

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103755; File No. SR-FINRA-2024-021]

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

August 21, 2025.

### **I. Introduction**

On December 11, 2024, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (SR-FINRA-2024-021) 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).<sup>3</sup> The proposed rule change would accelerate the processing of arbitration proceedings for parties who qualify based on their age or health condition.<sup>4</sup>

The proposed rule change was published for public comment in the Federal Register on December 26, 2024.<sup>5</sup> The public comment period closed on January 16, 2025. The Commission

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

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

<sup>3</sup> See Exchange Act Release No. 101957 (Dec. 18, 2024), 89 FR 105128 (Dec. 26, 2024) (File No. SR-FINRA-2024-021) (“Notice”).

<sup>4</sup> Id.

<sup>5</sup> Id.

received comment letters in response to the Notice.<sup>6</sup> On January 21, 2025, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 26, 2025.<sup>7</sup> On March 12, 2025, FINRA responded to the comment letters received in response to the Notice.<sup>8</sup> On March 12, 2025, the Commission published an order instituting proceedings (“OIP”) to determine whether to approve or disapprove the proposed rule change.<sup>9</sup> The OIP public comment period closed on April 8, 2025. The Commission received one additional comment letter in response to the OIP.<sup>10</sup> On June 11, 2025, FINRA consented to extend until August 22, 2025, the time period in which the Commission must approve or disapprove the proposed rule change.<sup>11</sup> This order approves the proposed rule change.

## **II. Description of the Proposed Rule Change**

### **A. Background**

FINRA’s Dispute Resolution Services (“DRS”) provides a forum for disputes between customers, member firms, and associated persons of member firms.<sup>12</sup> FINRA currently offers a

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<sup>6</sup> The comment letters are available at <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021.htm>.

<sup>7</sup> See letter from Kristen Vo, Assistant General Counsel, Office of General Counsel, FINRA, dated January 21, 2025, <https://www.finra.org/sites/default/files/2025-01/FINRA-2024-021-Extension1.pdf>.

<sup>8</sup> See letter from Kristine Vo, Assistant General Counsel, Office of General Counsel, FINRA, dated March 12, 2025, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021.htm> (“FINRA Response Letter”).

<sup>9</sup> See Exchange Act Release No. 102641 (Mar. 12, 2025), 90 FR 12616 (Mar. 18, 2025) (File No. SR-FINRA-2024-021).

<sup>10</sup> See *supra* note 6.

<sup>11</sup> See letter from Kristen Vo, Assistant General Counsel, Office of General Counsel, FINRA, dated June 11, 2025, <https://www.finra.org/sites/default/files/2025-06/2024-021x2.pdf>.

<sup>12</sup> See FINRA Rules 12101(a) (Applicability of [Customer] Code), 13101(a) (Applicability of [Industry] Code). FINRA also provides a mediation forum that is not the subject of this proposed rule change. See FINRA Rule 14101 (Applicability of [Mediation] Code).

program to expedite arbitration proceedings in its DRS forum for parties who have a serious health condition or are at least 65 years old (“the current program”). FINRA stated that when an eligible party makes a request to expedite arbitration 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.”<sup>13</sup> However, the current program does not provide for shortened, rules-based deadlines for parties or provide arbitrators with guidance on how quickly the arbitration should be completed. As a result, FINRA stated that cases that qualify for the current program “close only marginally more quickly than cases that are not in the current program.”<sup>14</sup>

FINRA’s proposed rule change would accelerate case processing by codifying shortened case-processing deadlines for eligible parties and providing guidance to arbitrators regarding how quickly they should endeavor to complete an arbitration proceeding.<sup>15</sup> The proposed rule change would also establish eligibility requirements, based on a party’s age or eligible health condition, for parties to request accelerated processing. FINRA stated that by accelerating case processing, the proposed rule change would shorten the length of proceedings subject to the proposed rule change by approximately six months, which would make a meaningful difference for older parties or those with a serious health condition.<sup>16</sup>

## **B. Proposed Rule Change**

### **1. Requesting Accelerated Case Processing**

FINRA’s proposed rule change would allow parties to request accelerated processing of a

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<sup>13</sup> See Notice at 105128.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id. (stating that the median time for customer arbitrations that are not in the current program is approximately 15.7 months).

case when initiating an arbitration pursuant to FINRA Rules 12302 or 13302 or filing an answer pursuant to FINRA Rules 12303 or 13303 if they meet one of two eligibility requirements based on their age or health condition.<sup>17</sup> The proposed rule change would also continue to allow parties who do not meet an eligibility requirement to request that the panel consider other factors, including their age and health, when scheduling hearings and discovery, briefing, and motions deadlines.<sup>18</sup>

**a. Eligibility Based on Age**

Proposed Rules 12808(a)(1)(A) and 13808(a)(1)(A) would allow a party to request accelerated processing of a case when initiating an arbitration or filing an answer if the requesting party is at least 70 years of age at the time of the request.

FINRA stated that parties who are 70 years of age and older are more likely than younger individuals to become seriously ill or die before the outcome of their arbitration proceeding. As such, they are less likely to be able to meaningfully participate throughout the course of a lengthy arbitration proceeding, which could affect the outcome of their claim.<sup>19</sup> FINRA stated that because the proposed rule change would make it more likely that these parties are able to meaningfully participate for the duration of an arbitration proceeding, the proposed rule change would help ensure that the outcomes of their cases accurately reflect the underlying merits.<sup>20</sup>

**b. Eligibility Based on Health**

Proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B) would allow a party to request accelerated processing of a case when initiating an arbitration or filing an answer if the party

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<sup>17</sup> Proposed Rules 12808(a) and 13808(a).

