awards in accelerated arbitrations. Currently, the median time for customer arbitrations to close by award after a hearing when they are not part of the current program is almost 16 months, as is discussed more fully below.[32] Shortening the length of the proceedings by approximately six months would make a meaningful difference for a party who is at least 70 years old or suffering from an eligible health condition.[33]

As noted above, although shortening the length of the proceedings for parties who qualify for accelerated processing is an important goal, FINRA understands that speed cannot come at the cost of fairness. However, FINRA believes that 10 months should provide a reasonable and fair opportunity for discovery, motions, briefing, and hearings to be completed.[34]

At the same time, FINRA recognizes that there are some cases that may qualify for accelerated processing but that cannot reasonably be completed within 10 months because, for example, they are too complex. As to these matters, FINRA believes that the proposed rule change—which would establish a benchmark but would not mandate that all cases be completed within 10 months—would provide the arbitrators with sufficient flexibility to accommodate the particular circumstances of each case.[35]

3. Shortening Party Deadlines

Finally, the third way that the proposed rule change would shorten the length of the proceedings is to shorten several of the default deadlines that apply to parties under the Codes, as follows:

- *Serving an Answer.* Under the Codes, a respondent must serve an answer within 45 days of receipt of the statement of claim.[36] Under proposed Rules 12808(b)(2)(D)(i) and 13808(b)(2)(D)(i), a respondent would be required to serve an answer within 30 days of receipt of the statement of claim.
- *Responding to a Third Party Claim.* Under the Codes, a party responding to a third party claim must serve a response within 45 days of receipt of the third party claim.[37] Under proposed Rules 12808(b)(2)(D)(ii) and 13808(b)(2)(D)(ii), a party responding to a third party claim would be required to serve a response within 30 days of receipt of the third party claim.
- *Completing Arbitrator Lists.* Under the Codes, parties must return the ranked arbitrator lists to the Director no more than 20 days after the lists were sent to the parties.[38] Under proposed Rules 12808(b)(2)(D)(iii) and 13808(b)(2)(D) (iii), parties would be required to return the ranked arbitrator lists to the Director no more than 10 days after the lists are sent to the parties.
- *Discovery in Customer Cases.* Under the Customer Code, parties in customer cases are required to produce to all other parties documents that are described in the Document Production Lists on FINRA's website; explain why specific documents cannot be produced; or object and file an objection with the Director within 60 days of the date that the answer to the statement of claim or third party claim is due, unless the parties agree otherwise.[39] Under proposed Rule 12808(b)(2)(D)(iv), parties in customer cases would be required to respond to the Document Production Lists within 35 days of the date the answer to the statement of claim or third party claim is due, unless the parties agree otherwise.
- *Other Discovery Requests.* Under the Codes, parties must respond within 60 days of receipt to requests for other documents or information, unless the parties agree otherwise.[40] Under proposed Rules 12808(b)(2)(D)(v) and 13808(b)(2)(D)(iv), parties would be required to respond to requests for other

[27] *See* proposed Rules 12808(b)(2)(A) and 13808(b)(2)(A).

[28] *See* proposed Rules 12808(b)(2)(B), 12808(b)(2)(C), 13808(b)(2)(B), and 13808(b)(2)(C).

[29] *See* proposed Rules 12808(b)(2)(D) and 13808(b)(2)(D).

[30] FINRA uses a list selection algorithm that generates, on a random basis, lists of arbitrators from FINRA's rosters of arbitrators for the selected hearing location for each proceeding. The parties select their panel through a process of striking and ranking the arbitrators on the lists generated by the list selection algorithm. *See* FINRA Rules 12400(a) and 13400(a).

[31] *See* FINRA Rules 12402(c)(1), 12403(b)(1) and 13403(c)(1).

[32] *See infra* Item II.B.2 (discussing *Economic Baseline*).

[33] *See infra* Item II.B.3 (discussing *Economic Impacts*).

[34] *See supra* note 17.

[35] Further, as is discussed more fully, *infra* note 42 and accompanying text, even after the proposed rule change is adopted, arbitrators would continue to have flexibility under existing FINRA rules to modify the deadlines that apply to the parties when appropriate. *See* FINRA Rules 12508(b) and 13508(b) (allowing arbitrators to excuse untimely objections to discovery requests where ''the party had substantial justification for failing to make the objection within the required time''); FINRA Rules 12207(b) and 13207(b) (authorizing arbitrators to extend or modify any deadline ''either on its own initiative or upon motion of a party'').

[36] *See* FINRA Rules 12303 and 13303.

[37] *See* FINRA Rules 12306 and 13306.

[38] *See* FINRA Rules 12403 and 13404.

[39] *See* FINRA Rule 12506.

[40] *See* FINRA Rules 12507 and 13507.

documents and information within 30 days of receipt, unless the parties agree otherwise.

Based on FINRA's experience, FINRA believes these proposed shortened deadlines are reasonable and would not compromise the fairness of the arbitration proceedings because they would be manageable in most cases. In addition, arbitrators and parties could extend the proposed deadlines if warranted. Specifically, there may be some cases in which the complexity of the case, the volume of discovery, or other factors may justify extending these proposed deadlines.[41] Under such circumstances, the existing provisions of the Codes would provide the parties and arbitrators with the flexibility to address the unique facts and circumstances of each case. Specifically, under existing FINRA Rules 12207(a) and 13207(a), the parties may agree to extend or modify any deadline for serving an answer, returning the ranked arbitrator or chairperson lists, responding to motions, or exchanging documents or witness lists.[42] Under existing FINRA Rules 12207(b) and 13207(b), the panel may extend or modify any deadline for serving an answer, responding to motions, exchanging documents or witness lists, or any other deadline set by the panel, either on its own initiative or upon motion of a party. Further, under existing FINRA Rules 12508(b) and 13508(b), the panel may extend the time for a party to object to discovery requests if the party has ''substantial justification for failing to make the objection within the required time.''

