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September 7, 2016

Via Electronic Filing

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Release No. 34-78553; Fine No. SR-FINRA-2016-030 (Proposed Rule Amending Rule 12504 of the Code of Arbitration Procedure for Customer Disputes Relating to Motions to Dismiss in Arbitration)

Dear Mr. Errett:

The Cornell Securities Law Clinic ("Clinic") welcomes the opportunity to comment on the Proposed Rule Change to Amend Rule 12504 of the Code of Arbitration Procedure for Customer Disputes Relating to Motions to Dismiss in Arbitration ("Proposed Rule Change"). The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors and public education as to investment in the largely rural "Southern Tier" region of upstate New York. For more information, please visit: http://www.lawschool.cornell.edu/Clinical-Programs/securities-law-clinic/index.cfm.

On August 11, 2016, FINRA filed with the Securities and Exchange Commission ("SEC") this Proposed Rule Change.[1] The Proposed Rule Change amends FINRA Rule 12504, which established procedures limiting motions to dismiss in arbitration.[2] If the arbitrators grant a motion to dismiss before the close of the case in chief of the party bringing the claim, such party loses the opportunity to have his or her arbitration case heard in whole or in part by the arbitrators. FINRA therefore limited motions to dismiss because FINRA believed that industry parties were filing prehearing motions repetitively in an effort to delay scheduled hearing sessions on the merits, increase investors' costs, and intimidate less sophisticated investors. FINRA now believes that it would be appropriate to add an additional ground for arbitrators to act on motions to dismiss prior to the conclusion of the claimant's case in chief.

The Clinic opposes the Proposed Rule Change for the reasons stated below.

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[1] As always, the Clinic takes no position on Rules governing only Industry disputes, and responds here only with regard to the Customer Code.

[2] See Regulatory Notice 09-07 announcing Commission approval of new FINRA Rules 12504 and 13504 (Motions to Dismiss).

First, FINRA has not provided any statistical evidence as to the frequency of repeat claims being brought under circumstances that the Proposed Rule Change would remedy. Is this just a hypothetical, theoretical attempt to improve Rule 12504, or is this addressing an actual problem? Given the importance of Rule 12504 in preventing abusive motion to dismiss practice by industry parties, the Clinic does not believe that Rule 12504 should be broadened without a demonstrable compelling actual need.

Second, FINRA ignores the fact that there already exists a remedy for the alleged problem of repeat filing of claims, namely, the courts. Numerous courts have held that bringing duplicative claims is an unlawful collateral attack on an award, and have stayed or enjoined arbitrations. E.g., Oppenheimer & Co. Inc, v. Louis PITCH, et al., 129 A.D.3d 621 (1st Dept. 2015); see also, Prime Charter Ltd. V. Kapchan, 287 A.D.2d 419 (1st Dept. 2001). Given that determinations as to what constitutes adjudication of a prior claim may involve legal concepts of res judicata and collateral estoppel, as well as interpretation of the Federal Arbitration Act, FINRA has failed to demonstrate that the court remedy is less effective and fair to all parties.

The Clinic appreciates the opportunity to comment on the Proposed Rule Change and hopes that the SEC will consider some of the concerns raised in this comment letter to further the goals of protecting investors.

Respectfully submitted,

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