



St. John's University School of Law
Securities Arbitration Clinic

8000 Utopia Parkway
Belson Hall, 2nd Floor
Queens, NY 11439
Tel (718) 990-6930
Fax (718) 990-6931
www.stjohns.edu/law/sac

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VIA ONLINE SUBMISSION

Elizabeth M. Murphy
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

***Re: SR-FINRA-2012-012
Proposed Rule Change Relating to Simplified Arbitration***

Dear Ms. Murphy,

The Securities Arbitration Clinic at St. John's University School of Law appreciates the opportunity to respond to the request for comment by the U.S. Securities and Exchange Commission (the "SEC") with regard to the Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to amend FINRA Rules 12401, 12800, 13401, 13800, which set forth the requirements for simplified arbitration. As explained in greater detail below, the Clinic supports the proposed FINRA amendments to raise the limit for simplified arbitration from \$25,000 to \$50,000.

The Clinic is a not-for-profit organization where second and third year law students provide free legal services to investors. We generally represent low income and elderly clients in disputes with their brokers and brokerage firms. Our clients are investors who have been unable to obtain other legal representation and would be forced to proceed *pro se* without our services.

In addition to representing aggrieved investors, the Clinic is committed to investor protection and offers education seminars at various locations in the community. Accordingly, we have a strong interest in the rules that affect investors.

The increased limit for simplified arbitration would benefit both investors and firms. As a not-for-profit clinic we often serve low income and elderly clients who, in many cases, cannot afford the various fees associated with arbitrating their claims. The proposed changes to the simplified arbitration limit would be advantageous for our clients, as well as for investors with small claims who are intimidated by the arbitration process. First, raising the limit for simplified arbitration will allow a greater number of economically disadvantaged individuals to bring claims against their brokers without the financial burden of hearing fees, the total amount of which is unpredictable. Moreover, those parties who still desire, and can afford to pay the requisite fees, will be permitted to request a hearing even if their claim falls within the simplified arbitration threshold. Therefore, parties are not losing the ability to have their case heard as a result of this rule change. It will merely open up a simpler, faster and less expensive arbitration procedure for many claims.

Many investors with damages ranging from \$25,000 to \$50,000 are unable to obtain legal representation as the attorney's fees associated with such claims may exceed their losses. While some of these investors may be able to seek legal representation through pro bono clinics like ours, many not-for-profit legal services set restrictions on the age and net worth of the clients they choose to accept. Without attorneys willing to represent these investors, many of them will be discouraged from bringing legitimate claims to arbitration. The simplified arbitration process provides a venue for such investors who probably never have had any experience with the arbitration process, in which they will not be required to testify before arbitrators, sit through cross-examination, and figure out how to question a broker. Thus, raising the limit from \$25,000 to \$50,000 will allow a greater number of investors to pursue meritorious claims against their brokers, on a *pro se* basis.

Furthermore, the increased number of cases that will likely be conducted under the simplified procedures as a result of the higher threshold will benefit elderly individuals who may find the difficulty and expense of traveling to a FINRA office for arbitration hearings an impediment to bringing their case. Additionally, older individuals with health issues may find sitting through cross-examination at a hearing potentially detrimental to their well being. A client in this situation may be forced to pursue his or her claim for far less than the full amount of their damages in order to meet the threshold for simplified arbitration. By increasing the limit, fewer individuals will be faced with this difficult choice.

Brokerage firms should also find the increased threshold beneficial. Because simplified arbitration offers a more streamlined procedure that is less expensive for all parties involved, firms will avoid the additional costs associated with preparing for and appearing at arbitration hearings. The Clinic has had a firm consent to proceeding under the simplified arbitration procedures for more than twice the current threshold, indicating that the simplified procedures can be appealing to both sides, even for cases where damages exceed \$25,000.

Furthermore, there are two general economic factors that support raising the simplified arbitration limit. As mentioned in the FINRA filing material, the \$25,000 threshold captures only 10% of its caseload when it once captured 21% in 1998. Inflation is likely a factor in this change. The current consumer price inflation calculator indicates that \$25,000 in 1998 has the buying power of almost \$35,000 in 2012.¹ In other words, the annual rate of inflation change since 1998 was 39.1%. Just as the IRS updates the Federal Tax Code to address the effect of inflation on taxpayer income, it is logical to increase the threshold for simplified arbitration to keep pace with the effects of inflation on the filing of simplified arbitration claims. Raising the threshold to only \$35,000 to address the inflation issue would not take into account the effect of the financial crisis that began in 2008. Many investors who have suffered losses stemming from their broker's misconduct have lost even greater amounts due to the volatility of the stock market over the past few years, and not necessarily because of broker misconduct. The volume of cases filed with FINRA has increased exponentially in the wake of the 2008 market collapse. Thus, the combination of inflation and the economic downturn over the past few years have contributed to more cases falling outside of the scope of simplified arbitration process. Therefore, the limit should be raised in order to accommodate the influx of cases caused by the current financial climate in a timely manner.

As discussed above, we support the proposed rule changes as they are financially beneficial to both investors and firms and encourage this streamlined process for investors who may otherwise be wary of bringing legitimate claims. Thank you for your consideration in this important matter.

Respectfully submitted,

ST. JOHN'S UNIVERSITY SCHOOL OF LAW
SECURITIES ARBITRATION CLINIC

/s/

Anna Andreescu, Julia Iodice, and Ashley Morris
Legal Interns

Lisa A. Catalano
Director, Associate Professor of Clinical Legal Education

Christine Lazaro
Supervising Attorney

¹ According to the consumer price index inflation calculator, provided by the Bureau of Labor Statistics, \$25,000 has the same buying power as \$34,764.57 in 2012. http://www.bls.gov/data/inflation_calculator.htm