While these provisions in the Codes provide the panel and the parties with flexibility to modify the shortened deadlines in the proposed rule change, FINRA expects the extensions to be the exception and not the rule. Accordingly, if the Commission approves the proposed rule change, FINRA would provide training and guidance to arbitrators on accelerated processing, which would include training on evaluating requests to extend the proposed shortened deadlines.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.*[43]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[44] which requires, among other things, that FINRA rules must 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.

FINRA believes that the proposed rule change will protect investors and the public interest by shortening case processing times for those parties—most of whom are likely to be customers—who may not be able to meaningfully participate for the duration of a lengthy arbitration because of their age or health condition. When parties are unable to meaningfully participate in an arbitration, it can affect the outcome of the proceedings. By shortening the length of the arbitration for these parties, the proposed rule change will make it more likely that they are able to meaningfully participate for the duration of the proceedings. This, in turn, will protect investors and the public interest by helping to ensure that arbitration cases are resolved based on the underlying merits.

In addition, those parties who do not meet the eligibility requirements of the proposed rule change still will be able to request, once the panel has been appointed, that the panel consider other factors, including their age or a change in their health condition during the arbitration proceeding, when scheduling hearings and discovery, briefing, and motion deadlines. Thus, although these proceedings would not be subject to the shortened, rule-based deadlines of the proposed rule change, the panel may determine at a party's request, to expedite the proceedings based on the party's particular circumstances.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking, its potential economic impacts, including anticipated benefits and costs, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Economic Impact Assessment

1. Regulatory Need

The proposed rule change would address concerns that FINRA has received that certain parties who are seriously ill or 70 years or older may be unable to meaningfully participate in a lengthy arbitration. An inability to meaningfully participate harms these parties if, as a result, the resolution of the arbitration does not accurately reflect the underlying merits of the case. For the parties who qualify, the proposed rule change would shorten case deadlines and provide arbitrators with instruction on how quickly the arbitration should be completed.

2. Economic Baseline

The economic baseline is the current provisions under the Codes that address the administration of arbitration proceedings and the current program to shorten case processing times. The proposed rule change is expected to affect the parties to cases in the DRS forum, their counsel, and FINRA arbitrators.

Under the current program, parties who have a serious health condition or are at least 65 years of age may request that the processing of their arbitration be expedited. Since the current program is voluntary, requesting parties presumably anticipate that the benefits from the shortened case processing times more than offset any additional costs, such as paying for expedited legal services. Expedited processing may also impose additional costs on the other parties and arbitrators associated with arbitrations.

From 2019 through 2023, customers requested expedited processing in approximately 29 percent of customer arbitrations. During this time period, 10,961 customer arbitrations (where customers appeared as claimants) closed where DRS had served the statement of claim on respondents. Parties requested expedited processing in 3,174 of these arbitrations. Ninety-nine percent, or 3,132 of the 3,174 requests, were granted. Parties did not request expedited processing in the remaining 7,787 arbitrations.[45]

Arbitrations in the current program closed only slightly faster than arbitrations not in the current program. The median time for the 3,132 customer

[41] *See infra* Item II.C.4 (discussing comments to the *Notice* addressing the proposed shortened deadlines for parties and guidance to arbitrators).

[42] Proposed Rules 12808(b)(2)(D)(iv), 12808(b)(2)(D)(v), and 13808(b)(2)(D)(iv) similarly would permit the parties to mutually agree to extend discovery deadlines.

[43] FINRA notes that the proposed rule change would impact all members, including members that are funding portals or have elected to be treated as capital acquisition brokers (''CABs''), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

[44] 15 U.S.C. 78*o*–3(b)(6).

[45] Parties requested expedited processing in few arbitrations where customers appeared only as respondent or that were intra-industry arbitrations. For this reason, FINRA focuses the empirical discussion on customer arbitrations where customers appeared as claimant.

arbitrations in the current program to close was approximately 13.7 months. This is two months shorter than the median time for the 7,829 customer arbitrations not in the current program to close, which was 15.7 months.[46]

3. Economic Impacts

The proposed rule change would impact the number of parties who are eligible for accelerated processing.[47] For example, from a sample of 499 requests for expedited processing that were granted in 2023, 77 percent of the requests (385 requests) were granted on the basis of serious illness or age 70 or over. These parties represent 20 percent of customer claimants (385 of 1,891 arbitrations where customers appeared as claimant). The remaining 23 percent of requests (114 requests), or six percent of customer claimants, were granted solely on the basis of age to parties between the ages of 65 and 69. Under the proposed rule change, these parties would no longer qualify for accelerated processing.[48]

FINRA anticipates that the proposed rule change would shorten the length of arbitrations for parties who request and are granted accelerated processing. In these arbitrations, arbitrators would be required to endeavor to render an award within 10 months. From a sample of arbitrations in the current program in 2020 that have since closed, 384 were granted on the basis of serious illness or age 70 or over. Seventy percent (269 of 384 arbitrations in the current program) took longer than 10 months to close. Among the arbitrations in the current program that took longer than 10 months to close, approximately 50 percent took longer than 15.3 months to close.[49] As discussed below, the magnitude of the benefits and costs resulting from the proposed rule change would increase as the arbitrations that proceed under accelerated processing shorten.

