



May 5, 2014

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

**Re: File No. SR-FINRA-2014-008 – Proposed Rule Change Relating to Protecting Personal Confidential Information in Documents Filed with FINRA Dispute Resolution; Response to Comments and Partial Amendment No. 1**

Dear Secretary:

The Financial Industry Regulatory Authority, Inc. ("FINRA") hereby responds to the comment letters received by the Securities and Exchange Commission ("SEC") with respect to the above rule filing. In this rule filing, FINRA is proposing to amend the Customer and Industry Codes of Arbitration Procedure to provide that any document that a party files with FINRA which contains an individual's Social Security number, taxpayer identification number, or financial account number ("PCI") must be redacted to include only the last four digits of any of these numbers. The proposed amendments would apply only to documents filed with FINRA. They would not apply to documents that parties exchange with each other or submit to the arbitrators at a hearing on the merits. In addition, the amendments would not apply to cases administered under the Simplified Arbitration rules.<sup>1</sup>

The SEC received six comment letters on the proposed rule change.<sup>2</sup> Five commenters expressed support, in whole or in part, for the amendments,<sup>3</sup> and one commenter confined its

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<sup>1</sup> See Securities Exchange Act Rel. No. 71608 (February 24, 2014), 79 FR 11491 (February 28, 2014) (File No. SR-FINRA-2014-008).

<sup>2</sup> Comment letters were submitted by Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated March 4, 2014 ("Caruso letter"); Nataliya Nemtseva, Student Intern, Timothy Guilmette Student Intern, Thomas Abrahamson, Student Intern, and Nicole Iannarone, Assistant Clinical Professor, Georgia State University College of Law's Investor Advocacy Clinic, dated March 14, 2014 ("Georgia State letter"); Kara Cain, Esq., Aderant CompuLaw dated March 19, 2014 ("Aderant letter"); Jason Doss, Public Investors Arbitration Bar Association, dated March 20, 2014 ("PIABA letter"); Ryan Jennings, Legal Intern, Christian Corkery, Legal Intern, and Daniel Coleman, Legal Intern, Securities Arbitration Clinic, St. Vincent DePaul Legal Program, Inc., St. John's University School of Law, dated March 20, 2014 ("St. John's letter"); and Jill I. Gross, James D. Hopkins Professor of law, Director, Investor Rights Clinic, Pace Law School, dated March 24, 2014 ("Pace letter").

<sup>3</sup> See the Caruso, Georgia State, PIABA, St. John's, and Pace letters.

comments to a concern about applying the deadlines included in the proposed rule change.<sup>4</sup> The proposal's supporters recognized the importance of protecting investors from identity theft. The Caruso letter asks the SEC to approve the proposed rule change immediately, stating that the rule change "would be beneficial – if not critical – for public investors."

### **Exemptions from the Redaction Requirements**

As stated above, the redaction requirements would not apply to: documents that parties exchange with each other; documents parties submit to the arbitrators at a hearing on the merits; or cases administered under the Simplified Arbitration rules. Four commenters raised concerns about the proposed exemptions to the redaction requirements.<sup>5</sup> The Georgia State letter states that FINRA should require redaction of all documents submitted or exchanged in all stages of every arbitration proceeding. The PIABA letter states that FINRA should exempt all pro se parties, and should not limit the exemption to claims that FINRA administers under the Simplified Arbitration rules. Like the PIABA letter, the St. John's letter states that FINRA should exempt all pro se parties. However, the St. John's letter goes further and asserts that represented parties in Simplified Arbitration proceedings (customer or industry) should not be exempt from the redaction requirements. Finally, the Gross letter objects to the exemption for Simplified Arbitration cases and suggests that FINRA be required to assist pro se parties with the redaction process. The Gross letter also suggests that FINRA include in correspondence with pro se customers an explanation of the importance of protecting confidential information.

In order to keep arbitration efficient and cost effective, when FINRA develops a rule proposal, staff carefully analyzes the impact of a proposed rule change on the stake-holders that are affected by the change. In this instance, FINRA constituents raised concerns about the burden and expense associated with redaction for all parties, and asked FINRA staff to be especially mindful of how difficult a redaction requirement would be for pro se parties who are not familiar with the practice of redacting documents.

As described in FINRA's rule filing, FINRA has procedures in place to guide its staff on how to keep confidential information safe. FINRA maintains an Information Privacy and Protection Policy, and administers Information Privacy and Protection training to all FINRA staff annually. In addition, Dispute Resolution has its own detailed procedures for protecting confidential information. The proposed rule change is intended to enhance FINRA's ongoing efforts to protect forum users' PCI. FINRA believes that given the processes already in place, the proposed exemptions from the redaction requirements provide relief from the burden of redaction at minimal risk to the parties. The commenters' concerns are addressed below.

