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

File No. * SR 2024 - * 008

Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 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 FINRA Rule 12800 (Simplified Arbitration) to Clarify and Amend the Applicability of the Document Production Lists

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 * Carissa Last Name * Laughlin

Title * Principal Counsel

E-mail * Carissa.laughlin@finra.org

Telephone * (212) 858-4115 Fax

Signature

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

Date 05/13/2024

(Title *)

By Victoria Crane

(Name *)

Vice President and Associate General Counsel

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: 2024.05.13 16:50:02 -04'00'

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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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FINRA-2024-008 19b-4.docx

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-2024-008 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-2024-008 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”),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 FINRA Code of Arbitration Procedure for Customer Disputes (“Customer Code”) to clarify and, in some instances, amend the applicability of the Document Production Lists to simplified customer arbitrations administered under FINRA Rule 12800.

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.

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

(a) Purpose

I. Overview of the Document Production Lists and Simplified Customer Arbitrations

¹ 15 U.S.C. 78s(b)(1).

FINRA Dispute Resolution Services (“DRS”) provides a Discovery Guide to supplement the discovery rules contained in the Customer Code and help guide the parties and arbitrators through the discovery process in customer arbitrations.² The Document Production Lists, which are included in the Discovery Guide and described in FINRA Rule 12506, outline presumptively discoverable documents that the parties should exchange, without arbitrator or DRS staff intervention. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member firm or associated person except in simplified customer arbitrations as explained below.³ List 1 outlines the documents that member firms and associated persons shall produce; List 2 outlines the documents that customers shall produce.⁴

The proposed rule change would affect the applicability of the Document Production Lists in simplified customer arbitrations. Simplified customer arbitrations are arbitrations in which the dispute between a customer and member firm or associated person involves \$50,000 or less, exclusive of interest and expenses.⁵ There are three types of simplified customer arbitrations. If the customer does not request a hearing, the arbitrator will render an award based on the pleadings and other materials submitted by

² See <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>. The FINRA Discovery Guide and Document Production Lists do not apply to arbitrations administered under the Code of Arbitration Procedure for Industry Disputes.

³ See FINRA Rule 12506(a).

⁴ See <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

⁵ See FINRA Rule 12800(a).

the parties (“paper cases”).⁶ If the customer requests a hearing, the customer must select between one of two hearing options.⁷ If the customer requests an Option One hearing under FINRA Rule 12800(c)(3)(A), the regular provisions of the Customer Code relating to prehearings and hearings, including all fee provisions, apply (“regular hearing”). The customer may also request an Option Two special proceeding, an abbreviated hearing, under FINRA Rule 12800(c)(3)(B) (“special proceeding”).

Currently, the Document Production Lists do not apply in paper cases and special proceedings.⁸ However, under FINRA Rule 12800(g)(1), the arbitrator may exercise discretion to choose to use relevant portions of the Document Production Lists in paper cases and special proceedings “in a manner consistent with the expedited nature of simplified proceedings.” Absent such an exercise of discretion by the arbitrator, to obtain discovery in paper cases and special proceedings, the parties must request documents and other information from each other, pursuant to FINRA Rule 12800(g)(2).⁹ Therefore,

⁶ See FINRA Rule 12800(c)(2).

⁷ See FINRA Rule 12800(c)(3).

⁸ FINRA Rule 12800(g)(1) provides that the Document Production Lists “do not apply to arbitrations subject to this rule” (i.e., paper cases and special proceedings).

⁹ FINRA Rule 12800(g)(2) provides that all production requests must be served on all other parties and filed with the Director within 30 days from the date that the last answer is due; any response or objection to a production request must be served on all other parties and filed with the Director within 10 days of the receipt of the request. The term “Director” means the Director of DRS and, unless the Customer Code provides that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority. See FINRA Rule 12100(m).

under the current Customer Code, no documents or information are presumptively discoverable in paper cases and special proceedings.

By contrast, the Document Production Lists do apply in simplified customer arbitrations in which the customer requests a regular hearing. As noted above, if the customer requests a regular hearing during the simplified customer arbitration, FINRA Rule 12800(c)(3)(A) states that the “regular provisions” of the Customer Code “relating to prehearings and hearings” apply. DRS has issued guidance clarifying this language to mean that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing.¹⁰ Consistent with this guidance, the current practice is to treat the Document Production Lists as applying in simplified customer arbitrations in which the customer requests a regular hearing.¹¹

¹⁰ See FINRA DRS Party’s Reference Guide, p. 31, <https://www.finra.org/sites/default/files/Partys-Reference-Guide.pdf> (explaining that “[t]he Document Production Lists in the Discovery Guide as described in FINRA Rule 12506 do not apply to simplified [customer] arbitrations decided on the papers or decided by special proceeding. However, the Discovery Guide does apply to simplified cases in which a customer requests a regular hearing.”). See also <https://www.finra.org/arbitration-mediation/simplified-arbitrations>.

¹¹ For cases in which the Document Production Lists apply, FINRA Rule 12506(b)(1) provides that unless the parties agree otherwise, within 60 days of the date that the answer to the statement of claim is due, or, for parties added by amendment or third party claim, within 60 days of the date that their answer is due, parties must either: (1) produce to all other parties all documents in their possession or control that are described in Document Production Lists 1 and 2; (2) identify and explain the reason that specific documents described in Document Production Lists 1 and 2 cannot be produced within the required time, and state when the documents will be produced, and serve this response on all parties and file this response with the Director; or (3) object as provided in FINRA Rule 12508 and serve this response on all parties and file this response with the Director.