Relative to the baseline, the proposed rule change would benefit parties who are seriously ill or at least 70 years old by shortening case deadlines for their arbitrations and providing arbitrators with instruction on how quickly the arbitration should be completed. This would help reduce the length of the arbitration and increase the chance that qualifying parties can fully participate. The ability of these parties to meaningfully participate would help facilitate outcomes that are more consistent with the merits of the case.[50] Those parties who, as a result of the shorter processing times settle or are awarded damages earlier than under the current program, may also have a greater ability to meet their short-term financial needs.

The proposed rule change, however, may also impose additional costs on parties and arbitrators to meet the shorter, rule-based deadlines. The parties who are eligible and request accelerated processing would incur these costs at their own discretion. The types of costs the other parties to the proceeding may incur would depend on how they manage their resources to meet the shortened deadlines. For example, these parties may reallocate resources from other activities, possibly increasing the time required to meet other business objectives; or they may incur additional costs from adding staff or using outside counsel; or do a combination of the two. How these parties would adjust to meet the shortened deadlines may differ depending on their business models and available resources. The additional costs parties incur, however, may be partly offset by the gains to efficiency from the shorter deadlines and a more focused effort on the associated tasks.

Participants to non-accelerated arbitrations may also incur costs associated with longer processing times. It could be difficult for arbitrators, industry parties and their counsel—many of whom participate concurrently in more than one arbitration—to maintain their current timelines for non-accelerated arbitrations. As a result, case processing times of non-accelerated arbitrations may lengthen.

Reducing the length of the arbitration may help more parties with serious health issues than are helped under the current program, though the reduction may not be sufficient to help all parties with more serious health issues and shorter life expectancies. Also, under the proposed rule change, parties between the ages of 65 and 69 who are seriously ill would no longer be able to rely on their age to qualify for accelerated processing. These parties may incur additional costs to certify that they have received a medical diagnosis and prognosis in order to take advantage of accelerated processing.

Finally, it is not expected that the proposed rule change would impose costs on those parties who would no longer qualify for accelerated processing on the basis of either their age or health condition. These parties would still be able to ask that the panel consider their age and health in making scheduling decisions and setting deadlines.

4. Alternatives Considered

FINRA considered different age eligibility cutoffs when developing the proposed rule change.[51] FINRA is concerned that age cutoffs greater than 70 would deny accelerated processing to many parties who are at higher risk of becoming seriously ill, experiencing an adverse health condition, or not living to see the outcome of an arbitration. In 2023, relative to the proposed age cutoff of 70, an age cutoff of 75 would decrease the total number of customer claimants who would qualify for accelerated processing from 20 percent to 16 percent.[52] Alternatively, as noted above, lowering the proposed age cutoff from 70 to 65—the same age cutoff for the current program—would increase the total number of customer claimants who would qualify for accelerated processing from 20 percent to 26 percent.[53] FINRA

[46] FINRA finds similar evidence comparing the length of customer arbitrations that went through the full arbitration process and closed by award after a hearing from 2019 to 2023.

[47] As noted above, the proposed rule change would be more likely than the current program, which does not provide for shortened, rule-based deadlines for parties or provide arbitrators with direction on how quickly the arbitration should be completed, to accelerate the proceedings for those parties who may not be able to meaningfully participate throughout the course of a lengthy arbitration. In addition, for those parties who may benefit from shortened proceedings but do not meet the eligibility requirements of the proposed rule change, the proposed rule change would allow the parties to request that the panel consider other factors, including their age and health, when scheduling hearings and discovery, briefing, and motion deadlines. Thus, although these proceedings would not be subject to the shortened, rule-based deadlines of the proposed rule change, the panel may determine at a party's request, to expedite the proceedings based on the party's particular circumstances, including developing a serious health condition during the arbitration proceeding.

[48] FINRA also identified 31 requests for expedited processing made by customer claimants where the request was based on age but information describing the age was not available. Depending on the age of the customer, these requests may or may not be eligible under the proposed rule change. The sample reflects all arbitrations filed in 2023 where customer claimants requested expedited processing. The sample, therefore, should be representative of the customer claimants who make these requests.

[49] As a comparison, from a sample of 109 arbitrations in the current program in 2020 involving customer claimants who were under the age of 70 and not seriously ill, 72 percent (78 of 109 arbitrations in the current program) took longer than 10 months to close. Among the arbitrations in the current program that took longer than 10 months to close, approximately 50 percent took longer than 14.6 months to close. As of the date of this filing, two arbitrations in the current program in 2020 remained open.

[50] Such outcomes can include awards and settlements insofar as settlements reflect the merits of the case. Among the 10,961 customer arbitrations that closed from 2019 through 2023, 8,423 arbitrations (77 percent) resulted in settlements reached by the parties.

[51] *See infra* Item II.C.2.

[52] In 2023, with a proposed age cutoff of 75, customer claimants in 295 arbitrations (16 percent of 1,891 arbitrations where customers appeared as claimant) would qualify for accelerated processing.

