Submitted Electronically to: rule-comments@sec.gov

November 3, 2023

Secretary
U.S. Securities and Exchange Commission
101 F Street, NE
Washington, DC 20549

Re: **File No. SR – FINRA – 2023 – 013**
Proposed Amendments to FINRA
Codes of Arbitration and Mediation Procedure

Ladies and Gentlemen:

This will serve as comments of Cetera Financial Group ("Cetera") regarding proposed amendments to the FINRA Codes of Arbitration and Mediation Procedure. (We will refer to the proposed amendments and accompanying text collectively as the "Proposal"). The Proposal would create standards regarding representation of parties in FINRA arbitration and mediation proceedings by non-attorney representatives ("NARs").

Cetera is the corporate parent of four broker-dealers and three investment advisers. We operate in all 50 states and provide securities brokerage and investment advisory services to more than 1 million individual investors and small businesses through more than 9,000 financial professionals. We have been involved in a number of arbitration and mediation proceedings in which NARs have appeared, and offer these comments with that experience in mind.

Cetera Supports the Proposal

The Proposal represents a practical and well-reasoned approach to non-attorney representation, which has produced both positive and negative impacts for parties and the FINRA dispute resolution process in general. FINRA offers arbitration and mediation facilities that are designed to provide an effective and efficient process for resolution of disputes among customers, member firms, and representatives. Its' relative lack of formality in comparison to litigation conducted in courts has benefitted most participants, and we are not usually inclined to support changes that would make arbitration and mediation more like traditional legal proceedings. However, individuals representing parties in FINRA arbitration and mediation proceedings have a large impact on how cases are brought and resolved and the overall effectiveness of the forum. We believe that the Proposal is necessary to protect the interests of all concerned.

The Proposal would amend the Codes of Arbitration and Mediation Procedure to generally prevent NARs from representing parties in any FINRA Dispute Resolution forum. There are exceptions for representation by family members and law students in specified circumstances,

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but in general, only attorneys authorized to practice in the jurisdiction in which the proceeding is being conducted could be compensated for such activities.

The reasons for these amendments are thoroughly described in the Proposal. NARs are not subject to regulations generally applicable to attorneys under state law, which leaves parties represented by NARs without important protections or recourse in the event of negligence or impropriety by the NAR. In addition, arbitrators in FINRA proceedings lack authority to effectively control the behavior of NARs in hearing and other proceedings. Judges have the power to sanction counsel if they violate rules or orders of the court, but arbitrators do not have similar authority. If attorneys violate rules or professional standards in FINRA proceedings, arbitrators or parties can refer the offending attorney to the authorities that regulate professional conduct. The only effective method for arbitrators to control an NAR who violates applicable standards is to impose sanctions on the party. This may be effective in some cases, but it misaligns the interests of the NAR and the party they represent and leads to conflicts of interest that are difficult to resolve.

In our experience, NARs have a greater propensity than attorneys to engage in improper or disruptive conduct, particularly during hearings or mediation sessions. However, even if this were not the case, we believe it is necessary for investors to have protection in the event of misconduct and some level of confidence in the professional qualifications of the NAR. NARs have no requirements for education or formal training and no limits on how they characterize and market their services. They cannot be sued for legal malpractice and are not subject to discipline by bar authorities. The ability to represent parties in a FINRA Dispute Resolution forum for compensation should be considered a privilege, and should include protections for both parties and the forum. Parties have such protections when they are represented by attorneys, but not when represented by NARs. The Proposal takes appropriate steps to address this disparity.

Suggestion for Further Study

Section 12208(b)(1)(B) of the Proposal would permit law students to represent parties in FINRA Dispute Resolution matters under specified circumstances. We endorse this because it benefits both the parties and the system by helping to assure that parties have access to expertise that they may lack or cannot afford to pay for. However, the framework in Section 12208 limits this to law students who are supervised by "law school clinical programs or equivalents". This is a reasonable approach because it provides a structure that FINRA can use to determine if a law student NAR is under appropriate supervision. However, it is our understanding that substantially all of the law school clinics that sponsor programs of this type limit their representation to investor claimants, and often do not appear on behalf of respondents such as representatives or member firms as a matter of policy. We are not aware of any programs that might be deemed "equivalent" to law school clinics within the meaning of this provision, but they may well exist. The Proposal has the effect of conferring instant approval on law school clinics without providing guidance to other institutions that may wish to provide similar services to non-investor claimants.

In order to potentially increase access to representation and level the playing field for institutions seeking to offer these services, FINRA should undertake a review to determine if such institutions exist, and if they do, it should consider what qualifications or restrictions may be necessary to allow them to appear. FINRA should also consider and publish standards for programs that would satisfy the "or equivalent" provision in Section 12208(b)(1)(B).

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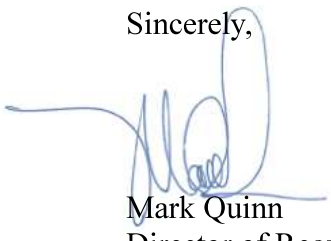
Thank you for this opportunity to share our views on this important matter. If we can offer any additional assistance or provide further information, please let me know.

Sincerely,



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