*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of * 96

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 033
Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule
☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

## Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed rule change to amend the Codes of Arbitration Procedure to make various clarifying and technical changes to the Codes, including in response to recommendations in the report of independent counsel Lowenstein Sandler LLP.

## Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.


First Name * Kristine Last Name * Vo

Title * Assistant General Counsel

E-mail * kristine.vo@finra.org

Telephone * (212) 858-4106 Fax (202) 728-8264


## Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 12/23/2022

By Victoria Crane
(Name *)

(Title *)
Vice President & Associate General Counsel, D

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Victoria Crane
Digitally signed by Victoria Crane
Date: 2022.12.23 11:48:45 -05'00'

*Required fields are shown with yellow backgrounds and astericks.*

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information ***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change ***

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FINRA 2022-033 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies ***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

☐ Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

☐ Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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FINRA-2022-033 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] the Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change 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 make changes to provisions relating to the arbitrator list selection process in response to recommendations in the report of independent counsel Lowenstein Sandler LLP. The proposed rule change also makes clarifying and technical changes to requirements in the Codes for holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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

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

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

(a) Purpose

Background and Discussion

FINRA is proposing to amend the Codes to provide greater transparency and consistency regarding the arbitrator list selection process, and to clarify the application of certain procedures and include expressly these procedures in various rules in the Codes. The proposed rule change would enhance the transparency of the arbitration forum administered by FINRA Dispute Resolution Services ("DRS").[2]

I. List Selection Process Amendments

In June 2022, FINRA published the report from Lowenstein Sandler LLP relating to an independent review and analysis of the DRS arbitrator list selection process ("Report").[3] The Report made several recommendations to provide greater transparency

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2 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.

3 See FINRA, The Report of the Independent Review of FINRA's Dispute Resolution Services – Arbitrator Selection Process, https://www.finra.org/sites/default/files/2022-06/report-independent-review-drs-arbitrator-selection-process.pdf. In February 2022, the Audit Committee of FINRA's Board of Governors engaged independent counsel Lowenstein Sandler LLP to provide a review and analysis in connection with a Fulton County (Georgia) Superior Court decision vacating an arbitration award in favor of Wells Fargo Clearing Services, LLC. See Order Granting Mot. to Vacate Arb. Award and Den. Cross Mot. to Confirm Arb. Award at 37, Leggett v. Wells Fargo Clearing Servs., LLC, No. 2019-CV-328949 (Ga. Super. Ct., January 25, 2022). Since publication of the Report, the Fulton County (Georgia) Superior Court's decision was reversed by the Court of Appeals of Georgia. See Wells Fargo Clearing Servs. v. Leggett, No. A22A1149, 2022 Ga. App. (Ct. App. August 2, 2022).

and consistency in the arbitrator list selection process, some of which require amendments to the Codes. In response to the recommendations in the Report, FINRA is proposing to amend the Codes to implement the Report's recommendations, as described below.[4]

**1. Conflicts of Interest**

The Codes provide that a list selection algorithm will randomly generate the ranking lists of arbitrators from the DRS roster of arbitrators,[5] and exclude arbitrators from the lists based upon current conflicts of interest identified within the list selection algorithm.[6] In addition, once the lists are generated, DRS conducts a manual review for other conflicts not identified within the list selection algorithm. This manual review is described on FINRA's website and in rule filings with the SEC, but not in the Codes.[7] The Report recommended that, "to improve transparency, FINRA should amend Rule 12400 to specifically state that prior to sending the arbitrator list to the parties, NM

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4 Separately, FINRA addressed a recommendation from the Report by making technical, non-substantive changes to the Codes to remove references to the Neutral List Selection System from those rules describing arbitrator list selection and instead refer to a "list selection algorithm." See Securities Exchange Act Release No. 95871 (September 22, 2022), 87 FR 58854 (September 28, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-026).

5 See FINRA Rules 12400, 12402, 12403, 13400 and 13406.

6 See FINRA Rules 12402(b), 12403(a)(3), 13403(a)(4) and 13403(b)(4).

7 See FINRA, How Parties Select Arbitrators, https://www.finra.org/arbitration-mediation/arbitrator-selection. See also Securities Exchange Act Release No. 40261 (July 24, 1998), 63 FR 40761, 40769 (July 30, 1998) (Notice of Filing of SR-NASD-98-48) (stating that DRS will perform a manual review for conflicts of interests between parties and potential arbitrators); Securities Exchange Act Release No. 40555 (October 21, 1998), 63 FR 56670, 56675 (October 22, 1998) (Order Approving File No. SR-NASD-98-48) (describing the manual review for conflicts of interests between parties and potential arbitrators).

[DRS's Neutral Management Department] shall conduct a manual review for conflicts of interest."[8]

The proposed rule change would amend the Codes to clarify the current practice that the Director will exclude arbitrators from the lists based upon a review of current conflicts of interest not identified within the list selection algorithm.[9] Under the proposed rule change, if an arbitrator is removed based on this conflicts review, consistent with current practice, the list selection algorithm would randomly select an arbitrator to complete the lists.[10]

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8 See Lowenstein Report at 36, supra note 3 (citing to a general rule on the list selection algorithm rather than specific FINRA rules relating to excluding arbitrators from the lists based upon current conflicts of interest identified within the list selection algorithm). See supra note 6. FINRA notes that an arbitration case may have three arbitrators. For a three-person panel under the Customer Code, the list selection algorithm generates three lists of arbitrators: one from the FINRA non-public arbitrator roster, another from the FINRA public arbitrator roster, and another from the FINRA chairperson roster. See FINRA Rule 12403(a)(1). Under the Industry Code, the number of lists generated for a three-person panel will depend on whether the dispute is between members or between associated persons or between or among members and associated persons. See FINRA Rule 13402.

9 See proposed Rules 12402(b)(3), 12403(a)(4), 13403(a)(5) and 13403(b)(5). 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) and 13100(m).

10 Potential conflicts include that: the arbitrator is employed by a party to the case; the arbitrator is an immediate family member or relative of a party to the case or a party's counsel; the arbitrator is employed at the same firm as a party to the case; the arbitrator is employed at the same law firm as counsel to a party to the case; the arbitrator is representing a party to the case as counsel; the arbitrator is an account holder with a party to the case; the arbitrator is employed by a member firm that clears through a clearing agent that is a party to the case; or the arbitrator is in litigation with or against a party to the case. DRS may also remove an arbitrator for other reasons affecting the arbitrator's ability to serve, such as if DRS learns the arbitrator has moved out of the hearing location. These potential

**2. Written Explanation of Director's Decision**

The Codes do not require the Director to provide a written explanation when deciding a party-initiated challenge to remove an arbitrator. The Report recommended that, to improve transparency, DRS should consider amending its policies to require a written explanation whenever a challenge to remove an arbitrator is granted or denied, if a written explanation is requested by either party.[11]

Effective September 1, 2022, DRS updated its policy to provide a written explanation whenever a party-initiated challenge to remove an arbitrator is granted or denied, regardless of whether an explanation is requested by either party.[12] To provide transparency and consistency, the proposed rule change would amend the Codes to codify this practice by requiring the Director to provide a written explanation to the parties of the Director's decision to grant or deny a party's request to remove an arbitrator.[13]

**3. Challenge to Remove an Arbitrator**

Although not a specific recommendation in the Report, the proposed rule change would make an additional clarifying change to provisions in the Codes relating to party-initiated challenges for cause. Specifically, the Codes provide that before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or

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conflicts, along with a description of the manual review process, are published on FINRA's website. See FINRA, How Parties Select Arbitrators, https://www.finra.org/arbitration-mediation/arbitrator-selection.

11 See Lowenstein Report at 37, supra note 3.

12 See FINRA, Status Report on Lowenstein Sandler LLP Recommendations, https://www.finra.org/rules-guidance/guidance/reports/report-independent-review-finra-dispute-resolution-services-arbitrator-selection-process.

13 See proposed Rules 12407(c) and 13410(c).

bias, either upon request of a party or on the Director's own initiative.[14] To help ensure that parties are aware that they may challenge an arbitrator for cause at any point after receipt of the arbitrator ranking lists until the first hearing session begins, the proposed rule change would amend the Codes to clarify that after the Director sends the arbitrator ranking lists generated by the list selection algorithm to the parties, but before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.[15]

II. Procedural Amendments

The Codes include requirements for holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record. Over the years, DRS has developed practices to help implement these requirements so that arbitration cases are timely and efficiently administered in its forum. The proposed rule change would amend the Codes to incorporate these practices, as described below.

**1. Virtual Prehearing Conferences**

Under the Codes, prehearing conferences are generally held by telephone.[16] Based on forum users' experiences during the COVID-19 pandemic, they have expressed

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14 See FINRA Rules 12407(a) and 13410(a).

15 See proposed Rules 12407(a) and 13410(a).

16 See, e.g., FINRA Rules 12500(b) and 13500(b). A "prehearing conference" means any hearing session, including an Initial Prehearing Conference, that takes place before the hearing on the merits begins. See FINRA Rules 12100(y) and 13100(w).

a preference for holding prehearing conferences by video conference.[17] As a result, effective July 1, 2022, DRS updated its policy so that all prehearing conferences are held by video conference. To provide greater transparency and consistency, the proposed rule change would codify this policy by amending the Codes to provide that prehearing conferences will generally be held by video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session.[18]

In contrast to prehearing conferences, under the Codes, hearings are generally held in person.[19] Forum users have not similarly expressed a preference for making video conference the default for hearings. Accordingly, the proposed rule change would amend the Codes to clarify that hearings will generally be held in person unless the parties agree to, or the panel grants a motion for, another type of hearing session.[20]

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17 While FINRA postponed in-person arbitration hearings and mediation sessions in response to the pandemic, FINRA permitted arbitration hearings and mediation sessions to proceed virtually either by party agreement or arbitration panel order. See Regulatory Notice 21-44 (December 2021). On February 22, 2022, DRS began two pilot programs with some prehearing conferences held on the Zoom platform with video and some without video before updating its policy so that all prehearing conferences are held on the Zoom platform with video. See The Neutral Corner, "Pilot Programs: Prehearing Conferences by Zoom," Volume 1 – 2022.

18 See proposed Rules 12500(b), 12501(c) and 12504(a); see also proposed Rules 13500(b), 13501(c) and 13504(a).

19 The term "hearing" means the hearing on the merits of an arbitration under Rule 12600. See FINRA Rules 12100(o) and 13100(o).

20 See proposed Rules 12600(b) and 13600(b). In addition, the proposed rule change would require the renumbering of paragraphs in the rules impacted by the proposed rule change.

**2. Virtual Option for Special Proceeding**

Arbitrations involving $50,000 or less, called simplified arbitrations, generally are decided by a single arbitrator based on the parties' written submissions, unless the customer requests a hearing.[21] In some cases, however, customers want an opportunity to present their case to the arbitrator without the travel and expenses associated with a full hearing. The Codes permit such customers to elect to have an abbreviated telephonic hearing ("special proceeding").[22] The special proceeding option is intended to ensure that customers have an opportunity to present their case to an arbitrator in a convenient and cost-effective manner without being subject to cross-examination by an opposing party.[23]

Following suggestions from customers that they would prefer also to have the option to have a special proceeding by video conference, FINRA is proposing to amend the Codes to provide customers with this option. Specifically, the proposed rule change would amend the Codes to provide that a special proceeding will be held by video conference, unless the customer requests at least 60 days before the first scheduled hearing that it be held by telephone, or the parties agree to another type of hearing

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21 See FINRA Rules 12800(a) and 13800(a). Under the Industry Code, the individual filing the claim is referred to as the "claimant." For simplicity in this section, "customer" will be used to refer to the individual filing the claim unless otherwise noted.

22 See FINRA Rules 12800(c)(3)(B)(i) and 13800(c)(3)(B)(i). See also Securities Exchange Act Release No. 83276 (May 17, 2018), 83 FR 23959, 23960 (May 23, 2018) (Order Approving File No. SR-FINRA-2018-003).

23 See Securities Exchange Act Release No. 82693 (February 12, 2018), 83 FR 7086, 7087 (February 16, 2018) (Notice of Filing of File No. SR-FINRA-2018-003); see also 83 FR 23959, 23960, supra note 22.

session.[24] Thus, the proposed rule change would make video conference the default for special proceedings; however, customers or claimants would have the option to select a telephonic hearing. The 60 days notification requirement would help ensure that the parties and arbitrator are aware of how the hearing session will be conducted well in advance of the hearing session and can prepare accordingly.

**3. Redacting Confidential Information**

Under the Codes, when parties submit pleadings and supporting documents to DRS, the parties must redact personal confidential information ("PCI") such as an individual's Social Security number, taxpayer identification number or financial account number to include only the last four digits of such numbers.[25] This requirement does not apply, however, to claims administered under FINRA's simplified arbitration rules. As discussed above, generally a single arbitrator decides these claims based solely on the parties' written submissions. Many claimants who initiate claims under the simplified arbitration rules are not represented by counsel, i.e., pro se customers. FINRA has not applied the redaction requirements to simplified arbitrations due to concerns that the requirements may prove difficult for pro se customers.[26]

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24 See proposed Rules 12800(c)(3)(B)(i) and 13800(c)(3)(B)(i).

25 See FINRA Rules 12300(d)(1)(A) and 13300(d)(1)(A).

26 See FINRA Rules 12300(d)(1)(C) and 13300(d)(1)(C). See also Securities Exchange Act Release No. 72269 (May 28, 2014), 79 FR 32003, 32004 (June 3, 2014) (Notice of Filing and Order Approving File No. SR-FINRA-2014-008).