II. The Proposed Rule Change

A. Proposed Amendments to the Applicability of the Document Production Lists in Paper Cases and Special Proceedings

The proposed rule change would amend FINRA Rule 12800(g)(1) to give customers in paper cases and special proceedings the option to elect at the time that they initiate an arbitration or, if they are a respondent, no later than the answer due date, whether they want the Document Production Lists to apply to all parties. Specifically, under proposed Rule 12800(g)(1)(B), FINRA Rule 12506—which describes the Document Production Lists and sets forth the timeframes for responding to the Document Production Lists—would not apply in paper cases or special proceedings “unless the customer requests that the Document Production Lists apply to all parties when initiating an arbitration pursuant to Rule 12302 or, if the customer is a respondent, no later than the answer due date pursuant to Rule 12303, regardless of the parties’ agreement to extend any answer due date.”¹² If the customer elects to apply the Document Production Lists in their case, FINRA Rule 12506 would apply. As a result, all parties would be required to produce the documents on the Document Production Lists, explain why the documents cannot be produced, or object to the production of the documents within the timeframes set forth in FINRA Rule 12506.¹³

¹² FINRA Rule 12303 provides that respondent(s) must serve each other party with an answer to the statement of claim within 45 days of receipt of the statement of claim. FINRA Rule 12207(a) provides that the parties may agree in writing to extend or modify the deadline for serving an answer.

¹³ A party must act in good faith when complying with FINRA Rule 12506(b)(1). "Good faith" means that a party must use its best efforts to produce all documents required or agreed to be produced. If a document cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document. See FINRA Rule 12506(b)(2). If a party objects to producing any

If the customer does not timely elect to apply the Document Production Lists to all parties when initiating an arbitration or, as applicable, no later than the answer due date, proposed Rule 12800(g)(1)(B) would retain the current provision in the rule that the arbitrator has the discretion to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified customer arbitrations. Additionally, proposed Rule 12800(g)(2) would retain the current provision in the rule that would permit the parties to request documents and information from each other.

Based on feedback from customer representatives, FINRA is concerned that pro se¹⁴ customers, who are the majority of customers in paper cases and special proceedings,¹⁵ may not know what documents to request from the opposing party. This lack of understanding creates the risk that parties may not obtain and, therefore, are unable to provide arbitrators with the relevant documents and information to decide paper cases and special proceedings. Providing customers in paper cases and special proceedings with the option to use the Document Production Lists could increase customer awareness and understanding of the discovery process and the likelihood that these parties are able to discover the documents and information that are relevant to their

document described in Document Production Lists 1 or 2, FINRA Rule 12508 provides that the party must specifically identify which document or requested information it is objecting to and why (e.g., a document is irrelevant to the particular dispute).

¹⁴ For purposes of the Customer Code, the term “pro se” refers to a party that is not represented by an attorney or others during an arbitration or mediation. See FINRA Rule 12100(z).

¹⁵ From 2018 to 2023, customers were a party in 1,038 paper cases and special proceedings that closed and appeared pro se in 623 of the arbitrations (60 percent).

arbitration. If the customer elects to use the Document Production Lists in a paper case or special proceeding, parties should automatically (i.e., without the need to make production requests or engage in motion practice) receive those documents and information that are relevant, or likely to lead to relevant evidence, in such customer disputes, which could help expedite the discovery process.¹⁶ In addition, this increased access to relevant documents and other information could improve the efficiency of the DRS arbitration forum to bring about outcomes (i.e., awards and settlements) in paper cases or special proceedings that are more consistent with the merits of the case.¹⁷

If the SEC approves the proposed rule change, FINRA will develop and publish guidance about discovery that will be available to all parties in simplified customer arbitrations. The guidance would, among other things, direct parties to the Discovery Guide. In addition to describing the Document Production Lists, the Discovery Guide includes information that could improve the parties' awareness and understanding of the discovery process such as information about the circumstances under which the parties may object to the production of documents on the Document Production Lists, the

¹⁶ See Securities Exchange Act Release No. 41833 (September 2, 1999), 64 FR 49256, 49260-61 (September 10, 1999) (Order Approving File No. SR-NASD-1999-07) (stating that the Document Production Lists were created “to provide parties with information that is reasonably calculated to lead to the discovery of admissible evidence in arbitrations” and that “[t]he Discovery Guide will streamline the discovery process. By creating lists of documents that should be produced in all customer arbitrations...the Discovery Guide will help expedite the discovery process and reduce the number of discovery disputes between parties, which in turn should help lower the cost of the arbitration discovery process.”). See also Securities Exchange Act Release No. 70419 (September 16, 2013), 78 FR 57916, 57920 (September 20, 2013) (Order Approving File No. SR-FINRA-2013-024) (stating that FINRA amended the Discovery Guide to “help reduce the number and limit the scope of disputes involving document production.”).

¹⁷ See infra Item 4 (discussing Economic Impact Assessment).

parties' ability to request additional documents other than those included on the Document Production Lists, the process for obtaining the production of documents from non-parties, the forms that the production of documents should take, and the parties' right to object to the production of documents based on confidentiality and privilege concerns.¹⁸

As discussed above, proposed Rule 12800(g)(1)(B) would require that the customer decide whether to apply the Document Production Lists in a paper case or special proceeding "when initiating an arbitration pursuant to Rule 12302" or "no later than the answer due date pursuant to Rule 12303, regardless of the parties' agreement to extend any answer due date."¹⁹ Thus, parties would know whether they will have to gather and eventually produce the documents on the Document Production Lists in the early stages of an arbitration case, either after the arbitration has been initiated or no later than the answer due date.²⁰ As noted above, if the SEC approves the proposed rule change, FINRA will develop and publish guidance about discovery that will be available for all parties in simplified customer arbitrations. This guidance would include

¹⁸ Nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide. FINRA encourages the parties to agree to the voluntary exchange of documents and to stipulate to various matters. See <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

¹⁹ See supra note 12 and accompanying text.

²⁰ As noted above, if the customer elects to have the Document Production Lists apply, all parties would be required to produce the documents on the Document Production Lists, explain why the documents cannot be produced, or object to the production of the documents within the timeframes set forth in FINRA Rule 12506.

information to assist customers in making an informed decision regarding whether to elect to use the Document Production Lists in their case.

