

File No. SR-FINRA-2018-003; Proposed Rule Change Relating to Simplified Arbitration

I served as Chair of the FINRA Dispute Resolution Task Force that proposed an intermediate form of adjudication for small claims. As a former director of the Securities Arbitration Clinic at Pace Law School, which represents customers with small claims in disputes with their broker-dealers, I saw firsthand the difficulties and frustrations of these investors, whose losses often represent a significant portion of their savings. In addition, as a Chair-qualified arbitrator, I appreciate the difficulties of assessing credibility on paper submissions. Although arbitrators have the power to require a full hearing, they may be understandably reluctant to overturn the customers' choice.

I am writing in my personal capacity, on the basis of my experiences, to express my wholehearted support for the proposed rule change relating to simplified arbitration. In my opinion, the proposal is a useful intermediate form of adjudication for those who want an opportunity for personal contact with an arbitrator but for whom a full hearing is infeasible or is otherwise not desired. As FINRA's statement suggests, it should be most beneficial for pro se, senior or seriously ill parties.

There are three significant differences between full hearings and the proposed Option Two Special Proceedings: (1) time limits, (2) telephonic hearing (unless parties otherwise agree), and (3) the inability to cross-examine parties and witnesses. In my view, FINRA made reasonable choices to achieve the goal of an expeditious and inexpensive form of hearing. With respect to the inability to cross-examine, to fill the void, arbitrators should be prepared to ask questions of the parties and witnesses to explore inconsistencies in their accounts of the dispute at issue, in a manner that is probing but nonthreatening. Additional arbitrator training is key to the success of this option in providing a hearing alternative that is rigorous in ascertaining the facts but also non-intimidating. FINRA states that it "intends to provide substantial training to arbitrators." In view of the importance of training, I recommend that FINRA make it a requirement for arbitrators who are selected for Option Two Special Proceedings and that FINRA give thought to creating a specially-qualified roster for these hearings.

Thank you for the opportunity to comment on the proposed rule change.

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