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Corresponding Author

for FINRA Arbitrators Ann C. Northern, Lorraine Brennan, and John M. Bergin

October 7, 2022

VIA EMAIL: rule-comments@sec.gov

Securities and Exchange Commission
Attn: Ms. Vanessa Countryman, Secretary
11 F Street NE
Washington, D.C. 20549

Re: Petition for Rulemaking to Amend FINRA Rules 12601(b) and 13601(b) to curtail late settlement abuse and disregard for FINRA arbitrator time Commitments

Dear Ms. Countryman:

The undersigned (in their personal capacities) respectfully petition the SEC, pursuant to Rule 192 of the SEC's Rules of Practice, to amend FINRA Rules 12601(b) and 13601(b) to curtail late settlement abuse and disregard for FINRA arbitrator time Commitments.

Having directly requested this rule change from FINRA's National Arbitration and Mediation Committee ("NAMC") in summer of 2022, (see **Exhibit A**, attached), the request met with the NAMC's empathy, but no action. Hence, we proceed with this petition to the SEC.

Existing 10 Day Rule

As you may know, FINRA arbitrators receive no compensation when hearings are postponed unless postponed within ten days of the first scheduled hearing session. In 2015 (seven years ago), FINRA amended rules 12601(b) and 13601(b) such that arbitrators must be compensated for postponed hearing dates when parties postpone within the ten day period. Under these rules, arbitrators receive \$600 compensation, regardless of how many days they have held on their calendars for scheduled hearings -- often 4-5 consecutive days held for a year or more.

This policy has not only failed to adequately compensate arbitrators for the opportunity cost of their scheduled time - opened at the last impracticable minute – but, more importantly,

has failed to incent parties to get serious about mediation or negotiation and settlement until the 11th hour.

We know many other arbitrators are at their wit's end with this policy – recently exacerbated by the seemingly endless rescheduling brought about by the pandemic. (Indeed, those who arbitrate in multiple fora have noted that other arbitration fora allow arbitrators to impose or contractually set postponement provisions.) Modifying the rules establishing the apparently unique FINRA policy will simply incent fairer process in dispute resolution.

Proposal

We propose the following solution to incent earlier good faith attempts at settlement and to respect the valuable time of FINRA's many highly qualified arbitrators. (Of course, these changes should be applied in parallel to Rule 13601 and logically carried through in additional amendments to subparts and companion rules in the course of the rule-making process.)

12601(b) (2) If a postponement request is made by one or more parties (i) between 60 days prior and 40 days prior to the first scheduled hearing session the party or parties making the request shall pay \$200 per scheduled hearing day per arbitrator, (ii) between 39 days prior and 20 days prior to the first scheduled hearing session the party or parties making the request shall pay \$300 per scheduled hearing day per arbitrator, (iii) between 19 days prior and 0 days prior to the first scheduled hearing session the party or parties making the request shall pay \$600 per scheduled hearing day per arbitrator . If more than one party requests the postponement, the arbitrators shall allocate the applicable fee per arbitrator among the requesting parties. The arbitrators may allocate all or a portion of the applicable fee per arbitrator to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the postponement. In the event that an extraordinary circumstance prevents a party or parties from making a timely postponement request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

No Reason This Would Increase Costs

Arguments regarding cost to parties are irrelevant to this proposal as parties have every opportunity to settle before 60 days prior to the first scheduled hearing date, or to include the postponement fees in the settlement terms, or to proceed to the scheduled hearings. The cost is in no way embedded in the FINRA dispute resolution process. It is entirely avoidable and consistent with the purpose of the FINRA rules – to fairly, efficiently, and expeditiously resolve disputes.

This “ratcheted” approach, if you will, incents earlier good faith mediation or negotiation toward settlement and offers some modicum of respect for arbitrators' time, albeit with compensation for an entire lost day that is very likely less than half of one hour of a party's counsel's time. Moreover, this approach respects indigent and/or *pro se* claimants by providing ample notice and incentive to come to settlement terms before incurring the costs of travel, witness accommodations...and other final hearing preparations. It further avoids the last-minute exploitation of the existing rules by knowing counsel against unknowing *pro se* claimants.

The current rule is untenable.

Thank you for your full and prompt attention to this urgent matter going to the heart of FINRA's purpose.

Very truly yours,

/s/ Thomas M. Madden

Thomas M. Madden;

/s/Ann C. Northern

Ann C. Northern;

/s/ Lorraine Brennan

Lorraine Brennan; and

/s/ John Bergin

John Bergin

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June 15, 2022

VIA EMAIL

Richard Berry
Executive Vice President
Director of Dispute Resolution
FINRA
200 Liberty Street
New York, NY 10281

FINRA National Arbitration and Mediation Committee:

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Chair
Drexel University
Thomas R. Kline School of Law
Philadelphia, PA

David R. Chase
Law Firm of David R. Chase, Esq.
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Elissa Germaine
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Florham Park, NJ

Beverly Jo Slaughter
Wells Fargo
St. Louis, MO

Sara Soto
Bressler, Amery & Ross, P.C.
Miami, FL

Dear Mr. Berry, Chair Iannorone, and Members of FINRA NAMC:

A FINRA arbitrator for a dozen years, I write this open letter regarding a matter of long-term concern to me and many fellow arbitrators.

As you may know, FINRA arbitrators receive no compensation when hearings are postponed unless postponed within ten days of the first scheduled hearing session. In 2015 (seven years ago), FINRA amended rules 12601(b) and 13601(b) such that arbitrators must be compensated for postponed hearing dates when parties postpone within the ten day period. Under these rules, arbitrators receive \$600 compensation, regardless of how many days they have held on their calendars for scheduled hearings -- often 4-5 consecutive days held for a year or more.

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I know many arbitrators are at their wit's end with this policy – recently exacerbated by the seemingly endless rescheduling brought about by the pandemic. (Indeed, those who arbitrate in multiple fora have noted that other arbitration fora allow arbitrators to impose or contractually

set postponement provisions.) Modifying the rules establishing the apparently unique FINRA policy will simply incent fairer process in dispute resolution.

I propose the following solution to incent earlier good faith attempts at settlement and to respect the valuable time of FINRA's many highly qualified arbitrators. (Of course, these changes should be applied in parallel to Rule 13601 and logically carried through in additional amendments to subparts and companion rules in the course of the rule-making process.)

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The current rule is untenable.

I would be more than happy to attend the NAMC meeting on July 15 in person or via Zoom to discuss this further.

Thank you for your full and prompt attention to this urgent matter going to the heart of FINRA’s purpose.

Very truly yours,

/s/ Thomas M. Madden

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