[53] *See supra* note 15.

notes that these are estimates of eligibility, and that we do not know the fraction of those eligible who would request accelerated processing if the proposed rule change were adopted.

Even though the data suggests that lowering the proposed age cutoff from 70 to 65 would only affect approximately six percent of customer claimants, FINRA is concerned that this change may reduce the likelihood that the proposed rule change would materially shorten the length of the proceedings for those parties who may be less likely to be able to participate for the duration of a lengthy arbitration. FINRA is also concerned that participation by arbitrators, industry parties and their counsel in more than one arbitration, including an arbitration that is accelerated under the proposed rule change may affect parties in other arbitrations in the DRS forum in the form of longer processing times.

FINRA understands that the average likelihood of becoming unable to meaningfully participate in an arbitration may differ among populations and that these differences can persist after the age of 65.[54] This suggests that lowering the proposed age cutoff cannot fully equalize the ability of individuals in all populations to participate in the forum. However, populations with higher likelihoods of serious illness or adverse health conditions may experience additional benefits from the eligibility requirements based on health. As noted above, a party younger than 70 would still be able to request accelerated processing if they are suffering from a serious health condition.

Finally, FINRA also considered establishing different deadlines for parties (*e.g.,* requiring the parties to complete the ranked arbitrator lists in 20 days and not the proposed 10 days; and requiring parties to respond to Document Production Lists in 20 days and not the proposed 35 days). When establishing the proposed deadlines, FINRA considered the potential burden on arbitrators and parties relative to their importance on the length of arbitration proceedings to close. FINRA believes that the deadlines as proposed would be manageable and only impose a burden on arbitrators and parties to the extent that the deadlines would help result in meaningfully shortened processing times.

[54] *See* Elizabeth Arias, Jiaquan Xu & Kenneth Kochanek, United States Life Tables, 2021, National Vital Statistics Reports, Vol. 72, No. 12, *https://www.cdc.gov/nchs/data/nvsr/nvsr72/nvsr72-12.pdf.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA published the proposed rule change for comment in *Regulatory Notice* 22–09.[55] FINRA received 15 comment letters from 14 commenters in response to the *Notice.*[56] A copy of the *Notice* is available on FINRA's website at *http://www.finra.org.* A list of comment letters received in response to the *Notice* is available on FINRA's website. Copies of the comment letters received in response to the *Notice* are available on FINRA's website.

Eleven commenters supported FINRA's efforts to accelerate arbitration proceedings for those parties who may not be able to meaningfully participate in lengthy proceedings but suggested modifications.[57] A summary of the comments and FINRA's responses are discussed below.

1. Comments Addressing the Need for the Proposed Rule Change

In its response to the *Notice,* SIFMA supported the intent behind the proposed rule change—''to ensure that parties to a FINRA arbitration are able to participate meaningfully in their proceedings and obtain a fair outcome''—but questioned whether the proposed rule change is necessary given the existence of the current program. FINRA disagrees that the proposed rule change is unnecessary. The current program has reduced the median time that it takes for customer arbitrations to close by just two months.[58]

FINRA understands that any shortening in the length of an arbitration can be helpful to a party who is elderly or suffering from a serious health condition. However, FINRA believes that the proposed rule change has the potential to shorten the time that it takes for arbitrations to close to approximately 10 months, thereby shortening the median closing time by approximately an additional three months. As a number of commenters noted, the additional time savings contemplated by the proposed rule change could be critical for parties who are elderly or suffering from a serious health condition and who, therefore, may be unable to meaningfully participate in a lengthy arbitration.[59] As Miami stated, ''[t]he critical months saved under the proposal could mean the difference in'' whether an elderly or sick party is able to meaningfully participate in the proceedings, ''whether by testifying, consulting with their attorneys, or making decisions about settlement offers.'' Cardozo noted the ''grave'' consequences that some elderly or seriously ill parties face without accelerated processing. Some of these parties die before the arbitration is completed, and others, who are diagnosed with a memory-impairing disease like Alzheimer's, may initially be able to assist in the preparation of their case but then ''enter into a steep decline to a point where they can no longer testify on their own behalf.'' [60] According to Cardozo, ''[m]oving quickly in such a case is critical.'' FINRA believes that, by establishing rule-based deadlines for the parties and codifying the expectation that arbitrators endeavor to render an award within 10 months, the proposed rule change would be more likely than the current program to ensure that cases occur on an accelerated schedule.[61]

SIFMA suggests that, even without the proposed rule change, FINRA could encourage arbitrators to endeavor to render awards in accelerated proceedings within a period of 10 months. FINRA agrees that arbitrator training is important, and, as noted above, if the Commission approves the proposed rule change, FINRA would provide training and guidance to arbitrators on accelerated processing, which would include training on evaluating requests to extend the proposed shortened deadlines.

2. Comments Addressing Which Parties Should Be Eligible for Accelerated Processing

As discussed below, those commenters who addressed the issue of which parties should be eligible for accelerated processing almost uniformly supported allowing parties to qualify based on either their age or their health condition.[62] The principal area of disagreement among the commenters

[55] *See supra* note 12.

[56] One of the 14 commenters, Slater, submitted two comment letters. *See* SR–FINRA–2024–021 (Form 19b–4, Exhibit 2b) for a list of abbreviations assigned to commenters (available on FINRA's website at *http://www.finra.org*).

