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Via Electronic Filing

Mr. Brent Fields
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: File Number SR-FINRA-2015-003; Release Number 34-74289 (Proposed Rule Change to Amend the Codes of Arbitration Procedure to Increase the Late Cancellation Fee)

Dear Mr. Fields,

The Cornell Securities Law Clinic (“Clinic”) welcomes the opportunity to comment on the proposal (“the Rule Proposal”) of the Financial Industry Regulatory Authority to amend FINRA Rules 12214 (Payment of Arbitrators) and 12601 (Postponement of Hearings) relating to the increase of the late cancellation fee.¹ The Clinic is a Cornell Law School curricular offering, in which law students provide representation to public investors and public education as to investment fraud in the largely rural “Southern Tier” region of upstate New York. For more information, please see: <http://securities.lawschool.cornell.edu>.

As will be explained in greater detail below, the Clinic supports the amendments in the Rule Proposal but recommends a sliding scale for the assessment of honorarium so that the parties will still have greater incentive to settle even after the late cancellation fee applies.

Under the current rules, each arbitrator receives a \$100 honorarium for a request to postpone or cancel a hearing granted within three business days of the

¹ The Rule Proposal also proposed analogous changes to FINRA Rules 13214 (Payment of Arbitrators) and 13601 (Postponement of Hearings) of the Code of Arbitration Procedure for Industry Disputes. The Clinic takes no position on the Industry Code as it is only concerned with the rule proposals that affect customer disputes.



first hearing date. However, no honorarium applies if the postponement is granted more than three business days before the scheduled hearing.

FINRA proposes to amend its Code of Arbitration Procedure for Customer Disputes such that if a postponement or cancellation request is made by one or more parties within 10 calendar days before a scheduled hearing session and is granted, the party or parties making the request would have to pay a fee of \$600 per arbitrator. FINRA argues that such an amendment would make the parties give earlier notice to arbitrators and consider settling the case early. The Rule Proposal does not apply to Simplified Arbitration, which is subject to Rule 12800.

I. The Clinic supports making the Timing of the Party's Request the Controlling Factor in the Assessment of Late Cancellation Fee

The Clinic supports FINRA's proposal to amend FINRA Rule 12601 so that the timing of the parties' cancellation request, instead of the timing of the arbitrator's decision, determines whether the fee is assessed. This change promotes certainty, as the requesting party would no longer have to rely on the arbitrators' prompt decision to avoid the late cancellation fee.

II. The Clinic Supports Extension of the Cancellation Timeframe

The Clinic also supports the proposal to extend the cancellation timeframe. Arbitrators have to set aside their private time, at the expense of their other income-generating activities, to prepare for and attend the scheduled meetings. Cancelling the meetings in the last minute at a fee would compensate arbitrators for foregoing the income they could have earned had the hearing been cancelled with earlier notice.

III. The Clinic Recommends a Sliding Scale for the Late Cancellation Fee and a Presumption that the Member or Associated Person Will Pay

The Clinic agrees in principle with FINRA that increasing the amount of honorarium paid to each arbitrator in a cancelled hearing session would protect investors and public interests by improving FINRA's ability to retain qualified arbitrators. However, the Clinic is concerned that the dramatic increase of arbitration costs would run counter to FINRA's objective of providing an affordable method to resolve disputes.

Under the Rule Proposal, the late cancellation fee for a three-person arbitration panel would be \$1,800. Raising arbitration costs could force investors into accepting a less favorable offer to avoid a dramatically higher cost where the settlement is made after the "deadline". In some cases, the parties may fail to reach

a settlement just because the parties disagree over which party will pay the significant late cancellation fee.

Therefore, the Clinic believes that the late cancellation fee should be on a sliding scale. Moreover, in order to protect the interests of investors, FINRA should operate on the basis of a rebuttable presumption that the member firm and/or associated person would pay the late cancellation fee, unless the arbitrators conclude that the customer has caused the need for the cancellation or postponement.

IV. A Sliding Scale Best Serves the Interest of FINRA and Parties

The Clinic suggests FINRA introduce the following sliding scale for the amount of honorarium the parties have to pay for cancelling hearing sessions late.

For example, arbitrators would not receive an honorarium if the postponement is requested more than 10 calendar days prior to the scheduled hearing. The arbitrators will get an increment of \$100 for every two days passed in the 10-day period. However, if the request is made within 4 calendar days before a scheduled hearing session, the parties should pay the full cost of the hearing.

Calendar days before hearing when notice given	Cancellation Fee Per Arbitrator
11 or more	0
9-10	100
7-8	200
5-6	300
4 or fewer	600

V. Potential Conflict of Interest Arises when Arbitrators Decide Whether to Waive the Late Cancellation Fee

FINRA Rule 12601(b)(2) permits the arbitrators to use their discretion to waive the late cancellation fee if an extraordinary circumstance prevents a party or parties from making a timely cancellation request.

The language of the provision suggests that such discretion should be exercised only sparingly and with the utmost restraint. Yet, this provision could give rise to a conflict of interest: after all, the requesting party is asking the arbitrators to waive the compensation that the arbitrators themselves would be entitled to after the hearing sessions are cancelled with late notice. This conflict of interest is amplified when the late cancellation fee is increased dramatically as proposed in the Rule Proposal.

Therefore, the Clinic believes FINRA should take this opportunity to give clear guidance on what circumstances would warrant a waiver of the late cancellation fee. Although the term "extraordinary circumstance" apparently refers to situations that are unforeseeable in nature, it should be possible to set out in advance examples of where such an exceptional rule applies.

Conclusion

For the foregoing reasons, the Clinic supports FINRA's proposal to increase the late cancellation fee and extend the cancellation timeframe. The Clinic also recommends a sliding scale that takes into account the number of days of notice the parties have to give to the arbitrators in advance and a presumption of the member firm and/or associated person to pay the cancellation fee.

Respectfully Submitted,



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