<sup>18</sup> Proposed Rules 12808(a)(3) and 13808(a)(3).

<sup>19</sup> See Notice at 105129.

<sup>20</sup> Id.

making the request certifies, in the manner and form required by the DRS Director (“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”). Under the proposed rule change, the party would not be required to disclose the details of their medical diagnosis or prognosis with the certification.<sup>21</sup> Additionally, a party’s certification would not alone be sufficient grounds to compel the production of information concerning, or allow questioning at any hearing about, the party’s health condition, diagnosis or prognosis.<sup>22</sup>

FINRA stated that it is appropriate to allow parties, regardless of age, to qualify for accelerated processing based on an eligible health condition because they may be unable to meaningfully participate in a lengthy arbitration proceeding, which, in turn, could affect the outcome of the proceeding.<sup>23</sup> FINRA further stated that the proposed certification requirement is the most appropriate method to identify those individuals with an eligible health condition because it would minimize unnecessary intrusions into a party’s private health information.<sup>24</sup> Moreover, FINRA stated that by prohibiting a party from using an opponent’s request for accelerated processing as the sole basis to seek discovery into their health condition, the proposed rule change would further address privacy concerns.<sup>25</sup>

**c. Requests by Parties Ineligible for Accelerated Processing**

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<sup>21</sup> Proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B).

<sup>22</sup> Proposed Rules 12808(a)(2) and 13808(a)(2).

<sup>23</sup> See Notice at 105130.

<sup>24</sup> Id.

<sup>25</sup> FINRA also stated, however, that 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. Id.

Proposed Rules 12808(a)(3) and 13808(a)(3) would allow parties who may benefit from shortened proceedings, but do not qualify for accelerated processing under the age or health eligibility requirements of proposed Rules 12808(a)(1) or 13808(1), to request that the panel consider other factors, including a party's age and health, when scheduling hearings and discovery, briefing, and motions deadlines.

FINRA stated that some parties who would not be eligible to request accelerated processing based on either their age or their health condition, might still benefit if their arbitrations were completed more quickly.<sup>26</sup> FINRA further stated that although these proceedings would not be subject to the shortened, rules-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.<sup>27</sup>

## **2. Determination of Eligibility**

Proposed Rules 12808(b)(1) and 13808(b)(1) would require the Director to determine if a party's request for accelerated processing complies with the requirements of proposed Rules 12808(a)(1) or 13808(a)(1). FINRA stated that, under the proposed rules, 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.<sup>28</sup> FINRA further stated that the proposed rule change would not require any assessment by the Director regarding the reasonableness of the requesting party's belief that accelerated processing is necessary.<sup>29</sup>

## **3. Accelerated Proceedings**

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<sup>26</sup> See Notice at 105130.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

If the Director determines that a request complies with the requirements of proposed Rules 12808(a)(1) or 13808(a)(1), the proposed rule change would accelerate the proceedings in three ways. First, the arbitrator selection process would be accelerated by shortening the deadlines for the Director to send the list of potential arbitrators to the parties.<sup>30</sup> Second, the arbitrators would receive guidance on how quickly they should endeavor to complete arbitrations.<sup>31</sup> Third, certain of the default deadlines that apply to the parties under the Codes would be shortened.<sup>32</sup>

**a. Accelerated Arbitrator Selection**

The first way that the proposed rule change would accelerate the proceedings would be by requiring that the Director send out the lists of potential arbitrators to the parties more quickly than under the current program. Currently, the Director must send the lists of potential arbitrators to the parties “within approximately 30 days after the last answer is due,” regardless of the parties’ agreement to extend any answer due date.<sup>33</sup> The proposed rule change would amend the timeframe that the Director must send the list out to all parties in an accelerated proceeding. Specifically, proposed Rules 12808(b)(2)(A) and 13808(b)(2)(A) would require the Director to send the arbitrator lists “as soon as practicable after the last answer is due, notwithstanding any agreement of the parties to extend any answer due date.”

FINRA stated that 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 must be sent shortly after

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<sup>30</sup> See Proposed Rules 12808(b)(2)(A) and 13808(b)(2)(A).

<sup>31</sup> See Proposed Rules 12808(b)(2)(B), 12808(b)(2)(C), 13808(b)(2)(B), and 13808(b)(2)(C).

<sup>32</sup> See Proposed Rules 12808(b)(2)(D) and 13808(b)(2)(D).

<sup>33</sup> See FINRA Rules 12402(c)(1), 12403(b)(1), and 13403(c)(1).

the last answer due date but would retain some flexibility for the Director in sending the lists.<sup>34</sup>

**b. Arbitrator Guidance Regarding Arbitration Completion Timeframe**

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

FINRA stated that by providing arbitrators with specific guidance regarding how quickly they should endeavor to complete an arbitration, the proposed rule change would be more likely to significantly reduce the overall length of the proceedings in cases that qualify for accelerated processing.<sup>35</sup> However, FINRA also stated that by establishing a benchmark but not mandating that all cases be completed within 10 months, the proposed rule change would provide the arbitrators with sufficient flexibility to accommodate the particular circumstances of each case.<sup>36</sup>

**c. Shortened Party Deadlines**

Finally, the proposed rule change would accelerate proceedings by shortening the following default deadlines that apply to parties under the Codes:

- Serving an Answer: Under the Codes, a respondent must serve the signed and dated

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<sup>34</sup> See Notice at 105131.