Finally, the proposed rule change would give only customers the right to elect to have the Document Production Lists apply in paper cases and special proceedings because, as discussed above, a majority of the customers who appear in these types of cases are pro se and may not be familiar with the discovery process.²¹ On the other hand, few associated persons appear pro se in paper cases and special proceedings.²² FINRA understands, however, that some pro se associated persons may not be familiar with the discovery process; the guidance that FINRA plans to issue would be available to all parties, including parties who appear pro se.

Further, although only customers would have the option to choose whether the Document Production Lists would apply in their case, FINRA does not believe the proposed rule change would impose an unfair burden on industry parties or deprive them in any way of their right to obtain discoverable documents and information. If a customer elects to have the Document Production Lists apply in a paper case or special proceeding, that election would trigger production obligations for both customers and industry parties; as noted above, the documents on List 1 would be presumptively discoverable by customers, and the documents on List 2 would be presumptively discoverable by member firms and associated persons.²³ Moreover, even if a customer

²¹ See supra note 15 and accompanying text.

²² From 2018 to 2023, where they were a party, associated persons appeared pro se in 88 of the 292 customer paper cases and special proceedings that closed.

²³ See FINRA Rule 12506. See also <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

chooses not to apply the Document Production Lists in a particular case, industry parties still would have the same right that they currently have under FINRA Rule 12800(g)(2) to request the production of documents and information from the customer.

B. Proposed Amendments to Clarify the Applicability of the Document Production Lists in Simplified Customer Arbitrations when the Customer Requests a Regular Hearing

Currently, FINRA Rule 12800(c)(3)(A) states that, when a customer requests a regular hearing, the “regular provisions” of the Customer Code relating to prehearings and hearings apply. As noted above, DRS has issued guidance clarifying this language to mean that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing.²⁴ For additional clarity, the proposed rule change would codify that the Document Production Lists apply to simplified customer arbitrations in which the customer requests a regular hearing. Specifically, proposed Rule 12800(g)(1)(A) would provide that the “Document Production Lists, described in Rule 12506, apply to arbitrations in which the customer requests an Option One hearing.” The proposed rule change would increase transparency and help ensure parties are aware and understand that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.²⁵

²⁴ See supra note 10 and accompanying text.

²⁵ 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

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change will protect investors and the public interest as it will provide customers in paper cases and special proceedings with the option to use the Document Production Lists, thereby increasing customer awareness and understanding of the discovery process and the likelihood that these parties are able to discover the documents and information that are relevant to their arbitration. If the customer elects to use the Document Production Lists in a paper case or special proceeding, parties should automatically (*i.e.*, without the need to make production requests or engage in motion practice) receive those documents and information that are relevant, or likely to lead to relevant evidence, in such customer disputes, which could help expedite the discovery process. In addition, this increased access to relevant documents and other information could improve the efficiency of the DRS arbitration forum to bring about outcomes (*i.e.*, awards and settlements) in paper cases or special proceedings that are more consistent with the merits of the case.²⁷

acquisition brokers (“CABs”), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

²⁶ 15 U.S.C. 78o-3(b)(6).

²⁷ See *infra* Item 4 (discussing *Economic Impact Assessment*).

FINRA also believes that the proposed rule change will protect investors and the public interest by aligning the Customer Code with existing DRS practice and guidance that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing. Codifying this existing practice and guidance will improve transparency and enhance parties' awareness and understanding of the discovery process in simplified customer arbitrations.

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

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

Economic Impact Assessment

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.

(a) Regulatory Need

The proposed rule change addresses a concern that certain customers in simplified customer arbitrations may be at a disadvantage in obtaining relevant documents and other information useful to their cases, due to a lack of awareness and understanding of how to use the discovery process. The proposed rule change and additional guidance are anticipated to increase customer awareness, understanding and utilization of the discovery process, reducing the risk that the resulting outcomes do not reflect the actual merits of the underlying dispute.

(b) Economic Baseline

The economic baseline for the proposed rule change consists of the current provisions under the Customer Code and published guidance that address the discovery process in simplified customer arbitrations. FINRA anticipates the proposed rule change to affect the customers, industry parties, and arbitrators to simplified customer arbitrations.

To better understand the potential impacts of the proposed rule change, FINRA examines the 1,717 simplified customer arbitrations that closed from 2018 to 2023.²⁸ Simplified customer arbitrations represent 12 percent of all customer arbitrations which closed during the sample period.

As discussed above, customer representatives have provided feedback that the Customer Code provides inadequate guidance, particularly to pro se customers, regarding discovery in simplified customer arbitrations. They have reported to FINRA that customers may not know what documents to request from the opposing party. This raises concerns that parties are not obtaining and, therefore, not providing arbitrators the relevant documents and information to decide simplified customer arbitrations and that these arbitrations are not decided on a full record.

To put these concerns in context, for the 1,717 simplified customer arbitrations that closed from 2018 to 2023, FINRA identifies the number where a customer appears pro se. A higher percentage of customers appear pro se in paper cases (517 of 792 cases,

²⁸ Customers appeared as claimant in 1,650 simplified customer arbitrations, as respondent in 63 simplified customer arbitrations, and as both claimant and respondent in four cases.

65 percent) and special proceedings (106 of 246 cases, 43 percent) than in simplified customer arbitrations where they request a regular hearing (183 of 679 cases, 27 percent).

Data are not available to comprehensively describe the discovery process in the DRS arbitration forum. FINRA is therefore not able to determine the number of discovery requests in simplified customer arbitrations, the frequency of objections, and how discovery may differ by proceeding or representation type.²⁹

(c) Economic Impacts

In paper cases and special proceedings, the proposed rule change would provide customers the option to apply the Document Production Lists. Along with the planned additional guidance, this proposed rule change may increase customer awareness and understanding of the discovery process and their access to relevant documents and other information through an established framework of presumptively discoverable documents. This increased access may improve the efficiency of the DRS arbitration forum to bring about outcomes (i.e., awards and settlements) in paper cases or special proceedings that are more consistent with the merits of the case which could decrease the potential benefits to member firms and associated persons from engaging in misconduct and increase customer protection.