[57] *See* Cambridge, Cardozo, Caruso, Cornell, FSI, Iannarone, Miami, NASAA, Pace, PIABA, and St. John's. SIFMA stated that the proposed rule change is unnecessary because FINRA's current program for expediting arbitrations sufficiently addresses the issue. The two remaining commenters, Kolber and Slater, did not address the proposed rule change specifically but, rather, expressed concerns about misconduct by attorneys in FINRA arbitrations.

[58] *See supra* Item II.B.2 (discussing *Economic Baseline*).

[59] *See* Miami, Cardozo.

[60] *See* Cardozo.

[61] *See* PIABA (stating that ''[c]odifying the mandates of an accelerated process'' may make it more likely that parties and arbitrators comply with an accelerated schedule).

[62] *See infra* Item II.C.2(A) and (B).

was the appropriate age at which a party should become eligible for accelerated processing.[63] Further, some commenters suggested that FINRA should take into consideration other factors in addition to age and health condition when deciding whether a party should qualify for accelerated processing.[64]

(A) Comments Addressing Eligibility Based on Age

All but one of the commenters who addressed the issue supported allowing parties to qualify for accelerated processing based solely on age.[65] The only exception is Cambridge. Specifically, Cambridge questioned the need for parties who are otherwise healthy to qualify for accelerated processing based solely on age. Cambridge stated that accelerated processing should be available only when a party is suffering from an eligible health condition.

FINRA disagrees with Cambridge. Even if they are otherwise healthy at the outset of the arbitration, elderly parties may be more likely because of their age to become seriously ill or die during the arbitration, in which case they would be unable to meaningfully participate for the duration of the proceedings. For this reason, FINRA believes it is appropriate that the proposed rule change would allow parties to qualify for accelerated processing based solely on age.

The remaining commenters, other than Cambridge, focused principally on the question of what the appropriate age cutoff should be for a party to qualify for accelerated processing. In the *Notice,* FINRA proposed an age cutoff of 75 years and requested comment on whether 75 was the appropriate age at which parties should be able to request that the proceedings be accelerated.[66] In response, three commenters supported the proposed age cutoff of 75.[67] St. John's recommended lowering the age cutoff to 70. Six commenters urged FINRA to lower the age cutoff to 65.[68] As noted above, those commenters who suggested lowering the age cutoff from 75 to either 70 or 65 relied on some or all of the following three justifications for their recommendation: (1) 65 is the age that is commonly used in other statutes and rules relating to the protection of seniors;[69] (2) lowering the age cutoff to below 75 would account for different life expectancies across different groups;[70] and (3) customer claimants who are 65 years of age and older are more likely to be facing economic hardship because they may not have ongoing income from employment.[71]

After considering the comments, FINRA has determined to propose an age cutoff to qualify for accelerated processing of 70. As discussed in detail above, an age cutoff of 70 would make accelerated processing available to more parties who are at a higher risk of becoming seriously ill or experiencing an eligible health condition during the course of an arbitration, or potentially not living to see the outcome of the arbitration proceeding.[72] However, as noted above, if the Commission approves the proposed rule change, FINRA would monitor the new program to determine if adjustments to the age cutoff for qualification for accelerated processing are warranted.[73]

(B) Comments Addressing Eligibility Based on Health Condition

Those commenters who addressed the issue of which parties should be eligible for accelerated processing unanimously supported allowing parties to qualify based on their health condition.[74] However, FSI requested further guidance regarding the kinds of health conditions that would support a request for accelerated processing. Cornell requested that FINRA reconsider the requirement in proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B) that, in order to qualify for accelerated processing based on their health condition, a party must certify that they have a ''reasonable belief'' that accelerated processing is necessary. In explaining its objection to that standard, Cornell expressed the concern that parties could be subject to sanctions if they and the Director—who, according to Cornell, will have ''the authority of determining whether the applicants' beliefs are reasonable''—disagree as to ''what conditions warrant an accelerated hearing.''

Given the breadth of potential diagnoses and prognoses that could result in parties reasonably believing that they would be prejudiced without accelerated processing, FINRA does not believe it would be helpful to provide examples of eligible health conditions. In addition, FINRA is concerned that doing so could discourage parties with medical diagnoses and prognoses that fall outside of the examples from making a legitimate request for accelerated processing.

FINRA also believes that the ''reasonable belief'' standard is appropriate. As discussed above, when assessing eligibility for accelerated processing under proposed Rules 12808(b)(1) and 13808(b)(1), the Director would make an objective determination as to whether the requesting party has submitted the required certification regarding an eligible health condition. This determination would not require any assessment by the Director regarding the reasonableness of the requesting party's belief that accelerated processing is necessary. FINRA believes that these concerns are unfounded.

(C) Comments Proposing Additional Categories of Eligible Parties

Although they supported making accelerated processing available to parties based on their age or health condition, two commenters suggested that FINRA should allow parties to request accelerated treatment based on other factors.[75] Specifically, St. John's recommended that parties should be able to qualify for accelerated processing based on ''need.'' Under the approach proposed by St. John's, a party's eligibility for accelerated processing would be determined based on a consideration of their ''full circumstances,'' including their medical status, socioeconomic status, and other needs, such as caregiver responsibilities. In addition, both St. John's and Iannarone suggested that parties should qualify for accelerated processing if they are healthy but have a spouse or immediate family member who is

[63] *See infra* Item II.C.2(A).

[64] *See infra* Item II.C.2(C).