### **Exemption for Documents Parties Exchange with Each Other or Submit to the Arbitrators at the Hearing**

The number and size of documents produced during discovery or submitted at a hearing can be voluminous, and the burden of redaction can be onerous. As explained in FINRA's rule filing, an exemption for documents parties exchange with each other or submit to arbitrators at a hearing would reduce the burden of the redaction requirements on the parties and would not raise the risk of DR staff transmitting PCI. Parties can agree to measures to protect PCI in

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<sup>4</sup> See the Aderant letter.

<sup>5</sup> See the Georgia State, PIABA, St. John's, and Gross letters.

documents they share, and can use secure shredding facilities to safely dispose of documents they use at a hearing. In addition, as a practical matter, FINRA does not receive copies of the documents parties exchange with each other during discovery and policing that exchange would be difficult.<sup>6</sup> Further, if FINRA instructed arbitrators to reject documents with PCI at a hearing, the rejection could disrupt the hearing, resulting in significant delays in completing a case. By permitting this exemption, FINRA believes it is taking a balanced approach to protecting PCI and minimizing burden on parties.

### **Exemption for Simplified Arbitration**

FINRA believes that it would be appropriate to provide an exemption for cases administered under the Simplified Arbitration rules. In Simplified Arbitration, a single arbitrator resolves the dispute; a hearing is not held unless the customer (in a customer dispute) or the claimant (in an intra-industry dispute) requests one; and the Discovery Guide's Document Production Lists do not apply. Therefore, the risk of FINRA, the parties, or arbitrators misdirecting or losing documents with PCI is reduced. In addition, there is a large concentration of pro se parties in cases administered under the Simplified rules. Finally, having a clear distinction between cases administered under the Simplified rules and all other cases makes application of the exemption straight forward for FINRA staff administering cases.

### **Proposed Steps**

For the reasons stated above, FINRA declines to amend the exemption provisions in the proposed rule change. FINRA's website has a section titled *Resources for Investors Representing Themselves in FINRA Arbitrations and Mediations*.<sup>7</sup> On this web page, FINRA describes arbitration and mediation, and explains how a pro se party can initiate a proceeding. To respond to the concerns raised about the proposed exemption for Simplified Arbitration, FINRA intends to add a discussion to this web page alerting pro se parties to the potential for identity theft associated with the disclosure of PCI and emphasizing the importance of excluding and/or redacting PCI from documents filed with FINRA. We believe this is a practical approach to alerting pro se parties to the importance of protecting PCI. In addition, FINRA staff answers parties' questions about the arbitration process on a regular basis, and if a party, pro se or otherwise, asks FINRA staff about the redaction process, FINRA staff will explain the process.

### **Additional Redaction**

The Georgia State letter requests that FINRA amend the proposed rule change to require parties to redact birthdates from documents filed with FINRA. During the development of this proposal, FINRA constituents raised concerns only about Social Security numbers, taxpayer identification numbers, and financial account numbers, as these are the identifiers most commonly found in arbitration documents. If the SEC approves the proposed rule change, FINRA will consider whether it makes sense to propose additional redaction requirements after it evaluates the efficacy of the amendments. As explained in FINRA's rule filing, in 2010 FINRA

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<sup>6</sup> See FINRA Rules 12506, 12507, 12508, 13506, 13507 and 13508 relating to discovery requests and responses/objections to discovery requests.

<sup>7</sup> This section can be found at <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/OverviewofArbitrationMediation/P230280>.

published a Notice to Parties stating that parties and their counsel should take steps to protect confidential information.<sup>8</sup> The Notice states that for example, parties can agree not to use, or to redact social security, account, or driver license numbers. To respond to the concern raised in the Georgia State letter, FINRA intends to update and reissue the Notice to Parties. The new Notice will include a reference to birth date.

The PIABA letter asserts that FINRA should require redaction of the entire Social Security number and taxpayer identification number. Georgia State and PIABA note that, in the Discovery Guide, full redaction is required for certain items in the Document Production Lists. The Discovery Guide only applies to customer cases over \$50,000. The context of the proposed rule change is much broader, and FINRA believes that the last four digits of the Social Security number, taxpayer identification number, and financial account number provide a useful way to identify parties and their accounts during an arbitration proceeding. In addition, FINRA staff notes that the Federal Rules of Civil Procedure allow parties to include the last four digits of the Social Security number and taxpayer identification number in filings made with the court.<sup>9</sup> Therefore, FINRA declines to amend the proposal as suggested.

### **Deadlines for Correcting Non-Compliant Documents**

Under the proposed rule change, if FINRA rejects a document because a party did not comply with the redaction requirement, the party has 30 days to correct the submission. The Georgia State letter suggests that FINRA give investors an additional 15 days to submit compliant documents after the 30 day period in the rule has expired. The Aderant letter asserts that the proposed rule text is unclear about which event triggers the 30-day deadline.