Paper cases and special proceedings may be decided on the merits of the case where customers appear pro se and avail themselves of discovery. The proposed rule

²⁹ Data are also not available describing, under Rule 12800(g)(1), arbitrator discretion to choose relevant portions of the Document Production Lists in paper cases and special proceedings to obtain discovery. Arbitrator use of this discretion under the baseline may indicate the need for information by customers, and an impact of the proposed rule change may be to reduce reliance on this discretion.

change, together with the guidance that would accompany it, would increase customers' awareness and understanding of their option to apply the Document Production Lists, and more generally inform them of the documents or information that may be available through discovery. The value of the additional awareness and understanding is likely greater for those customers who appear pro se and have limited knowledge of discovery than for those customers who retain an attorney or representation by a law clinic. Customers who appear pro se, however, may still have difficulty understanding the discovery process, the types of documents or information that may support their claims, and whether to apply the Document Production Lists. For some customers who appear pro se, therefore, the proposed rule change may not have the full intended effect.

When customers elect to apply the Document Production Lists in paper cases or special proceedings, parties may incur additional or fewer discovery-related costs. The additional costs customers may incur would be at their own expense. The overall impact on discovery-related costs would depend on how the number of production requests and discovery-related motions change relative to the baseline. Parties may need to produce additional documents or information described in the Document Production Lists, increasing costs relative to the baseline. On the other hand, parties may cease objecting to the production of documents that were requested in the baseline and that become presumptively discoverable. They may, however, incur additional costs objecting to the production of additional documents or information that were not requested under the baseline and which the proposed rule change makes presumptively discoverable.

The costs parties incur may also relate to the time to resolution. The proposed 60 days for parties to respond to the Document Production Lists may lengthen the time to

resolution.³⁰ The time to resolution may further lengthen if parties object to the production of documents or information that were not requested under the baseline and which the proposed rule change makes presumptively discoverable. Longer times to resolution may create additional business uncertainty for industry parties and delay the availability of funds to customers who win awards. To the extent that the application of the Document Production Lists reduces the amount of disagreement between parties and precludes the need for production requests and discovery-related motions, however, then the time to resolution may decrease and parties may benefit from a shorter time to resolution.

The greater exchange of relevant documents or information when customers elect to apply the Document Production Lists may also increase the ability of parties to settle prior to an award. Relative to arbitrating the dispute, parties who settle may incur fewer costs (e.g., attorney fees, forum fees, time to resolution) to resolve the dispute.³¹

The codification of existing DRS guidance (as detailed above) that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing should not result in material economic effects. In the experience of FINRA staff, since DRS issued additional guidance, few questions have arisen regarding the application of Document Production Lists in simplified customer arbitrations in

³⁰ As described above, under current FINRA Rule 12800(g)(2), when customers elect not to apply the Document Production Lists, all production requests must be served within 30 days from the date that the last answer is due. Any response or objection to a production request must be served within 10 days of its receipt.

³¹ Half of the 1,717 simplified customer arbitrations that closed from 2018 to 2023 settled. A higher percentage of simplified customer arbitrations settled where customers requested a regular hearing (73 percent) than in paper cases (34 percent) or special proceedings (56 percent).

which the customer requests a regular hearing. However, to the extent that parties are currently unaware of the DRS guidance and misunderstand the application of the Document Production Lists in simplified customer arbitrations, the codification of the DRS guidance could affect the discovery process.

(d) Alternatives Considered

An alternative to the proposed rule change is to automatically apply the Document Production Lists in paper cases and special proceedings without the need for the customer to make an election. Relative to the proposed rule change, all parties in paper cases and special proceedings would obtain the relevant documents and other information and further decrease the risk that arbitration outcomes do not reflect the actual merits of the underlying dispute. As discussed above, most customers appear pro se in paper cases and special proceedings and may have difficulty understanding the discovery process. Parties, however, would incur the costs associated with the application of the Document Production Lists in all cases, even when the documents and other information described on the Document Production Lists are not relevant to the case and their production may not impact arbitration outcomes.

Another alternative is to pare the Document Production Lists for paper cases and special proceedings, to the extent possible, to those documents and other information that are thought to be more relevant for these arbitrations. Relative to the proposed rule change, this alternative may decrease production costs. However, given that the Document Production Lists were designed to capture those documents that are most likely to lead to the discovery of relevant information in customer arbitrations, paring down the Document Production Lists may reduce the ability of customers to access

relevant documents and other information. It is not known how these countervailing effects may impact the decision of customers to apply the Document Production Lists and case outcomes.

Finally, an alternative to the proposed rule change is to decrease the number of days for a party to respond when customers elect to apply the Document Production Lists in paper cases and special proceedings (e.g., from 60 days to 30 days). This may reduce the extent to which the time to resolution may lengthen. Some parties, however, including customers who appear pro se, may incur additional costs to respond to the Document Production Lists within the shortened timeframe, such as by needing to obtain relevant documents on an expedited basis. Parties may also seek an extension, thereby lengthening the discovery process, nonetheless.

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.

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.³²

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.

³² 15 U.S.C. 78s(b)(2).

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2024-008)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 12800 (Simplified Arbitration) to Clarify and Amend the Applicability of the Document Production Lists

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , 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 FINRA Code of Arbitration Procedure for Customer Disputes (“Customer Code”) to clarify and, in some instances, amend the applicability of the Document Production Lists to simplified customer arbitrations administered under FINRA Rule 12800.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Overview of the Document Production Lists and Simplified Customer Arbitrations

FINRA Dispute Resolution Services (“DRS”) provides a Discovery Guide to supplement the discovery rules contained in the Customer Code and help guide the parties and arbitrators through the discovery process in customer arbitrations.³ The Document Production Lists, which are included in the Discovery Guide and described in FINRA Rule 12506, outline presumptively discoverable documents that the parties should exchange, without arbitrator or DRS staff intervention. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member firm or associated person except in simplified customer arbitrations as explained below.⁴ List 1 outlines the documents that

³ See <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>. The FINRA Discovery Guide and Document Production Lists do not apply to arbitrations administered under the Code of Arbitration Procedure for Industry Disputes.

