



April 1, 2011

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

Re: File No. SR-FINRA-2011-006 – Proposed Rule Change to Amend the Codes of Arbitration Procedure to Provide Moving Parties with a Five-day Period to Reply to Responses to Motions; Response to Comments

Dear Ms. Murphy:

The Financial Industry Regulatory Authority, Inc. (“FINRA”) hereby responds to the comments received by the Securities and Exchange Commission (“SEC”) with respect to the above rule filing. In this rule filing, FINRA is proposing to amend Rules 12206, 12503, and 12504 of the Code of Arbitration Procedure for Customer Disputes and Rules 13206, 13503, and 13504 of the Code of Arbitration Procedure for Industry Disputes (“Codes”) to provide moving parties with a five-day period to reply to responses to motions.¹

The SEC received two comments which support the proposed rule change and suggest modifications, both from securities arbitration clinics run by law schools.² The Cornell comment asks FINRA to consider amending the subpoena rules to provide for a five-day period to reply to responses to motions (instead of the current 10-day period) in order to maintain consistency in the Codes’ timeframes. FINRA is not amending the subpoena rules in the proposed rule change. Therefore, the comment is outside the scope of the proposal. However, FINRA intends to consider the suggestion for possible future rule making.

¹ See Securities Exchange Act Rel. No. 63910 (February 15, 2011), 76 FR 9840 (February 22, 2011) (File No. SR-FINRA-2011-006).

² Comments were submitted by William A. Jacobson, Esq., Associate Clinical Professor, and Director, Cornell Securities Law Clinic, and Negisa Balluku, Cornell Law School, dated March 15, 2011 (“Cornell comment”); and Lisa A. Catalano, Esq., Director and Associate Professor of Clinical Legal Education, Christine Lazaro, Esq., Supervising Attorney, Clair S. Seu, Student Intern, and Stephen Chou, Student Intern, St. John’s University School of Law Securities Arbitration Clinic, dated March 15, 2011 (“St. John’s comment”). In addition, a comment was submitted to FINRA by David M. Foster, Esq., dated March 21, 2011 (“Foster comment”). The Foster comment opposes shortening the time to respond to a motion. The proposed rule change relates to replies to responses, not to the time to respond to a motion. Therefore, the Foster comment is not germane to this rule proposal.

The St. John's comment raises a concern that the proposed five-day period to reply to a response to a motion may not provide *pro se* claimants with adequate time to prepare their replies. FINRA believes that *pro se* parties would have enough time to reply to a response to a motion under the proposed rule change. Since a *pro se* claimant would be the drafter of the initial motion, the *pro se* would be aware of the issues raised, and would only be commenting on the opposing parties' responses. If a *pro se* claimant needed additional time to reply to a response, FINRA Rule 12207(c) (Extension of Deadlines) provides that the Director may extend a deadline for good cause. In drafting the proposed rule change, FINRA sought to codify its practice relating to replies to responses to motions without causing significant delays in arbitration proceedings. Therefore, FINRA does not intend to amend the proposal in response to this comment.

The St. John's comment also raised a concern that a *pro se* claimant might assume that the absence of language setting a time to file a sur-reply implies that such a filing is impermissible. The commenter asks for additional guidance for *pro se* claimants regarding their procedural rights. FINRA does not wish to encourage additional filings by addressing sur-replies in the Codes. FINRA staff is available to explain FINRA's procedures relating to sur-replies to *pro se* claimants as the issue arises. In addition, the arbitrators managing the process often assist in educating *pro se* claimants and respondents about procedures such as motion practice. Therefore, FINRA does not intend to amend the proposal in response to this comment.

The commenter also suggests that FINRA amend the proposal to include express language limiting the scope of motion replies to those issues and facts previously raised in the motion and response. FINRA believes that the arbitrators are in the best position to determine the scope of motions and the replies thereto. If the arbitrators determine that the parties' filings are inappropriate in any way, they would address their concerns directly with the parties. Therefore, FINRA does not intend to amend the proposal in response to this comment.

FINRA believes the proposal would ensure that parties have an opportunity to brief fully the issues in dispute, and ensure that arbitrators have all the related motions papers before issuing a final decision on a motion. Therefore, FINRA asks the SEC to approve the proposed rule change as drafted. If you have any questions, please contact me by telephone at (212) 858-4481 or email at margo.hassan@finra.org.

Very truly yours,

Margo A. Hassan
Assistant Chief Counsel
FINRA Dispute Resolution