Due to increasing concerns with customers' identities being used for fraudulent purposes in the securities industry,[27] the proposed rule change would extend the requirement to redact PCI to parties in simplified arbitrations.[28] In addition, if the proposal is approved by the SEC, FINRA will update guidance on its website regarding the steps parties can take to protect PCI, to include guidance to pro se parties on the importance of safeguarding PCI and on how to redact PCI from documents filed with DRS.[29]

**4. Number of Hearing Sessions Per Day**

Under the Codes, a "hearing session" is any meeting between the parties and arbitrators of four hours or less, including a hearing or a prehearing conference.[30] Arbitrators are paid for each hearing session in which they participate.[31] Currently, some arbitrators have the misunderstanding that they may be compensated for time spent

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27 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).

28 FINRA Rules 12300(d)(1)(C) and 13300(d)(1)(C) would be deleted. See proposed Rules 12300(d)(1) and 13300(d)(1).

29 See FINRA, Protecting Personal Confidential Information, https://www.finra.org/arbitration-mediation/protecting-personal-confidential-information.

30 See FINRA Rules 12100(p) and 13100(p).

31 See generally FINRA Rules 12214 and 13214.

outside of the hearing session, such as on lunch breaks, because the Codes do not specify when the next hearing session begins.

DRS's current practice is to calculate the number of hearing sessions per day by adding the number of hearing hours, subtracting time spent for lunch, and dividing that number by four hours.[32] Consistent with this practice and to provide transparency and consistency, the proposal would amend the definition of "hearing session" to clarify that in one day, the next hearing session begins after four hours of hearing time has elapsed.[33]

**5. Update Submission Agreement When Filing a Third Party Claim**

Under the Codes, respondents must serve a signed and dated Submission Agreement and an answer on each other party within 45 days of receipt of the statement of claim.[34] The answer may include a third party claim.[35] If the answer includes a third party claim, the respondent must also serve the third party with the answer containing the third party claim and all documents previously served by any party, or sent to the parties

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32 See FINRA, Honorarium, https://www.finra.org/arbitration-mediation/honorarium.

33 See proposed Rules 12100(p) and 13100(p).

34 See FINRA Rules 12303(a) and 13303(a). The 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. See FINRA Rules 12100(dd) and 13100(ee). This document confirms FINRA's jurisdiction over a case and binds parties to the outcome of the case.

35 A "third party claim" is a claim asserted against a party not already named in the statement of claim or any other previous pleading. See FINRA Rules 12100(ee) and 13100(gg).

by the Director.[36] The Codes also provide that the respondent must file the third party claim with the Director through the Party Portal, except as otherwise provided.[37]

Because the Codes do not have express procedures related to the filing of Submission Agreements if the answer includes a third party claim, often, when a respondent includes a third party claim in the answer, the respondent does not execute a Submission Agreement that lists the name of the third party. Under the Codes, the Director will not serve any claim that is deficient. A claim is deficient if the Submission Agreement does not name all parties named in the claim.[38] In addition, the Codes do not provide that if the answer includes a third party claim, the respondent must file the Submission Agreement with the Director. Thus, if the answer includes a third party claim, DRS must contact the respondent to inform them of the deficiency and to file an updated Submission Agreement with the Director. These additional steps may result in delays and slower case processing times.

To clarify to parties the requirements related to third party claims and Submission Agreements, the proposed rule change would amend the Codes to provide that if the answer contains a third party claim, the respondent must execute a Submission Agreement that lists the name of the third party.[39] In addition, the proposed rule change

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36 See FINRA Rules 12303(b) and 13303(b).

37 See FINRA Rules 12303(b) and 13303(b). Parties must use the Party Portal to file initial statements of claim and to file and serve pleadings and any other documents on the Director or any other party, except as otherwise provided. See FINRA Rules 12300(a) and 13300(a).

38 See FINRA Rules 12307(a) and 13307(a).

39 See proposed Rules 12303(b) and 13303(b).

would amend the Codes to clarify that the respondent must file the Submission Agreement with the Director.[40] FINRA believes that the proposed rule change would help avoid potential delays and slower case processing times that may result from a lack of clarity in the Codes today regarding Submission Agreements when an answer contains a third party claim.

**6. Amending Pleadings or Filing Third Party Claims**

As discussed above, currently, the Codes include provisions related to including a third party claim in an answer to a statement of claim.[41] In addition, the Codes include provisions related to answering third party claims.[42] The Codes do not, however, include express procedures related to the filing of third party claims other than in an answer to a statement of claim. Instead, procedures for the filing of third party claims are included broadly under the provisions related to amended pleadings. Accordingly, the proposed rule change would amend the Codes to expressly add the procedures for the filing of third party claims to the provisions in the Codes, such that the procedures that would apply to the filing and serving of third party claims would be the same procedures that would apply to amended pleadings.[43] In addition, the proposed rule change would restructure the provisions related to amending pleadings and filing third party claims and add titles to clarify what processes are available based on various milestones in a case, including

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40 See proposed Rules 12303(b) and 13303(b).

41 See FINRA Rules 12303(b) and 13303(b).

42 See FINRA Rules 12306 and 13306.

43 See proposed Rules 12309 and 13309.

before and after panel appointment and before and after ranked arbitrator lists are due to the Director.[44]

a. Clarifying the Process

The proposed rule change would also amend the Codes to clarify the processes related to amending pleadings and filing third party claims. Specifically, the proposed rule change would clarify that: (1) arbitrators are "appointed to" the panel, rather than placed "on" the panel;[45] (2) the form of an amended pleading or third party claim that should be included with a motion need not be a hard copy;[46] (3) once the ranked arbitrator lists are due, no party may amend a pleading to add a party or file a third party claim until a panel has been appointed and the panel grants a motion to amend a pleading or file the third party claim;[47] (4) service by first-class mail or overnight mail service is accomplished on the date of mailing and that service by any other means is accomplished on the date of delivery;[48] (5) the provisions in the Codes relating to responding to amended pleadings are separate from the current provisions relating to answering

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44 See proposed Rules 12309 and 13309.

45 See proposed Rules 12309(a) and 13309(a).

46 The phrase "a copy of" would be deleted. See proposed Rules 12309(b)(1) and 13309(b)(1).

47 See proposed Rules 12309(c)(1) and 13309(c)(1).

48 See proposed Rules 12309(c)(3) and 13309(c)(3).

amended claims;[49] and (6) before panel appointment, the Director has authority to determine whether any party may file a response to an amended pleading.[50]

b. Member or Associated Person Becomes Inactive

The proposed rule change would also amend provisions of the Customer Code related to filing amended pleadings when a customer in an arbitration is notified by FINRA that a member or associated person in the arbitration has become inactive.

Under the Customer Code, after panel appointment, a party may amend a pleading if FINRA notifies a customer that a member or an associated person has become inactive as set forth in FINRA Rule 12202.[51] Once the ranked arbitrator lists are due to the Director, a party may only amend a pleading to add a new party to the arbitration if FINRA notifies a customer that a member or an associated person has become inactive as set forth in FINRA Rule 12202.[52] The proposed rule change would amend these provisions of the Customer Code to also apply to the filing of third party claims.[53] The same processes that would apply to the filing of third party claims are those that are applicable today to amending pleadings after panel appointment and amending pleadings to add a new party once the ranked arbitrator lists are due.[54] In addition, FINRA is

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49 See proposed Rules 12309(d) and 13309(d). See also FINRA Rules 12310 and 13310.

50 See proposed Rules 12309(d) and 13309(d). See also FINRA Rules 12310 and 13310.

51 See FINRA Rule 12309(b)(2).

52 See FINRA Rule 12309(c).

53 See proposed Rule 12309(b)(2) and (c)(2).

54 See proposed Rules 12309 and 13309.

proposing to replace "party" with "customer" as it is the customer to the arbitration proceeding who may amend a pleading or file a third party claim if FINRA notifies the customer that a member or associated person has become inactive.[55]

**7. Combining Claims**

Before ranked arbitrator lists are due to the Director, the Codes permit the Director to combine separate but related claims into one arbitration.[56] The Codes also provide that once a panel has been appointed, the panel may reconsider the Director's decision upon motion of a party.[57] The Codes do not address, however, if a panel can combine separate but related claims into one arbitration, or which panel may reconsider the Director's decision upon motion of party.

Under current practice, if a panel has been appointed to the lowest numbered case (i.e., the case with the earliest filing date), the panel in that case may combine separate but related claims into one arbitration and reconsider the Director's decision upon motion of a party.[58] If a panel has been appointed to the highest numbered case (i.e., the case with the latest filing date), but not to the lowest numbered case, under current practice, the panel appointed to the highest numbered case may make these determinations.

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55 See proposed Rule 12309(b)(2) and (c)(2).

56 See FINRA Rules 12314 and 13314.

57 See FINRA Rules 12314 and 13314.

58 The current practice of having the panel appointed to the lowest numbered case make such determinations is consistent with how motions related to separated claims are decided under the Codes today. For example, the Codes provide that in cases with multiple claimants or multiple respondents, a party whose claims were separated by the Director may make a motion to the panel in the lowest numbered case to reconsider the Director's decision. See FINRA Rules 12312, 12313, 13312 and 13313.

For transparency and consistency, FINRA is proposing to codify current practice by amending the Codes to provide that if a panel has been appointed to the lowest numbered case, the panel in that case may: (a) combine separate but related claims into one arbitration; and (b) reconsider the Director's decision upon motion of a party.[59] In addition, the proposed rule change would codify current practice that if a panel has been appointed to the highest numbered case (i.e., the case with the latest filing date), but not to the lowest numbered case, the panel appointed to the highest numbered case may: (a) combine separate but related claims into one arbitration; and (b) reconsider the Director's decision upon motion of a party.[60] The proposed rule change would clarify for parties and arbitrators procedures related to combining claims in the forum.

**8. Motion Practice**

Currently, some parties assume that the Party Portal automatically sends the parties' responses and replies to the panel. In practice, DRS sends all motions and all responses to the panel after the last reply date has elapsed, unless otherwise directed by the panel. This practice helps ensure that the arbitrators have the complete set of motion papers before they begin considering the motion. Parties are often unaware of this practice because the Codes do not address how DRS processes motions including responses and replies.

To provide transparency and consistency, the proposed rule change would amend the Codes to codify the current practice by providing that the Director will send all motions, responses, and replies to the panel after the last reply date has elapsed, unless

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59 See proposed Rules 12314(b)(1) and 13314(b)(1).

60 See proposed Rules 12314(b)(2) and 13314(b)(2).

otherwise directed by the panel.[61] After the last reply date has elapsed, if the Director receives additional submissions on the motion,[62] the Director will forward the submissions to the panel upon receipt and the panel will then determine whether to accept them.[63]

In addition, the proposed rule change would amend the Codes to clarify who has the authority to decide motions related to separating and combining claims or arbitrations. Specifically, the proposed rule change would amend the Codes to include cross-references to FINRA Rules 12312, 12313, 13312 and 13313, as applicable, which provide that motions relating to separating claims or arbitrations are decided by the Director before a panel is appointed, or by the panel after the panel is appointed.[64] In addition, the proposed rule change would amend the Codes to include a cross-reference to proposed FINRA Rules 12314 and 13314,[65] as applicable, which, as discussed above, would clarify which panel from multiple arbitrations may combine separate but related

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61 See proposed Rules 12503(d) and 13503(d).

62 With respect to motions to amend a pleading, the proposed rule change would revise the Codes to state that such motions must "include" rather than "be accompanied by copies of" the proposed amended pleading to clarify that hard copies are not required. See proposed Rules 12504(a)(4) and 13504(a)(4). In addition, the proposed rule change would renumber paragraphs in the rules impacted by the proposed rule change.

63 See proposed Rules 12503(d) and 13503(d).

64 See proposed Rules 12503(e)(3) and 13503(e)(3).

65 See proposed Rules 12503(e)(4) and 13503(e)(4).

claims into one arbitration and reconsider the Director's decision to combine claims upon motion of a party.[66]

**9. Witness Lists Shall Not Be Combined with Document Lists**

Under the Codes, at least 20 days before the first scheduled hearing date, all parties must provide all other parties with copies of all documents and other materials in their possession or control that they intend to use at the hearing that have not already been produced. The parties should not file the documents with the Director or arbitrators before the hearing.[67] The Codes also provide that at least 20 days before the first scheduled hearing date, all parties must provide each other with the names and business affiliations of all witnesses they intend to present at the hearing. All parties must file their witness lists with the Director.[68]

Often, parties file with the Director one document that contains both the list of documents and other materials, such as exhibits, they intend to use at the hearing that have not already been produced and the witness list. As the list of documents and other materials could contain prejudicial or inadmissible material, as a service to forum users, the Director will manually remove this information from the document containing the witness list before forwarding it to the panel. However, on occasion, the Director may inadvertently disseminate the list of documents and other materials to the arbitrators, which could reveal potentially prejudicial or inadmissible information to the arbitrators before the hearing.

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66 See supra notes 59 and 60 and accompanying text.

67 See FINRA Rules 12514(a) and 13514(a).

68 See FINRA Rules 12514(b) and 13514(b).

Because the Codes do not currently include language regarding the sharing of document lists before the hearing, the proposed rule change would specify that if the parties create lists of documents and other materials in their possession or control that they intend to use at the hearing and have not already been produced, the parties may serve the lists on all other parties, but shall not combine the lists with the witness lists filed with the Director.[69] The proposed rule change would clarify to parties that they should not combine document lists with witness lists and, thereby, also help protect against the inadvertent sharing of such document lists with the arbitrators before the hearing.