<sup>35</sup> Id.

<sup>36</sup> Id.

Submission Agreement<sup>37</sup> and answer on each party within 45 days of receipt of the statement of claim.<sup>38</sup> In an accelerated proceeding, proposed Rules 12808(b)(2)(D)(i) and 13808(b)(2)(D)(i) would shorten this deadline to within 30 days.

- Responding to a Third Party Claim: Under the Codes, a party responding to a third party claim must serve all other parties with the signed and dated Submission Agreement and answer within 45 days of receipt of the third party claim.<sup>39</sup> In an accelerated proceeding, proposed Rules 12808(b)(2)(D)(ii) and 13808(b)(2)(D)(ii) would shorten this deadline to within 30 days.
- Completing Arbitrator Lists: Under the Codes, parties must return the ranked arbitrator lists of each separately represented party to the Director no more than 20 days after the date upon which the Director sends the arbitrator lists to the parties.<sup>40</sup> In an accelerated proceeding, proposed Rules 12808(b)(2)(D)(iii) and 13808(b)(2)(D)(iii) would shorten this deadline to no more than 10 days.
- 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,<sup>41</sup> 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 is due, or, for parties added by

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<sup>37</sup> See FINRA Rules 12100(dd) and 13100(ee). The FINRA Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Codes.

<sup>38</sup> See FINRA Rules 12303 and 13303.

<sup>39</sup> FINRA Rules 12306 and 13306.

<sup>40</sup> FINRA Rules 12403 and 13404.

<sup>41</sup> FINRA Rule 12506 (Document Production Lists) describes the documents that are presumed to be discoverable in all arbitrations between a customer and a member firm or associated person.

amendment or third party claim, within 60 days of the date that their answer is due, unless the parties agree otherwise.<sup>42</sup> In an accelerated proceeding, proposed Rule 12808(b)(2)(D)(iv) would shorten these deadlines to within 35 days unless the parties agree otherwise.

- Other Discovery Requests: Under the Codes, the party receiving the request must respond within 60 days from the date a discovery request other than the Document Production Lists is received, unless the parties agree otherwise.<sup>43</sup> In an accelerated proceeding, proposed Rules 12808(b)(2)(D)(v) and 13808(b)(2)(D)(iv) would shorten this deadline to within 30 days 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.<sup>44</sup> FINRA stated, however, that there may be some accelerated processing cases in which the complexity of the case, the volume of discovery, or other factors may justify extending these proposed deadlines.<sup>45</sup> FINRA stated that in these 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, for example:<sup>46</sup>

- FINRA Rules 12207(a) and 13207(a) allow parties to 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;

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<sup>42</sup> See Id.

<sup>43</sup> FINRA Rules 12507 and 13507.

<sup>44</sup> See Notice at 105132.

<sup>45</sup> Id.

<sup>46</sup> Id.

- FINRA Rules 12207(b) and 13207(b) allow the panel to 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; and
- FINRA Rules 12508(b) and 13508(b) allow the panel to 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 provide the panel and the parties with flexibility to modify the shortened deadlines in the proposed rule change, FINRA stated that it expects the extensions to be the exception and not the rule.<sup>47</sup> FINRA also stated that if the Commission approves the proposed rule change, it would provide training and guidance to arbitrators on accelerated processing, which would include training on evaluating requests to extend the proposed shortened deadlines.<sup>48</sup>

### **III. Discussion and Commission Findings**

After careful review of the proposed rule change, the comment letters, and FINRA’s response to comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>49</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices,

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<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> In approving this rule change, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>50</sup>

## **A. Requesting Accelerated Case Processing**

### **1. Discussion**

The proposed rule change would allow parties to request accelerated processing of a case when initiating an arbitration pursuant to FINRA Rules 12302 or 13302, or when filing an answer pursuant to FINRA Rules 12303 or 13303, if they meet an eligibility requirement based on their age or health condition. The proposed rule change would also continue to allow parties who do not meet an eligibility requirement to request that the panel consider other factors, including their age and health, when scheduling hearings and discovery, briefing, and motions deadlines.<sup>51</sup> The Commission addresses the proposed rule change's specific provisions, and any related comments, in turn.

#### **a. Eligibility Based on Age**

As stated above, the proposed rule change would allow a party to request accelerated processing of a case when initiating an arbitration or filing an answer if the requesting party is at least 70 years of age at the time of the request.<sup>52</sup>

One commenter supported the proposed rule change, stating that the proposed eligibility age of 70 or older supports FINRA's goal of increasing the likelihood that the participant can meaningfully participate through the resolution of a proceeding, leading to "outcomes more accurately reflective of the underlying merits, while balancing the number of expedited

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<sup>50</sup> 15 U.S.C. 78o-3(b)(6).

<sup>51</sup> See Proposed Rules 12808(a)(3) and 13808(a)(3).