⁴ See FINRA Rule 12506(a).

member firms and associated persons shall produce; List 2 outlines the documents that customers shall produce.⁵

The proposed rule change would affect the applicability of the Document Production Lists in simplified customer arbitrations. Simplified customer arbitrations are arbitrations in which the dispute between a customer and member firm or associated person involves \$50,000 or less, exclusive of interest and expenses.⁶ There are three types of simplified customer arbitrations. If the customer does not request a hearing, the arbitrator will render an award based on the pleadings and other materials submitted by the parties (“paper cases”).⁷ If the customer requests a hearing, the customer must select between one of two hearing options.⁸ If the customer requests an Option One hearing under FINRA Rule 12800(c)(3)(A), the regular provisions of the Customer Code relating to prehearings and hearings, including all fee provisions, apply (“regular hearing”). The customer may also request an Option Two special proceeding, an abbreviated hearing, under FINRA Rule 12800(c)(3)(B) (“special proceeding”).

Currently, the Document Production Lists do not apply in paper cases and special proceedings.⁹ However, under FINRA Rule 12800(g)(1), the arbitrator may exercise discretion to choose to use relevant portions of the Document Production Lists in paper

⁵ See <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

⁶ See FINRA Rule 12800(a).

⁷ See FINRA Rule 12800(c)(2).

⁸ See FINRA Rule 12800(c)(3).

⁹ FINRA Rule 12800(g)(1) provides that the Document Production Lists “do not apply to arbitrations subject to this rule” (i.e., paper cases and special proceedings).

cases and special proceedings “in a manner consistent with the expedited nature of simplified proceedings.” Absent such an exercise of discretion by the arbitrator, to obtain discovery in paper cases and special proceedings, the parties must request documents and other information from each other, pursuant to FINRA Rule 12800(g)(2).¹⁰ Therefore, under the current Customer Code, no documents or information are presumptively discoverable in paper cases and special proceedings.

By contrast, the Document Production Lists do apply in simplified customer arbitrations in which the customer requests a regular hearing. As noted above, if the customer requests a regular hearing during the simplified customer arbitration, FINRA Rule 12800(c)(3)(A) states that the “regular provisions” of the Customer Code “relating to prehearings and hearings” apply. DRS has issued guidance clarifying this language to mean that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing.¹¹ Consistent with this guidance, the

¹⁰ FINRA Rule 12800(g)(2) provides that all production requests must be served on all other parties and filed with the Director within 30 days from the date that the last answer is due; any response or objection to a production request must be served on all other parties and filed with the Director within 10 days of the receipt of the request. The term “Director” means the Director of DRS and, unless the Customer Code provides that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority. See FINRA Rule 12100(m).

¹¹ See FINRA DRS Party’s Reference Guide, p. 31, <https://www.finra.org/sites/default/files/Partys-Reference-Guide.pdf> (explaining that “[t]he Document Production Lists in the Discovery Guide as described in FINRA Rule 12506 do not apply to simplified [customer] arbitrations decided on the papers or decided by special proceeding. However, the Discovery Guide does apply to simplified cases in which a customer requests a regular hearing.”). See also <https://www.finra.org/arbitration-mediation/simplified-arbitrations>.

current practice is to treat the Document Production Lists as applying in simplified customer arbitrations in which the customer requests a regular hearing.¹²

II. The Proposed Rule Change

A. Proposed Amendments to the Applicability of the Document Production Lists in Paper Cases and Special Proceedings

The proposed rule change would amend FINRA Rule 12800(g)(1) to give customers in paper cases and special proceedings the option to elect at the time that they initiate an arbitration or, if they are a respondent, no later than the answer due date, whether they want the Document Production Lists to apply to all parties. Specifically, under proposed Rule 12800(g)(1)(B), FINRA Rule 12506—which describes the Document Production Lists and sets forth the timeframes for responding to the Document Production Lists—would not apply in paper cases or special proceedings “unless the customer requests that the Document Production Lists apply to all parties when initiating an arbitration pursuant to Rule 12302 or, if the customer is a respondent, no later than the answer due date pursuant to Rule 12303, regardless of the parties’ agreement to extend any answer due date.”¹³ If the customer elects to apply the Document Production Lists in

¹² For cases in which the Document Production Lists apply, FINRA Rule 12506(b)(1) provides that unless the parties agree otherwise, within 60 days of the date that the answer to the statement of claim is due, or, for parties added by amendment or third party claim, within 60 days of the date that their answer is due, parties must either: (1) produce to all other parties all documents in their possession or control that are described in Document Production Lists 1 and 2; (2) identify and explain the reason that specific documents described in Document Production Lists 1 and 2 cannot be produced within the required time, and state when the documents will be produced, and serve this response on all parties and file this response with the Director; or (3) object as provided in FINRA Rule 12508 and serve this response on all parties and file this response with the Director.

¹³ FINRA Rule 12303 provides that respondent(s) must serve each other party with an answer to the statement of claim within 45 days of receipt of the statement of

their case, FINRA Rule 12506 would apply. As a result, all parties would be required to produce the documents on the Document Production Lists, explain why the documents cannot be produced, or object to the production of the documents within the timeframes set forth in FINRA Rule 12506.¹⁴

If the customer does not timely elect to apply the Document Production Lists to all parties when initiating an arbitration or, as applicable, no later than the answer due date, proposed Rule 12800(g)(1)(B) would retain the current provision in the rule that the arbitrator has the discretion to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified customer arbitrations. Additionally, proposed Rule 12800(g)(2) would retain the current provision in the rule that would permit the parties to request documents and information from each other.