[65] *Compare* Cardozo, Caruso, Cornell, FSI, Iannarone, Miami, NASAA, Pace, PIABA, SIFMA, and St. John's (all supporting allowing parties to qualify for accelerated processing based solely on age) with Cambridge (recommending that FINRA eliminate eligibility based solely on age). SIFMA generally supported allowing parties to request accelerated processing based on age but suggested that FINRA should require parties to produce proof of their age. FINRA discusses all of the comments addressing the question of what kind of proof should be required to qualify for accelerated processing below. *See infra* Item II.C.3(A).

[66] *See supra* note 12.

[67] *See* FSI, Miami, SIFMA.

[68] *See* Cardozo, Caruso, Cornell, Iannarone, Pace, PIABA.

[69] *See* Caruso, Iannarone, Pace, PIABA.

[70] *See* Cardozo, Cornell, Iannarone, Pace, PIABA.

[71] *See* Cardozo.

[72] *See supra* Item II.A.1(II)(A)(1) (discussing *Eligibility Based on Age*) and Item II.B.4 (discussing *Alternatives Considered*).

[73] *See supra* Item II.A.1(II)(A)(1).

[74] *See* Cambridge, Cardozo, Caruso, Cornell, FSI, Iannarone, Miami, NASAA, Pace, PIABA, SIFMA, and St. John's. Although they generally supported allowing parties to qualify for accelerated processing based on their health condition, some of these commenters suggested that the proposed rule change should require parties to produce additional proof of their health condition. *See* Cambridge, SIFMA. FINRA discusses these comments on the issue of what proof should be required to establish eligibility based on health condition below. *See infra* Item II.C.

[75] *See* Iannarone, St. John's.

suffering from a qualifying health condition.

FINRA understands that there are some parties who would benefit if their arbitration were accelerated but who would not qualify for accelerated processing under the proposed rule change. However, FINRA is concerned that the needs-based approach suggested by St. John's is too vague and subjective to be workable. Although FINRA understands that parties with ill spouses or immediate family members might benefit if—according to St. John's, they were able to ''spend less time and money on the arbitration process,''—there is no evidence that these parties would be unable to meaningfully participate in arbitration proceedings absent accelerated processing. Finally, FINRA believes it is unnecessary to expand the categories of eligible parties as suggested by the commenters because the proposed rule change provides those parties who do not meet the eligibility requirements of the proposed rule change with an alternative route to seek to accelerate the proceedings. Specifically, as discussed above, proposed Rules 12808(a)(3) and 13808(a)(3) would allow parties who do not meet the eligibility requirements of the proposed rule change to request, once the panel has been appointed, that the panel consider other factors, including their age or a change in their health condition during the arbitration proceeding, when scheduling hearings and discovery, briefing, and motion deadlines. Thus, although the shortened deadlines in proposed Rules 12808(b) and 13808(b) would not apply to these parties, they would be able to ask the arbitration panel to accelerate their proceedings based on a consideration of their particular circumstances, including developing a serious health condition after the panel is appointed.

3. Comments Addressing the Proof Required To Qualify for Accelerated Processing

As noted above, although almost all of the commenters supported allowing parties to qualify for accelerated processing based on their age or their health conditions, two of those commenters suggested that, in order to minimize the potential for abuse of the process, FINRA should require parties to produce proof of their age or health condition.[76] To further deter parties from falsely claiming they are eligible for accelerated processing, two commenters suggested that existing sanctions provisions in the Codes should be expanded.[77] FINRA disagrees with these commenters, as discussed below.

(A) Comments Addressing Proof of Age

SIFMA suggested that parties requesting accelerated processing on the basis of age should be required to prove they are at least 70 years old by producing ''a driver's license, passport, birth certificate, or other similar official record.'' However, FINRA believes that requiring proof of age is unnecessary. Just as there is no evidence that parties have falsely claimed to be suffering from a serious health condition, FINRA has no evidence that parties have falsified their age to qualify for the current program. Nor is there any reason to believe that parties are more likely to falsify their age under the proposed rule change, particularly when such conduct could result in potential sanctions under existing FINRA Rules 12212 and 13212. FINRA is also concerned that requiring proof of age under the proposed rule change could discourage some parties from making legitimate requests for accelerated processing as they may view this as an unnecessary intrusion into their personal information.[78] Further, in the unlikely event that a genuine dispute arises as to whether a party qualifies for accelerated processing on the basis of age, the arbitration panel could require that the party provide proof of age to determine the applicability of the proposed rule change.[79]

(B) Comments Addressing Proof of a Party's Health Condition

To minimize the risk that parties will falsely certify that they are suffering from an eligible health condition, two commenters suggested that parties should be required to provide additional proof of their health condition, for example, by providing a certification from a physician.[80] As discussed above, FINRA believes that the proposed certification requirement and the threat of potential sanctions would be sufficient to protect against abuse of the process while, at the same time, minimizing unnecessary intrusions into private medical information.

Some commenters also expressed the concern that parties who request accelerated processing on the basis of an eligible health condition could be subject to discovery requests for the production of medical records or other private information about their health condition.[81] These commenters stated that in addition to raising privacy concerns, such discovery requests could deter parties from making valid requests for accelerated processing and also unnecessarily delay the proceedings.[82] FINRA agrees with these concerns. As a result, the proposed rule change would make clear that a party does not open the door to discovery into their health condition merely by requesting accelerated processing.[83]

To further protect a party's privacy, Cardozo requested that the proposed rule change require that the certification be submitted only to FINRA staff and not shared with other parties or the arbitrators. However, FINRA believes that such a requirement is unnecessary because the certification required under the proposed rule change would not contain any details regarding the party's medical condition or other private health information.

