

Center for Clinical Programs

Mailing Address:

PO BOX 4037
Atlanta, GA 30302-4037
Phone: (404) 413-9270
Fax : (404) 413-9145

In Person:

85 Park Place
Atlanta, GA 30303



September 7, 2016

VIA ELECTRONIC SUBMISSION

Ms. Margo Hassan
Associate Chief Counsel
FINRA Dispute Resolution
1735 K Street NW, Washington, DC 20006-1506

Re: SR-FINRA-2016-029
Comments on Proposed Rule Change to Require Portal Filing

Dear Ms. Hassan:

The Investor Advocacy Clinic ("IAC") at Georgia State University College of Law appreciates the opportunity to comment on SR-FINRA-2016-029. The IAC provides free legal representation to investors who have suffered losses from broker misconduct but who cannot obtain legal representation due to the size of their claim. Our clients are investors would not otherwise have a voice. Because we routinely represent investors who cannot afford to hire counsel in FINRA proceedings, we are uniquely positioned to comment on how the proposal may affect investors who already have difficulty pursuing legitimate, but small, claims.

We appreciate FINRA's efforts to make the dispute resolution system easier to use. The proposal that all represented parties use the Party Portal for filings¹ will undoubtedly improve efficiency and ease of access to materials in FINRA proceedings.² Moreover, the requirement that parties file discovery communications via the Party Portal will allow the panel to be more actively engaged in the discovery process and provides FINRA with additional enforcement capability concerning potential firm rule violations relating to discovery.

While we generally support the proposal, some aspects of it may reduce access to the FINRA Dispute Resolution forum by claimants with smaller claims, prompting us to raise proposed modifications to the otherwise sound proposal. First, we recommend exempting small claims from the electronic payment requirement. Second, we recommend that FINRA extend its rule requiring

¹See SR-FINRA-2016-029 at 3, available at http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-029.pdf.

² As the American Bar Association Commission on the Future of Legal Services found in their recently released report, innovative methods that increase access to justice include remote access technology and online dispute resolution, two benefits of the instant FINRA proposal. See Commission on the Future of Legal Services, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES (2016), available at <http://abafuturesreport.com/#1> (last accessed Sept. 7, 2016).

redaction of personal confidential information to all matters required to be filed via the Party Portal, including simplified cases.

1. FINRA Should Exempt Claimants with Small Claims from Remitting Fees Electronically.

FINRA should exempt simplified cases and smaller claims from the requirement that claimants pay all fees through the Party Portal. As a law school clinic, we represent clients who often are only able to proceed if they obtain fee waivers. Even if we represent clients with small claims who do not qualify for a fee waiver, we lack the infrastructure to pay their filing fees via credit card or ACH transfer. We understand that many law firms who fill an important void by representing claimants with smaller claims require that their clients directly remit payment to FINRA as these firms are unable to take on such a representation unless the client pays the fees directly to FINRA via a personal check. Without an exception allowing payment of fees by check for these small claims, we fear that the proposal will encourage parties to evade the Party Portal entirely by initiating an action on a *pro se* basis and then having counsel appear to represent them. At worst, it may discourage private attorneys from accepting clients with smaller claims entirely, resulting in more unrepresented claimants. Accordingly, we propose that parties with damages under \$100,000 be permitted to pay fees by personal check.

2. Redaction of Personal Confidential Information Should be Extended to Simplified Proceedings Filed via the Party Portal.

FINRA should revise the proposal to ensure that claimants' personal confidential information (PCI) in simplified proceedings filed via the Party Portal receive the same level of protection as that of parties in non-simplified proceedings. While the proposal includes changes to FINRA Rule 12300 that subject documents filed via the Party Portal to redaction requirements, the redaction requirements are not extended to simplified proceedings.³ This places claimants with smaller claims in a particularly vulnerable situation.

When FINRA proposed redaction of PCI in SR-FINRA-2014-008, we previously recommended that redaction of PCI be required in all proceedings, including simplified proceedings, a recommendation that was not implemented.⁴ We renew that recommendation here, and raise additional concerns regarding PCI in simplified proceedings because all represented parties in such matters will be subject to filing via the Party Portal. FINRA has, for some time, recognized the importance of protecting customer information against information security breaches.⁵ And,

³ See proposed FINRA Rule 12300(d), SR-FINRA-2016-029, at 93-94, available at http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-029.pdf.