<sup>52</sup> See Proposed Rules 12808(a)(1)(A) and 13808(a)(1)(A).

proceedings and the impact on other individuals seeking timely arbitration of their cases.”<sup>53</sup> This commenter also stated, however, that increasing the qualifying age to 70 or older could incentivize parties to improperly seek accelerated processing such as by misrepresenting their age. This commenter recommended that arbitrators sanction such parties by removing their cases from accelerated processing, stating that “removal of participants who wrongfully were granted an accelerated arbitration process is a natural consequence and fitting deterrent to ensure people do not try to ‘cut the line.’”<sup>54</sup>

Four other commenters generally supported the proposed rule change but suggested lowering the eligibility age from 70 or older, as FINRA proposed, to 65 or older for various reasons.<sup>55</sup> One of these commenters stated that lowering the eligibility age to 65 or older would be unlikely to increase the administrative burden on FINRA but would have a “significant impact on the individuals who would be covered.”<sup>56</sup> A second commenter suggested lowering the eligibility age to 65 or older, in part, because parties who are at least 65 years of age are very

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<sup>53</sup> See Letter from David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute, dated January 16, 2025, at 2, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-557555-1598982.pdf> (“FSI”) (basing its support, in part, on the proposed rule change permitting those under 70 to request accelerated processing of their arbitration case based on a certified medical condition).

<sup>54</sup> FSI at 2-3 (citing the sanctioning authority in FINRA Rules 12212(a) and 13212(a)).

<sup>55</sup> See Letters from Jaelyn Rommeney, Legal Intern, Chris O’Connor, Legal Intern, Joseph Alfonzetti, Legal Intern, Professor Elissa Germaine, Esq., Supervising Attorney, and Professor Christine Lazaro, Esq., Supervising Attorney, Securities Arbitration Clinic, St. Vincent De Paul Legal Program, Inc., St. John’s University School of Law, dated January 16, 2025, at 2, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-557715-1599282.pdf> (“St. John’s”) (supporting the proposed eligibility age of 70 or older, but suggesting FINRA consider lowering the eligibility age to 65 or older); Alice L. Stewart, Associate Professor of Law, Director of Legal Clinics, Rachael T. Shaw, Staff Attorney/Adjunct Law Professor, Minu Nagashunmugam, Certified Student Attorney, and Danny O’Byrne, Certified Student Attorney, Securities Arbitration Clinic, University of Pittsburgh School of Law, dated January 16, 2025, at 5-6, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-557476-1598962.pdf> (“UPitt”); Adam Gana, President, Public Investors Advocate Bar Association, dated January 16, 2025, at 2, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-557435-1598903.pdf> (“PIABA”); Steven Caruso, dated January 18, 2025, at 1, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-558095-1600682.html> (“Caruso”).

<sup>56</sup> St. John’s at 2 (stating that lowering the triggering age to 65 would increase the number of claimants who would qualify for accelerated processing from 20 percent to 26 percent).

likely to be retirees on fixed incomes for whom “time is of the essence.”<sup>57</sup> This second commenter also stated that such parties are more likely to be in proceedings where the party is represented by one of the ten law school securities arbitration clinics, and that reducing the length of arbitration would allow for “continuity of representation and enhanced learning opportunities for students.”<sup>58</sup> A third commenter opposed the proposed eligibility age of 70 or older, in favor of an eligibility age of 65 or older, stating that “while life expectancy has increased in the United States, so have age-related health issues... making it more difficult for individuals over 65 to endure prolonged arbitration.”<sup>59</sup> This commenter also stated that 65 is the traditional retirement age and “is commonly used as a benchmark for senior benefits and legal protections.”<sup>60</sup> The fourth commenter also recommended lowering the eligibility age to 65 years or older, stating that “FINRA [failed] to offer any viable explanation for the proposed increase or the selection of 70 years of age as being the proper cut-off...”<sup>61</sup>

Another commenter, on the other hand, questioned the need for parties who are otherwise healthy to qualify for accelerated processing based solely on age.<sup>62</sup> This commenter stated that the “use of age as a criterion is speculative, arbitrary, and untenable, and without more insufficient to justify the changes contemplated” by the proposed rule change.<sup>63</sup> In the

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<sup>57</sup> UPitt at 10; see also PIABA at 2 (stating that “investors over 65 are often living on fixed incomes, making prolonged arbitration particularly burdensome”).

<sup>58</sup> UPitt at 6 (accelerated proceedings would allow the same student attorney to represent a claimant during the entire proceeding).

<sup>59</sup> See PIABA at 2.

<sup>60</sup> Id.

<sup>61</sup> See Caruso at 1.

<sup>62</sup> See Letter from Seth A. Miller, General Counsel, President, Advocacy & Administration, Cambridge Investment Research, Inc., dated January 15, 2025, at 2, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-557055-1597802.pdf> (“Cambridge”).