**10. Hearing Records**

Under the Codes, the Director will make a tape, digital or other recording of every hearing with certain exceptions as specified in the Codes.[70] The Codes permit the panel to order the parties to provide a transcription of the recording.[71] The parties may also make a stenographic record of the hearing.[72]

a. Distributing Copies

The Codes do not set forth which party must provide to each arbitrator, serve on each party and file with the Director a copy of a transcription of a recording or the stenographic record if it is the official record of the proceeding. Accordingly, the proposed rule change would amend the Codes to provide that if the panel orders a

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69 See proposed Rules 12514(a) and 13514(a).

70 See FINRA Rules 12606(a) and 13606(a).

71 See FINRA Rules 12606(a)(2) and 13606(a)(2).

72 See FINRA Rules 12606(a) and 13606(b).

transcription, or the stenographic record is the official record of the proceeding, a copy of the transcription or stenographic record must be provided to each arbitrator, served on each party, and filed with the Director by the party or parties ordered to make the transcription or electing to make the stenographic record, as applicable.[73]

b. Executive Sessions

Executive sessions are discussions among arbitrators outside the presence of the parties and their representatives, witnesses and stenographers and are not recorded as they are not part of the official record of the hearing. For transparency and consistency, the proposed rule change would amend the Codes to provide that executive sessions held by the panel will not be recorded.[74]

**11. Dismissal of Proceedings for Insufficient Service**

Under the Codes, parties, except for pro se parties, must serve all pleadings and other documents through the Party Portal, and service is accomplished on the day of submission through the Party Portal.[75] If a party who is served fails to submit an answer, DRS reviews the service history with the panel and asks the panel to decide whether service is complete and sufficient upon the unresponsive party before the case may proceed to hearing.[76] The Codes do not address, however, what action a panel may take if the panel determines that service on the unresponsive party was insufficient. In

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73 See proposed Rules 12606(a)(2), 13606(a)(2), 12606(b)(2) and 13606(b)(2).

74 See proposed Rules 12606(a)(1) and 13606(a)(1).

75 See FINRA Rules 12300(c) and 13300(c).

76 See FINRA, Initial Prehearing Conference Script for Panel Cases, https://www.finra.org/sites/default/files/2022-08/iphc_script_panel_cases.pdf.

practice, if the panel determines that service was insufficient, the panel may dismiss the claim or arbitration without prejudice.

For transparency and consistency, the proposed rule change would codify current practice by amending the Codes to provide that the panel may dismiss without prejudice a claim or an arbitration for lack of sufficient service upon a respondent.[77]

**12. Dismissal of Claimant's Claims Requires Issuance of an Award**

Under the Codes, an award is a document stating the disposition of a case,[78] is final and is not subject to review or appeal,[79] and shall be made publicly available.[80] The Codes permit a panel to grant a motion to dismiss a party's case at the conclusion of the case in chief.[81] The Codes, however, do not address whether such a dismissal requires the issuance of an award. As the dismissal of all a claimant's claims disposes of the case,

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77 See proposed Rules 12700(c) and 13700(c). In addition, while FINRA Rules 12700(b) and 13700(b) currently include cross-references to other rules in which a panel may dismiss a claim or an arbitration, the rules do not include a cross-reference to FINRA Rules 12504 or 13504, as applicable. Thus, the proposed rule change would amend FINRA Rules 12700(b) and 13700(b) to include a cross-reference to FINRA Rules 12504 or 13504, as applicable, which would clarify that a panel may dismiss a claim or an arbitration prior to the conclusion of a party's case in chief under very limited circumstances (i.e., if it is time-barred upon motion of a party, as a sanction for material and intentional failure to comply with an order of the panel, or if there are multiple postponements). The proposed rule change would also remove the bullets and replace them with numbers for outline numbering consistency. See proposed Rules 12700(b)(1) and 13700(b)(1).

78 See FINRA Rules 12100(c) and 13100(c).

79 See FINRA Rules 12904(b) and 13904(b).

80 See FINRA Rules 12904(h) and 13904(h). See also FINRA, Arbitration Awards Online, https://www.finra.org/arbitration-mediation/arbitration-awards.

81 See FINRA Rules 12504(b) and 13504(b).

it is current practice to require the issuance of an award for such dismissals.[82] For transparency and consistency, the proposed rule change would codify current practice by amending the Codes to require that if a panel dismisses all of a claimant's claims at the conclusion of the case in chief, the decision must contain the elements of a written award and must be made publicly available as an award.[83]

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[84] 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.

The proposed rule change will enhance the transparency of the arbitrator selection process by addressing recommendations in the Report by codifying DRS's practice of conducting a manual review for conflicts of interest prior to sending an arbitrator list to the parties and requiring the Director to provide a written explanation to parties of the Director's decision to grant or deny a party's request to remove an arbitrator. In addition, the proposed rule change will clarify for forum users that parties may challenge an

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82 See FINRA, FINRA Dispute Resolution Services Arbitrator's Guide, https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf.

83 See proposed Rules 12504(b) and 13504(b). See also FINRA Rules 12904(e) and 13904(e). If the panel grants a motion to dismiss some but not all of the claimant's claims, the hearing would proceed as to the remaining claims and at the conclusion of the hearing, the panel would issue an award that disposes of each claim. See FINRA, FINRA Dispute Resolution Services Arbitrator's Guide, https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf.

84 15 U.S.C. 78o-3(b)(6).

arbitrator for cause at any point after receipt of the arbitrator lists until the first hearing session begins.

The proposed rule change will address the preferences of forum users to hold prehearing conferences by video conference and of customers in simplified arbitrations to have the option to hold simplified proceedings by video conference or by telephone, unless the parties agree to another type of hearing session. It may also help facilitate parties' ability to participate or interact in such arbitration proceedings. The proposed rule change will also clarify for forum users that hearings will generally be held in person unless the parties agree to, or the panel grants a motion for, another type of hearing session.

The proposed rule change will enhance the transparency and efficiency of the DRS arbitration forum for forum users, including investors, by codifying current practices relating to how parties must distribute transcriptions or stenographic records of hearings; clarifying that an answer with a third party claim must include an updated Submission Agreement that lists the name of the third party; clarifying the processes relating to amending pleadings and filing third party claims; codifying current practices relating to how DRS processes motions; codifying current practice that the panel appointed to the lowest numbered case makes decisions regarding combining claims; codifying current practice to allow a panel to dismiss without prejudice a claim or an arbitration for lack of sufficient service upon a respondent; clarifying that executive sessions held by the panel will not be recorded; and codifying current practice requiring a panel to render a written award if the panel grants a motion to dismiss all of the claimant's claims made after the conclusion of a party's case.

Finally, the proposed rule change will help protect forum users, including pro se parties, from the inadvertent disclosure of PCI or other information that is potentially prejudicial or inadmissible by requiring parties to redact PCI in simplified arbitrations and prohibiting parties from prematurely filing the list of documents and other materials they intend to use at a hearing with the Director.

FINRA believes the proposed rule change reflects and aligns with DRS's current practices and procedures, and enhances the transparency and efficiency of the DRS arbitration forum by codifying and clarifying these practices and procedures.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA has undertaken an economic impact assessment to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives. As discussed below, 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 Exchange Act.

Economic Impact Assessment

A. Regulatory Need

Certain arbitration procedures are not formally described in the Codes, whereas certain other arbitration procedures are formally described in the Codes but questions arise regarding their application. This potential ambiguity may reduce the ability of parties to anticipate their future actions or obligations and thus may cause parties to incur additional costs to prepare and participate in the DRS arbitration forum. Parties and

arbitrators may also incur the time to make inquiries to DRS to clarify these arbitration procedures. In addition, potential ambiguity regarding certain arbitration procedures may result in delays and slower case processing times. The proposed rule change would help address these costs by providing greater transparency and consistency regarding the arbitrator list selection process, and clarifying the application of certain procedures.

B. Economic Baseline

The economic baseline for the proposed rule change consists of the current provisions under the Codes that address the administration of arbitration proceedings. The economic baseline also includes current practices concerning the administration of arbitration proceedings. The proposed rule change is expected to affect parties to cases in the DRS arbitration forum, their legal representatives, and arbitrators.

The proposed rule change may affect any of the cases parties file in the DRS arbitration forum. To describe the potential impact of the proposed rule change, however, FINRA uses the cases that closed from January 2017 to December 2021 ("sample period"). During the sample period, 19,141 cases closed in the DRS arbitration forum. The 19,141 cases include 12,205 cases involving one or more customers and 6,936 cases involving only industry parties.

C. Economic Impacts

Many of the proposed amendments would clarify in the Codes forum procedures and the obligations of parties and arbitrators and, in some instances, codify current practice. To the extent that these amendments would permit forum users to better understand their options or to anticipate their future actions or obligations, the proposed rule change may also increase their ability to prepare and participate in the forum. These

amendments would also decrease the need for forum users to inquire with DRS when questions arise. Where the actions of parties or arbitrators vary from general current practice, clarification and codification should increase the consistency of the DRS arbitration forum. Relative to the baseline, such parties may incur costs to adhere to the proposed requirements, but there should be few such parties.

Some of the proposed amendments may have other economic effects. The proposed amendments would clarify that parties may challenge an arbitrator for cause after receipt of the arbitrator lists. To the extent that parties currently believe that they may seek to remove an arbitrator through the challenge process only once the arbitrator is appointed, the proposed clarification may help create efficiencies in the DRS arbitration forum by minimizing potential delays from challenges to arbitrators later in the arbitration proceedings. Among the 19,141 cases that were closed during the sample period, FINRA can identify 236 challenges to remove an arbitrator in 204 cases (one percent).[85]

The proposed amendments would provide that prehearing conferences would generally be held by video conference, unless the customer requests at least 60 days before the first scheduled hearing that it be held by telephone, or the parties agree to another type of hearing session, and may affect the options parties have in arbitration. Among the 19,141 cases that were closed during the sample period, a prehearing conference was held in 14,648 cases (77 percent, with an average of 1.7 prehearing

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[85] See FINRA Rules 12407 and 13410. In general, the 236 challenges relate to challenges to remove an appointed arbitrator. Information describing party challenges to remove an arbitrator from a list was not collected during the sample period.

conferences held per case) and a special proceeding was held in 290 cases (two percent). For these hearings, the use of video conference would generally be used in place of telephone.

Some parties may perceive an increase in their ability to participate or interact in the hearings by video conference. As noted above, forum users have expressed a preference to hold prehearing conferences by video conference.[86] Other parties, however, may perceive a decrease. The costs to these other parties may be mitigated by their ability to move for another method of appearance (e.g., telephone) or to seek assistance from DRS. Parties to special proceedings held by video conference may incur additional time to prepare to present their case. This preparation may include meeting with arbitrators to ensure that all hearing participants are able to use the video conference application.[87]

The proposed amendments related to combining claims may help parties decide whether to move to combine claims and how to respond to such motions in arbitration. Among the 19,141 cases that were closed during the sample period, 143 cases (one percent) were closed and consolidated with another case. The proposed rule change may improve the ability of parties to the higher numbered case to weigh the potential benefits of combining claims (e.g., lower legal and forum fees) against the potential costs associated with having the claim decided by the panel in the lowest numbered case.

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86 See supra note 17 and accompanying text.

87 The proposed amendments may ameliorate these additional costs by requiring that a customer request that a special proceeding be conducted by telephone at least 60 days before a scheduled hearing. Within the 60 days, similar to today, parties can agree to another type of hearing session

The parties to cases that combine as a result of the proposed amendments may benefit from lower legal and forum fees relative to the total fees parties would similarly incur in separate arbitrations. Parties that would choose to combine claims under the baseline due to a misunderstanding of the current practice, but not under the proposed rule change, would incur the legal and forum fees to separately arbitrate their dispute and have their claim decided by the panel to their case. The fees these parties incur may be greater than their share if they instead combined claims. The decision not to combine claims and incur the higher fees, however, results from improved information. The parties that do not want to combine claims, therefore, must anticipate that the higher fees are justified.

Finally, the proposed amendments would better organize the handling of certain documents and records in the DRS arbitration forum by imposing new obligations and requirements on parties. These new obligations and requirements would reduce the level of involvement by DRS, allow for more efficient document management and help protect parties from the inadvertent sharing of potentially prejudicial or confidential information. For example, the proposed rule change would prohibit parties from combining lists of documents and other materials with the witness list to help protect against the inadvertent sharing of such document lists with the arbitrators before the hearing. In addition, the proposed requirement to redact PCI from filings with claims of $50,000 or less, exclusive of interest and expenses, would benefit parties by reducing the risk of identity theft. However, parties may incur additional costs to redact this information. Among the 19,141 cases that closed during the sample period, 4,431 cases (23 percent) relate to claims of $50,000 or less. At least one party appeared pro se in less than 30 percent of

the 4,431 cases. These parties may benefit from updated guidance on how to redact PCI from documents filed with DRS.[88]

D. Alternatives Considered

FINRA developed the proposed amendments over a multi-year process during which FINRA considered and modified proposals based on feedback from forum users, including investors, securities industry professionals and FINRA arbitrators. FINRA also considered the Report's recommendations to provide greater transparency and consistency in the arbitrator list selection process, some of which require amendments to the Codes. In evaluating proposals, FINRA considered numerous factors including efficiency, cost, fairness and transparency, and certain tradeoffs among these factors. Codifying current practice may achieve greater efficiency and fairness by reducing uncertainty among forum users. It would also have the least impact on costs. Those amendments that do not codify current practice and are new requirements for forum users may result in the more efficient administration of cases in the DRS arbitration forum, and would not impose an undue burden. Thus, the proposed amendments strike an appropriate balance between further enhancing the DRS arbitration forum while limiting any additional costs of complying with the proposed amendments.

