

Center for Clinical Programs

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VIA E-MAIL: rule-comments@sec.gov

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments Concerning SR-FINRA-2019-004
Proposal to Expand Non-Party Responses to Subpoenas

Dear Mr. Errett:

Thank you for the opportunity to comment on SR-FINRA-2019-004. The Investor Advocacy Clinic provides no-cost assistance to retail investors that would not otherwise have legal representation. Typically, we represent retirees, with limited resources, who need to expeditiously and efficiently resolve disputes with their brokers so they can support themselves. The Clinic supports the five additional days added to the response deadline because the additional days mirror the expectations of parties in similar actions. Moreover, the removal of first-class mailings provides our clients quicker and inexpensive methods of service. However, we recommend using “service,” instead of “receipt,” as the trigger for response deadlines in order to avoid the inefficiencies that the amended rule is meant to prevent.

I. Adding five days to the response time will promote speed and efficiency in arbitration, therefore we support the proposal’s fifteen-day response deadline.

We agree with FINRA’s statements that amending the rule will accelerate the response of non-parties and increase transparency of forum operations. The proposal’s response deadline falls within the typical response time-frame given to non-parties in similar forums.¹ FINRA’s proposal to mirror its rule with other forums means that non-parties will be familiar with the process and timing of responding even if they have not previously worked with FINRA. This will result in more timely answers from non-parties and FINRA spending less time enforcing orders and subpoenas that were not answered. For these reasons we support the proposal’s fifteen-day response time.

II. We support the change in acceptable methods of service because the proposal permits service methods that are quick and inexpensive.

We welcome FINRA’s efforts to enhance the speed of and lower costs in arbitration by amending the

¹ AAA, federal courts, the SEC, and FTC provide 14 or 15 days for non-parties to respond. *See* AAA Consumer Rule R-2(c) (2014) (non-parties provided 14 days for responses); Federal Rules of Civil Procedure Rule 45(d)(2)(B) (objection to subpoenas served before the earlier of the time specified for compliance or 14 days); 17 C.F.R. § 201.232(e)(1) (2016) (15 days to object to subpoenas); 16 C.F.R. § 3.12(a) (respondent’s answer due within 14 days). *But see* JAMS Rule 7 (Providing for the arbitrator to dictate the response deadline based upon the circumstances).

methods of service. This assists our Clinic's continuing efforts to provide no-cost advocacy to retail investors who cannot obtain legal representation because these new service options do not cost anything. These service methods also guarantee that non-parties receive requests almost immediately. Therefore, we support the change in acceptable methods of service.

III. We suggest that FINRA amend the proposal to use "service," instead of "receipt," as the trigger for the response deadline.

We recommend that FINRA amend the proposal to use service as the trigger for response deadlines to avoid creating the very inefficiencies that the proposal is meant to prevent. The proposal's use of "receipt" instead of "service" as a trigger for responses introduces uncertainty into the process. While service can be verified, a serving party may not be aware of when a request is received by a third party. The resulting confusion will cause disputes concerning when responses are due and remove the efficiencies created by the proposal. Indeed, other similar forums currently use service and not receipt as the trigger for calculating a response deadline.² Changing the trigger for the response deadline from service to receipt can create confusion and disputes obviating the proposal's goals of clarity and efficiency, therefore the Clinic suggests FINRA revert to the current practice which uses service as the trigger.

Conclusion

Thank you for the opportunity to comment on SR-FINRA-2019-004. We appreciate FINRA's efforts to expedite proceedings and keep costs manageable. While we support the proposal overall, we recommend a minor change to use service, not receipt, to initiate the response deadline.



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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.

² Service is the trigger for responses in federal court, in response to SEC or FTC requests, and in the JAMS arbitral forum. See Federal Rule of Civil Procedure Rule 45 (b)(2)(B) (service as trigger for objection deadline); 17 C.F.R. § 201.232(e)(1) (2016)(service as the trigger for objection to a subpoena); 16 C.F.R. § 3.34(c) (2009) (service as a trigger for objecting to a subpoena); and JAMS Rule 8 (service as a trigger for arbitrator's decision on response date).