FINRA intends the deadline for correction to be 30 days from the time the party receives notice of non-compliance. Deficiency Rules 12307(b) and 13307(b) provide that if a claimant corrects the deficiency within 30 days from the time the claimant receives notice, FINRA will consider the claim to be filed on the date the initial claim was filed. FINRA staff believes that the deadline for all non-compliance should be the consistent, and that 30 days is sufficient. Therefore, FINRA declines to amend the deadline for submitting compliant documents under the proposed rule change.

As stated above, FINRA intends the deadline to be 30 days from the time a party receives notice of non-compliance. Therefore, for purposes of clarity, FINRA is proposing to amend the proposed rule change as follows.

Proposed additions are underlined>

### **Customer Code**

#### **12300. Filing and Serving Documents**

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(g)(1) In an electronic or paper filing with FINRA, any document that contains an individual's Social Security number, taxpayer identification number or financial account number must be

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<sup>8</sup> See <http://www.finra.org/arbitrationandmediation/arbitration/rules/noticestoarbitratorsparties/p123999>

<sup>9</sup> See FRCP Rule 5.2 Privacy Protection for Filings Made with The Court.

redacted to include only the last four digits of any of these numbers; a party shall not include the full numbers. If FINRA receives a claim, including supporting documents, with the full Social Security number, taxpayer identification number or financial account number, FINRA will deem the filing deficient under Rule 12307 and will request that the party refile the document in compliance with this paragraph. If a party files with FINRA any document not covered by Rule 12307, that contains full numbers as referenced above, FINRA will deem the filing improper and will request that the party refile the document within 30 days from the time the party receives notice. If a party refiles the document, the corrected documents will be considered filed on the date the party initially filed the documents with FINRA.

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### **12307. Deficient Claims**

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(c) The panel will not consider any counterclaim, cross claim or third party claim that is deficient. The reasons a counterclaim, cross claim or third party claim may be deficient include the reasons listed in paragraph (a). The Director will notify the party making the counterclaim, cross claim or third party claim of any deficiencies in writing. If the deficiency is corrected within 30 days from the time the party receives notice, the counterclaim, cross claim or third party claim will be considered filed on the date the initial counterclaim, cross claim or third party claim was filed with the Director. If all deficiencies are not corrected within 30 days from the time the party making the counterclaim, cross claim or third party claim receives notice of the deficiency, the panel will proceed with the arbitration as though the deficient counterclaim, cross claim or third party claim had not been made.

### **Industry Code**

#### **13300. Filing and Serving Documents**

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(g)(1) In an electronic or paper filing with FINRA, any document that contains an individual's Social Security number, taxpayer identification number or financial account number must be redacted to include only the last four digits of any of these numbers; a party shall not include the full numbers. If FINRA receives a claim, including supporting documents, with the full Social Security number, taxpayer identification number or financial account number, FINRA will deem the filing deficient under Rule 13307 and will request that the party refile the document in compliance with this paragraph. If a party files with FINRA any document not covered by Rule 13307, that contains full numbers as referenced above, FINRA will deem the filing improper and will request that the party refile the document within 30 days from the time the party receives notice. If a party refiles the document, the corrected documents will be considered filed on the date the party initially filed the documents with FINRA.

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(c) The panel will not consider any counterclaim, cross claim or third party claim that is deficient. The reasons a counterclaim, cross claim or third party claim may be deficient include the reasons listed in paragraph (a). The Director will notify the party making the counterclaim, cross claim or third party claim of any deficiencies in writing. If the deficiency is corrected within 30 days from the time the party receives notice, the counterclaim, cross claim or third party claim will be considered filed on the date the initial counterclaim, cross claim or third party claim was filed with the Director. If all deficiencies are not corrected within 30 days from the time the party making the counterclaim, cross claim or third party claim receives notice of the deficiency, the panel will proceed with the arbitration as though the deficient counterclaim, cross claim or third party claim had not been made.

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**Conclusion**

The comment letters express broad support for amending the Customer and Industry Codes of Arbitration to require parties to redact PCI. If the SEC approves the proposed rule change, FINRA intends to evaluate how the rule is working to determine if any additional changes should be made. FINRA believes that the proposed rule change is a positive step toward protecting forum users from identity theft and the accidental loss of PCI, and requests that the SEC approve the proposed rule change, with the additional amendments requested above.

If you have any questions, please contact me by telephone at (212) 858-4481 or by email at [margo.hassan@finra.org](mailto:margo.hassan@finra.org).

Very truly yours,



Margo A. Hassan  
Assistant Chief Counsel  
FINRA Dispute Resolution