<sup>63</sup> Id.

alternative, the commenter recommended an eligibility age of at least 75 years old as “the most reasonable compromise,” because “the eventualities presumed by the current Proposal become less speculative” as the “litigant’s age increases.”<sup>64</sup>

In response, FINRA stated that an eligibility age is warranted to account for elderly parties who may be otherwise healthy at the outset of the arbitration but may become more likely to become seriously ill (or potentially deceased) during the arbitration proceeding because of their age.<sup>65</sup> More specifically, FINRA supported maintaining the proposed age eligibility requirement at 70 or older for multiple reasons.<sup>66</sup> First, FINRA stated that while lowering the proposed age eligibility requirement from 70 or older to 65 or older would affect only approximately six percent of claimants, the resulting increase in the number of accelerated cases could overburden arbitrators, making it difficult for them to comply with their obligations to endeavor to hold hearings and render an award within 10 months or less.<sup>67</sup> As such, FINRA suggested that reducing the age eligibility to 65 or older could undermine the proposed rule change’s stated objective – to materially shorten the length of the proceedings.<sup>68</sup> Similarly, FINRA stated that arbitrators are often involved in more than one arbitration at the same time; as such, further increasing the number of accelerated cases could cause arbitrators to extend the case processing times of their concurrent, non-accelerated arbitrations to meet the shortened deadlines that would apply to their accelerated arbitrations.<sup>69</sup> In addition, FINRA stated that, under the proposed rule change, parties who are younger than 70 would still have an opportunity

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<sup>64</sup> Id.

<sup>65</sup> See FINRA Response Letter at 2.

<sup>66</sup> Id. at 2-4.

<sup>67</sup> Id. at 3.

<sup>68</sup> Id.

<sup>69</sup> Id. at 3-4.

to request accelerated processing if they have a serious health condition, or other factor that could be considered by a panel.<sup>70</sup> Specifically, FINRA stated that “parties who would not qualify for accelerated processing based on either their age or health condition 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.”<sup>71</sup> Finally, FINRA stated that raising the proposed age eligibility requirement above 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.<sup>72</sup>

For these reasons, FINRA declined to adopt the commenters’ suggested alternatives.<sup>73</sup> FINRA, however, stated that it would monitor the new program to determine if adjustments to the eligibility age for qualification are warranted.<sup>74</sup> FINRA also stated that it would update its guidance to arbitrators to clarify that potential sanctions may include the ability to remove a matter from accelerated processing if parties are found to have either misrepresented their age or health condition to qualify for accelerated processing.<sup>75</sup>

**b. Eligibility Based on Health Condition**

As stated above, the proposed rule change would allow a party to request accelerated processing of a case when initiating an arbitration or filing an answer if the party making the request certifies, in the manner and form required by the DRS Director, that: (i) the party has

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<sup>70</sup> Id. at 4.

<sup>71</sup> Id.

<sup>72</sup> Id. at 2 n. 5.

<sup>73</sup> Id. at 2-4.

<sup>74</sup> Id. at 4.

<sup>75</sup> Id. at 6.

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.<sup>76</sup> An eligible party would not be required to disclose the details of their medical diagnosis or prognosis with the certification, nor would a party's certification alone be sufficient grounds to compel the production of information concerning, or allow questioning at any hearing about, the party's health condition.<sup>77</sup>

Six commenters supported the proposed rule change permitting a party with an eligible health condition to request accelerated processing of a case.<sup>78</sup> One of these commenters stated that shortening case-processing deadlines for parties with a serious health condition would be "meritorious and beneficial to the arbitration process."<sup>79</sup> Another one of these commenters stated that it appreciated the proposed rule change's inclusion of safeguards that would protect parties' private health information.<sup>80</sup>

Two otherwise supportive commenters, however, expressed concerns about the medical certification requirement.<sup>81</sup> One of these commenters stated that requiring claimants to produce medical records to qualify for expedited proceedings would be "invasive, unnecessary, and contrary to the spirit of the proposed rule."<sup>82</sup> The other commenter stated that the proposed rule change "lacks any meaningful controls to preclude misuse" and suggested that parties be

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<sup>76</sup> See Proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B).

<sup>77</sup> Id.; see also proposed Rules 12808(a)(2) and 13808(a)(2).

<sup>78</sup> See Caruso; St John's; UPitt; PIABA; Cambridge; FSI.

<sup>79</sup> Caruso at 1.

<sup>80</sup> St. John's at 3 (referencing the provision making clear that a party does not open the door to discovery into their health condition merely by requesting accelerated processing); see also UPitt at 7 (stating that the proposed rule change would provide "the proper amount of flexibility and disclosure while protecting a party's privacy").

<sup>81</sup> See PIABA at 1-2; Cambridge at 2-3.

<sup>82</sup> PIABA at 1-2.

required to provide proof of their health condition before it can trigger accelerated processing.<sup>83</sup>

One supportive commenter recommended sanctioning participants found to have misrepresented either their age or medical condition.<sup>84</sup>

In response to the commenter's privacy concerns, FINRA stated that the proposed certification requirement is the most appropriate way to minimize unnecessary intrusions into a party's private health information, while allowing FINRA to identify those individuals who could benefit most from accelerated processing because they have an eligible health condition.<sup>85</sup> Moreover, FINRA noted that a party's certification would not alone be "sufficient grounds to compel production of information concerning, or to allow questioning at any hearing about, the party's medical condition."<sup>86</sup>

In response to commenters' concerns about potential misrepresentations, FINRA stated that it has no evidence that parties have falsely claimed to have a serious health condition under the current program nor any reason to believe that this kind of misconduct would be more likely under the proposed rule change.<sup>87</sup> FINRA further stated that the threat of potential sanctions under existing FINRA Rules 12212 and 13212 (such as assessing monetary penalties payable to one or more parties; precluding a party from presenting evidence; making an adverse inference against a party; assessing postponement and forum fees; and assessing attorneys' fees, costs and expenses) should help deter parties from falsely certifying that they have been diagnosed with an

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<sup>83</sup> Cambridge at 2 (suggesting that the "most objective qualification criteria" would be for parties to obtain a "medical certification" in a manner similar to how one would obtain a Disability Parking Placard).