⁴ See Georgia State Investor Advocacy Clinic comment on SR-FINRA-2014-008, at 1-2 (Mar. 14, 2014), available at <https://www.sec.gov/comments/sr-finra-2014-008/finra2014008-2.pdf> (last accessed Sept. 7, 2016) (commenting on SR-FINRA-2014-008).

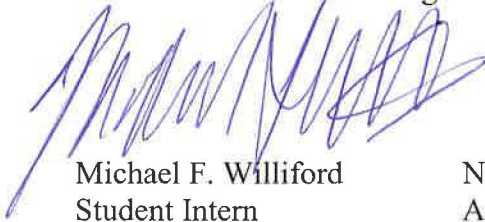
⁵ See, e.g., FINRA, *Customer Information Protection*, available at <http://www.finra.org/industry/customer-information-protection> (last accessed Sept. 7, 2016) ("Protection of financial and personal customer information is a key responsibility and obligation of FINRA member firms...Firms should be aware that customer information and records can be compromised in a variety of ways. *This is especially true for firms that offer online, Web-based*

as the FBI notes, “Some of the more prevalent schemes criminals are using these days to steal identities include...computer and network intrusions that result in the loss of personally identifiable information.”⁶ Indeed, much of the PCI involved in a simplified proceeding is of the type that, according to the FBI, can be used by criminals to engage in identity theft, including financial account numbers, birth dates, addresses, and Social Security numbers.⁷ Expanding the redaction requirement to include simplified cases filed via the Party Portal would be directly in line with FINRA’s investor protection mission. The PCI of all claimants should be protected from electronic theft, regardless of the size of the claim. While we recommend extending the requirement to *pro se* parties as well, we recognize that the risk of misuse may not be as significant (though not non-existent) if the information is not sent, received, or stored electronically via the Party Portal.

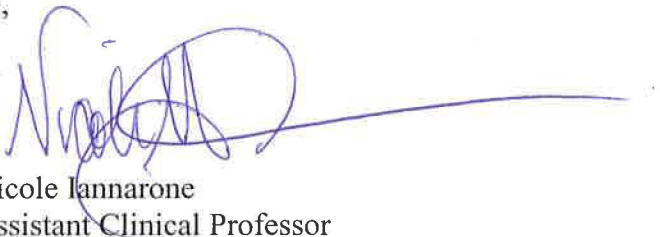
Conclusion

We commend FINRA’s efforts to streamline the dispute resolution process and we recognize the efficiency gains the Party Portal may create. We recommend minor changes to the proposal to ensure that all users of the Party Portal, including those with smaller claims, are able to effectively and safely interact with FINRA Dispute Resolution. Neither the value of counsel nor the value of PCI increase with the size of claim. All claimants deserve counsel and protection from identity theft. Thank you for the opportunity to comment, and please do not hesitate to contact us if we can provide any further information.

Best regards,



Michael F. Williford
Student Intern



Nicole Iannarone
Assistant Clinical Professor

access to trading platforms and customer account information.”) (emphasis added); see also FINRA, *Investor Alerts: Cybersecurity and Your Brokerage Firm*, available at <http://www.finra.org/investors/alerts/cybersecurity-and-your-brokerage-firm> (last accessed Sept. 7, 2016) (“Unfortunately, cyber threats to the information and computer systems of brokerage firms are increasing, and with these threats comes the risk of potential harm to investors. ***Dangers include email hack attacks, improper transfer or theft of customer assets, and misuse or even theft of customer data.***”) (emphasis added).

⁶ See FBI, *Cyber Crime*, available at <https://www.fbi.gov/investigate/cyber> (last accessed Sept. 7, 2016).

⁷ *Id.* (“Along with names, Social Security numbers, and dates of birth, fraudsters also use ... financial account numbers (i.e., bank account, credit card) ... telephone numbers...to commit identity theft.”).