



Securities Arbitration Clinic  
St. Vincent DePaul Legal  
Program, Inc.

8000 Utopia Parkway  
Queens, NY 11439  
Tel (718) 990-6930  
Fax (718) 990-6931  
Email: [sac@stjohns.edu](mailto:sac@stjohns.edu)

VIA E-MAIL To: [pubcom@finra.org](mailto:pubcom@finra.org)

September 25, 2012

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006-1506

Re: SR-FINRA-2012-041  
Proposed Rule Change to Amend FINRA's Customer and Industry Codes Of Arbitration  
Procedure Relating to Subpoenas and to Arbitrator Authority to Direct Appearances of  
Associated Person Witnesses and Production Of Documents Without Subpoenas

Dear Ms. Asquith:

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.'s ("FINRA") proposal to amend the Customer and Industry Codes of Arbitration Procedure (collectively "Codes"). The proposed amendments provide that, when specified industry parties seek the appearance of witnesses or the production of documents from non-party FINRA members (and individuals associated with the members), FINRA arbitrators shall issue orders for the appearance of witnesses or the production of documents, rather than issuing subpoenas. As explained in greater detail below, the Clinic supports the proposed FINRA amendments mandating that arbitrators issue orders of appearance rather than subpoenas to non-party members, as well as codify the current practice that allows arbitrators to determine the reasonable production costs and to assess responsibility for paying them.

The Clinic is a not-for-profit organization in which second and third year law students provide free legal representation under attorney supervision to public investors in their securities disputes who are otherwise unable to obtain legal representation. In addition to representing investors in securities arbitrations, the Clinic also promotes investor education and protection. Accordingly, the Clinic and its clients have a strong interest in the rules governing the arbitration process at FINRA.

The proposed FINRA rule requires arbitrators to issue an order compelling the appearance of a witness or production of documents rather than using the subpoena process. The proposed rule is consistent with the implicit goal of arbitration, which is to streamline dispute resolution and, where possible, minimize the involvement of the courts. This helps maximize the efficiency of both the FINRA arbitration process and the court system itself by helping to keep FINRA subpoena disputes out of the already-clogged court dockets, and in the control of arbitrators who are most familiar with the case. We also believe that the geographical limitations placed on the issuance of subpoenas may, in some cases, severely limit the claimant's ability to compel compliance with appearance and document production orders. Simplified arbitration cases are administered in FINRA's New York office, and subpoena statutes limit the reach of subpoenas so that they may not be able to extend to key witnesses located outside of the state. By implementing a rule requiring arbitrators to issue orders of appearance or document production, which have no geographical limitations, FINRA will likely increase compliance with such orders from parties outside of the forum state, and can compel compliance through their power to sanction members.

The proposed new Rules 12512(g) and 13512(g) clarify who shall bear the cost of document production. Disputes may arise as to whether an amount is "reasonable" and who should pay it, but the proposed Rules codify the process by which the arbitrators determine in their discretion the reasonableness of the amount and who shall be responsible for payment.

Currently, the rules give arbitrators the authority to issue subpoenas to non-parties, and FINRA permits non-parties to file objections to these subpoenas as a matter of course. Proposed Rules 12512(e) and 13512(e) simply codify this process by providing that non-parties can file written objections with the Director within 10 calendar days of service. Codifying these rules provides certainty to all parties involved, and affords non-parties to the action a mechanism by which they may dispute the subpoena without having to bring the issue before the courts.

Thank you for the opportunity to comment on this proposed rule. We believe that the proposed amendments to Rules 12512, 12513, 13512, and 13513 are necessary to promote the efficiency of the FINRA arbitration process. We respectfully ask that the SEC approve this rule as proposed.

Respectfully submitted,

s/

Shane Malone  
*Student Intern*

Javier Merino  
*Student Intern*

Jonathan Weiss  
*Student Intern*

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

Christine Lazaro  
Supervising Attorney