Based on feedback from customer representatives, FINRA is concerned that pro se¹⁵ customers, who are the majority of customers in paper cases and special

claim. FINRA Rule 12207(a) provides that the parties may agree in writing to extend or modify the deadline for serving an answer.

¹⁴ A party must act in good faith when complying with FINRA Rule 12506(b)(1). "Good faith" means that a party must use its best efforts to produce all documents required or agreed to be produced. If a document cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document. See FINRA Rule 12506(b)(2). If a party objects to producing any document described in Document Production Lists 1 or 2, FINRA Rule 12508 provides that the party must specifically identify which document or requested information it is objecting to and why (e.g., a document is irrelevant to the particular dispute).

¹⁵ For purposes of the Customer Code, the term "pro se" refers to a party that is not represented by an attorney or others during an arbitration or mediation. See FINRA Rule 12100(z).

proceedings,¹⁶ may not know what documents to request from the opposing party. This lack of understanding creates the risk that parties may not obtain and, therefore, are unable to provide arbitrators with the relevant documents and information to decide paper cases and special proceedings. Providing customers in paper cases and special proceedings with the option to use the Document Production Lists could increase customer awareness and understanding of the discovery process and the likelihood that these parties are able to discover the documents and information that are relevant to their arbitration. If the customer elects to use the Document Production Lists in a paper case or special proceeding, parties should automatically (*i.e.*, without the need to make production requests or engage in motion practice) receive those documents and information that are relevant, or likely to lead to relevant evidence, in such customer disputes, which could help expedite the discovery process.¹⁷ In addition, this increased access to relevant documents and other information could improve the efficiency of the

¹⁶ From 2018 to 2023, customers were a party in 1,038 paper cases and special proceedings that closed and appeared *pro se* in 623 of the arbitrations (60 percent).

¹⁷ See Securities Exchange Act Release No. 41833 (September 2, 1999), 64 FR 49256, 49260-61 (September 10, 1999) (Order Approving File No. SR-NASD-1999-07) (stating that the Document Production Lists were created “to provide parties with information that is reasonably calculated to lead to the discovery of admissible evidence in arbitrations” and that “[t]he Discovery Guide will streamline the discovery process. By creating lists of documents that should be produced in all customer arbitrations...the Discovery Guide will help expedite the discovery process and reduce the number of discovery disputes between parties, which in turn should help lower the cost of the arbitration discovery process.”). See also Securities Exchange Act Release No. 70419 (September 16, 2013), 78 FR 57916, 57920 (September 20, 2013) (Order Approving File No. SR-FINRA-2013-024) (stating that FINRA amended the Discovery Guide to “help reduce the number and limit the scope of disputes involving document production.”).

DRS arbitration forum to bring about outcomes (i.e., awards and settlements) in paper cases or special proceedings that are more consistent with the merits of the case.¹⁸

If the SEC approves the proposed rule change, FINRA will develop and publish guidance about discovery that will be available to all parties in simplified customer arbitrations. The guidance would, among other things, direct parties to the Discovery Guide. In addition to describing the Document Production Lists, the Discovery Guide includes information that could improve the parties' awareness and understanding of the discovery process such as information about the circumstances under which the parties may object to the production of documents on the Document Production Lists, the parties' ability to request additional documents other than those included on the Document Production Lists, the process for obtaining the production of documents from non-parties, the forms that the production of documents should take, and the parties' right to object to the production of documents based on confidentiality and privilege concerns.¹⁹

As discussed above, proposed Rule 12800(g)(1)(B) would require that the customer decide whether to apply the Document Production Lists in a paper case or special proceeding "when initiating an arbitration pursuant to Rule 12302" or "no later than the answer due date pursuant to Rule 12303, regardless of the parties' agreement to

¹⁸ See infra Item II.B. (discussing Economic Impact Assessment).

¹⁹ Nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide. FINRA encourages the parties to agree to the voluntary exchange of documents and to stipulate to various matters. See <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

extend any answer due date.”²⁰ Thus, parties would know whether they will have to gather and eventually produce the documents on the Document Production Lists in the early stages of an arbitration case, either after the arbitration has been initiated or no later than the answer due date.²¹ As noted above, if the SEC approves the proposed rule change, FINRA will develop and publish guidance about discovery that will be available for all parties in simplified customer arbitrations. This guidance would include information to assist customers in making an informed decision regarding whether to elect to use the Document Production Lists in their case.

Finally, the proposed rule change would give only customers the right to elect to have the Document Production Lists apply in paper cases and special proceedings because, as discussed above, a majority of the customers who appear in these types of cases are pro se and may not be familiar with the discovery process.²² On the other hand, few associated persons appear pro se in paper cases and special proceedings.²³ FINRA understands, however, that some pro se associated persons may not be familiar with the discovery process; the guidance that FINRA plans to issue would be available to all parties, including parties who appear pro se.

²⁰ See supra note 13 and accompanying text.

²¹ As noted above, if the customer elects to have the Document Production Lists apply, all parties would be required to produce the documents on the Document Production Lists, explain why the documents cannot be produced, or object to the production of the documents within the timeframes set forth in FINRA Rule 12506.

²² See supra note 16 and accompanying text.

²³ From 2018 to 2023, where they were a party, associated persons appeared pro se in 88 of the 292 customer paper cases and special proceedings that closed.

Further, although only customers would have the option to choose whether the Document Production Lists would apply in their case, FINRA does not believe the proposed rule change would impose an unfair burden on industry parties or deprive them in any way of their right to obtain discoverable documents and information. If a customer elects to have the Document Production Lists apply in a paper case or special proceeding, that election would trigger production obligations for both customers and industry parties; as noted above, the documents on List 1 would be presumptively discoverable by customers, and the documents on List 2 would be presumptively discoverable by member firms and associated persons.²⁴ Moreover, even if a customer chooses not to apply the Document Production Lists in a particular case, industry parties still would have the same right that they currently have under FINRA Rule 12800(g)(2) to request the production of documents and information from the customer.

