



PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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February 1, 2023

Via Email Only: rule-comments@sec.gov

Ms. Vanessa Countryman

Securities and Exchange Commission

100 F Street, NE

Washington, D.C. 20549-1090

Re: File Number 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

Dear Ms. Countryman:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities litigation. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Securities and Exchange Commission ("SEC") relating to both investor protection and disclosure.

Pursuant to Rule of Practice 192(a) of the Securities and Exchange Commission, PIABA submits this comment to the SEC concerning FINRA's recent proposed rule changes set forth in Release No. 34-96607. The proposed rule changes include substantive changes to the arbitrator list selection process in response to recommendation made by Independent Counsel Lowenstein Sandler, such as requiring the Director to provide a written explanation whenever a challenge to remove an arbitrator is granted or denied, if a written explanation is requested by either party. In addition, the proposed rule changes include several procedural amendments, such as additional virtual hearing options, clarifying changes to amended and third-party claims and redaction requirements for simplified arbitrations.

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While PIABA generally supports the rule proposals, we urge FINRA to consider additional steps in the arbitration selection process to promote our shared goal of improving transparency and fairness in the Dispute Resolution forum.

List Selection Process Amendments

The appointment of arbitrators is the most important procedural part of the arbitration process and investors who are forced into arbitration must have confidence in the integrity of the selection process. Unfortunately, the arbitration selection process is still an imperfect one several decades since its introduction, as illustrated by last years' Fulton County, Georgia Superior Court decision vacating an arbitration award in favor of respondent Wells Fargo Clearing Services, LLC, which necessitated the appointment of Lowenstein Sandler as Independent Counsel. While PIABA remains concerned about the lack of transparency in the process and the appearance of impropriety in that case, PIABA welcomes FINRA's rule amendments to the arbitrator appointment process recommended by the Lowenstein Sandler report, as such efforts will operate to prevent abuses, provide consistent results, and give greater transparency.

Amending the Codes of Arbitration Procedure ("Codes") to explicitly reference conflict of interest checks during arbitrator selection, as well as the procedures related to challenging an arbitrator for cause are welcome additions to the arbitration process that give much greater transparency to internal FINRA processes. Requiring the Director to issue a written decision when deciding a party-initiated challenge to an arbitrator is another improvement to the Codes that improves the transparency of the arbitration process.

Nevertheless, PIABA believes additional steps can be taken to promote transparency and fairness. For example, PIABA believes that Director's decisions regarding party-initiated challenges should be placed in a publicly available database, such as the one currently maintained for FINRA awards. Such release would provide helpful precedents for future parties to consider in evaluating potential arbitrators. Moreover, such a database would give parties insight that would help them in understanding what FINRA considers to be a legitimate ground for a challenge to a potential arbitrator and provide greater transparency, consistency and fairness to the process. PIABA understands FINRA's likely reluctance to have such a database contain the name(s) of the arbitrator(s) at issue, and would support the redaction of those names from the database records.

Procedural Amendments to the Codes

PIABA generally supports FINRA's proposed procedural amendments in the rules proposals, many of which are simply to clarify and codify existing policies into the FINRA Code provisions. PIABA submits the following additional comments with respect to the specific procedural amendments detailed below.

Virtual Hearings Default Option for Special Proceedings

FINRA's proposed rule change making video conferencing as the default for "special proceedings" aligns with PIABA's belief that investors must be provided with a full and fair opportunity to present their cases. Considering the time restrictions (e.g. hearings completed in one day) and the restriction of questioning opposing party witnesses, Claimants will benefit from having video conferencing as the default method of presenting their cases to the single arbitrator in this abbreviated proceeding, rather than a telephonic hearing. PIABA supports this proposal.

Redaction Requirements for Simplified Arbitration

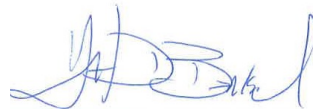
PIABA agrees that the safeguarding of personal confidential information is of paramount importance. At the same time, in contrast to the sophisticated and well-resourced FINRA Members, many unsophisticated Claimants in simplified arbitrations may have serious difficulty complying with the PCI redaction requirements in simplified arbitrations. PIABA proposes that the suggested guidance for protecting PSI posted on FINRA's website is likewise posted by the Director on each case's docket/portal so that Claimants are aware and can take action to protect their information. PIABA supports this proposal.

Amended Claims and Third-party Claims

Several of the procedural amendments concern amending claims and the filing of third-party claims. PIABA supports these proposals to specifically codify existing FINRA policy and/or provide additional procedural details and requirements for these types of claims. PIABA believes that parties to FINRA arbitration should be able to rely on the Code for the procedural rules and requirements to the greatest extent possible, and the proposed additions to the Code help to provide necessary procedural details about these claims that are currently lacking.

In sum, PIABA generally supports FINRA's proposed rule amendments set forth in Release No. 34-96607. PIABA thanks the Commission and FINRA for the opportunity to comment on these proposals.

Very Truly Yours,



Hugh Berkson
President, Public Investors Advocate Bar
Association