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July 23, 2014

VIA ELECTRONIC SUBMISSION

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-FINRA-2014-026, Proposed Rule Change to Amend the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes to Increase Arbitrator Honoraria and Increase Certain Arbitration Fees

Dear Ms. Murphy:

The Pace Investor Rights Clinic at Pace Law School, operating through John Jay Legal Services, Inc. (“PIRC”),¹ welcomes the opportunity to write this comment letter in support of FINRA’s proposed rule change to amend the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes to increase various forum fees and charges for the purpose of increasing arbitrator honoraria.²

PIRC supports increasing arbitrator honoraria in order to help FINRA recruit and retain a roster of high-quality arbitrators. FINRA has found that the current honoraria level is a “barrier to recruiting” and arbitrators have regularly cited the current honoraria level when leaving the roster.³ FINRA’s notice states that, in some instances, arbitrators are unwilling to comply with requests to take a new training course or to complete a survey or disclosure statement, viewing these requests as the “last straw” that prevents

¹ PIRC opened in 1997 as the nation’s first law school clinic in which J.D. students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes. See Barbara Black, *Establishing A Securities Arbitration Clinic: The Experience at Pace*, 50 J. LEGAL EDUC. 35 (2000); see also Press Release, Securities Exchange Commission, SEC Announces Pilot Securities Arbitration Clinic To Help Small Investors - Levitt Responds To Concerns Voiced At Town Meetings (Nov. 12, 1997), available at <http://www.sec.gov/news/press/pressarchive/1997/97-101.txt>.

² FINRA proposes to amend Rules 12214, 12800, 12900, 12901, 12902, and 12903 of the Customer Code and Rules 13214, 13800, 13900, 13901, 13902, and 13903 of the Industry Code. PIRC focuses its comments on the amendments to the Customer Code.

³ Securities Exchange Act Release No. 34-72479, at 39 (June 13, 2014), 78 FR 37786 (July 2, 2013) (Notice of Filing of SR-FINRA-2014-026).

them from remaining on the roster.⁴ While still below market-rate, the increased honoraria – coupled with the non-monetary benefits of serving as a FINRA arbitrator, such as learning effective arbitration skills, serving the public, and giving back to one’s community – should help FINRA achieve its goal of maintaining a high-quality roster of arbitrators.

PIRC supports FINRA’s plan to fund the increased honoraria generally through increased member surcharges and process fees for claims larger than \$250,000 and increased filing and hearing session fees for investors, associated persons, or firms for claims over \$500,000. The proposed fee increases are allocated fairly among the parties, as cases with larger claims usually require more time and labor. This fee allocation is consistent with FINRA’s goal of maintaining a just and equitable forum for parties to settle their disputes. Even with the proposed increases, FINRA’s fees remain significantly less than those of the American Arbitration Association and other similar fora, making it less likely that they will unduly burden respondent parties and member firms.

PIRC appreciates FINRA’s effort to minimize the exposure of the fee increases to the investing public. Member-respondents are better able than investor-claimants to cover these increased costs. FINRA also seeks to keep its arbitration program accessible and affordable to the parties, especially investors, by linking the largest fee increases to the larger claim amounts.

Additionally, while the per hearing session payment structure is not at issue in this rule proposal, PIRC would like to use this opportunity to comment on FINRA’s payment of arbitrators based on this structure. Hearing sessions are loosely defined as “any meeting between the parties and the arbitrator(s), including a prehearing conference with an arbitrator, which lasts four hours or less.”⁵ In our experience, most hearing sessions last significantly less than four hours and the length of each session can vary considerably. Arbitrators are thus compensated the same amount regardless of whether they hold a hearing session that lasts two hours or four hours. For this reason, PIRC recommends changing the payment structure for arbitrators from sessions of “four hours or less” to an hourly rate. This more equitable compensation structure should help eliminate unnecessary expenses to FINRA – which are passed along to claimants and members – when it pays arbitrators on a per hearing session basis, for a session that most often lasts substantially less than four hours. This proposal should also encourage arbitrators to provide parties with a full day of hearings, and not cut short hearing sessions for the arbitrators’ personal convenience. This change in compensation structure, along with the increased honoraria, should help recruit and retain high-quality arbitrators who are incentivized to manage arbitration cases efficiently and consider all arbitration issues thoroughly, resulting in proceedings that are more fair and equitable to the parties.

⁴ *Id.*

⁵ Frequently Asked Questions, Arbitrator Honorarium 1
<http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbtors/documents/arbmed/p122407.pdf> (last visited July 23, 2014).

In sum, PIRC supports the increase in arbitrator honoraria and allocation of fees, as together they should help recruit and retain a roster of high-quality arbitrators, while being funded in an equitable manner. The proposed rule change, coupled with shifting the arbitrator compensation structure to an hourly basis, should incentivize this roster of high-quality arbitrators to conduct each proceeding in a diligent and efficient manner.

Respectfully yours,

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