CAMBRIDGE

VIA ELECTRONIC MAIL: pubcom@finra.org

May 11, 2022

Jennifer Piorko Mitchell
Office of the Corporate Secretary
The Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 22-09: Request for Comment on a Proposed Rule to Accelerate Arbitration Proceedings for Seriously Ill or Elderly Parties

Dear Ms. Mitchell,

Cambridge Investment Research, Inc. ("Cambridge") appreciates the opportunity to comment on the proposed rule change contemplated in RN-22-09 (the "Proposal") that would amend The Financial Industry Regulatory Authority's ("FINRA") Codes of Arbitration Procedure ("Codes"). Cambridge understands that this proposed rule change would allow any party to request accelerated processing of an arbitration proceeding if they: 1) are at least 75 years old; or 2) certify that they have received a medical diagnosis and prognosis, and that based on that information they have a reasonable belief that accelerated processing is necessary to prevent prejudicing their interest in the arbitration.

Cambridge understands that there are situations in which a party to an arbitration proceeding may have a medical condition that may necessitate an accelerated processing of the arbitration. Cambridge supports the Proposal and its applicability in certain limited circumstances; however, for the reasons detailed below, Cambridge encourages FINRA to provide additional limits and guidelines for when an accelerated arbitration proceeding would be available and, further, to consider allowing for greater flexibility in setting an accelerated arbitration schedule.

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I. Age Requirement

Cambridge encourages FINRA to establish additional limitations regarding the circumstances in which a party could request an accelerated proceeding. Specifically, Cambridge questions the necessity for a party to make a request solely due to the party being 75 years old. FINRA notes in the Proposal that the age requirement would be moderated by the medical diagnosis and prognosis qualification available under the Proposal. Cambridge agrees that individuals 75 years old or older could still qualify for the accelerated arbitration proceeding if they meet the requirements of the medical diagnosis and prognosis qualification; however, this highlights situations where one of the parties does not meet the medical qualification and is an otherwise healthy individual. Under those circumstances, it is difficult to understand the need for a healthy 75-year-old to request accelerated arbitration solely due to age.

FINRA points to published rates of adverse health conditions and mortality. As noted above and as described in the Proposal, those 75-year-olds with adverse health conditions may qualify for the accelerated arbitration proceeding under the proposed medical diagnosis and prognosis provision. Removal of the proposed age provision would best balance the need for a mechanism to allow qualifying individuals to request an accelerated proceeding with the need to maintain a fair and balanced procedural process for all parties involved in the arbitration. Therefore, Cambridge respectfully requests FINRA remove the proposed age requirement as a method for a party to request an accelerated arbitration proceeding.

II. Medical Diagnosis and Prognosis Requirement

Cambridge understands and appreciates FINRA's desire to improve the ability for parties with a medical condition to meaningfully participate in an arbitration proceeding by providing a mechanism for the party to request an accelerated arbitration. However, Cambridge encourages FINRA to provide greater clarity regarding the medical diagnosis requirement and to require more stringent requirements for requesting an accelerated proceeding due to a medical condition. These requirements would allow individuals with a qualifying medical condition to still request and obtain an accelerated proceeding while ensuring that the process is not misused and remains fair for all parties involved.

Specifically, Cambridge suggests that the party requesting an accelerated proceeding on the basis of illness be required to obtain a medical certification. The form utilized by the party requesting the accelerated proceeding could include a section in which the medical professional certifies that, to a reasonable degree of medical certainty, the party has a medical condition that would not enable the party to participate meaningfully in an arbitration proceeding within the next 18 months. This medical certification would establish the necessity for the accelerated arbitration proceeding and would prevent a party from misusing the process.

III. Accelerated Arbitration Proceeding Timeframe

Cambridge recognizes that there are circumstances in which a party may need an accelerated arbitration proceeding in order to participate meaningfully in the arbitration. However, Cambridge respectfully requests that FINRA not establish firm deadlines in an accelerated arbitration. Rather, Cambridge encourages FINRA to allow for flexibility in each situation to determine deadlines based on the circumstances.

Imposition of a pre-determined, shortened schedule in an accelerated arbitration proceeding is too rigid. Simply having a medical certification that qualifies a party for the accelerated proceeding does not indicate that all situations should be treated uniformly. The medical conditions and accommodations needed by each party could vary widely, depending on the nature of each party's circumstances. The parties to the arbitration should be encouraged to work together to determine deadlines that consider the medical condition of the qualifying party. However, in the absence of an agreement between the parties, the arbitrators should have the latitude to adjust the deadlines for the arbitration to accommodate the party with the qualifying medical condition.

A strict, shortened schedule assumes that the accelerated arbitration proceeding exists in a vacuum and does not take into consideration other factors outside of the immediate proceeding. Arbitrations are dependent on the availability of the arbitrators, particularly if the arbitration must occur within an accelerated amount of time. A pre-determined, set schedule may affect the arbitrator selection process due to the unavailability of arbitrators during the abbreviated timeframe. Further, attorneys simultaneously handle multiple cases at once. In looking at each case on its face, there is no discernable difference between the cases. However, strictly establishing an accelerated schedule requires the prioritization of the accelerated proceeding solely based on the shortened timeline and deadlines. As part of the scheduling flexibility proposed by Cambridge, these extraneous factors would be part of the considerations made by the parties and the arbitration panel when scheduling, while ultimately giving appropriate weight to the party's medical condition.

In the absence of the deadline scheduling flexibility proposed by Cambridge, several of the proposed new deadlines are too abbreviated. For example, the Proposal would shorten the deadline for an answer to a statement of claim from 45 days to 30 days. Additionally, the proposed reduction of the deadline for discovery from 60 days to 35 days nearly reduces the time in half to complete discovery requests. Arbitration lists must be ranked and returned within ten (10) days under the Proposal. This greatly reduced deadline unduly burdens the respondent in the arbitration. In many proceedings, the time period relevant to the dispute spans years, requiring respondents to collect, review and organize hundreds if not thousands of documents and communications from multiple sources and systems. This involves significant internal resources from many departments

or teams, including operations, technology, finance, supervision, and compliance. Only after documents and communications are collected can respondent's counsel begin evaluating the matter, which necessitates sufficient time to provide effective representation to their client.

In contrast, claimants and their counsel have ample time to evaluate the merits and arguments of their case prior to filing the arbitration. In most jurisdictions, the shortest statute of limitations applicable to certain claims by a claimant is two years from the date of discovery and could be as long as five or ten years. Shortening the timeframe for respondents to file the answer and discovery may deny respondents a meaningful opportunity to research and draft a well-crafted answer to the statement of claim. The absence of sufficient time to prepare an informed responsive pleading could result in significant prejudice.

Rather than shorten the deadlines as proposed, Cambridge suggests FINRA maintain the existing deadlines but consider establishing concurrent deadlines. As an example, once the statement of claim has been filed, the parties could begin working on the arbitrator rankings during the time the respondent completes the answer to the statement of claim. In this way, the overall time for the completion of the arbitration proceeding could be shortened without shortening the individual deadlines within the arbitration. At a minimum, Cambridge requests FINRA not shorten the timelines to file an answer or produce discovery to anything less than 45 days to ensure a fair and orderly process for all parties involved in the proceeding.

Cambridge appreciates the opportunity to offer comments regarding the proposed rule to accelerate arbitration proceedings for seriously ill or elderly parties. Cambridge would be happy to discuss further any of the comments or recommendations outlined in this letter.

Respectfully submitted,

/s/
Seth A. Miller
General Counsel
Executive Vice President, Chief Risk Officer