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

Written comments were neither solicited nor received.

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88 See supra note 29 and accompanying text.

**6. Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.[89]

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

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89 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2022-033)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend the Codes of Arbitration Procedure to Make Various Clarifying and Technical Changes to the Codes, Including in Response to Recommendations in the Report of Independent Counsel Lowenstein Sandler LLP

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on , 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 make changes to provisions relating to the arbitrator list selection process in response to recommendations in the report of independent counsel Lowenstein Sandler LLP. The proposed rule change also makes clarifying and technical changes to requirements in the Codes for holding prehearing

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

2 17 CFR 240.19b-4.

conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record.

The text of the proposed rule change is available on FINRA's website at http://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

Background and Discussion

FINRA is proposing to amend the Codes to provide greater transparency and consistency regarding the arbitrator list selection process, and to clarify the application of certain procedures and include expressly these procedures in various rules in the Codes. The proposed rule change would enhance the transparency of the arbitration forum administered by FINRA Dispute Resolution Services ("DRS").[3]

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[3] 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.

I. List Selection Process Amendments

In June 2022, FINRA published the report from Lowenstein Sandler LLP relating to an independent review and analysis of the DRS arbitrator list selection process ("Report").[4] The Report made several recommendations to provide greater transparency and consistency in the arbitrator list selection process, some of which require amendments to the Codes. In response to the recommendations in the Report, FINRA is proposing to amend the Codes to implement the Report's recommendations, as described below.[5]

1. Conflicts of Interest

The Codes provide that a list selection algorithm will randomly generate the ranking lists of arbitrators from the DRS roster of arbitrators,[6] and exclude arbitrators

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4 See FINRA, The Report of the Independent Review of FINRA's Dispute Resolution Services – Arbitrator Selection Process, https://www.finra.org/sites/default/files/2022-06/report-independent-review-drs-arbitrator-selection-process.pdf. In February 2022, the Audit Committee of FINRA's Board of Governors engaged independent counsel Lowenstein Sandler LLP to provide a review and analysis in connection with a Fulton County (Georgia) Superior Court decision vacating an arbitration award in favor of Wells Fargo Clearing Services, LLC. See Order Granting Mot. to Vacate Arb. Award and Den. Cross Mot. to Confirm Arb. Award at 37, Leggett v. Wells Fargo Clearing Servs., LLC, No. 2019-CV-328949 (Ga. Super. Ct., January 25, 2022). Since publication of the Report, the Fulton County (Georgia) Superior Court's decision was reversed by the Court of Appeals of Georgia. See Wells Fargo Clearing Servs. v. Leggett, No. A22A1149, 2022 Ga. App. (Ct. App. August 2, 2022).

5 Separately, FINRA addressed a recommendation from the Report by making technical, non-substantive changes to the Codes to remove references to the Neutral List Selection System from those rules describing arbitrator list selection and instead refer to a "list selection algorithm." See Securities Exchange Act Release No. 95871 (September 22, 2022), 87 FR 58854 (September 28, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-026).

6 See FINRA Rules 12400, 12402, 12403, 13400 and 13406.

from the lists based upon current conflicts of interest identified within the list selection algorithm.[7] In addition, once the lists are generated, DRS conducts a manual review for other conflicts not identified within the list selection algorithm. This manual review is described on FINRA's website and in rule filings with the SEC, but not in the Codes.[8] The Report recommended that, "to improve transparency, FINRA should amend Rule 12400 to specifically state that prior to sending the arbitrator list to the parties, NM [DRS's Neutral Management Department] shall conduct a manual review for conflicts of interest."[9]

The proposed rule change would amend the Codes to clarify the current practice that the Director will exclude arbitrators from the lists based upon a review of current

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7 See FINRA Rules 12402(b), 12403(a)(3), 13403(a)(4) and 13403(b)(4).

8 See FINRA, How Parties Select Arbitrators, https://www.finra.org/arbitration-mediation/arbitrator-selection. See also Securities Exchange Act Release No. 40261 (July 24, 1998), 63 FR 40761, 40769 (July 30, 1998) (Notice of Filing of SR-NASD-98-48) (stating that DRS will perform a manual review for conflicts of interests between parties and potential arbitrators); Securities Exchange Act Release No. 40555 (October 21, 1998), 63 FR 56670, 56675 (October 22, 1998) (Order Approving File No. SR-NASD-98-48) (describing the manual review for conflicts of interests between parties and potential arbitrators).

9 See Lowenstein Report at 36, supra note 4 (citing to a general rule on the list selection algorithm rather than specific FINRA rules relating to excluding arbitrators from the lists based upon current conflicts of interest identified within the list selection algorithm). See supra note 7. FINRA notes that an arbitration case may have three arbitrators. For a three-person panel under the Customer Code, the list selection algorithm generates three lists of arbitrators: one from the FINRA non-public arbitrator roster, another from the FINRA public arbitrator roster, and another from the FINRA chairperson roster. See FINRA Rule 12403(a)(1). Under the Industry Code, the number of lists generated for a three-person panel will depend on whether the dispute is between members or between associated persons or between or among members and associated persons. See FINRA Rule 13402.

conflicts of interest not identified within the list selection algorithm.[10] Under the proposed rule change, if an arbitrator is removed based on this conflicts review, consistent with current practice, the list selection algorithm would randomly select an arbitrator to complete the lists.[11]

2. Written Explanation of Director's Decision

The Codes do not require the Director to provide a written explanation when deciding a party-initiated challenge to remove an arbitrator. The Report recommended that, to improve transparency, DRS should consider amending its policies to require a written explanation whenever a challenge to remove an arbitrator is granted or denied, if a written explanation is requested by either party.[12]

Effective September 1, 2022, DRS updated its policy to provide a written explanation whenever a party-initiated challenge to remove an arbitrator is granted or

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10 See proposed Rules 12402(b)(3), 12403(a)(4), 13403(a)(5) and 13403(b)(5). 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) and 13100(m).

11 Potential conflicts include that: the arbitrator is employed by a party to the case; the arbitrator is an immediate family member or relative of a party to the case or a party's counsel; the arbitrator is employed at the same firm as a party to the case; the arbitrator is employed at the same law firm as counsel to a party to the case; the arbitrator is representing a party to the case as counsel; the arbitrator is an account holder with a party to the case; the arbitrator is employed by a member firm that clears through a clearing agent that is a party to the case; or the arbitrator is in litigation with or against a party to the case. DRS may also remove an arbitrator for other reasons affecting the arbitrator's ability to serve, such as if DRS learns the arbitrator has moved out of the hearing location. These potential conflicts, along with a description of the manual review process, are published on FINRA's website. See FINRA, How Parties Select Arbitrators, https://www.finra.org/arbitration-mediation/arbitrator-selection.

12 See Lowenstein Report at 37, supra note 4.

denied, regardless of whether an explanation is requested by either party.[13] To provide transparency and consistency, the proposed rule change would amend the Codes to codify this practice by requiring the Director to provide a written explanation to the parties of the Director's decision to grant or deny a party's request to remove an arbitrator.[14]

3. Challenge to Remove an Arbitrator

Although not a specific recommendation in the Report, the proposed rule change would make an additional clarifying change to provisions in the Codes relating to party-initiated challenges for cause. Specifically, the Codes provide that before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.[15] To help ensure that parties are aware that they may challenge an arbitrator for cause at any point after receipt of the arbitrator ranking lists until the first hearing session begins, the proposed rule change would amend the Codes to clarify that after the Director sends the arbitrator ranking lists generated by the list selection algorithm to the parties, but before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.[16]

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13 See FINRA, Status Report on Lowenstein Sandler LLP Recommendations, https://www.finra.org/rules-guidance/guidance/reports/report-independent-review-finra-dispute-resolution-services-arbitrator-selection-process.

14 See proposed Rules 12407(c) and 13410(c).

15 See FINRA Rules 12407(a) and 13410(a).

16 See proposed Rules 12407(a) and 13410(a).

II. Procedural Amendments

The Codes include requirements for holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record. Over the years, DRS has developed practices to help implement these requirements so that arbitration cases are timely and efficiently administered in its forum. The proposed rule change would amend the Codes to incorporate these practices, as described below.

1. Virtual Prehearing Conferences

Under the Codes, prehearing conferences are generally held by telephone.[17] Based on forum users' experiences during the COVID-19 pandemic, they have expressed a preference for holding prehearing conferences by video conference.[18] As a result, effective July 1, 2022, DRS updated its policy so that all prehearing conferences are held by video conference. To provide greater transparency and consistency, the proposed rule change would codify this policy by amending the Codes to provide that prehearing

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17 See, e.g., FINRA Rules 12500(b) and 13500(b). A "prehearing conference" means any hearing session, including an Initial Prehearing Conference, that takes place before the hearing on the merits begins. See FINRA Rules 12100(y) and 13100(w).

18 While FINRA postponed in-person arbitration hearings and mediation sessions in response to the pandemic, FINRA permitted arbitration hearings and mediation sessions to proceed virtually either by party agreement or arbitration panel order. See Regulatory Notice 21-44 (December 2021). On February 22, 2022, DRS began two pilot programs with some prehearing conferences held on the Zoom platform with video and some without video before updating its policy so that all prehearing conferences are held on the Zoom platform with video. See The Neutral Corner, "Pilot Programs: Prehearing Conferences by Zoom," Volume 1 – 2022.

conferences will generally be held by video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session.[19]

In contrast to prehearing conferences, under the Codes, hearings are generally held in person.[20] Forum users have not similarly expressed a preference for making video conference the default for hearings. Accordingly, the proposed rule change would amend the Codes to clarify that hearings will generally be held in person unless the parties agree to, or the panel grants a motion for, another type of hearing session.[21]

2. Virtual Option for Special Proceeding

Arbitrations involving $50,000 or less, called simplified arbitrations, generally are decided by a single arbitrator based on the parties' written submissions, unless the customer requests a hearing.[22] In some cases, however, customers want an opportunity to present their case to the arbitrator without the travel and expenses associated with a full hearing. The Codes permit such customers to elect to have an abbreviated telephonic hearing ("special proceeding").[23] The special proceeding option is intended to ensure

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19 See proposed Rules 12500(b), 12501(c) and 12504(a); see also proposed Rules 13500(b), 13501(c) and 13504(a).

20 The term "hearing" means the hearing on the merits of an arbitration under Rule 12600. See FINRA Rules 12100(o) and 13100(o).

21 See proposed Rules 12600(b) and 13600(b). In addition, the proposed rule change would require the renumbering of paragraphs in the rules impacted by the proposed rule change.

22 See FINRA Rules 12800(a) and 13800(a). Under the Industry Code, the individual filing the claim is referred to as the "claimant." For simplicity in this section, "customer" will be used to refer to the individual filing the claim unless otherwise noted.

23 See FINRA Rules 12800(c)(3)(B)(i) and 13800(c)(3)(B)(i). See also Securities Exchange Act Release No. 83276 (May 17, 2018), 83 FR 23959, 23960 (May 23, 2018) (Order Approving File No. SR-FINRA-2018-003).

that customers have an opportunity to present their case to an arbitrator in a convenient and cost-effective manner without being subject to cross-examination by an opposing party.[24]

Following suggestions from customers that they would prefer also to have the option to have a special proceeding by video conference, FINRA is proposing to amend the Codes to provide customers with this option. Specifically, the proposed rule change would amend the Codes to provide that a special proceeding will be held by video conference, unless the customer requests at least 60 days before the first scheduled hearing that it be held by telephone, or the parties agree to another type of hearing session.[25] Thus, the proposed rule change would make video conference the default for special proceedings; however, customers or claimants would have the option to select a telephonic hearing. The 60 days notification requirement would help ensure that the parties and arbitrator are aware of how the hearing session will be conducted well in advance of the hearing session and can prepare accordingly.

3. Redacting Confidential Information

Under the Codes, when parties submit pleadings and supporting documents to DRS, the parties must redact personal confidential information ("PCI") such as an individual's Social Security number, taxpayer identification number or financial account number to include only the last four digits of such numbers.[26] This requirement does not

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24 See Securities Exchange Act Release No. 82693 (February 12, 2018), 83 FR 7086, 7087 (February 16, 2018) (Notice of Filing of File No. SR-FINRA-2018-003); see also 83 FR 23959, 23960, supra note 23.

25 See proposed Rules 12800(c)(3)(B)(i) and 13800(c)(3)(B)(i).

26 See FINRA Rules 12300(d)(1)(A) and 13300(d)(1)(A).

apply, however, to claims administered under FINRA's simplified arbitration rules. As discussed above, generally a single arbitrator decides these claims based solely on the parties' written submissions. Many claimants who initiate claims under the simplified arbitration rules are not represented by counsel, i.e., pro se customers. FINRA has not applied the redaction requirements to simplified arbitrations due to concerns that the requirements may prove difficult for pro se customers.[27]

Due to increasing concerns with customers' identities being used for fraudulent purposes in the securities industry,[28] the proposed rule change would extend the requirement to redact PCI to parties in simplified arbitrations.[29] In addition, if the proposal is approved by the SEC, FINRA will update guidance on its website regarding the steps parties can take to protect PCI, to include guidance to pro se parties on the

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27 See FINRA Rules 12300(d)(1)(C) and 13300(d)(1)(C). See also Securities Exchange Act Release No. 72269 (May 28, 2014), 79 FR 32003, 32004 (June 3, 2014) (Notice of Filing and Order Approving File No. SR-FINRA-2014-008).

28 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).

