



Securities Arbitration Clinic  
St. Vincent DePaul Legal Program, Inc.



February 2, 2023

Via email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Vanessa Countryman, Esq.  
Office of the Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: File No. SR-FINRA-2022-033  
Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of  
a Proposed Rule Change To Amend the Codes of Arbitration Procedure To Make Various  
Clarifying and Technical Changes to the Codes, Including in Response to Recommendations in  
the Report of Independent Counsel Lowenstein Sandler LLP

Dear Ms. Countryman:

Thank you for the opportunity to comment on FINRA's proposed rule changes related to the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes. 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 dollar claims and is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the transparency of the procedural rules and clarity for investors filing arbitration claims.

The Clinic supports the proposal to codify and clarify the current procedure by amending the Codes to require manual review of the potential arbitrator list for conflicts of interests. Given that the algorithm can or does not remove all conflicts of interest, the manual review process is a necessary buttress. Codifying this process will help parties feel confident in the selection process. Furthermore, the proposal's purported purpose is to enhance transparency and consistency in the list selection process. The Clinic represents investors that, were it not for the Clinic, would be representing themselves *pro se*. Enhancing the transparency in the list selection process would help these *pro se* filers, as well as others who are not familiar with the arbitration process, understand and be comfortable with the process. While the Clinic supports this effort to remove potential conflicts, the process might be further improved by upgrading the archaic algorithm by which the conflicts are screened. A more comprehensive and effective computerized process will limit the necessity for manual review, lending additional confidence to the arbitrator selection process.

The Clinic further supports the proposal to amend the Codes to codify the practice of providing written explanation of the Director's decisions in a party-initiated challenge to remove an arbitrator. The practice of providing written explanation for the Director's decisions provides extra transparency to the arbitration process. Furthermore, codifying this practice will provide consistency in the process of party-initiated challenges to remove an arbitrator. The Clinic also supports the proposal to amend the Codes to clarify the procedure by which a selected arbitrator may be removed. The amendment would assist parties unfamiliar with the arbitration process by helping them understand their rights and abilities as it relates to challenges to remove arbitrators. Additional clarification will help further protect investors who are unfamiliar with the process.

The Clinic strongly supports the proposed procedural amendment to provide for video conferencing as the default for special proceedings. The Clinic primarily represents investors with small claims which are often filed under the Simplified Rule, FINRA Rule 12800. The Clinic believes that this default format allows for investors with small claims to present their case to the arbitrator without added expenses or travel. While some investors prefer to proceed under Rule 12800 on the papers, for those that want a limited hearing, video can often be a more effective and efficient option than telephone. However, the Clinic also supports the allowance for the alternative telephonic format for special proceedings with sufficient notice of at least 60 days before the first proceeding. We believe that this will ensure that Respondents will have sufficient notice, to plan and prepare accordingly.

The Clinic similarly supports the proposed changes that would default all prehearing conferences to video. This proposed change will also provide more clarity for *pro se* filers by providing a codification of the policy changes already made as a result of the COVID-19 pandemic.

The Clinic is also supportive of FINRA's attempt to protect the personal confidential information ("PCI") in connection with simplified claims. However, we believe that the extension of the requirement for redaction will lead to unintended harm to some of the investors FINRA is trying to protect. FINRA acknowledges the reason for the redaction rule not being implemented sooner in simplified arbitrations is due to difficulty for *pro se* filers. FINRA proposes that this difficulty will be countered with guidance on how to redact PCI from documents filed with Dispute Resolution Services ("DRS").

The Clinic believes that merely providing guidance to *pro se* filers may create barriers for those who are not able to redact their PCI. Some *pro se* filers simply do not have the resources to adequately redact their PCI. The Clinic believes that FINRA should permit *pro se* filers the ability to waive the PCI redaction requirement or, alternatively, that DRS undertake the redactions itself. This will allow this redaction rule to be implemented fairly without the unintended consequences of dismissals either due to *pro se* filers' inability to comply with the rule, or their abandoning their case because they don't fully understand how to accomplish the redaction.

In sum, the Clinic supports the proposed procedural changes to the arbitration process to promote clarity and transparency, particularly for *pro se* filers. The Clinic does suggest further examination of the proposals related to PCI, to ensure that it does not prove overly difficult for *pro se* filers to comply with. Thank you for your consideration of this matter and the opportunity to comment on these important proposals.

Respectfully Submitted,

/s/

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/s/

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/s/

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/s/

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