(C) Comments Addressing Sanctions

To provide further protection against abuse of the process, two commenters suggested that the existing sanctions provisions in the Codes should be expanded.[84] More specifically, FSI proposed that arbitrators should be able to remove a matter from the accelerated processing track, and SIFMA proposed that matters should be subject to dismissal as a sanction if a party falsely claims to be eligible for accelerated treatment. However, existing FINRA Rules 12212(a) and 13212(a) already authorize arbitrators to impose a wide range of sanctions, including, assessing monetary penalties payable to one or more parties; precluding a party from presenting evidence; making an adverse inference against a party; assessing postponement or forum fees; and assessing attorneys' fees, costs and

[76] *See* Cambridge, SIFMA.

[77] *See* FSI, SIFMA.

[78] In addition, FINRA notes there are increasing concerns with customers' identities being used for fraudulent purposes in the securities industry. *See, e.g., Regulatory Notice* 20–13 (May 2020) (reminding firms to be aware of fraud during the pandemic); *Regulatory Notice* 20–32 (September 2020) (reminding firms to be aware of fraudulent options trading in connection with potential account takeovers and new account fraud); *Regulatory Notice* 21–14 (March 2021) (alerting firms to recent increase in automated clearing house ''Instant Funds'' abuse); *Regulatory Notice* 21–18 (May 2021) (sharing practices firms use to protect customers from online account takeover attempts); and *Regulatory Notice* 22–21 (October 2022) (alerting firms to recent trend in fraudulent transfers of accounts through the Automated Customer Account Transfer Service).

[79] *See* FINRA Rules 12409 and 13413. The panel has the authority to interpret and determine the applicability of all provisions under the Codes.

[80] *See* Cambridge, SIFMA.

[81] *See* Miami, PIABA.

[82] *See* Miami, PIABA.

[83] *See* proposed Rules 12808(a)(2) and 13808(a)(2).

[84] *See* FSI, SIFMA.

expenses. FINRA believes these rules are broad enough and provide arbitrators with sufficient flexibility to address any abuse of accelerated processing.

4. Comments Addressing the Proposed Shortened Deadlines for Parties and Guidance to Arbitrators

(A) Comments Addressing the Proposed 10-Month Timeframe for Arbitrators To Endeavor To Render an Award

Two commenters addressed the proposed 10-month timeframe within which arbitrators should endeavor to render awards in accelerated arbitrations.[85] Miami supported the proposed rule change and, based on its experience representing parties in FINRA arbitrations, stated that ''arbitrators appear equipped to meet FINRA's proposed guidance to render an award within 10 months or less.'' [86] SIFMA did not object to the proposed 10-month timeframe per se but, rather, noted that it may not be possible or appropriate to close all accelerated cases within 10 months. For example, SIFMA noted that large, complex cases may involve voluminous discovery.

For the reasons discussed above, FINRA believes that 10 months is the appropriate timeframe within which arbitrators should endeavor to render awards in accelerated arbitrations.[87] In addition, however, FINRA agrees that there are some cases that may qualify for accelerated processing but which cannot reasonably be completed within 10 months because these cases are complex or involve voluminous discovery. As to these matters, FINRA believes that the proposed rule change would provide the arbitrators with sufficient flexibility to accommodate the particular circumstances of each case. As discussed above, the proposed rule change would establish a benchmark but does not mandate that all cases be completed within 10 months.[88]

(B) Comments Addressing the Shortened Deadlines for Parties

As discussed above, in addition to establishing a 10-month timeframe within which arbitrators should endeavor to render an award in accelerated cases, proposed Rules 12808(b)(2)(D) and 13808(b)(2)(D) would accelerate the proceedings by establishing shortened deadlines for the parties. Three commenters expressed concerns regarding some or all of these proposed shortened deadlines.[89] Cambridge recommended against including any deadlines in the proposed rule change ''to allow for flexibility in each situation.'' It also objected to all of the proposed shortened deadlines for filing answers, returning the ranked arbitrator lists, and producing discovery as allegedly too short and unfair to respondents.[90] SIFMA generally supported the proposed deadline for filing answers ''provided that the parties are free to grant extensions upon request,'' but it stated that the proposed deadlines for returning the ranked arbitrator lists and discovery might be difficult or impossible to meet in some cases. FSI took issue only with the proposed shortened discovery deadlines, which FSI claimed were unrealistic and would result in requests for extensions of time ''as a matter of course.''

FINRA disagrees with Cambridge's suggestion to eliminate all shortened deadlines from the proposed rule change. To meaningfully reduce case processing times for those parties who may be unable to fully participate in lengthy arbitration proceedings—a goal that the current program has been unable to achieve—FINRA believes it is necessary and appropriate to establish rule-based shortened deadlines. As to the other concerns raised by commenters regarding specific deadlines, FINRA understands that the proposed shortened deadlines may not be reasonable in some cases, for example, if the case is complex or involves voluminous discovery. However, as discussed above, FINRA believes that the existing provisions of the Codes provide the parties and arbitrators with sufficient flexibility to modify the proposed shortened deadlines when necessary.[91] Further, as noted above, if the Commission approves the proposed rule change, FINRA would provide training and guidance to arbitrators on accelerated processing, which would include training on evaluating requests to extend the proposed shortened deadlines.