29 FINRA Rules 12300(d)(1)(C) and 13300(d)(1)(C) would be deleted. See proposed Rules 12300(d)(1) and 13300(d)(1).

importance of safeguarding PCI and on how to redact PCI from documents filed with DRS.[30]

4. Number of Hearing Sessions Per Day

Under the Codes, a "hearing session" is any meeting between the parties and arbitrators of four hours or less, including a hearing or a prehearing conference.[31] Arbitrators are paid for each hearing session in which they participate.[32] Currently, some arbitrators have the misunderstanding that they may be compensated for time spent outside of the hearing session, such as on lunch breaks, because the Codes do not specify when the next hearing session begins.

DRS's current practice is to calculate the number of hearing sessions per day by adding the number of hearing hours, subtracting time spent for lunch, and dividing that number by four hours.[33] Consistent with this practice and to provide transparency and consistency, the proposal would amend the definition of "hearing session" to clarify that in one day, the next hearing session begins after four hours of hearing time has elapsed.[34]

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30 See FINRA, Protecting Personal Confidential Information, https://www.finra.org/arbitration-mediation/protecting-personal-confidential-information.

31 See FINRA Rules 12100(p) and 13100(p).

32 See generally FINRA Rules 12214 and 13214.

33 See FINRA, Honorarium, https://www.finra.org/arbitration-mediation/honorarium.

34 See proposed Rules 12100(p) and 13100(p).

5. Update Submission Agreement When Filing a Third Party Claim

Under the Codes, respondents must serve a signed and dated Submission Agreement and an answer on each other party within 45 days of receipt of the statement of claim.[35] The answer may include a third party claim.[36] If the answer includes a third party claim, the respondent must also serve the third party with the answer containing the third party claim and all documents previously served by any party, or sent to the parties by the Director.[37] The Codes also provide that the respondent must file the third party claim with the Director through the Party Portal, except as otherwise provided.[38]

Because the Codes do not have express procedures related to the filing of Submission Agreements if the answer includes a third party claim, often, when a respondent includes a third party claim in the answer, the respondent does not execute a Submission Agreement that lists the name of the third party. Under the Codes, the Director will not serve any claim that is deficient. A claim is deficient if the Submission Agreement does not name all parties named in the claim.[39] In addition, the Codes do not

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35 See FINRA Rules 12303(a) and 13303(a). The 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. See FINRA Rules 12100(dd) and 13100(ee). This document confirms FINRA's jurisdiction over a case and binds parties to the outcome of the case.

36 A "third party claim" is a claim asserted against a party not already named in the statement of claim or any other previous pleading. See FINRA Rules 12100(ee) and 13100(gg).

37 See FINRA Rules 12303(b) and 13303(b).

38 See FINRA Rules 12303(b) and 13303(b). Parties must use the Party Portal to file initial statements of claim and to file and serve pleadings and any other documents on the Director or any other party, except as otherwise provided. See FINRA Rules 12300(a) and 13300(a).

39 See FINRA Rules 12307(a) and 13307(a).

provide that if the answer includes a third party claim, the respondent must file the Submission Agreement with the Director. Thus, if the answer includes a third party claim, DRS must contact the respondent to inform them of the deficiency and to file an updated Submission Agreement with the Director. These additional steps may result in delays and slower case processing times.

To clarify to parties the requirements related to third party claims and Submission Agreements, the proposed rule change would amend the Codes to provide that if the answer contains a third party claim, the respondent must execute a Submission Agreement that lists the name of the third party.[40] In addition, the proposed rule change would amend the Codes to clarify that the respondent must file the Submission Agreement with the Director.[41] FINRA believes that the proposed rule change would help avoid potential delays and slower case processing times that may result from a lack of clarity in the Codes today regarding Submission Agreements when an answer contains a third party claim.

6. Amending Pleadings or Filing Third Party Claims

As discussed above, currently, the Codes include provisions related to including a third party claim in an answer to a statement of claim.[42] In addition, the Codes include provisions related to answering third party claims.[43] The Codes do not, however, include

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40 See proposed Rules 12303(b) and 13303(b).

41 See proposed Rules 12303(b) and 13303(b).

42 See FINRA Rules 12303(b) and 13303(b).

43 See FINRA Rules 12306 and 13306.

express procedures related to the filing of third party claims other than in an answer to a statement of claim. Instead, procedures for the filing of third party claims are included broadly under the provisions related to amended pleadings. Accordingly, the proposed rule change would amend the Codes to expressly add the procedures for the filing of third party claims to the provisions in the Codes, such that the procedures that would apply to the filing and serving of third party claims would be the same procedures that would apply to amended pleadings.[44] In addition, the proposed rule change would restructure the provisions related to amending pleadings and filing third party claims and add titles to clarify what processes are available based on various milestones in a case, including before and after panel appointment and before and after ranked arbitrator lists are due to the Director.[45]

a. Clarifying the Process

The proposed rule change would also amend the Codes to clarify the processes related to amending pleadings and filing third party claims. Specifically, the proposed rule change would clarify that: (1) arbitrators are "appointed to" the panel, rather than placed "on" the panel;[46] (2) the form of an amended pleading or third party claim that should be included with a motion need not be a hard copy;[47] (3) once the ranked arbitrator lists are due, no party may amend a pleading to add a party or file a third party

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44 See proposed Rules 12309 and 13309.

45 See proposed Rules 12309 and 13309.

46 See proposed Rules 12309(a) and 13309(a).

47 The phrase "a copy of" would be deleted. See proposed Rules 12309(b)(1) and 13309(b)(1).

claim until a panel has been appointed and the panel grants a motion to amend a pleading or file the third party claim;[48] (4) service by first-class mail or overnight mail service is accomplished on the date of mailing and that service by any other means is accomplished on the date of delivery;[49] (5) the provisions in the Codes relating to responding to amended pleadings are separate from the current provisions relating to answering amended claims;[50] and (6) before panel appointment, the Director has authority to determine whether any party may file a response to an amended pleading.[51]

b. Member or Associated Person Becomes Inactive

The proposed rule change would also amend provisions of the Customer Code related to filing amended pleadings when a customer in an arbitration is notified by FINRA that a member or associated person in the arbitration has become inactive.

Under the Customer Code, after panel appointment, a party may amend a pleading if FINRA notifies a customer that a member or an associated person has become inactive as set forth in FINRA Rule 12202.[52] Once the ranked arbitrator lists are due to the Director, a party may only amend a pleading to add a new party to the arbitration if FINRA notifies a customer that a member or an associated person has become inactive as

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48 See proposed Rules 12309(c)(1) and 13309(c)(1).

49 See proposed Rules 12309(c)(3) and 13309(c)(3).

50 See proposed Rules 12309(d) and 13309(d). See also FINRA Rules 12310 and 13310.

51 See proposed Rules 12309(d) and 13309(d). See also FINRA Rules 12310 and 13310.

52 See FINRA Rule 12309(b)(2).

set forth in FINRA Rule 12202.[53] The proposed rule change would amend these provisions of the Customer Code to also apply to the filing of third party claims.[54] The same processes that would apply to the filing of third party claims are those that are applicable today to amending pleadings after panel appointment and amending pleadings to add a new party once the ranked arbitrator lists are due.[55] In addition, FINRA is proposing to replace "party" with "customer" as it is the customer to the arbitration proceeding who may amend a pleading or file a third party claim if FINRA notifies the customer that a member or associated person has become inactive.[56]

7. Combining Claims

Before ranked arbitrator lists are due to the Director, the Codes permit the Director to combine separate but related claims into one arbitration.[57] The Codes also provide that once a panel has been appointed, the panel may reconsider the Director's decision upon motion of a party.[58] The Codes do not address, however, if a panel can combine separate but related claims into one arbitration, or which panel may reconsider the Director's decision upon motion of party.

Under current practice, if a panel has been appointed to the lowest numbered case (i.e., the case with the earliest filing date), the panel in that case may combine separate

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53 See FINRA Rule 12309(c).

54 See proposed Rule 12309(b)(2) and (c)(2).

55 See proposed Rules 12309 and 13309.

56 See proposed Rule 12309(b)(2) and (c)(2).

57 See FINRA Rules 12314 and 13314.

58 See FINRA Rules 12314 and 13314.

but related claims into one arbitration and reconsider the Director's decision upon motion of a party.[59] If a panel has been appointed to the highest numbered case (i.e., the case with the latest filing date), but not to the lowest numbered case, under current practice, the panel appointed to the highest numbered case may make these determinations.

For transparency and consistency, FINRA is proposing to codify current practice by amending the Codes to provide that if a panel has been appointed to the lowest numbered case, the panel in that case may: (a) combine separate but related claims into one arbitration; and (b) reconsider the Director's decision upon motion of a party.[60] In addition, the proposed rule change would codify current practice that if a panel has been appointed to the highest numbered case (i.e., the case with the latest filing date), but not to the lowest numbered case, the panel appointed to the highest numbered case may: (a) combine separate but related claims into one arbitration; and (b) reconsider the Director's decision upon motion of a party.[61] The proposed rule change would clarify for parties and arbitrators procedures related to combining claims in the forum.

8. Motion Practice

Currently, some parties assume that the Party Portal automatically sends the parties' responses and replies to the panel. In practice, DRS sends all motions and all

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59 The current practice of having the panel appointed to the lowest numbered case make such determinations is consistent with how motions related to separated claims are decided under the Codes today. For example, the Codes provide that in cases with multiple claimants or multiple respondents, a party whose claims were separated by the Director may make a motion to the panel in the lowest numbered case to reconsider the Director's motion. See FINRA Rules 12312, 12313, 13312 and 13313.

60 See proposed Rules 12314(b)(1) and 13314(b)(1).

61 See proposed Rules 12314(b)(2) and 13314(b)(2).

responses to the panel after the last reply date has elapsed, unless otherwise directed by the panel. This practice helps ensure that the arbitrators have the complete set of motion papers before they begin considering the motion. Parties are often unaware of this practice because the Codes do not address how DRS processes motions including responses and replies.

To provide transparency and consistency, the proposed rule change would amend the Codes to codify the current practice by providing that the Director will send all motions, responses, and replies to the panel after the last reply date has elapsed, unless otherwise directed by the panel.[62] After the last reply date has elapsed, if the Director receives additional submissions on the motion,[63] the Director will forward the submissions to the panel upon receipt and the panel will then determine whether to accept them.[64]

In addition, the proposed rule change would amend the Codes to clarify who has the authority to decide motions related to separating and combining claims or arbitrations. Specifically, the proposed rule change would amend the Codes to include cross-references to FINRA Rules 12312, 12313, 13312 and 13313, as applicable, which provide that motions relating to separating claims or arbitrations are decided by the

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62 See proposed Rules 12503(d) and 13503(d).

63 With respect to motions to amend a pleading, the proposed rule change would revise the Codes to state that such motions must "include" rather than "be accompanied by copies of" the proposed amended pleading to clarify that hard copies are not required. See proposed Rules 12504(a)(4) and 13504(a)(4). In addition, the proposed rule change would renumber paragraphs in the rules impacted by the proposed rule change.

64 See proposed Rules 12503(d) and 13503(d).

Director before a panel is appointed, or by the panel after the panel is appointed.[65] In addition, the proposed rule change would amend the Codes to include a cross-reference to proposed FINRA Rules 12314 and 13314,[66] as applicable, which, as discussed above, would clarify which panel from multiple arbitrations may combine separate but related claims into one arbitration and reconsider the Director's decision to combine claims upon motion of a party.[67]

9. Witness Lists Shall Not Be Combined with Document Lists

Under the Codes, at least 20 days before the first scheduled hearing date, all parties must provide all other parties with copies of all documents and other materials in their possession or control that they intend to use at the hearing that have not already been produced. The parties should not file the documents with the Director or arbitrators before the hearing.[68] The Codes also provide that at least 20 days before the first scheduled hearing date, all parties must provide each other with the names and business affiliations of all witnesses they intend to present at the hearing. All parties must file their witness lists with the Director.[69]

Often, parties file with the Director one document that contains both the list of documents and other materials, such as exhibits, they intend to use at the hearing that have not already been produced and the witness list. As the list of documents and other

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65 See proposed Rules 12503(e)(3) and 13503(e)(3).

66 See proposed Rules 12503(e)(4) and 13503(e)(4).

67 See supra notes 60 and 61 and accompanying text.

68 See FINRA Rules 12514(a) and 13514(a).

69 See FINRA Rules 12514(b) and 13514(b).

materials could contain prejudicial or inadmissible material, as a service to forum users, the Director will manually remove this information from the document containing the witness list before forwarding it to the panel. However, on occasion, the Director may inadvertently disseminate the list of documents and other materials to the arbitrators, which could reveal potentially prejudicial or inadmissible information to the arbitrators before the hearing.

Because the Codes do not currently include language regarding the sharing of document lists before the hearing, the proposed rule change would specify that if the parties create lists of documents and other materials in their possession or control that they intend to use at the hearing and have not already been produced, the parties may serve the lists on all other parties, but shall not combine the lists with the witness lists filed with the Director.[70] The proposed rule change would clarify to parties that they should not combine document lists with witness lists and, thereby, also help protect against the inadvertent sharing of such document lists with the arbitrators before the hearing.

10. Hearing Records

Under the Codes, the Director will make a tape, digital or other recording of every hearing with certain exceptions as specified in the Codes.[71] The Codes permit the panel

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70 See proposed Rules 12514(a) and 13514(a).