<sup>84</sup> FSI at 2-3 (suggesting that FINRA remove their case from expedited arbitration and the required deadlines using FINRA Rules 12212(a) and 13212(a) to impose sanctions addressing improper conduct).

<sup>85</sup> See FINRA Response Letter at 5.

<sup>86</sup> Id.

<sup>87</sup> Id.

eligible health condition.<sup>88</sup>

For these reasons, FINRA declined to amend the proposed rule change.<sup>89</sup> In response to the commenter's recommendation to sanction participants found to have misrepresented their age or medical condition, FINRA stated that it would update its guidance to arbitrators to clarify that potential sanctions may include the ability to remove a matter from accelerated processing if parties are found to have either misrepresented their age or health condition to qualify for accelerated processing.<sup>90</sup> FINRA also stated that it would monitor the new program for indications that misrepresentations are occurring, as well as to determine if adjustments to the criteria for qualification based on an eligible health condition are warranted.<sup>91</sup>

**c. Requests by Parties Ineligible for Accelerated Processing**

As stated above, the proposed rule change would allow parties who do not meet the age or health condition eligibility requirements to request that the panel consider other factors, including a party's age and health condition, when scheduling hearings and discovery, briefing, and motions deadlines.<sup>92</sup> If such a request is approved, the party's proceeding would not be subject to the shortened, rules-based deadlines of the proposed rule change; rather, the panel may instead determine to expedite the proceedings based on the party's particular circumstances.<sup>93</sup>

One commenter supported accelerated processing for parties based on their age or health condition but suggested FINRA adopt eligibility requirements that account for the "disparities in

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<sup>88</sup> Id.

<sup>89</sup> Id. at 4-6.

<sup>90</sup> Id. at 6.

<sup>91</sup> Id.

<sup>92</sup> Proposed Rules 12808(a)(3) and 13808(a)(3).

<sup>93</sup> Id.; see also Notice at 105130.

life expectancies” associated with ethnicity and geography.<sup>94</sup> This commenter also recommended that FINRA consider additional options for *pro se* parties who may not be equipped to request accelerated processing if they do not meet the proposed eligibility requirements.<sup>95</sup>

Another commenter supported this proposed rule change but stated that without set deadlines, participants who do not qualify for accelerated processing based on either their age or health condition would continue to experience “waits longer than thirteen months.”<sup>96</sup> This commenter therefore suggested that at a minimum, FINRA provide training and guidance to arbitrators on setting deadlines so that parties facing age or health-related difficulties but who do not meet the proposed eligibility requirements do not face unreasonably long wait times.<sup>97</sup>

In response to the commenter’s recommendation that FINRA adopt eligibility requirements that account for “disparities in life expectancies,” FINRA acknowledged that there are parties who could benefit if their arbitration cases were accelerated but who would not qualify for accelerated processing under the proposed rule change.<sup>98</sup> However, FINRA stated that it is concerned that “an approach based on multiple additional factors could become too complex to be workable.”<sup>99</sup> In addition, FINRA stated that a further increase in the number of parties eligible for accelerated processing could impact arbitrators’ collective ability to hold hearings and render awards within 10 months or less.<sup>100</sup>

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<sup>94</sup> See St. John’s at 2.

<sup>95</sup> Id.

<sup>96</sup> UPitt at 7.

<sup>97</sup> Id.; see also Caruso at 1 (stating that there is “an absence of any discussion of the enhanced arbitrator training that must be associated with the proposed new rules so that arbitrators have the required guidance that will be needed to effectively implement the proposed new rules.”).

<sup>98</sup> See FINRA Response Letter at 6.

<sup>99</sup> Id.

<sup>100</sup> Id. at 7.

In response to the commenter’s concerns about *pro se* parties being equipped to make requests for accelerated processing, FINRA stated that it is not aware of any concerns that *pro se* parties have been unable to make requests under the current program.<sup>101</sup> Nevertheless, FINRA stated that it would update its website to provide guidance to *pro se* parties “regarding the availability of and process for requesting accelerated processing.”<sup>102</sup> In addition, FINRA stated that it would provide training and guidance to arbitrators on the proposed rule change, including on “various ways that arbitrators can expedite cases.”<sup>103</sup>

## **2. Commission Findings Regarding the Proposed Rule Changes for Requesting Accelerated Case Processing**

The proposed rule change is reasonably designed to enhance qualifying parties’ ability to meaningfully participate for the duration of a proceeding so that case outcomes more accurately reflect the underlying merits. Currently, FINRA offers a program to expedite arbitration proceedings in its DRS arbitration forum for parties who have a serious health condition or are at least 65 years old. Under the current program, DRS staff has discretion to expedite certain case-related tasks (e.g., the arbitrator selection process) to try to shorten the overall length of a proceeding. In practice, however, the current program only marginally shortens the median time for customer arbitrations to close by award after a hearing. By establishing shortened, rules-based deadlines for parties and providing guidance to arbitrators on how quickly they should endeavor to complete a proceeding, the proposed rule change should help reduce the length of time for completing eligible proceedings, helping ensure that eligible parties can meaningfully participate for the duration of the proceedings so that case outcomes more accurately reflect the

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<sup>101</sup> Id.

