

September 17, 2024

Via Email

Sherry R. Haywood
Assistant Secretary, Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F St., NE Washington, D.C. 20549

RE: Release No. 34-100204; File No. SR-FINRA-2024-008

Dear Ms. Haywood,

Malecki Law writes in response to the U.S. Securities and Exchange Commission’s (the “SEC”) request for comment on the proposed rule change to Financial Industry Regulatory Authority (“FINRA”) Rule 12800 to specifically clarify and amend “the applicability of the Document Production Lists to simplified customer arbitrations...”¹ See Release No. 34-100204; File No. SR-FINRA-2024-008 (referred to as the “Proposal” herein).

This office recommends that FINRA’s proposal be adopted by the SEC, for the reasons described below.

Rule 12800 Currently

Under FINRA Rule 12800(g)(1), Document Production Lists do not apply. However, “the arbitrator may, in his or her discretion, choose to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified proceedings.”

Background of Rule 12800

FINRA’s proposal to amend Rule 12800 would allow customer investors to elect to include Document Production Lists in their arbitration. Rule 12800 specifically applies to arbitrations involving \$50,000 or less.² Arbitrations, under this rule, are conducted as “paper cases,” unless the

¹ Available at: <https://www.sec.gov/files/rules/sro/finra/2024/34-100204.pdf>.

² Rule 12800(a) states: “This rule applies to arbitrations involving \$50,000 or less, exclusive of interest and expenses. All arbitrations administered under this rule will be decided on the pleadings and other materials submitted by the parties unless the customer requests a hearing under paragraph (c) of this rule. Except as

customer requests a hearing under the following two options: (1) regular provisions of the code relating to prehearings and hearing under FINRA Rule 12800(c)(3)(A), or (2) a special proceeding under FINRA Rule 12800(c)(3)(B).

In a paper case, the arbitrator makes their decision based solely on the pleadings and other materials submitted by the parties. A special proceeding “will be held by video conference, unless the customer requests at least 60 days before the first scheduled hearing that it be held by telephone, or the parties agree to another type of hearing session...” Rule 12800(c)(3)(B)(i).

The rule proposal points out that “the Document Production Lists *do not apply* in paper cases and special proceedings. However, under FINRA Rule 12800(g)(1), the arbitrator may exercise discretion to choose to use relevant portions of the Document Production Lists in paper cases and special proceedings ‘in a manner consistent with the expedited nature of simplified proceedings.’” Meanwhile, “By contrast, the Document Production Lists *do apply* in simplified customer arbitrations in which the customer requests a regular hearing.” *See* Proposal at 3-4.

FINRA’s Proposal

In an effort to clarify any discrepancies on when and how the Document Production Lists apply, “The proposed rule change would amend FINRA Rule 12800(g)(1) to give customers in paper cases and special proceedings the option to elect at the time that they initiate an arbitration or, if they are a respondent, no later than the answer due date, whether they want the Document Production Lists to apply to all parties.” *See* Proposal at 5.

Why the Proposal Should be Adopted

The proposed changes would increase customer fairness to smaller investors who likely need the money the most. It will aid the many pro se investors whose claims are not large enough to be accepted by a law firm by helping them better understand the discovery process, what are presumptively relevant documents and how to participate in the process itself. This can level the unequal playing field for those appearing pro se. Specifically, simplified customer arbitrations

otherwise provided in this rule, all provisions of the Code apply to such arbitrations.”

represent twelve percent of all customer arbitrations. Within these twelve percent, sixty-five percent of customers appear pro se in paper cases and forty-three percent of customers appear pro se in special proceedings. *See* Proposal at 12.

Conclusion

Based on the reasons mentioned above, Malecki Law believes that FINRA's proposal to change Rule 12800 should be adopted, in the interest of protecting investors with smaller claims, including pro se investors who may not be able to retain an attorney. Thank you for giving us the opportunity to provide a public comment on this issue.

Respectfully,

MALECKI LAW

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