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March 1, 2019

Via Electronic Filing

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

RE: Release No. 34-85063; File No. SR-FINRA-2019-004 (Rule Proposal to Expand Time for Non-Parties to Respond to Arbitration Subpoenas and Orders of Appearance of Witnesses or Production of Documents)

Dear Mr. Aleman:

The Cornell Securities Law Clinic (“Clinic”) submits this comment letter in support of the proposal (“Rule Proposal”) of the Financial Industry Regulatory Authority (“FINRA”) to amend Rule 12512(d) through (e) and Rule 12513(d) through (e) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and Rule 13512(d) through (e) and Rule 13513(d) through (e) of the Code of Arbitration Procedure for Industry Disputes (“Industry Code” and together, “Codes”). The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors and public education as to investment fraud in the largely rural “Southern Tier” region of upstate New York. For more information, please see <http://securities.lawschool.cornell.edu>

As explained in greater detail below, the Clinic supports the amendments contained in the Rule Proposal as an important step towards ensuring non-parties have sufficient time to respond to an order or subpoena during arbitration and enhancing the discovery process for forum users.

Currently, a non-party receiving an order or a subpoena in arbitration may respond within 10 calendar days of service of the order or subpoena by filing written objections through the Director of the Office of Dispute. However, forum users have raised concerns that the amount of time that non-parties have to respond to orders and subpoenas is insufficient. Specifically, there have been cases where the non-party responsible for responding to an order or subpoena (e.g., legal staff) may not actually receive a copy of the order or subpoena until after the tenth day from service has passed, thereby resulting in a possible waiver to object to the order or subpoena. Our comment letter will address the (1) deadline extension, (2) updated service methods, and (3) efforts to increase transparency and understanding of administration procedures.



I. The Clinic Supports Extending the Response Time for Non-Parties

First, FINRA is proposing to extend the response time for non-parties to object to an order or subpoena from 10 calendar days of service to 15 calendar days of receipt of the order or subpoena. The Clinic supports this amendment because it gives non-parties wanting to object to an order or subpoena sufficient time to do so. Specifically, the 15-day timeframe starts once the order or subpoena has been received, not the date of service. Further, the Clinic recommends requiring a certified mail option to verify when the order or subpoena was received. Additionally, non-parties may benefit from the proposal by avoiding the release of proprietary or non-public information. However, the proposed rule may prevent requesting parties from presenting information from non-parties that successfully object to orders or subpoenas. Also, the extension of time may lengthen the discovery stage of arbitration proceedings. However, the Clinic believes the benefits of the extension outweigh the costs because it balances the playing field by ensuring non-parties have sufficient time to object to an order or subpoena.

II. The Clinic Supports Excluding First-Class Mail as an Option to Serve Documents and File Objections to Orders or Subpoenas

Second, FINRA is proposing to exclude first-class mail as an option to serve documents on the non-party and as an option for the non-party to file the objection to the scope or propriety of the order or subpoena. Rather, FINRA requires using one of the following: overnight mail service, overnight delivery, hand delivery, email or facsimile. With these methods, FINRA aims to improve service confirmation and facilitate the timing of discovery obligations. The Clinic supports these service methods because it speeds up the time it takes to serve documents to non-parties. It is important to note that it may become more expensive to serve documents through these methods. However, the Clinic supports this amendment because we believe it is critical for non-parties to receive orders or subpoenas in a timely manner.

III. The Clinic Supports FINRA's Efforts to Increase Transparency and Understanding of Case Administration Procedures.

Third, FINRA is proposing to amend the Codes to codify the current practice that the Director sends, at the same time, objections and responses to the panel after the reply date has elapsed, unless otherwise directed by the panel. The purpose behind this amendment is to ensure that the panel receives the advocacy positions of all parties at the same time. The Clinic supports this effort because it improves understanding of case administration procedures for forum users and increases transparency concerning forum operations. Codifying this practice makes it clear to forum users how the Director processes the requests, objections, and responses of all parties.

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For the foregoing reasons, the Clinic supports FINRA's Rule Proposal.

Respectfully submitted,

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