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March 8, 2018

VIA ELECTRONIC SUBMISSION

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

Re: File Number SR-FINRA-2018-003, Proposed Rule Change Relating to Simplified Arbitration

Dear Mr. Fields:

The Investor Rights Clinic at the Elisabeth Haub School of Law at Pace University, operating through John Jay Legal Services, Inc. (PIRC),[1] welcomes the opportunity to submit this letter regarding the SEC's request for comment on FINRA's proposal to amend the hearing provisions in Rules 12600 and 12800 of the Customer Code to provide an additional hearing option for parties in arbitration with claims of $50,000 or less, excluding interest and expenses.[2] Specifically, FINRA is proposing to amend Rule 12800(c) so that customers who request a hearing select between two hearing options. Option One would be the current hearing option that provides for the regular provisions of the Code relating to prehearings and hearings. Option Two would be the new, intermediate Special Proceeding, with several limiting conditions, including: a telephonic hearing format (unless the parties agree to another method of appearance), a maximum of two hearing sessions of limited duration to be completed in one day, and a prohibition against parties questioning opposing parties' witnesses or calling an opposing party as a witness. PIRC supports the intermediate hearing option, as it would provide an additional mechanism for modest means investors to have their disputes heard by a live arbitrator, eliminate the fear of cross-examination, and save both claimants and respondents time and money.

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[1] PIRC opened in 1997 as the nation's first law school clinic in which law students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes. *See* Barbara Black, *Establishing A Securities Arbitration Clinic: The Experience at Pace*, 50 J. LEGAL EDUC. 35 (2000); *see also* Press Release, Securities Exchange Commission, SEC Announces Pilot Securities Arbitration Clinic To Help Small Investors - Levitt Responds To Concerns Voiced At Town Meetings (Nov. 12, 1997), *available at* http://www.sec.gov/news/press/pressarchive/1997/97-101.txt.

[2] Due to the nature of our clinic work representing investors of modest means, we are limiting our comments to the Customer Code.

First, PIRC supports the provision of an additional mechanism for modest means investors to be heard by a live arbitrator. Currently, the Code provides two methods for administering arbitration cases with claims involving $50,000 or less. The default method is a decision by a single arbitrator based on the parties' pleadings and other materials submitted by the parties. The alternative method involves a full hearing with a single arbitrator. The new, intermediate Special Proceeding would provide modest means investors with an opportunity to explain their case to a live arbitrator. The arbitrator can use the Special Proceeding as an opportunity to assess the credibility of the parties and their witnesses and to ask questions to gain clarity on the issues in the case. Additionally, this new mechanism would benefit modest means investors representing themselves *pro se,* by alleviating the burden of producing a detailed statement of claim in the default method and preparing for cross-examination and other formalities in a full hearing.

PIRC agrees with FINRA's decision to make a telephone hearing the default format for the Special Proceeding, although we acknowledge that a videoconference or in-person hearing likely would provide a better opportunity for arbitrators to assess witness demeanor and credibility. If our clients were representing themselves *pro se*, many would not have access to videoconference equipment or have the financial means to travel to, or desire to appear at, an in-person hearing location. However, PIRC recommends that the rule be further amended to allow customers to choose whether to use an alternate method of appearance, rather than requiring the parties to agree on an alternate method. Whether the choice is the customer's or must be agreed upon by the parties, PIRC recommends that FINRA require the arbitrator to explain to the parties, during the prehearing conference, the potential for alternate methods of appearance for the hearing. This will help ensure that if customers do have access to videoconference equipment or live close to a FINRA hearing location and desire an in-person hearing, they are aware of the opportunity for an alternate method.

Second, PIRC believes that eliminating cross-examination will benefit customers who currently fear the prospect of being cross-examined. In the Special Proceeding, only the arbitrator is allowed to ask questions. Neither party is permitted to cross-examine the opposing parties' witnesses or call witnesses from the other side. One reason many of our clients choose not to request a hearing is that they fear cross-examination and seeing their broker again. The Special Proceeding option, particularly in the telephone format, alleviates these concerns.

Third, PIRC believes that the proposed rule change will save the parties time and money. Many modest means investors want the opportunity to tell their story to a live arbitrator and feel like their voices have been heard, but the travel and expenses associated with a full hearing serve as a deterrent. The Special Proceeding will eliminate travel expenses because the proceeding would take place via telephone (unless the parties agree to another method of appearance).

PIRC strongly urges the SEC to adopt FINRA's proposed rule change, as it would provide a valuable, additional mechanism to modest means investors to be heard by a live arbitrator, while eliminating the fear of cross-examination and saving parties time and money.

Respectfully submitted,

Pace Investor Rights Clinic

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