B. Proposed Amendments to Clarify the Applicability of the Document Production Lists in Simplified Customer Arbitrations when the Customer Requests a Regular Hearing

Currently, FINRA Rule 12800(c)(3)(A) states that, when a customer requests a regular hearing, the “regular provisions” of the Customer Code relating to prehearings and hearings apply. As noted above, DRS has issued guidance clarifying this language to mean that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing.²⁵ For additional clarity, the proposed rule change would codify that the Document Production Lists apply to simplified customer

²⁴ See FINRA Rule 12506. See also <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

²⁵ See supra note 11 and accompanying text.

arbitrations in which the customer requests a regular hearing. Specifically, proposed Rule 12800(g)(1)(A) would provide that the “Document Production Lists, described in Rule 12506, apply to arbitrations in which the customer requests an Option One hearing.” The proposed rule change would increase transparency and help ensure parties are aware and understand that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.²⁶

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change will protect investors and the public interest as it will provide customers in paper cases and special proceedings with the option to use the Document Production Lists, thereby increasing customer awareness and understanding of the discovery process and the likelihood that these parties are able to discover the documents and information that are relevant to their arbitration. If the

²⁶ 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.

²⁷ 15 U.S.C. 78q-3(b)(6).

customer elects to use the Document Production Lists in a paper case or special proceeding, parties should automatically (i.e., without the need to make production requests or engage in motion practice) receive those documents and information that are relevant, or likely to lead to relevant evidence, in such customer disputes, which could help expedite the discovery process. In addition, this increased access to relevant documents and other information could improve the efficiency of the DRS arbitration forum to bring about outcomes (i.e., awards and settlements) in paper cases or special proceedings that are more consistent with the merits of the case.²⁸

FINRA also believes that the proposed rule change will protect investors and the public interest by aligning the Customer Code with existing DRS practice and guidance that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing. Codifying this existing practice and guidance will improve transparency and enhance parties' awareness and understanding of the discovery process in simplified customer arbitrations.

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

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

Economic Impact Assessment

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,

²⁸ See infra Item II.B. (discussing Economic Impact Assessment).

and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives.

(a) Regulatory Need

The proposed rule change addresses a concern that certain customers in simplified customer arbitrations may be at a disadvantage in obtaining relevant documents and other information useful to their cases, due to a lack of awareness and understanding of how to use the discovery process. The proposed rule change and additional guidance are anticipated to increase customer awareness, understanding and utilization of the discovery process, reducing the risk that the resulting outcomes do not reflect the actual merits of the underlying dispute.

(b) Economic Baseline

The economic baseline for the proposed rule change consists of the current provisions under the Customer Code and published guidance that address the discovery process in simplified customer arbitrations. FINRA anticipates the proposed rule change to affect the customers, industry parties, and arbitrators to simplified customer arbitrations.

To better understand the potential impacts of the proposed rule change, FINRA examines the 1,717 simplified customer arbitrations that closed from 2018 to 2023.²⁹ Simplified customer arbitrations represent 12 percent of all customer arbitrations which closed during the sample period.

²⁹ Customers appeared as claimant in 1,650 simplified customer arbitrations, as respondent in 63 simplified customer arbitrations, and as both claimant and respondent in four cases.

As discussed above, customer representatives have provided feedback that the Customer Code provides inadequate guidance, particularly to pro se customers, regarding discovery in simplified customer arbitrations. They have reported to FINRA that customers may not know what documents to request from the opposing party. This raises concerns that parties are not obtaining and, therefore, not providing arbitrators the relevant documents and information to decide simplified customer arbitrations and that these arbitrations are not decided on a full record.

To put these concerns in context, for the 1,717 simplified customer arbitrations that closed from 2018 to 2023, FINRA identifies the number where a customer appears pro se. A higher percentage of customers appear pro se in paper cases (517 of 792 cases, 65 percent) and special proceedings (106 of 246 cases, 43 percent) than in simplified customer arbitrations where they request a regular hearing (183 of 679 cases, 27 percent).

Data are not available to comprehensively describe the discovery process in the DRS arbitration forum. FINRA is therefore not able to determine the number of discovery requests in simplified customer arbitrations, the frequency of objections, and how discovery may differ by proceeding or representation type.³⁰

(c) Economic Impacts

In paper cases and special proceedings, the proposed rule change would provide customers the option to apply the Document Production Lists. Along with the planned

³⁰ Data are also not available describing, under Rule 12800(g)(1), arbitrator discretion to choose relevant portions of the Document Production Lists in paper cases and special proceedings to obtain discovery. Arbitrator use of this discretion under the baseline may indicate the need for information by customers, and an impact of the proposed rule change may be to reduce reliance on this discretion.

additional guidance, this proposed rule change may increase customer awareness and understanding of the discovery process and their access to relevant documents and other information through an established framework of presumptively discoverable documents. This increased access may improve the efficiency of the DRS arbitration forum to bring about outcomes (i.e., awards and settlements) in paper cases or special proceedings that are more consistent with the merits of the case which could decrease the potential benefits to member firms and associated persons from engaging in misconduct and increase customer protection.

Paper cases and special proceedings may be decided on the merits of the case where customers appear pro se and avail themselves of discovery. The proposed rule change, together with the guidance that would accompany it, would increase customers' awareness and understanding of their option to apply the Document Production Lists, and more generally inform them of the documents or information that may be available through discovery. The value of the additional awareness and understanding is likely greater for those customers who appear pro se and have limited knowledge of discovery than for those customers who retain an attorney or representation by a law clinic. Customers who appear pro se, however, may still have difficulty understanding the discovery process, the types of documents or information that may support their claims, and whether to apply the Document Production Lists. For some customers who appear pro se, therefore, the proposed rule change may not have the full intended effect.