71 See FINRA Rules 12606(a) and 13606(a).

to order the parties to provide a transcription of the recording.[72] The parties may also make a stenographic record of the hearing.[73]

a. Distributing Copies

The Codes do not set forth which party must provide to each arbitrator, serve on each party and file with the Director a copy of a transcription of a recording or the stenographic record if it is the official record of the proceeding. Accordingly, the proposed rule change would amend the Codes to provide that if the panel orders a transcription, or the stenographic record is the official record of the proceeding, a copy of the transcription or stenographic record must be provided to each arbitrator, served on each party, and filed with the Director by the party or parties ordered to make the transcription or electing to make the stenographic record, as applicable.[74]

b. Executive Sessions

Executive sessions are discussions among arbitrators outside the presence of the parties and their representatives, witnesses and stenographers and are not recorded as they are not part of the official record of the hearing. For transparency and consistency, the proposed rule change would amend the Codes to provide that executive sessions held by the panel will not be recorded.[75]

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72 See FINRA Rules 12606(a)(2) and 13606(a)(2).

73 See FINRA Rules 12606(a) and 13606(b).

74 See proposed Rules 12606(a)(2), 13606(a)(2), 12606(b)(2) and 13606(b)(2).

75 See proposed Rules 12606(a)(1) and 13606(a)(1).

11. Dismissal of Proceedings for Insufficient Service

Under the Codes, parties, except for pro se parties, must serve all pleadings and other documents through the Party Portal, and service is accomplished on the day of submission through the Party Portal.[76] If a party who is served fails to submit an answer, DRS reviews the service history with the panel and asks the panel to decide whether service is complete and sufficient upon the unresponsive party before the case may proceed to hearing.[77] The Codes do not address, however, what action a panel may take if the panel determines that service on the unresponsive party was insufficient. In practice, if the panel determines that service was insufficient, the panel may dismiss the claim or arbitration without prejudice.

For transparency and consistency, the proposed rule change would codify current practice by amending the Codes to provide that the panel may dismiss without prejudice a claim or an arbitration for lack of sufficient service upon a respondent.[78]

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76 See FINRA Rules 12300(c) and 13300(c).

77 See FINRA, Initial Prehearing Conference Script for Panel Cases, https://www.finra.org/sites/default/files/2022-08/iphc_script_panel_cases.pdf.

78 See proposed Rules 12700(c) and 13700(c). In addition, while FINRA Rules 12700(b) and 13700(b) currently include cross-references to other rules in which a panel may dismiss a claim or an arbitration, the rules do not include a cross-reference to FINRA Rules 12504 or 13504, as applicable. Thus, the proposed rule change would amend FINRA Rules 12700(b) and 13700(b) to include a cross-reference to FINRA Rules 12504 or 13504, as applicable, which would clarify that a panel may dismiss a claim or an arbitration prior to the conclusion of a party's case in chief under very limited circumstances (i.e., if it is time-barred upon motion of a party, as a sanction for material and intentional failure to comply with an order of the panel, or if there are multiple postponements). The proposed rule change would also remove the bullets and replace them with numbers for outline numbering consistency. See proposed Rules 12700(b)(1) and 13700(b)(1).

12. Dismissal of Claimant's Claims Requires Issuance of an Award

Under the Codes, an award is a document stating the disposition of a case,[79] is final and is not subject to review or appeal,[80] and shall be made publicly available.[81] The Codes permit a panel to grant a motion to dismiss a party's case at the conclusion of the case in chief.[82] The Codes, however, do not address whether such a dismissal requires the issuance of an award. As the dismissal of all a claimant's claims disposes of the case, it is current practice to require the issuance of an award for such dismissals.[83] For transparency and consistency, the proposed rule change would codify current practice by amending the Codes to require that if a panel dismisses all of a claimant's claims at the conclusion of the case in chief, the decision must contain the elements of a written award and must be made publicly available as an award.[84]

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79 See FINRA Rules 12100(c) and 13100(c).

80 See FINRA Rules 12904(b) and 13904(b).

81 See FINRA Rules 12904(h) and 13904(h). See also FINRA, Arbitration Awards Online, https://www.finra.org/arbitration-mediation/arbitration-awards.

82 See FINRA Rules 12504(b) and 13504(b).

83 See FINRA, FINRA Dispute Resolution Services Arbitrator's Guide, https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf.

84 See proposed Rules 12504(b) and 13504(b). See also FINRA Rules 12904(e) and 13904(e). If the panel grants a motion to dismiss some but not all of the claimant's claims, the hearing would proceed as to the remaining claims and at the conclusion of the hearing, the panel would issue an award that disposes of each claim. See FINRA, FINRA Dispute Resolution Services Arbitrator's Guide, https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[85] 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.

The proposed rule change will enhance the transparency of the arbitrator selection process by addressing recommendations in the Report by codifying DRS's practice of conducting a manual review for conflicts of interest prior to sending an arbitrator list to the parties and requiring the Director to provide a written explanation to parties of the Director's decision to grant or deny a party's request to remove an arbitrator. In addition, the proposed rule change will clarify for forum users that parties may challenge an arbitrator for cause at any point after receipt of the arbitrator lists until the first hearing session begins.

The proposed rule change will address the preferences of forum users to hold prehearing conferences by video conference and of customers in simplified arbitrations to have the option to hold simplified proceedings by video conference or by telephone, unless the parties agree to another type of hearing session. It may also help facilitate parties' ability to participate or interact in such arbitration proceedings. The proposed rule change will also clarify for forum users that hearings will generally be held in person unless the parties agree to, or the panel grants a motion for, another type of hearing session.

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[85] 15 U.S.C. 78o-3(b)(6).

The proposed rule change will enhance the transparency and efficiency of the DRS arbitration forum for forum users, including investors, by codifying current practices relating to how parties must distribute transcriptions or stenographic records of hearings; clarifying that an answer with a third party claim must include an updated Submission Agreement that lists the name of the third party; clarifying the processes relating to amending pleadings and filing third party claims; codifying current practices relating to how DRS processes motions; codifying current practice that the panel appointed to the lowest numbered case makes decisions regarding combining claims; codifying current practice to allow a panel to dismiss without prejudice a claim or an arbitration for lack of sufficient service upon a respondent; clarifying that executive sessions held by the panel will not be recorded; and codifying current practice requiring a panel to render a written award if the panel grants a motion to dismiss all of the claimant's claims made after the conclusion of a party's case.

Finally, the proposed rule change will help protect forum users, including pro se parties, from the inadvertent disclosure of PCI or other information that is potentially prejudicial or inadmissible by requiring parties to redact PCI in simplified arbitrations and prohibiting parties from prematurely filing the list of documents and other materials they intend to use at a hearing with the Director.

FINRA believes the proposed rule change reflects and aligns with DRS's current practices and procedures, and enhances the transparency and efficiency of the DRS arbitration forum by codifying and clarifying these practices and procedures.

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

FINRA has undertaken an economic impact assessment to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives. As discussed below, 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 Exchange Act.

Economic Impact Assessment

A. Regulatory Need

Certain arbitration procedures are not formally described in the Codes, whereas certain other arbitration procedures are formally described in the Codes but questions arise regarding their application. This potential ambiguity may reduce the ability of parties to anticipate their future actions or obligations and thus may cause parties to incur additional costs to prepare and participate in the DRS arbitration forum. Parties and arbitrators may also incur the time to make inquiries to DRS to clarify these arbitration procedures. In addition, potential ambiguity regarding certain arbitration procedures may result in delays and slower case processing times. The proposed rule change would help address these costs by providing greater transparency and consistency regarding the arbitrator list selection process, and clarifying the application of certain procedures.

B. Economic Baseline

The economic baseline for the proposed rule change consists of the current provisions under the Codes that address the administration of arbitration proceedings.

The economic baseline also includes current practices concerning the administration of arbitration proceedings. The proposed rule change is expected to affect parties to cases in the DRS arbitration forum, their legal representatives, and arbitrators.

The proposed rule change may affect any of the cases parties file in the DRS arbitration forum. To describe the potential impact of the proposed rule change, however, FINRA uses the cases that closed from January 2017 to December 2021 ("sample period"). During the sample period, 19,141 cases closed in the DRS arbitration forum. The 19,141 cases include 12,205 cases involving one or more customers and 6,936 cases involving only industry parties.

C. Economic Impacts

Many of the proposed amendments would clarify in the Codes forum procedures and the obligations of parties and arbitrators and, in some instances, codify current practice. To the extent that these amendments would permit forum users to better understand their options or to anticipate their future actions or obligations, the proposed rule change may also increase their ability to prepare and participate in the forum. These amendments would also decrease the need for forum users to inquire with DRS when questions arise. Where the actions of parties or arbitrators vary from general current practice, clarification and codification should increase the consistency of the DRS arbitration forum. Relative to the baseline, such parties may incur costs to adhere to the proposed requirements, but there should be few such parties.

Some of the proposed amendments may have other economic effects. The proposed amendments would clarify that parties may challenge an arbitrator for cause after receipt of the arbitrator lists. To the extent that parties currently believe that they

may seek to remove an arbitrator through the challenge process only once the arbitrator is appointed, the proposed clarification may help create efficiencies in the DRS arbitration forum by minimizing potential delays from challenges to arbitrators later in the arbitration proceedings. Among the 19,141 cases that were closed during the sample period, FINRA can identify 236 challenges to remove an arbitrator in 204 cases (one percent).[86]

The proposed amendments would provide that prehearing conferences would generally be held by video conference, unless the customer requests at least 60 days before the first scheduled hearing that it be held by telephone, or the parties agree to another type of hearing session, and may affect the options parties have in arbitration. Among the 19,141 cases that were closed during the sample period, a prehearing conference was held in 14,648 cases (77 percent, with an average of 1.7 prehearing conferences held per case) and a special proceeding was held in 290 cases (two percent). For these hearings, the use of video conference would generally be used in place of telephone.

Some parties may perceive an increase in their ability to participate or interact in the hearings by video conference. As noted above, forum users have expressed a preference to hold prehearing conferences by video conference.[87] Other parties, however, may perceive a decrease. The costs to these other parties may be mitigated by their

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86 See FINRA Rules 12407 and 13410. In general, the 236 challenges relate to challenges to remove an appointed arbitrator. Information describing party challenges to remove an arbitrator from a list was not collected during the sample period.

87 See supra note 18 and accompanying text.

ability to move for another method of appearance (e.g., telephone) or to seek assistance from DRS. Parties to special proceedings held by video conference may incur additional time to prepare to present their case. This preparation may include meeting with arbitrators to ensure that all hearing participants are able to use the video conference application.[88]

The proposed amendments related to combining claims may help parties decide whether to move to combine claims and how to respond to such motions in arbitration. Among the 19,141 cases that were closed during the sample period, 143 cases (one percent) were closed and consolidated with another case. The proposed rule change may improve the ability of parties to the higher numbered case to weigh the potential benefits of combining claims (e.g., lower legal and forum fees) against the potential costs associated with having the claim decided by the panel in the lowest numbered case.

The parties to cases that combine as a result of the proposed amendments may benefit from lower legal and forum fees relative to the total fees parties would similarly incur in separate arbitrations. Parties that would choose to combine claims under the baseline due to a misunderstanding of the current practice, but not under the proposed rule change, would incur the legal and forum fees to separately arbitrate their dispute and have their claim decided by the panel to their case. The fees these parties incur may be greater than their share if they instead combined claims. The decision not to combine claims and incur the higher fees, however, results from improved information. The

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[88] The proposed amendments may ameliorate these additional costs by requiring that a customer request that a special proceeding be conducted by telephone at least 60 days before a scheduled hearing. Within the 60 days, similar to today, parties can agree to another type of hearing session

parties that do not want to combine claims, therefore, must anticipate that the higher fees are justified.

Finally, the proposed amendments would better organize the handling of certain documents and records in the DRS arbitration forum by imposing new obligations and requirements on parties. These new obligations and requirements would reduce the level of involvement by DRS, allow for more efficient document management and help protect parties from the inadvertent sharing of potentially prejudicial or confidential information. For example, the proposed rule change would prohibit parties from combining lists of documents and other materials with the witness list to help protect against the inadvertent sharing of such document lists with the arbitrators before the hearing. In addition, the proposed requirement to redact PCI from filings with claims of $50,000 or less, exclusive of interest and expenses, would benefit parties by reducing the risk of identity theft. However, parties may incur additional costs to redact this information. Among the 19,141 cases that closed during the sample period, 4,431 cases (23 percent) relate to claims of $50,000 or less. At least one party appeared pro se in less than 30 percent of the 4,431 cases. These parties may benefit from updated guidance on how to redact PCI from documents filed with DRS.[89]

D. Alternatives Considered

FINRA developed the proposed amendments over a multi-year process during which FINRA considered and modified proposals based on feedback from forum users, including investors, securities industry professionals and FINRA arbitrators. FINRA also considered the Report's recommendations to provide greater transparency and

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89 See supra note 30 and accompanying text.

consistency in the arbitrator list selection process, some of which require amendments to the Codes. In evaluating proposals, FINRA considered numerous factors including efficiency, cost, fairness and transparency, and certain tradeoffs among these factors. Codifying current practice may achieve greater efficiency and fairness by reducing uncertainty among forum users. It would also have the least impact on costs. Those amendments that do not codify current practice and are new requirements for forum users may result in the more efficient administration of cases in the DRS arbitration forum, and would not impose an undue burden. Thus, the proposed amendments strike an appropriate balance between further enhancing the DRS arbitration forum while limiting any additional costs of complying with the proposed amendments.

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

Written comments were neither solicited nor received.

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 (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2022-033 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-2022-033. This file number should be included on the subject line if e-mail 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 (http://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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2022-033 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[90]

Jill M. Peterson
Assistant Secretary

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90 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**12000. CODE OF ARBITRATION PROCEDURE FOR CUSTOMER DISPUTES**

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**12100. Definitions**

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws.

(a) through (o) No Change.

