



**FINANCIAL
SERVICES
INSTITUTE**

VOICE OF INDEPENDENT
FINANCIAL SERVICES
FIRMS AND INDEPENDENT
FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

May 16, 2022

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 22-09: Proposed Rule to Accelerate Arbitration Proceedings for Seriously Ill or Elderly Parties

Dear Ms. Mitchell:

On March 16, 2022, the Financial Industry Regulatory Authority, Inc. (FINRA) published its request for public comment on Regulatory Notice 22-09, which proposed procedures to accelerate arbitration proceedings for seriously ill or elderly parties.¹ The proposed FINRA Arbitration Procedure Code revisions seek to ensure that all parties (including those who are seriously ill or are at least 75 years old) are able to participate meaningfully in FINRA arbitration by shortening certain case processing deadlines.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI supports FINRA's efforts to accelerate arbitration proceedings for those who meet the prerequisite qualifications of being seriously ill or at least 75 years old. We offer select comments on the proposal aimed at balancing the need for accelerated proceedings with ensuring the time necessary to collect and provide information needed for a panel to assess the matter before it.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 160,000 independent financial advisors, which account for approximately 52.7 percent of all producing registered representatives.³ These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).⁴

¹ FINRA Proposed Rule to Accelerate Arbitration Proceedings for Seriously Ill or Elderly Parties (March 16, 2022), [Regulatory Notice 22-09 | FINRA.org](#) (FINRA Proposal).

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

³ Cerulli Associates, Advisor Headcount 2016, on file with author.

⁴ The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$35.7 billion in economic activity. This activity, in turn, supports 408,743 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$7.2 billion annually to federal, state, and local government taxes.⁵

Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

Discussion

I. FSI Supports FINRA's Proposal to Accelerate Arbitration Proceedings for Those Who Qualify as Seriously Ill or Are At Least 75 Years Old

FINRA's proposal will 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.

FINRA's current voluntary program will accelerate arbitration proceedings, upon request, for those who have a serious health condition or are at least 65 years old. However, as FINRA has noted in its announcement, "the current program has not resulted in meaningfully shortened case processing times."⁶ The cases that do qualify for the current program close only slightly more quickly than cases that are not in the current program.⁷

For the parties who qualify, the proposal would shorten case deadlines and provide arbitrators with instructions on how quickly the arbitration should be completed. FSI members support this proposed rule as it will expedite participation in FINRA's arbitration proceedings for parties that may be otherwise prejudiced. To tailor the accelerated arbitrations to those most in need, FSI supports FINRA's decision to increase the age for these proceedings to 75 given that the proposed revisions also provide an avenue for those under the age threshold to certify, based on medical need, the need for an accelerated process. This provision ((a)(1)(B)) provides flexibility, as does (a)(3), to ensure that these accelerated arbitration procedures are applied equally across different populations (with potentially different life expectancies and health challenges). For cases that meet these criteria FINRA should review resources available to ensure that after the

dual registrant. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

⁵ Oxford Economics for the Financial Services Institute, *The Economic Impact of FSI's Members* (2020).

⁶ See FINRA Proposal.

⁷ *Id.*

statement of claim has been served and an answer filed, that a panel is promptly appointed to initiate the arbitration schedule and proceeding.

While FSI recognizes the necessity of balancing individual privacy with the potential for abuse of this accelerated process, FSI encourages FINRA to provide examples of its expectations for the type(s) of “medical diagnosis and prognosis” that would “qualify” for use of the certification. The proposed rule indicates that the “Director of Dispute Resolution Services (Director) would make an objective determination as to whether the requesting party...has submitted the required certification.” By providing the public with a better understanding of the types of situations where accelerated procedures are appropriate, it will instill confidence in this process and encourage qualified individuals to avail themselves of the certification process.

In addition, FINRA should consider possible additional avenues to those sanctions outlined in the Code to address cases where it comes to light that the certification process has been abused to ensure that these types of proceedings are reserved for those who truly need expedited consideration. It is unclear from the sanctions outlined in the Code whether the panel (or Director) could remove a matter from expedited proceedings. This may be one appropriate sanction or recourse in cases of abuse of the certification process.

II. FSI Encourages FINRA to Balance the Need for Accelerated Proceedings with Establishing a Full Factual Record to Enable the Panel to Evaluate the Matter

FSI believes that the proposed shortened discovery timeframes should be revisited to ensure that a fulsome record can be established for the arbitration panel to consider. Discovery inevitably takes time – from identifying individuals with information and knowledge at each firm to finding relevant documents, reviewing them, and producing the documents. FSI suggests the discovery deadline for items on FINRA’s Document Production Lists⁸ for customer cases should be reduced from 60 days to 45 days. The current proposal of 35 days is too short and could undercut the ability to establish a full factual record for the panel’s consideration. Similarly, FSI suggests, for the reasons noted above, that the timeframe for other discovery requests should be slightly longer than the proposed reduction to 30 days (currently 60 days is allowed) to 40 days. FSI believes that these suggested discovery deadlines are more realistic and will reduce the need for requesting extensions of time from the panel as a matter of course.

⁸ See FINRA Discovery Guide, located at <https://www.finra.org/arbitration-mediation/discovery-guide>

Conclusion

With the suggestions noted above, FSI believes that this proposal to revise FINRA's arbitration proceedings will protect investor interests, ensure efficient and timely resolution of disputes, and allow the requisite parties to meaningfully participate in FINRA arbitration. FSI applauds FINRA for its ongoing focus on protection of senior investors and vulnerable adults.

FSI is committed to constructive engagement in the regulatory process and welcomes the opportunity to work with FINRA on this and other important regulatory efforts. Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,

A handwritten signature in blue ink that reads "Robin Traxler". The signature is written in a cursive style with a long horizontal line extending to the right.

Robin Traxler
Senior Vice President, Policy & Deputy General Counsel