5. Other Comments

In response to the *Notice,* NASAA criticized FINRA member firms for often requiring customers to enter into agreements to arbitrate disputes regarding services provided to such customers. Kolber suggested that the Codes should be amended to provide for sanctioning attorneys for engaging in delay tactics in arbitration. St. John's recommended raising the threshold for simplified arbitration from $50,000 to $100,000. Iannarone suggested that FINRA help ensure that all customer claimants have access to counsel.

All of these comments are beyond the scope of the proposed rule change. However, with respect to NASAA's comment, FINRA notes that its rules do not require customers to enter into agreements to arbitrate disputes with member firms, nor do FINRA rules preclude customers from pursuing relief in state or federal courts. The Supreme Court has held that predispute arbitration agreements are enforceable as to claims brought under the Act.[92]

With respect to Kolber's comment, FINRA notes that it does not have direct authority to investigate or discipline representative misconduct in the DRS forum.[93] Currently, if an attorney is allegedly engaging in misconduct in the DRS forum, FINRA may make a referral to the attorney's disciplinary agency,

[85] *See* Miami, SIFMA.

[86] In addition, Miami stated that ''existing provisions of the Code provide sufficient flexibility if the shortened deadlines could not be met in a particular case.''

[87] *See supra* Item II.B.3 (discussing *Economic Impacts*).

[88] *See supra* Item II.A.1(II)(C)(2).

[89] *See* Cambridge, FSI, SIFMA.

[90] Cambridge also suggested that, instead of shortening the deadlines that apply to the parties, FINRA should consider establishing concurrent deadlines. For example, Cambridge proposed that the parties could be working on ranking potential arbitrators at the same time that the respondent is preparing the answer to the statement of claim. However, FINRA does not believe it would be appropriate to require the claimant to rank arbitrators before they are provided with an opportunity to review the respondent's answer and any counterclaims and crossclaims.

[91] *See supra* Item II.A.1(II)(C)(3). For this same reason, FINRA also does not believe it is necessary, as suggested by Cardozo, that the proposed rule change provide parties with the option to ''change their minds'' and have their cases returned to a regular schedule. If, as Cardozo suggests, the shortened deadlines become too ''challenging'' for a party, existing FINRA rules would permit them to request that the deadlines be modified.

[92] Until the Supreme Court's decision in *Shearson/American Express, Inc.* v. *McMahon,* 482 U.S. 220 (1987), the courts would not enforce predispute arbitration agreements relating to federal securities law claims. In addition, until its rescission in 1987, Rule 15c2–2(a) under the Act provided that: ''It shall be a fraudulent, manipulative or deceptive act or practice for a broker or dealer to enter into an agreement with any public customer which purports to bind the customer to the arbitration of future disputes between them arising under the federal securities laws, or to have in effect such an agreement, pursuant to which it effects transactions with or for a customer.'' As a result of *McMahon* and the rescission of Rule 15c2–2(a), firms can compel arbitration of customer claims through inclusion of predispute arbitration provisions in their agreements with customers. When member firms use mandatory arbitration clauses, FINRA rules establish minimum disclosure requirements regarding their use to help ensure customers understand these clauses, and to protect customers' rights under FINRA rules. *See* FINRA Rule 2268. *See also Regulatory Notice* 21–16 (April 2021) (reminding firms about requirements when using predispute arbitration agreements for customer accounts).

[93] *Cf.* FINRA Rule 8310 (allowing FINRA to impose sanctions on member firms and persons associated with member firms).

which has processes to respond to misconduct of attorneys subject to its jurisdiction.

With respect to St. John's comment, FINRA notes that any increase to the $50,000 threshold for simplified arbitrations would require a separate proposed rule change as the focus of this proposed rule change is on accelerating the processing of arbitration proceedings for parties who qualify based on their age or health condition rather than claim size.

Finally, with respect to Iannarone's comment, FINRA notes that its website offers several resources to help parties find an attorney.[94]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–FINRA–2024–021 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–FINRA–2024–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–FINRA–2024–021 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[95]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–30680 Filed 12–23–24; 8:45 am]

BILLING CODE 8011–01–P

[94] *See* Find An Attorney, *https://www.finra.org/arbitration-mediation/about/find-attorney.*

[95] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101964; File No. SR–DTC–2024–015]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to DTC's New Issue Information Dissemination Service To Unwind a Prior Rule Filing and Provide a More Accurate Description of the Service

December 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2024, The Depository Trust Company ''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will (i) correct DTC's rule filing record by unwinding a prior rule filing (''2014 Filing'')[5] regarding DTC's New Issue Information Dissemination Service (''NIIDS'') and (ii) update the description of NIIDS in the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Service) (''OA'')[6] to more clearly describe NIIDS, as described in greater detail below.[7]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will (i) correct DTC's rule filing record by unwinding the 2014 Filing regarding DTC's NIIDS and (ii) update the description of NIIDS in the OA to more clearly describe NIIDS.

[5] Securities Exchange Act Release No. 72763 (Aug. 5, 2014), 79 FR 46886 (Aug. 11, 2014) (SR–DTC–2014–08).

[6] *Available at www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[7] Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC (the ''Rules'') *available at www.dtcc.com/legal/rules-and-procedures.*