



Securities Arbitration Clinic
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[Via email to rule-comments@sec.gov](mailto:rule-comments@sec.gov)
Mr. Robert W. Errett, Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **SR-FINRA-2018-003**
Proposed Rule Filing Relating to Simplified Arbitration

Dear Mr. Errett:

Thank you for the opportunity to comment on FINRA's proposed rule amendment to provide an additional hearing option for parties in arbitration with claims of \$50,000 or less. We are writing this comment on behalf of the Securities Arbitration Clinic at St. John's University School of Law (the "Clinic"). The Clinic is part of the St. Vincent De Paul Legal Program, Inc., a not-for-profit legal services organization. The Clinic represents aggrieved investors with small claims, often less than \$50,000 and is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules governing the hearing options that may be available to customers when filing for an arbitration claim of \$50,000 or less.

Generally, the Clinic is supportive of the proposed amendment to add an intermediate form of adjudication that would provide claimants with an opportunity to argue their cases before an arbitrator in a shorter and more limited hearing format. This intermediate option closes a gap present between the two methods of administering arbitration cases with claims involving \$50,000 or less available under the current rules.

The Clinic agrees with FINRA's reasoning that a full hearing is often prohibitive because it is not limited in duration. Customers are often unable to seek this method due to the time and cost commitments associated with it. The Clinic further agrees that

apprehension regarding cross-examination acts as a deterrent for customers seeking to avoid a direct confrontation with their opponents and that this apprehension particularly impacts *pro se*, senior, and seriously ill parties. The Clinic also strongly agrees that customers whose cases were decided on the papers are least satisfied with the resolution of their claims. Additionally, the Clinic agrees with experienced FINRA arbitrators that it is more difficult for them to assess critical credibility issues when deciding cases solely on the papers. Customers often choose the default option of having their case decided on the papers because they are unable to afford the extensive hearing option. It is unfortunate that the default option has been shown to be less effective in providing a satisfactory resolution to customer claims.

The intermediate option closes the gap present between these two options by providing a method that is limited in time and cost. Customers would have personal contact with the arbitrator deciding the case and would have the opportunity to argue their case and respond to contentions from the other side. It would also allow the arbitrator to inquire about contentions in the papers, enabling a more comprehensive process. These limitations would successfully enable customers to have their “day in court” instead of being limited to the papers only, while also removing the negative aspects associated with unlimited hearings. Customers would also be better able to control their own participation and their individual time commitments with this method because it takes away the time and cost uncertainties associated with the hearing method.

Additionally, the Clinic is supportive of the limiting nature of this option. Limiting the hearing to two sessions to be completed in one day to be held by telephone provides a clear opportunity to present the case, rebuttal, and closing, including questions from the arbitrator. A rebuttal allows the opposing party to express their viewpoint without allowing cross-examination, which as previously noted, often creates an intimidating environment for certain customers. A telephonic format would be the most expeditious and inexpensive. In the present environment, the travel costs associated with the hearing option varies depending on where an individual is located. A telephonic conference would remove this discriminatory factor by providing the same opportunity regardless of a customer’s ability to travel.

Lastly, the Clinic notes that the proposal leaves intact the two arbitration methods currently available to customers. The addition would be a welcome addition without impacting customers who prefer one of the existing two methods.

The Clinic is also supportive of the additional training proposed to train arbitrators on this intermediate option because arbitrators will need to understand the new format and how this impacts their role during the arbitration process.

However, the Clinic advocates raising the \$50,000 limit to \$75,000 for the simplified arbitration process and \$100,000 for the new intermediate arbitration process. Regarding the simplified process, raising the maximum amount to \$75,000 or less will allow investors, whose claims fall slightly above the \$50,000 maximum, to still

seek relief without the expense of a full arbitration. This issue is especially relevant in rescission claims where the investor is only seeking to get back the money they invested and the case could be easily decided on the papers. Regarding increasing the maximum claim for this new intermediate claim, raising the limit to \$100,000 could also be very beneficial for investors, as these claims are still limited in scope, but the investor and the broker would be able to have their claims heard by an arbitrator under a limited hearing, something, as noted above, that helps customers feel comfortable with the outcome of the proceeding.

Given the reported lack of customer satisfaction with the cases that are decided on the papers only and the frequently cost-prohibitive nature of a full hearing in front of a single arbitrator, the Clinic supports the proposed changes to add an additional intermediate option that would provide customers with an opportunity to argue their cases before an arbitrator in a shorter and limited hearing format. Thank you for your consideration of this matter.

Very truly yours,

/s/_____
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/s/_____
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