**(p) Hearing Session**

The term "hearing session" means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference. In one day, the next hearing session begins after four hours of hearing time has elapsed.

(q) through (ee) No Change.

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**12206. Time Limits**

**(a) Time Limitation on Submission of Claims**

No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The panel will resolve any questions regarding the eligibility of a claim under this [r]Rule.

**(b) Dismissal under Rule**

Dismissal of a claim under this [r]Rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this [r]Rule, the moving party agrees that if the panel dismisses a claim under this [r]Rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(1) through (3) No Change.

(4) The panel may not grant a motion under this [r]Rule unless [an in-person or telephonic] a prehearing conference on the motion is held or waived by the parties. Prehearing conferences [to consider motions] under this [r]Rule will be recorded as set forth in Rule 12606 and will generally be held by video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session.

(5) through (10) No Change.

(c) through (d) No Change.

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**12300. Filing and Serving Documents**

(a) through (c) No Change.

**(d) General Rules for Filing and Serving Documents**

(1) Redaction of Personal Confidential Information

(A) No Change.

(B) The requirements of paragraph (d)(1)(A) of this Rule [above] do not apply to documents that parties exchange with each other and do

not file with the Director, or to documents parties submit to a panel at a hearing on the merits.

[(C) The requirements of paragraphs (d)(1)(A) above do not apply to Simplified Arbitrations under Rule 12800.]

(2) No Change.

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**12303. Answering the Statement of Claim**

(a) No Change.

(b) The answer to the statement of claim may include any counterclaims against the claimant, cross claims against other respondents, or third party claims, specifying all relevant facts and remedies requested, as well as any additional documents supporting such claim. If the answer contains a third party claim, the respondent must execute a Submission Agreement that lists the name of the third party and serve the third party with the answer containing the third party claim, the Submission Agreement, and all documents previously served by any party, or sent to the parties by the Director, by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile, and must file proof of service with the Director through the Party Portal except as provided in Rule 12300(a)(2). The respondent must file the third party claim and the Submission Agreement with the Director through the Party Portal except as provided in Rule 12300(a)(2).

(c) through (d) No Change.

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**12309. Amending Pleadings or Filing Third Party Claims**

**(a) Before Panel Appointment**

Except as provided in paragraph (c) of this Rule, a party may amend a pleading or file a third party claim at any time before the panel has been appointed. Panel appointment occurs when the Director sends notice to the parties of the names of the arbitrators [on] appointed to the panel.

(1) Amending Statement of Claim Not Yet Served

To amend a statement of claim that has been filed but not yet served by the Director, the claimant must file the amended claim with the Director. The Director will then serve the Claim Notification Letter or amended statement of claim in accordance with Rules 12300 and 12301.

(2) Amending Any Other Pleading

To amend any other pleading, a party must serve the amended pleading on each party and file the amended pleading with the Director.

(3) Amendments to Add a Party or to File a Third Party Claim; Service on New Party

If a pleading is amended to add a party to the arbitration or to file a third party claim before ranked arbitrator lists are due to the Director, the party amending the pleading or filing a third party claim must serve the new party with the amended pleading or third party claim and all documents previously served by any party, or sent to the parties by the Director, by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile, and must file proof of service with the Director through the Party Portal except as provided

in Rule 12300(a)(2). Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery. The party amending the pleading or filing a third party claim must file the amended pleading or third party claim with the Director through the Party Portal except as provided in Rule 12300(a)(2).

**(b) After Panel Appointment**

(1) Panel Grants Motion to Amend a Pleading or File a Third Party Claim

[Once a panel has been appointed, a] A party may amend a pleading or file a third party claim[: (1)] if the panel grants a motion to amend a pleading or file a third party claim in accordance with Rule 12503. Motions to amend a pleading or file a third party claim must include [a copy of] the proposed amended pleading or third party claim. If the panel grants the motion to amend the pleading or file the third party claim, the amended pleading or third party claim does not need to be re-served on the other parties, the Director, or the panel, unless the panel determines otherwise[; or].

(2) Member or Associated Person Becomes Inactive

A customer may amend a pleading or file a third party claim if FINRA notifies a customer that a member or an associated person has become inactive as set forth in Rule 12202. The customer may amend a pleading or file a third party claim within 60 days of receiving notice. The customer must serve the amended pleading or third party claim on each party and file the amended pleading or third party claim with the Director.

**(c) Amendments to Add [Parties] a Party or File a Third Party Claim Once Ranked Arbitrator Lists are Due**

(1) Motion to Add a Party or File a Third Party Claim

Once the ranked arbitrator lists are due to the Director under Rule 12402(d) or Rule 12403(c), [a] no party may [only] amend a pleading to add a new party to the arbitration or file a third party claim [if:] until [(1)] a panel has been appointed and the panel grants a motion to add the party or file the third party claim. Motions to add a party or file a third party claim after panel appointment must be served on all parties, including the party to be added. The party seeking to amend the pleading or file the third party claim may serve the party to be added by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery. The party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code. The response may be filed with the Director and served on all other parties by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile [; or].

(2) Member or Associated Person Becomes Inactive

Once the ranked arbitrator lists are due to the Director under Rule 12402(d) or Rule 12403(c), a customer may amend a pleading to add a new party to the arbitration or file a third party claim if FINRA notifies a customer that a member or an associated person has become inactive as set forth in Rule 12202.

The customer may amend a pleading to add a new party to the arbitration or file a third party claim within 60 days of receiving notice. The customer may serve the party to be added by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery. The customer must serve the amended pleading or third party claim on each other party and file the amended pleading or third party claim with the Director.

**(d) Responding to an Amended Pleading**

Except as provided in Rule 12310, [A]any party may file a response to an amended pleading, provided the response is filed and served within 20 days of receipt of the amended pleading, unless the Director or panel determines otherwise.

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**12314. Combining Claims**

**(a) Director's Authority to Combine Claims**

Before ranked arbitrator lists are due to the Director under Rule 12402(d) or Rule 12403(c), the Director may combine separate but related claims into one arbitration. [Once]

**(b) Panel's Authority to Combine Claims**

(1) If a panel has been appointed to the lowest numbered case, the panel in that case may:

(A) combine separate but related claims into one arbitration; and

(B) reconsider the Director's decision under paragraph (a) upon motion of a party.

(2) If a panel has been appointed to the highest numbered case but not to the lowest numbered case, the panel appointed to the highest numbered case may:

(A) combine separate but related claims into one arbitration; and

(B) reconsider the Director's decision under paragraph (a) upon motion of a party.

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**12402. Cases with One Arbitrator**

(a) No Change.

**(b) Generating Lists**

(1) No Change.

(2) The list selection algorithm will exclude arbitrators from the list[s] based upon current conflicts of interest identified within the list selection algorithm.

(3) The Director will exclude arbitrators from the list based upon a review of current conflicts of interest not identified within the list selection algorithm. If an arbitrator is removed due to such conflicts, the list selection algorithm will randomly select an arbitrator to complete the list.

(c) through (g) No Change.

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**12403. Cases with Three Arbitrators**

**Composition of Panels**

**(a) Generating Lists**

(1) through (3) No Change.

(4) The Director will exclude arbitrators from the lists based upon a review of current conflicts of interest not identified within the list selection algorithm. If an arbitrator is removed due to such conflicts, the list selection algorithm will randomly select an arbitrator to complete the list.

(b) through (h) No Change.

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**12407. Removal of Arbitrator by Director**

**(a) Before First Hearing Session Begins**

After the Director sends the list(s) generated by the list selection algorithm to the parties, but [B]before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) through (2) No Change.

(b) No Change.

**(c) Written Explanations**

The Director shall provide to the parties a written explanation of the Director's decision to grant or deny a party's request to remove an arbitrator pursuant to paragraph (a) or (b) of this Rule.

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**12500. Initial Prehearing Conference**

(a) After the panel is appointed, the Director will schedule an Initial Prehearing Conference before the panel, except as provided in paragraph (c) of this [r]Rule.

(b) The Initial Prehearing Conference will generally be held by [telephone] video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session. Unless the parties agree otherwise, the Director must notify each party of the time and place of the Initial Prehearing Conference at least 20 days before it takes place.

(c) through (d) No Change.

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**12501. Other Prehearing Conferences**

(a) through (b) No Change.

(c) The panel will determine the time and place of any additional prehearing conferences. Prehearing conferences will generally be held by [telephone] video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session. Unless the full panel is required under Rule 12503, prehearing conferences may be held before a single arbitrator, generally the chairperson.

(d) No Change.

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**12503. Motions**

**(a) Motions**

(1) through (3) No Change.

(4) Motions to amend a pleading after panel appointment pursuant to Rule 12309(b) must [be accompanied by copies of] include the proposed amended pleading when the motion is served on the other parties and filed with the Director. If the panel grants the motion, the amended pleading does not have to be served again, unless the panel determines otherwise. Motions to amend a pleading to add a party are made pursuant to Rule 12309(c).

(b) through (c) No Change.

**(d) Sending Motions, Responses, and Replies and Additional Motion Submissions to the Panel**

The Director will send all motions, responses, and replies to the panel after the last reply date has elapsed, unless otherwise directed by the panel. After the last reply date has elapsed, if the Director receives additional submissions on the motion, the Director will forward the submissions to the panel upon receipt and the panel will then determine whether to accept them.

**(e) Authority to Decide Motions**

(1) No Change.

(2) Motions relating to [combining or separating claims or arbitrations, or] changing the hearing location, are decided by the Director before a panel is appointed, and by the panel after the panel is appointed.

(3) Motions relating to separating claims or arbitrations are decided in accordance with Rules 12312 or 12313.

(4) Motions relating to combining claims are decided in accordance with Rule 12314.

(5) Discovery-related motions are decided by one arbitrator, generally the chairperson. The arbitrator may refer such motions to the full panel either at his or her own initiative, or at the request of a party. The arbitrator must refer motions relating to privilege to the full panel at the request of a party.

([4]6) Motions for arbitrator recusal under Rule 12406 are decided by the arbitrator who is the subject of the request.

([5]7) The full panel decides all other motions, including motions relating to the eligibility of a claim under Rule 12206, unless the Code provides or the parties agree otherwise.

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**12504. Motions to Dismiss**

**(a) Motions to Dismiss Prior to Conclusion of Case in Chief**

(1) through (4) No Change.

(5) The panel may not grant a motion under this [r]Rule unless a [an in-person or telephonic] prehearing conference on the motion is held or waived by the parties. Prehearing conferences [to consider motions] under this [r]Rule will be recorded as set forth in Rule 12606 and will generally be held by video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session.

(6) through (11) No Change.

**(b) Motions to Dismiss After Conclusion of Case in Chief**

A motion to dismiss made after the conclusion of a party's case in chief is not subject to the procedures set forth in paragraph (a). If the panel grants a motion to dismiss all claims, the decision must contain the elements enumerated under Rule 12904(e) and must be made publicly available as an award.

(c) through (e) No Change.

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**12514. Prehearing Exchange of Documents and Witness Lists, and Explained Decision Requests**

**(a) Documents and Other Materials**

At least 20 days before the first scheduled hearing date, all parties must provide all other parties with copies of all documents and other materials in their possession or control that they intend to use at the hearing that have not already been produced. The parties should not file the documents with the Director or the arbitrators before the hearing. If the parties create lists of documents and other materials in their possession or control that they intend to use at the hearing and have not already been produced, the parties may serve the lists on all other parties, but shall not combine the lists with the witness lists filed with the Director pursuant to Rule 12514(b).

(b) through (d) No Change.

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**12600. Required Hearings**

(a) No Change.

(b) The hearing will generally be held in person unless the parties agree to, or the panel grants a motion for, another type of hearing session.

(c) The panel will decide the time and date of the hearing at the initial prehearing conference or otherwise in another manner.

[(c)](d) The Director will notify the parties of the time and place at least 20 days before the hearing begins, unless the parties agree to a shorter time.

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**12606. Record of Proceedings**

**(a) Tape, Digital, or Other Recording**

(1) Except as provided in paragraph (b) of this Rule, the Director will make a tape, digital, or other recording of every hearing. Executive sessions (i.e., discussions among arbitrators outside the presence of the parties and their representatives, witnesses, and stenographers) held by the panel will not be recorded. The Director will provide a copy of the recording to any party upon request.

(2) The panel may order the parties to provide a transcription of the recording. If the panel orders a transcription, copies of the transcription must be provided to each arbitrator, served on each party, and filed with the Director pursuant to Rule 12300 by the party or parties ordered to make the transcription. The panel will determine which party or parties must pay the cost of making the transcription and copies.

(3) No Change.

**(b) Stenographic Record**

(1) No Change.

(2) If the stenographic record is the official record of the proceeding, a copy must be provided by the party or parties that elected to make the stenographic record to each arbitrator, served on each other party, and filed with the Director pursuant to Rule 12300 in an electronic format. The cost of making and copying the stenographic record will be borne by the party electing to make the stenographic record, unless the panel decides that one or more other parties should bear all or part of the costs.

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**12700. Dismissal of Proceedings Prior to Award**

(a) No Change.

(b) The panel may dismiss a claim or an arbitration:

[•] (1) Upon motion of a party under Rule 12206 or Rule 12504; or

[•] (2) On its own initiative under Rule 12212(c) or Rule 12601(c).

(c) The panel may dismiss without prejudice a claim or an arbitration for lack of sufficient service upon a respondent.

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**12800. Simplified Arbitration**

(a) through (b) No Change.

**(c) Hearings**

(1) through (2) No Change.

(3) If the customer requests a hearing, the customer must select between one of two hearing options under this [r]Rule.