<sup>102</sup> Id.

<sup>103</sup> Id. at 4.

underlying merits. Additionally, arbitrators will retain sufficient flexibility to accommodate the particular circumstances of each case.<sup>104</sup>

The proposed rule change reasonably sets the eligibility age for parties at 70 years or older. FINRA reasonably determined that individuals who are 70 years of age and older are more likely than younger individuals to become seriously ill or potentially die before the outcome of their arbitration proceeding.<sup>105</sup> As such, they are less likely to be able to meaningfully participate throughout the course of a lengthy arbitration proceeding, which could affect the outcome of their claim regardless of its underlying merits. The data presented by FINRA show that lowering the eligibility age to 65 years or older would likely increase the number of parties eligible for accelerated processing.<sup>106</sup> Since arbitrators preside over multiple cases at a time, any further increase in the number of cases eligible for accelerated processing could unduly impact their ability to comply with their obligations under the proposed rule change to endeavor to render an award within 10 months, as well as their ability to timely render an award in non-accelerated cases, thus affecting the efficiency of the DRS forum. In addition, as discussed more fully below, the proposed rule change would permit parties who are younger than 70 to request accelerated processing. Specifically, parties who would not qualify for accelerated processing based on their age would still be eligible to request that their arbitration panel consider their unique circumstances when scheduling their proceedings.

On the other hand, eliminating eligibility for accelerated processing based on age, or raising the age higher than 70, as one commenter suggested,<sup>107</sup> could frustrate FINRA's goal of

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<sup>104</sup> See Notice at 105131.

<sup>105</sup> Id. at 105134 n.54.

<sup>106</sup> Id. at 105129 n.15; see also FINRA Response Letter at 3.

<sup>107</sup> See Cambridge at 2.

helping ensure that older parties can meaningfully participate for the duration of a proceeding so that case outcomes more accurately reflect the underlying merits. It is reasonable for FINRA to establish the eligibility age at 70 years or older, an approach that reasonably balances the goal of maximizing the pool of parties likely to benefit from accelerated processing against the potential impact that a larger number of accelerated proceedings would have on the length of non-accelerated proceedings and on the efficiency of the DRS forum. And to the extent adjustments to the criteria for qualification based on age are warranted, FINRA stated that it will monitor the new program to make such a determination.

The proposed rule change also reasonably permits a party experiencing an eligible health condition to request accelerated processing of a case by certifying that: (i) they have received a medical diagnosis and prognosis, and (ii) based on that medical diagnosis and prognosis, they have a reasonable belief that accelerated processing of the case is necessary to prevent prejudicing their interest in the arbitration. Individuals experiencing an eligible health condition are less likely to be able to meaningfully participate in a lengthy arbitration proceeding, which could disadvantage them and affect the outcome of their case. The proposed rule change would help ensure that parties to an arbitration are able to meaningfully participate for the duration of the case, and as a result case outcomes may more accurately reflect the underlying merits.

The proposed rule changes reasonably balance parties' privacy concerns against the potential for abuse. To request accelerated processing due to an eligible health condition, a party need only certify their eligibility, and is not required to disclose the details of their medical diagnosis or prognosis (e.g., through medical records) with the certification. In addition, the proposed rule change would establish that the party's certification shall not alone be sufficient grounds for either seeking discovery (e.g., compelling production of information) about the

party's medical condition, diagnosis or prognosis, or allowing questioning at any hearing about the party's medical condition, diagnosis or prognosis. Moreover, the threat of potential sanctions under existing FINRA Rules 12212 and 13212 (such as assessing monetary penalties; making an adverse inference against a party; assessing forum fees, attorneys' fees, and costs and expenses) should help deter parties from making false certifications.<sup>108</sup> In addition, FINRA stated that it will monitor the new program for indications that misrepresentations are occurring, as well as to determine if adjustments to the criteria for qualification based on an eligible health condition are warranted.

Finally, the proposed rule change reasonably permits parties who do not meet the age or health eligibility requirements to request that the panel consider other factors, including a party's age and health, when scheduling hearings and discovery, briefing, and motions deadlines. As stated above, some ineligible parties may still benefit from accelerated processing. The proposed rule change would provide arbitrators with flexibility to determine whether to expedite a party's proceedings based on the party's particular circumstances. Such parties' proceedings would not be subject to the shortened, rules-based deadlines but the proposed rule change would instead give arbitrators flexibility when scheduling hearings and discovery, briefing, and motions deadlines. While the proposed rule change may increase the number of parties whose claims proceed under a form of expedited proceedings, arbitrators are provided with sufficient flexibility to extend the case processing times of their concurrent, non-accelerated arbitrations to meet the shortened deadlines that would apply to their accelerated arbitrations.<sup>109</sup> Such

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<sup>108</sup> See supra note 84.

<sup>109</sup> See FINRA Response Letter at 4, 8 (stating that the existing provisions of the Codes provide arbitrators with "sufficient flexibility to modify the proposed shortened deadlines when necessary"); see also supra notes 45-47.

flexibility should help ensure that arbitrators and, as a consequence, the forum, are not overburdened to such an extent that it undermines FINRA's goal of reducing the length of certain cases and maintaining the efficiency of the DRS Forum. Regarding the commenter's concern about *pro se* parties and arbitrator training, FINRA stated that it will update its website to provide guidance to *pro se* parties regarding the availability of, and process for, requesting accelerated processing. In addition, FINRA stated that it will provide training and guidance to arbitrators on the proposed rule change, including on ways they can help expedite cases. For these reasons, the proposed rule change is reasonably 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.