When customers elect to apply the Document Production Lists in paper cases or special proceedings, parties may incur additional or fewer discovery-related costs. The additional costs customers may incur would be at their own expense. The overall impact

on discovery-related costs would depend on how the number of production requests and discovery-related motions change relative to the baseline. Parties may need to produce additional documents or information described in the Document Production Lists, increasing costs relative to the baseline. On the other hand, parties may cease objecting to the production of documents that were requested in the baseline and that become presumptively discoverable. They may, however, incur additional costs objecting to the production of additional documents or information that were not requested under the baseline and which the proposed rule change makes presumptively discoverable.

The costs parties incur may also relate to the time to resolution. The proposed 60 days for parties to respond to the Document Production Lists may lengthen the time to resolution.³¹ The time to resolution may further lengthen if parties object to the production of documents or information that were not requested under the baseline and which the proposed rule change makes presumptively discoverable. Longer times to resolution may create additional business uncertainty for industry parties and delay the availability of funds to customers who win awards. To the extent that the application of the Document Production Lists reduces the amount of disagreement between parties and precludes the need for production requests and discovery-related motions, however, then the time to resolution may decrease and parties may benefit from a shorter time to resolution.

³¹ As described above, under current FINRA Rule 12800(g)(2), when customers elect not to apply the Document Production Lists, all production requests must be served within 30 days from the date that the last answer is due. Any response or objection to a production request must be served within 10 days of its receipt.

The greater exchange of relevant documents or information when customers elect to apply the Document Production Lists may also increase the ability of parties to settle prior to an award. Relative to arbitrating the dispute, parties who settle may incur fewer costs (e.g., attorney fees, forum fees, time to resolution) to resolve the dispute.³²

The codification of existing DRS guidance (as detailed above) that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing should not result in material economic effects. In the experience of FINRA staff, since DRS issued additional guidance, few questions have arisen regarding the application of Document Production Lists in simplified customer arbitrations in which the customer requests a regular hearing. However, to the extent that parties are currently unaware of the DRS guidance and misunderstand the application of the Document Production Lists in simplified customer arbitrations, the codification of the DRS guidance could affect the discovery process.

(d) Alternatives Considered

An alternative to the proposed rule change is to automatically apply the Document Production Lists in paper cases and special proceedings without the need for the customer to make an election. Relative to the proposed rule change, all parties in paper cases and special proceedings would obtain the relevant documents and other information and further decrease the risk that arbitration outcomes do not reflect the actual merits of the underlying dispute. As discussed above, most customers appear pro se in paper cases and

³² Half of the 1,717 simplified customer arbitrations that closed from 2018 to 2023 settled. A higher percentage of simplified customer arbitrations settled where customers requested a regular hearing (73 percent) than in paper cases (34 percent) or special proceedings (56 percent).

special proceedings and may have difficulty understanding the discovery process.

Parties, however, would incur the costs associated with the application of the Document Production Lists in all cases, even when the documents and other information described on the Document Production Lists are not relevant to the case and their production may not impact arbitration outcomes.

Another alternative is to pare the Document Production Lists for paper cases and special proceedings, to the extent possible, to those documents and other information that are thought to be more relevant for these arbitrations. Relative to the proposed rule change, this alternative may decrease production costs. However, given that the Document Production Lists were designed to capture those documents that are most likely to lead to the discovery of relevant information in customer arbitrations, paring down the Document Production Lists may reduce the ability of customers to access relevant documents and other information. It is not known how these countervailing effects may impact the decision of customers to apply the Document Production Lists and case outcomes.

Finally, an alternative to the proposed rule change is to decrease the number of days for a party to respond when customers elect to apply the Document Production Lists in paper cases and special proceedings (e.g., from 60 days to 30 days). This may reduce the extent to which the time to resolution may lengthen. Some parties, however, including customers who appear pro se, may incur additional costs to respond to the Document Production Lists within the shortened timeframe, such as by needing to obtain relevant documents on an expedited basis. Parties may also seek an extension, thereby lengthening the discovery process, nonetheless.

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-2024-008 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2024-008. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2024-008 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.³³

Jill M. Peterson
Assistant Secretary

³³ 17 CFR 200.30-3(a)(12).

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

* * * * *

12000. CODE OF ARBITRATION PROCEDURE FOR CUSTOMER DISPUTES

* * * * *

12800. Simplified Arbitration

(a) through (f) No Change.

(g) Discovery and Additional Evidence

(1) Applicability of Document Production Lists

(A) Option One Hearing. The Document Production Lists, described in Rule 12506, [do not] apply to arbitrations [subject to this rule]in which the customer requests an Option One hearing under paragraph (c)(3)(A) of this Rule.

(B) No Hearing or Option Two Special Proceeding. Rule 12506 does not apply to arbitrations in which the customer requests no hearing, pursuant to paragraph (c)(2) of this Rule, or to arbitrations in which the customer requests an Option Two special proceeding, pursuant to paragraph (c)(3)(B) of this Rule, unless the customer requests that the Document Production Lists apply to all parties when initiating an arbitration pursuant to Rule 12302 or, if the customer is a respondent, no later than the answer due date pursuant to Rule 12303, regardless of the parties' agreement to extend any answer due date. [However,]Even if the customer does not timely request that the Document Production Lists apply to all parties, the arbitrator [may, in his or her]has the discretion[,

choose] to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified proceedings.

(2) Making Other Discovery Requests

The parties may also request documents and other information from each other. All requests for the production of documents and other information must be served on all other parties, and filed with the Director, within 30 days from the date that the last answer is due. Any response or objection to a discovery request must be served on all other parties and filed with the Director within 10 days of the receipt of the requests. The parties receiving the request must produce the requested documents or information to all other parties by serving the requested documents or information by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Parties must not file the documents with the Director. The arbitrator will resolve any discovery disputes.

(h) through (i) No Change.

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