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Georgia State University | COLLEGE OF LAW
Investor Advocacy Clinic

March 9, 2018

VIA EMAIL to rule-comments@sec.gov

Mr. Eduardo A. Aleman
Assistant Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments Concerning SR-FINRA-2018-003
Proposed Changes to Simplified Arbitration Proceedings

To Whom It May Concern:

Thank you for the opportunity to comment on FINRA Notice 2018-003 and its proposal for an alternative option in simplified arbitration proceedings. The proposed changes to Rules 12600 and 12800 of the Code of Arbitration Procedure for Customer Disputes and Rules 13600 and 13800 of the Code of Arbitration Procedure for Industry Disputes provide flexibility for claimants seeking resolution for claims under $50,000 and a practical, efficient means of doing so.

FINRA's current simplified arbitration process gives claimants only two options: claimants can either have their case decided on the papers or claimants can take their case to a full hearing. These options present two extreme choices in both time, cost, and manner of presentation. This Special Proceeding provides a middle ground for claimants who want to tell their side of the story without the time commitment and cost of a full hearing. As student interns working in the Georgia State University College of Law's Investor Advocacy Clinic, we regularly represent investors with small claims and tight finances. Our clients would appreciate a third option that would not require them to miss several days from work but would still allow them to tell their story in person.

We suggest that FINRA should implement mandatory in-person training and require specialized expertise for arbitrators who oversee these Special Proceedings. In addition to FINRA's proposed amendments, FINRA should also change the name of "Simplified Arbitration" to "Small Claims Arbitration" and require narrowly tailored, mandatory discovery for the new Special Proceedings.

I. We Support the Proposed Amendments Because They Provide an Accessible, Intermediate Option for Claimants.

Currently, claimants with claims under $50,000 have two options: paper proceedings or full hearings. These options present two extreme choices. Low-cost, paper proceedings limit claimants' ability to tell their story and the arbitrator's ability to assess each party's credibility, while full hearings allow parties to tell their story but at a greater expense. Even though many of our clients would prefer to present their side of the case orally, they are dissuaded from choosing a full hearing because of the associated emotional and financial costs, including travel, lodging, and childcare. Additionally, claimants in simplified arbitration proceedings often cannot afford take time off work and travel to a hearing location. These problems are even more amplified for *pro se* claimants because they do not have the requisite expertise needed to put together paper proceeding materials and often lack the resources necessary to pursue a full hearing.

Under the new proposal, each Special Proceeding must be completed in a single day with strict time limitations on case presentations and rebuttals. This time limitation provides a cost-effective, intermediate option for claimants to tell their side of the story. This results in a minimal time burden and additional certainty when compared to a full hearing.

II. FINRA Should Clarify the Structure of the Special Proceedings.

We support the additional time provided for rebuttals and closing statements. However, FINRA should expressly allow parties to give their closing statements after each party presents its case and the arbitrator concludes his or her questioning.

III. FINRA Should Implement Mandatory In-Person Training and Require Specialized Expertise for Arbitrators Presiding Over Special Proceedings.

While we are in favor of continuing the education of arbitrators in order to better equip them for Special Proceedings, more robust and in-person training is necessary for Special Proceeding arbitrators. Although a video can be accessed on-demand in order to assist an arbitrator during the proceeding, arbitrators should receive in-person training. In-person training is interactive, allowing arbitrators to ask questions and participate in live, mock proceedings. While videos can impart large quantities of valuable information, they cannot replace the value of rigorous, in-person training to equip arbitrators for the unique challenges in these Special Proceedings.

In addition to requiring in-person training for arbitrators, FINRA should require that arbitrators have some minimum level of specialized expertise. Not all arbitrators will have the necessary skills to extract relevant testimony. This is an acquired skill, and requiring arbitrators to have familiarity with examination techniques will ensure thoughtful lines of questioning. As law students, we understand that the ability to identify relevant issues and ask exploratory questions is not an inherent skill and can only be acquired through practice. Requiring arbitrators to possess specialized expertise will promote efficiency and fairness in these new Special Proceedings.

IV. FINRA Should Change the Name of the Simplified Arbitration Process.

As student interns in a clinic that handles smaller-dollar claims, we find it difficult to explain what "simplified arbitration" cases are to our clients. Oftentimes, the smaller-dollar claims we handle involve complex products that are far from simple. Using the term "simplified" to describe all claims with less than $50,000 in dispute is misleading. While our clients rightly believe their claims are just as important as claims involving damages of six or more figures, referring to claims with damages of less than $50,000 as simplified makes our clients feel as if their claims are not taken seriously. To small investors like our clients, a loss less than $50,000 can mean the loss of their entire life-savings. Because of the confusion often associated with this term, FINRA should change the terminology for all smaller-dollar claims from "Simplified Arbitrations" to "Small Claims Arbitrations."

V. FINRA Should Provide Narrowly Tailored Mandatory Discovery for All Simplified Arbitration Proceedings.

Our experience with simplified arbitration proceedings has shown us that simplified arbitration claims can involve highly complex products. It can be difficult to determine what happened in a case without having access to basic documents. However, there is no mandatory discovery for simplified proceedings. As a clinic, we often face pushback on our requests of the most basic, essential documents. While the claims we handle have smaller-dollar amounts, they are no less complex than higher-dollar claims. As such, even simplified arbitration proceedings should provide for a narrowly tailored list of documents that both parties must produce. These concerns are even greater for small-claims investors who are unrepresented. An unrepresented small-claims investor may not know he can ask for documents, much less which documents he needs. Requiring narrowly tailored, mandatory discovery would resolve these concerns by providing both parties the minimum documents they would need to evaluate the claim. We recommend, at a minimum, that firms/associated persons must provide items 1-5, 15, and 18, already contained in Document Production List 1 in every proceeding under FINRA Rule 12800.

Conclusion

We agree that parties choosing simplified arbitration proceedings should have another option to tell their story. In addition, FINRA should provide in-person training for the Special Proceedings to arbitrators, require arbitrators overseeing the Special Proceedings to have specialized expertise, change the name of "Simplified Arbitration" to "Small Claims Arbitration," and provide narrowly tailored mandatory discovery the new Special Proceedings. We appreciate the opportunity to comment on this proposal and look forward to additional discussion.

Best regards,

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*All student interns in the Investor Advocacy Clinic, including this signatory, perform all work under the Georgia Student Practice Rule contained in Rules 91-95 of the Rules of the Supreme Court of Georgia as registered law students under the supervision of a licensed Georgia attorney.