#### **B. Determination of Eligibility**

As stated above, the proposed rule change would require the Director to determine if a party's request for accelerated processing complies with the proposed eligibility requirements. Specifically, 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 for an eligible health condition.<sup>110</sup> We received no comments on this proposed rule change.

The proposed rule change would reasonably require the Director to make an objective determination as to whether the requesting party has met the eligibility requirements for accelerated processing. As stated above, the health information required to be reported on the certification is restricted to the minimum amount of information necessary to permit the Director to identify those individuals with an eligible health condition. Similarly, the eligibility age requirement is designed to establish a bright line for eligibility for accelerated processing. Given

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<sup>110</sup> Proposed Rules 12808(b)(1) and 13808(b)(1).

the establishment of such objective criteria, the determination of eligibility should not require any assessment by the Director regarding the reasonableness of the requesting party's belief that accelerated processing is necessary. For these reasons, the proposed rule change is reasonably 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.

### **C. Accelerating the Proceedings**

As stated above, the proposed rule change would accelerate the proceedings by shortening the deadlines for the Director to send the list of potential arbitrators to the parties; providing arbitrators with guidance on how quickly they should endeavor to complete arbitration proceedings; and shortening certain other deadlines that apply to the parties under the Codes.<sup>111</sup>

One commenter supported the proposed rule change, emphasizing that the establishment of shortened case-processing deadlines for older parties or those parties with an eligible health condition would be “meritorious and beneficial to the arbitration process.”<sup>112</sup>

Another commenter opposed the “pre-determined, shortened schedule” of the accelerated arbitration proceedings because it “appears overly constrictive and could impact diligent legal representation.”<sup>113</sup> This commenter recommended FINRA “encourage parties and arbitrators to work together to determine an appropriate schedule that considers the unique circumstances of

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<sup>111</sup> See Notice at 105130-105131.

<sup>112</sup> Caruso at 1.

<sup>113</sup> Cambridge at 3. Another commenter stated that the proposed rule change would do little to address the problem that FINRA arbitration is becoming more expensive and less fair than courts, and suggested that FINRA expand the application of FINRA Rule 9280 (Contemptuous Conduct) to FINRA arbitrations to incentivize litigators to act in good faith. Letter from Daniel Kolber, CEO/General Counsel, Intellivest Securities, Inc., dated January 3, 2025, at 1, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-553435-1585502.html>. In response, FINRA stated that this comment is outside the scope of the proposed rule change but noted that to the extent an attorney is engaging in misconduct in the FINRA arbitration forum, it will make a referral to the attorney's disciplinary agency. FINRA Response Letter at 9. FINRA reasonably declined amending the proposed rule change in response, as the comment is outside the scope of the proposed rule change.

their particular case,” and, “in the absence of an agreement between the parties, the arbitrators should have the latitude to adjust the deadlines for the arbitration to accommodate the party with the qualifying medical condition.”<sup>114</sup> Alternatively, if FINRA retains the set schedule, the commenter suggested “at least” modifying the discovery deadlines because the “proposed reduction by approximately half of the discovery deadline unduly burdens the respondents and possibly the claimants as well.”<sup>115</sup>

In response, FINRA stated that establishing rules-based, shortened deadlines is necessary and appropriate 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 fully achieve.”<sup>116</sup> However, FINRA stated that the existing provisions of the Codes would provide parties and arbitrators with “sufficient flexibility to modify the proposed shortened deadlines when necessary.”<sup>117</sup>

The proposed rule change to accelerate proceedings by shortening deadlines and providing guidance to arbitrators is reasonably designed to enhance qualifying parties’ ability to meaningfully participate for the duration of a proceeding so that case outcomes more accurately reflect the underlying merits. Under the current program, DRS staff has discretion to expedite certain case-related tasks (e.g., the arbitrator selection process) to try to shorten the overall length of a proceeding. In practice, however, the current program only marginally shortens the median time for customer arbitrations to close by award after a hearing. By establishing shortened, rules-based deadlines for parties and providing guidance to arbitrators on how quickly they should

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<sup>114</sup> Id.

<sup>115</sup> Id.

<sup>116</sup> FINRA Response Letter at 8.

<sup>117</sup> Id.

endeavor to complete a proceeding, the proposed rule change should help reduce the length of time for completing qualifying proceedings, helping ensure that eligible parties can meaningfully participate for the duration of the case.

Moreover, as FINRA stated, existing provisions of the Codes would continue to provide parties and arbitrators with the flexibility to address the unique facts and circumstances of each case (such as the complexity of a case or the volume of discovery) and to modify deadlines as appropriate.<sup>118</sup> For these reasons, the proposed rule change is reasonably 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.

#### **IV. Conclusion**

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.<sup>119</sup>

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<sup>118</sup> See id.

<sup>119</sup> 15 U.S.C. 78q-3(b)(6).

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Exchange Act<sup>120</sup> that the proposed rule change (SR-FINRA-2024-021), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>121</sup>

**Stephanie J. Fouse,**

*Assistant Secretary.*

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<sup>120</sup> 15 U.S.C. 78s(b)(2).

<sup>121</sup> 17 CFR 200.30-3(a)(12).