(A) Option One — the regular provisions of the Code relating to prehearings and hearings, including all fee provisions.

(B) Option Two — a special proceeding, subject to the regular provisions of the Code relating to prehearings and hearings, including all fee provisions, except as modified by subparagraphs (i) through (viii) of this paragraph:

(i) a special proceeding will be held by video conference, unless the customer requests at least 60 days before the first scheduled hearing that it be held by telephone [unless], or the parties agree to another [method of appearance] type of hearing session;

(ii) through (viii) No Change.

(d) through (f) No Change.

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**13000. CODE OF ARBITRATION PROCEDURE FOR INDUSTRY DISPUTES**

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**13100. Definitions**

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws.

(a) through (o) No Change.

**(p) Hearing Session**

The term "hearing session" means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference. In one day, the next hearing session begins after four hours of hearing time has elapsed.

(q) through (gg) No Change.

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**13206. Time Limits**

**(a) Time Limitation on Submission of Claims**

No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The panel will resolve any questions regarding the eligibility of a claim under this [r]Rule.

**(b) Dismissal under Rule**

Dismissal of a claim under this [r]Rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this [r]Rule, the moving party agrees that if the panel dismisses a claim under this [r]Rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(1) through (3) No Change.

(4) The panel may not grant a motion under this [r]Rule unless [an in-person or telephonic] a prehearing conference on the motion is held or waived by the parties. Prehearing conferences [to consider motions] under this [r]Rule will be recorded as set forth in Rule 13606 and will generally be held by video

conference unless the parties agree to, or the panel grants a motion for, another type of hearing session.

(5) through (10) No Change.

(c) through (d) No Change.

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**13300. Filing and Serving Documents**

(a) through (c) No Change.

**(d) General Rules for Filing and Serving Documents**

(1) Redaction of Personal Confidential Information

(A) No Change.

(B) The requirements of paragraph (d)(1)(A) of this Rule [above] do not apply to documents that parties exchange with each other and do not file with the Director or to documents parties submit to a panel at a hearing on the merits.

[(C) The requirements of paragraphs (d)(1)(A) above do not apply to Simplified Arbitrations under Rule 13800.]

(2) No Change.

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**13303. Answering the Statement of Claim**

(a) No Change.

(b) The answer to the statement of claim may include any counterclaims against the claimant, cross claims against other respondents, or third party claims, specifying all relevant facts and remedies requested, as well as any additional documents supporting

such claim. If the answer contains a third party claim, the respondent must execute a Submission Agreement that lists the name of the third party and serve the third party with the answer containing the third party claim, the Submission Agreement, and all documents previously served by any party, or sent to the parties by the Director, by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile, and must file proof of service with the Director through the Party Portal except as provided in Rule 13300(a)(2). The respondent must file the third party claim and the Submission Agreement with the Director through the Party Portal except as provided in Rule 13300(a)(2).

(c) through (d) No Change.

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**13309. Amending Pleadings or Filing Third Party Claims**

**(a) Before Panel Appointment**

Except as provided in paragraph (c) of this Rule, a party may amend a pleading or file a third party claim at any time before the panel has been appointed. Panel appointment occurs when the Director sends notice to the parties of the names of the arbitrators [on] appointed to the panel.

(1) Amending Statement of Claim Not Yet Served

To amend a statement of claim that has been filed but not yet served by the Director, the claimant must file the amended claim with the Director. The Director will then serve the Claim Notification Letter or amended statement of claim in accordance with Rules 13300 or 13301.

(2) Amending Any Other Pleading

To amend any other pleading, a party must serve the amended pleading on each party and file the amended pleading with the Director.

(3) Amendments to Add a Party or to File a Third Party Claim; Service on New Party

If a pleading is amended to add a party to the arbitration or to file a third party claim before ranked arbitrator lists are due to the Director, the party amending the pleading or filing a third party claim must serve the new party with the amended pleading or third party claim and all documents previously served by any party, or sent to the parties by the Director, by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile, and must file proof of service with the Director through the Party Portal. Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery. The party amending the pleading or filing a third party claim must file the amended pleading or third party claim with the Director through the Party Portal.

**(b) After Panel Appointment**

[Once a panel has been appointed, a] A party may only amend a pleading or file a third party claim if the panel grants a motion to amend a pleading or third party claim in accordance with Rule 13503. Motions to amend a pleading or third party claim must include [a copy of] the proposed amended pleading. If the panel grants the motion to amend the pleading or third party claim, the amended

pleading or third party claim does not need to be re-served on the other parties, the Director, or the panel, unless the panel determines otherwise.

**(c) Amendments to Add [Parties] a Party or File a Third Party Claim Once Ranked Arbitrator Lists are Due**

Once the ranked arbitrator lists are due to the Director under Rule 13404(d), no party may amend a pleading to add a new party to the arbitration or file a third party claim until a panel has been appointed and the panel grants a motion to add the party or file a third party claim. Motions to add a party or file a third party claim after panel appointment must be served on all parties, including the party to be added. The party seeking to amend the pleading may serve the party to be added by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery. The party to be added may respond to the motion in accordance with Rule 13503 without waiving any rights or objections under the Code. The response may be filed with the Director and served on all other parties by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile.

**(d) Responding to an Amended Pleading**

Except as provided in Rule 13310, [A]any party may file a response to an amended pleading, provided the response is filed and served within 20 days of receipt of the amended pleading, unless the Director or the panel determines otherwise.

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**13314. Combining Claims**

**(a) Director's Authority to Combine Claims**

Before ranked arbitrator lists are due to the Director under Rule 13404(d), the Director may combine separate but related claims into one arbitration. [Once]

**(b) Panel's Authority to Combine Claims**

(1) If a panel has been appointed to the lowest numbered case, the panel in that case may:

(A) combine separate but related claims into one arbitration; and

(B) reconsider the Director's decision under paragraph (a) upon motion of a party.

(2) If a panel has been appointed to the highest numbered case but not to the lowest numbered case, the panel appointed to the highest numbered case may:

(A) combine separate but related claims into one arbitration; and

(B) reconsider the Director's decision under paragraph (a) upon motion of a party.

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**13403. Generating and Sending Lists to the Parties**

**(a) Lists Generated in Disputes Between Members**

(1) through (4) No Change.

(5) The Director will exclude arbitrators from the lists based upon a review of conflicts of interest not identified within the list selection algorithm. If an arbitrator is removed due to such conflicts, the list selection algorithm will generate a replacement arbitrator.

**(b) Lists Generated in Disputes Between Associated Persons or Between or Among Members and Associated Persons**

(1) through (4) No Change.

(5) The Director will exclude arbitrators from the lists based upon a review of conflicts of interest not identified within the list selection algorithm. If an arbitrator is removed due to such conflicts, the list selection algorithm will randomly select an arbitrator to complete the list.

(c) No Change.

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**13410. Removal of Arbitrator by Director**

**(a) Before First Hearing Session Begins**

After the Director sends the lists generated by the list selection algorithm to the parties, but [B]before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) through (2) No Change.

(b) No Change.

**(c) Written Explanations**

The Director shall provide to the parties a written explanation of the Director's decision to grant or deny a party's request to remove an arbitrator pursuant to paragraph (a) or (b) of this Rule.

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**13500. Initial Prehearing Conference**

(a) After the panel is appointed, the Director will schedule an Initial Prehearing Conference before the panel, except as provided in paragraph (c) of this [r]Rule.

(b) The Initial Prehearing Conference will generally be held by [telephone] video conference unless the parties agree to, or the arbitrator grants a motion for, another type of hearing session. Unless the parties agree otherwise, the Director must notify each party of the time and place of the Initial Prehearing Conference at least 20 days before it takes place.

(c) through (d) No Change.

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**13501. Other Prehearing Conferences**

(a) through (b) No Change.

(c) The panel will determine the time and place of any additional prehearing conferences. Prehearing conferences will generally be held by [telephone] video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session. Unless the full panel is required under Rule 13503, prehearing conferences may be held before a single arbitrator, generally the chairperson.

(d) No Change.

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**13503. Motions**

**(a) Motions**

(1) through (3) No Change.

(4) Motions to amend a pleading after panel appointment pursuant to Rule 13309(b) must [be accompanied by copies of] include the proposed amended pleading when the motion is served on the other parties and filed with the Director. If the panel grants the motion, the amended pleading does not have to be served again, unless the panel determines otherwise. Motions to amend a pleading to add a party are made pursuant to Rule 13309(c).

(b) through (c) No Change.

**(d) Sending Motions, Responses, and Replies and Additional Motion Submissions to the Panel**

The Director will send motions, responses, and replies to the panel after the last reply date has elapsed, unless otherwise directed by the panel. After the last reply date has elapsed, if the Director receives additional submissions on the motion, the Director will forward the submissions to the panel upon receipt and the panel will determine whether to accept them.

**(e) Authority to Decide Motions**

(1) No Change.

(2) Motions relating to [combining or separating claims or arbitrations, or] changing the hearing location, are decided by the Director before a panel is appointed, and by the panel after the panel is appointed.

(3) Motions relating to separating claims or arbitrations are decided in accordance with Rules 13312 and 13313.

(4) Motions relating to combining claims are decided in accordance with Rule 13314.

(5) Discovery-related motions are decided by one arbitrator, generally the chairperson. The arbitrator may refer such motions to the full panel either at his or her own initiative, or at the request of a party. The arbitrator must refer motions relating to privilege to the full panel at the request of a party.

([4]6) Motions for arbitrator recusal under Rule 13409 are decided by the arbitrator who is the subject of the request.

([5]7) The full panel decides all other motions, including motions relating to the eligibility of a claim under Rule 13206, unless the Code provides or the parties agree otherwise.

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**13504. Motions to Dismiss**

**(a) Motions to Dismiss Prior to Conclusion of Case in Chief**

(1) through (4) No Change.

(5) The panel may not grant a motion under this [r]Rule unless a [an in-person or telephonic] prehearing conference on the motion is held or waived by the parties. Prehearing conferences [to consider motions] under this [r]Rule will be recorded as set forth in Rule 13606 and will generally be held by video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session.

(6) through (11) No Change.

**(b) Motions to Dismiss After Conclusion of Case in Chief**

A motion to dismiss made after the conclusion of a party's case in chief is not subject to the procedures set forth in paragraph (a). If the panel grants a

motion to dismiss all claims, the decision must contain the elements enumerated under Rule 13904(e) and must be made publicly available as an award.

(c) through (e) No Change.

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**13514. Prehearing Exchange of Documents and Witness Lists, and Explained Decision Requests**

**(a) Documents and Other Materials**

At least 20 days before the first scheduled hearing date, all parties must provide all other parties with copies of all documents and other materials in their possession or control that they intend to use at the hearing that have not already been produced. The parties should not file the documents with the Director or the arbitrators before the hearing. If the parties create lists of documents and other materials in their possession or control that they intend to use at the hearing that have not already been produced, the parties may serve the lists on all other parties, but shall not combine the lists with the witness lists filed with the Director pursuant to Rule 13514(b).

(b) through (d) No Change.

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**13600. Required Hearings**

(a) No Change.

(b) The hearing will generally be held in person unless the parties agree to, or the panel grants a motion for, another type of hearing session.

(c) The panel will decide the time and date of the hearing at the initial prehearing conference or otherwise in another manner.

[(c)](d) The Director will notify the parties of the time and place at least 20 days before the hearing begins, unless the parties agree to a shorter time.

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**13606. Record of Proceedings**

**(a) Tape, Digital, or Other Recording**

(1) Except as provided in paragraph (b) of this Rule, the Director will make a tape, digital, or other recording of every hearing. Executive sessions (i.e., discussions among arbitrators outside the presence of the parties, their representatives, witnesses, and stenographers) held by the panel will not be recorded. The Director will provide a copy of the recording to any party upon request.

(2) The panel may order the parties to provide a transcription of the recording. If the panel orders a transcription, copies of the transcription must be provided to each arbitrator, served on each party, and filed with the Director pursuant to Rule 13300 by the party or parties ordered to make the transcription. The panel will determine which party or parties must pay the cost of making the transcription and copies.

(3) No Change.

**(b) Stenographic Record**

(1) No Change.

(2) If the stenographic record is the official record of the proceeding, a copy must be provided by the party or parties that elected to make the stenographic record to each arbitrator, served on each other party, and filed with

the Director pursuant to Rule 13300 in an electronic format. The cost of making and copying the stenographic record will be borne by the party electing to make the stenographic record, unless the panel decides that one or more other parties should bear all or part of the costs.

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**13700. Dismissal of Proceedings Prior to Award**

(a) No Change.

(b) The panel may dismiss a claim or an arbitration:

[•] (1) Upon motion of a party under Rule 13206 or Rule 13504; or

[•] (2) On its own initiative under Rule 13212(c) or Rule 13601(c).

(c) The panel may dismiss without prejudice a claim or arbitration for lack of sufficient service upon a respondent.

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**13800. Simplified Arbitration**

(a) through (b) No Change.

**(c) Hearings**

(1) through (2) No Change.

(3) If the claimant requests a hearing, the claimant must select between one of two hearing options under this [r]Rule.

(A) Option One — the regular provisions of the Code relating to prehearings and hearings, including all fee provisions.

(B) Option Two — a special proceeding, subject to the regular provisions of the Code relating to prehearings and hearings, including all

fee provisions, except as modified by subparagraphs (i) through (vii) of this paragraph:

(i) a special proceeding will be held by video conference, unless the claimant requests at least 60 days before the first scheduled hearing that it be held by telephone [unless], or the parties agree to another [method of appearance] type of hearing session;

(ii) through (vii) No Change.

(d) through (f) No Change.

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