

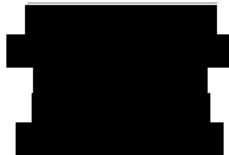
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February 2, 2023

VIA ELECTRONIC SUBMISSION

Secretary

Securities and Exchange Commission

100 F Street NE

Washington, DC 20549-1090

Re: File Number SR-FINRA-2022-033

Dear Secretary:

The Fairbridge Investor Rights Clinic at the Elisabeth Haub School of Law at Pace University, operating through John Jay Legal Services, Inc.,¹ welcomes the opportunity to comment on FINRA's proposal to amend the Codes of Arbitration Procedure to make several clarifying and technical changes, including in response to recommendations in the report of independent counsel Lowenstein Sandler LLP. Codifying FINRA guidance and procedures will improve transparency and consistency for all dispute resolution forum participants, whether they are pro se claimants, new attorneys, or parties or attorneys with experience in the forum.

We support FINRA's proposed list selection process amendments, specifically the requirement for a written explanation about an arbitrator challenge decision. We also support the procedural amendments, specifically regarding default virtual prehearing conferences and the virtual option for a special proceeding hearing, as well as redaction of personal confidential information in simplified cases, with additional suggestions regarding implementation of this proposed change.

¹ The Pace Investor Rights Clinic, which opened in 1997, was the nation's first law school clinic in which law students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes. See Barbara Black, *Establishing A Securities Arbitration Clinic: The Experience at Pace*, 50 J. LEGAL EDUC. 35 (2000); see also Press Release 97-101, Securities Exchange Commission, *SEC Announces Pilot Securities Arbitration Clinic To Help Small Investors – Levitt Response To Concerns Voiced At Town Meetings* (Nov. 12 1997), available at <http://www.sec.gov/news/press/pressarchive/1997/97-101.txt>.

Written Explanation for an Arbitrator Challenge Decision

The Clinic supports the list selection process amendments in response to the Lowenstein Report and highlights our support for the proposed rule change to require a written explanation for granting or denying a party-initiated challenge to remove an arbitrator. We note the importance of arbitrator appointment to the arbitration process in general, along with the importance of parties' confidence in the integrity of the arbitration selection process. Requiring a written explanation should improve transparency in the arbitrator selection process overall and provide an understanding for the basis of a decision in a particular case.

Default Virtual Prehearing Conferences and Virtual Option for Special Proceedings

We strongly support the proposed procedural amendments for default virtual prehearing conferences and the virtual option for special proceedings. Codifying virtual video conferences as the default mode of communication accommodates the expressed preferences of forum users. Virtual video conferencing allows for enhanced communication between parties, counsel, and arbitrators. This medium provides participants the ability to read body language and facial expressions, thereby increasing the quality and effectiveness of the communications. It also gives parties the opportunity to establish a rapport with each other at the outset of a case in a way that may benefit future communications.

We support the option for customers or claimants to choose virtual video conferences for special proceedings in simplified arbitrations for the reasons noted above, which are even more compelling in a determinative special proceeding hearing on the merits. We also support the option for customers to request a telephonic hearing before the 60-day deadline or for both parties to agree to another type of hearing session. Maintaining the opportunity to request a telephonic hearing provides customers choosing this option in simplified cases with additional ownership over the process and allows them to choose the best mode of communication for their individual case and circumstances.

Redacting Confidential Information

We also support the proposal to extend the requirement to redact personal confidential information (PCI) to parties in simplified arbitration. This procedural amendment adds a layer of protection against fraud, identity theft, and other concerns related to personal confidential information.

However, many customers in simplified arbitration – those with claims of \$50,000 or less – are not represented by counsel and are unlikely to be familiar with the FINRA dispute resolution process. The added step of redacting personal confidential information may feel overwhelming or confusing. The proposed rule change anticipates providing updated guidance on FINRA's website to pro se parties with steps on how to redact PCI. We want to ensure that guidance on PCI redaction is sufficiently beginner- and user-friendly and is not overlooked by pro se parties, who may not recognize the importance of closely reviewing guidance on the website or who may not be technologically savvy enough to find this guidance.

We recommend that FINRA consider also adding this information directly to the Dispute Resolution Portal in a visible and accessible manner, at the point in time when customers are likely to be uploading documents that may contain PCI (e.g., when they are filing a Statement of Claim). Guidance should use clear, plain English instructions to spell out to pro se customers the need to redact PCI, the specific information that should be redacted, examples of what a properly-redacted document looks like, and basic suggestions about how to make the redactions. Moreover, we recommend considering the use of a more plain English term or phrase in addition to or instead of the term “redact,” such as omit, delete, or black out. Similar instructions should be shared with pro se claimants who choose not to use the Portal, as early as possible in the process. These steps should help protect small, pro se investors from putting their PCI at risk, while reducing barriers to access to the forum.

In sum, we support the proposed rule changes, which will improve transparency, consistency, and fairness in the FINRA dispute resolution forum. Thank you for your consideration of our feedback.

Sincerely,

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