



## PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

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September 7, 2016

Brent Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: SR-FINRA-2016-029. Rule Proposal Re: Dispute Resolution Party Portal

Dear Secretary Fields:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA") relating to both investor protection and disclosure.

PIABA submits this letter in response to the request for comments to SR-FINRA-2016-29, which pertains to the mandatory use of the FINRA Party Portal for all represented parties and changes to the procedural rules to implement the proposal. PIABA generally supports the proposed rule changes in that they will make the FINRA system more efficient for parties involved in arbitration.

The implementation of the proposed changes will essentially transform the FINRA dispute resolution arm into a mandatory electronic filing forum. The federal courts slowly implemented electronic filing over twenty years ago. Most state courts have either adopted or are in the process of rolling out electronic filing systems. As such, attorneys are used to the protocols associated with electronic filing. FINRA should be commended for undertaking the transformation of its arbitration and mediation arm into an electronic filing forum. A review of the rule proposal indicates that the process has been carefully considered.

As mentioned at the outset, PIABA favors the rule proposal. However, PIABA wishes to highlight a few concerns.

### CONFIDENTIALITY AND REDACTION

The rule changes, as proposed, are a bit confusing with respect to confidentiality and redaction. For example, under FINRA Rule 12300, simplified proceedings are exempt from the redaction of Social Security, tax id, and financial account numbers. If electronic filing through the Party Portal becomes mandatory, parties in simplified proceedings who file unredacted pleadings and exhibits would be exposed to a heightened risk of identity theft.

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Individual investors pursuing arbitration claims are more likely to be the victims of identity theft than broker-dealers. PIABA feels that it is best to err on the side of caution and require the redaction of *all* documents submitted through the Portal, including documents in simplified proceedings.

#### DISCOVERY CORRESPONDENCE

The proposed changes require the parties to file discovery correspondence, including requests and discovery responses/objections (but not discovery production itself), through the Party Portal. This filing would include Discovery Guide responses under Rule 12506, as well as other discovery requests under Rule 12507, which currently require service. Per the proposal, "FINRA wants parties to file their explanations about why they are not timely producing documents and why they are objecting to production. FINRA believes that having this correspondence in the Party Portal would be efficient for FINRA staff and the parties." Current Rules 12506 and 12507 require service only on the parties, and Rule 12508 expressly states "Objections should not be filed with the Director".

PIABA strongly supports the filing of discovery correspondence. PIABA has complained long and hard that respondents in FINRA arbitrations often refuse to produce even the most basic presumptively discoverable items required by the Discovery Guide. Filing discovery correspondence and responses may finally give FINRA and arbitration panels a chance to see the abuse of discovery by respondents (and may serve as a detriment in continuing such abuses). Moreover, PIABA hopes that FINRA collects information regarding the frequency and types of objections filed by financial institutions. Likewise, arbitrator chairpersons should be trained to keep an eye on discovery responses and objections in order to proactively intervene to prevent abuses and reduce the need for the parties to file discovery motions.

The proposal is unclear as to how matters involving *pro se* parties who chose not to utilize the Portal should be handled. In such an instance, it makes sense for *pro se* parties to still be required to file discovery correspondence with FINRA outside of the Party Portal. PIABA believes that brokerage firms could be less likely to engage in discovery abuse against *pro se* parties if they know FINRA can still keep an eye on the discovery process.

#### SERVICE

The rule proposal provides for instances where filings must be served by means other than the Portal. It seems that the FINRA review of this area was quite comprehensive. Nonetheless, the service requirements are spread through a number of different rules. It may be prudent for FINRA to issue a Notice to Members setting forth a list of the specific filings which must be made outside of the Party Portal once the rule is implemented. This will allow practitioners an opportunity to review all the exceptions to filing via the Portal in one place.

#### PAYMENT

The rule proposal also provides for payment of forum fees only by credit card or Automated Clearing House (ACH) payments. However, it is not uncommon for individual claimants, even when represented, to pay their filing and other forum fees by personal check. Additionally, some law school securities arbitration centers do not have the ability to pay by credit card or ACH. For these reasons, it is likely that the vast majority of fees have been and will continue to be paid by credit card or check. PIABA urges that the rule should be fashioned to also allow the payment of fees by personal check when using the Portal.

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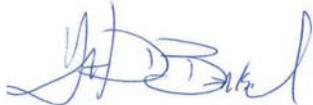
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CONCLUSION

PIABA applauds FINRA for undertaking the task of overhauling the rules and systems to implement a mandatory electronic filing system for represented parties. This rule will no doubt make the handling and processing of claims more efficient for claimants, respondents, arbitrators/mediators and FINRA staff.

Thank you for your consideration herein.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. Berkson", written in a cursive style.

Hugh Berkson, President  
PIABA

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