

**MICHIGAN STATE
UNIVERSITY
COLLEGE OF LAW**

March 17, 2015

VIA EMAIL ONLY

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
rule-comments@sec.gov

RE: SR-FINRA-2015-003 Proposed Rule Change To Amend Rules 12215 and 12601 of the Code of Arbitration Procedure for Customer Disputes and Rules 13214 and 13601 of the Code of Arbitration Procedure for Industry Disputes

Dear Secretary Fields:

On behalf of the Investor Advocacy Clinic at Michigan State University College of Law, I write to support SR-FINRA-2015-003 (the "Proposal"). The Clinic is a Michigan State University College of Law clinical course in which students provide representation to investors who cannot secure private legal representation due to the relatively small size of their claims. Additionally, students enrolled in the Clinic provide public education about investment fraud in the Michigan area. The Clinic has a strong interest in supporting measures that ensure high-quality arbitrators. The Clinic generally supports the Proposal and the goal of compensating arbitrators fairly. We write to set out our support for the Proposal's goals and objectives and to detail our reservations about the Proposal's current shape.



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I. The Proposal Serves Laudable Goals

As explained below, we support the Proposal because it will enhance FINRA's ability to retain high-quality arbitrators and improve party behavior.

A. An Honoraria Increase Encourages High-Quality Arbitrators

The Proposal will increase the fee assessed for cancelling a hearing on short notice from \$100 per arbitrator to \$600 per arbitrator. This increased fee funds an honoraria increase to fairly compensate arbitrators for time spent preparing for hearings and for declining other opportunities. We strongly support the honoraria increase because all stakeholders have a significant interest in retaining experienced arbitrators.

Increasing the honoraria will encourage individuals to continue to work as arbitrators because they are being more adequately compensated. This ensures both high-quality arbitrators and a high quantity of arbitrators from which to choose.

B. The Late Fee Forces Parties To Internalize the Costs of Delay

A ten-day cancellation period better protects arbitrators' preparation and scheduling and may also result in better prepared arbitrators. If arbitrators know that they will be compensated for their preparation, they may invest more time preparing for hearings because they know their time will not be wasted, transferring this benefit to parties as well. This reduces the chance that arbitrators will work to prepare for frequently canceled hearings without receiving any compensation.

The late fee may also improve party behavior. Parties would have an increased incentive to seriously consider settlement before the cancellation period. Parties near settlement may be more eager to complete the agreement to avoid an additional \$1,800 in fees. This may increase efficiency if it forces the parties to internalize the costs of their delay.

II. The Proposal Contains Flaws That the Commission Should Review Closely

As explained below, the Proposal may create arbitrator conflicts of interest and may unduly penalize investors bringing small claims.

A. The Proposal Could Discourage Fee Waivers for Extraordinary Circumstances

We are concerned that the Proposal may create a financial incentive for arbitrators to deny fee waiver requests. The Proposal indicates that the "Late Cancellation Fee would be paid by the parties, *and passed through to the arbitrators to provide them with more compensation for preparation time expended and lost opportunities in the event of a cancellation on short notice.*"¹ While it is a good thing that arbitrators will retain the ability to waive the fee on account of extraordinary circumstances, the substantial increase in the fee granted to each arbitrator could discourage an arbitrator from granting the waiver. This may present a significant conflict of interest. A self-interested arbitrator might deny waivers to secure her compensation. This could effectively penalize a party for cancelling a hearing even for extraordinary circumstances.

This apparent conflict of interest could be resolved with a clear guarantee. FINRA could guarantee the honoraria to the arbitrator if the arbitrator grants the waiver. This would mean that the arbitrator would receive her fee regardless of how she decided the waiver request—removing any conflict of interest. In the alternative, a disinterested third-party through FINRA could also decide whether or not an extraordinary circumstance existed instead of the arbitrator. This would also avoid the problem of an arbitrator needing to decide whether she should be paid for her time.

B. The Proposal Burdens Unsophisticated Investors with Small Claims

The Proposal may overly penalize small, unsophisticated investors. The Clinic represents some small investors. Yet, many investors with smaller claims cannot secure representation and must represent themselves. These pro se claimants need extra protection against incurring unexpected fees in a complicated arbitration forum. In single-arbitrator cases, the pro se claimant could be responsible for paying large percentages of her possible settlement in fees that she may not know exist and may not expect. Some of these pro se claimants may choose to go to arbitration instead of settling within the ten-day cancellation period to avoid paying the fee.

¹ Proposal, at 9 (emphasis added).

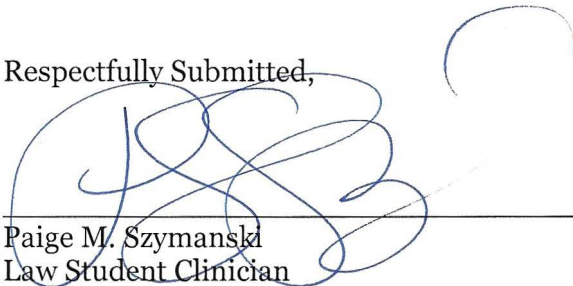
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FINRA should protect these pro se claimants with claims under \$100,000 by sending a letter 30 days before scheduled hearings informing them of the fees they could potentially incur by cancelling a hearing within the ten-day cancellation period. This would help educate pro se claimants and help them avoid an unanticipated \$600 fee.

III. Conclusion

The Clinic generally supports the Proposal and hopes that the Commission will ask that FINRA address our concerns. We thank the Commission for the opportunity to comment.

Respectfully Submitted,



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