



University of
Pittsburgh

School of Law

Hickton Center for Community Legal
Services and Clinical Legal Education

Barco Law Building
3900 Forbes Avenue
Suite 420
Pittsburgh, PA 15260
(P) 412-648-1300
(F) 412-648-1947

Mailing Address
P.O. Box 7226
Pittsburgh, PA 15213

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

May 7, 2024

Sent via email: rule-comments@sec.gov

RE: Comment to SR-FINRA-2023-013

I. Summary

The University of Pittsburgh School of Law’s Securities Arbitration Clinic (the “Clinic”) offers this statement in support of the Division of Trading and Markets’ approval of the adoption of FINRA’s “Proposed Rule Change to Amend the Codes of Arbitration Procedure and Code of Mediation Procedure to Revise and Restate the Qualifications for Representatives in Arbitrations and Mediations (File Number **SR-FINRA-2023-013**).”¹

The following statement is specifically made in support of the adoption of **Proposed Rules 12208(b)(1)(B), 13208(b)(1)(B), and 14106(b)(1)(B)** (the “Provisions”). These three provisions are the proposed rules regarding the participation of supervised law students and securities arbitration clinics (“SAC”s) in the Dispute Resolution Services (“DRS”) forum. The Clinic does not offer statement (either in support of or in opposition to) any of the other proposed rules in the “Proposed Rule Change.”

II. Introduction

The Clinic offers passionate support for the Provisions. The Provisions would facilitate an increase in the ranks of representatives for aggrieved investors—not only by explicitly recognizing that students may work within the FINRA DRS forum but by incubating the future of the securities bar. Codifying the Provisions affirms a commitment to supervised student participation in the DRS forum.

The Clinic was founded in 2000 and originally based at the Thomas R. Kline School of Law at Duquesne University. In 2011, the Clinic moved to the University of Pittsburgh School of Law (“Pitt Law”). Currently, the Clinic is comprised of eight law students and two attorney advisors. The Clinic requires that students participate for two consecutive semesters, ensuring that each student has sufficient time to acquire a wealth of experience and remain with his or her assigned cases over an entire academic year. Pitt Law is now one of only ten law schools across the country offering such a securities arbitrations clinic.

¹ Exchange Act Release No. 99335 (Jan. 11, 2024), 89 FR 3481 (Jan. 18, 2024).

Since the inception of the Clinic in 2000, Clinic students (under the supervision of Professor Alice Stewart) have recovered millions of dollars for investor clients. The Clinic does not take any legal fee and regularly requests filing fee waivers for clients, making it entirely free for the harmed small investors. The Clinic is vital to clients who cannot afford an attorney and to clients whose injuries are viewed by the practicing securities bar as too insignificant in value to accept (despite the significant financial hardship such claims bring on the injured parties). Clinic students often participate as a client's representation for the entire life cycle of potential cases—from drafting complaints and completing discovery to negotiating settlements or representing the client in arbitration.

Our perspective as a clinic is uniquely appropriate to offer comment on the Provisions. Students participating in the Clinic have garnered first-hand experience of the benefits provided both to law students and DRS claimants by SACs. Although representation by supervised law students is currently implicitly permitted by FINRA, the Clinic believes that FINRA has correctly taken the step of proposing codification of the role of law students and SACs in the DRS forum. This codification serves to safeguard the existence of the role of law students in the DRS forum while also allowing appropriate regulatory oversight. Codification may also encourage more law schools to institute similar clinics. For the following reasons, the Clinic supports adoption of the Provisions and respectfully urges that the codification be instituted for the betterment of aggrieved investors, participating law students, and the securities bar at large.

III. Clinics Increase Aggrieved Investors' Access to Representation

In what is perhaps their most important function, SACs promote and assist in the preservation of equal access to justice. In general, law school clinics are geared to the assistance of those in society who are most vulnerable to the inequities of the American legal system. SACs exist for the sole purpose of assisting individuals who are facing an unjust diminution of their assets. These individuals are frequently those who have lost retirement savings and other investments because of the action or inaction of their brokers or financial advisors. Many of the issues raised in the Clinic's matters are those involving monetary disputes of limited contingent value to existing licensed securities attorneys (especially since most securities disputes require the same amount of time and effort on behalf of attorneys, regardless of the amount in dispute). However, what appears as a case of limited value to a practicing securities attorney can represent a devastating loss to someone who depended upon the availability of the lost funds. SACs fill this gap. Equal access to justice requires available resources for everyone, not just those who can afford it.

Effective civil enforcement of the securities laws is dependent upon SACs in the same way that the criminal justice system is dependent on public defenders. Absent SACs, the victims of securities violations who cannot afford representation are left without informed recourse. While a large firm can afford a securities lawyer as a cost of doing business, an aggrieved retail investor is often left with SACs as his or her only available option. Without SACs, the retail investor victims would be forced to represent themselves *pro se* against experienced attorneys. Or even worse, the retail investors would not take legal action at all.

IV. Response to Statement of Commissioner Hester M. Peirce

On April 8, 2024, Commissioner Hester M. Peirce offered statement on the Proposed Rule, including relevant questions to be considered by commenters.² Regarding the Provisions, Commissioner Peirce noted:

FINRA’s proposal would codify the ability of law students, working with a licensed lawyer, to represent investors. This explicit recognition of the important role that law students can and do play could inspire other law schools to start similar clinics While most students who go through such a clinic may not end up representing investors in disputes after they graduate and pass the bar, some will.

The Clinic agrees with Commissioner Peirce’s observation. Commissioner Peirce goes on to ask a question to be considered by commenters:

Do commenters agree that such clinics could help to increase the ranks of representatives for investors with disputes not only by explicitly recognizing that students can work on these matters, but by creating a pool of lawyers with relevant experience gained as students serving in these clinics?

The Clinic agrees with the Commissioner in this case as well. The niche subject matter of securities law is constantly changing, and legal proficiency requires a significant amount of training. It is imperative for the future of the securities bar to nurture future attorneys who are familiar with the state of the law and capable of adequately representing the interests of retail investors. SACs provide the opportunity for law students to gain the requisite knowledge and experience to succeed in the practice of securities law. While many of the clinics at Pitt Law last for just one semester, the complexity of securities regulation requires two full semesters of work for Clinic students. Furthermore, the increase of artificial intelligence and the prominence of cryptocurrency as an investment have made a complex field even more complicated. The Clinic and other SACs seek to close any information gaps for the future of the securities bar.

SACs also provide an educational experience that is not typically found in the law school classroom environment. Rather than the typical law school practice of teaching theory in an insulated environment, SACs provide law students with real-world experience. Not only do SACs provide law students with the knowledge of *why* the law is the way it is, but they also teach *how* to achieve success within the existing legal framework. SACs provide law students with the opportunity for face-to-face contact with actual clients as well as the ability to work on substantive issues with real-world impact. Through the process of representation, law students learn how to interview clients, obtain relevant information, work collaboratively, and (perhaps most importantly) how to counsel aggrieved investors. Just as mock trial programs and other competitions are beneficial learning tools for law students, SACs provide an effective environment for students to learn and develop the practical skills necessary to represent clients (not just in securities law but in the general practice of law)—skills including effective organization, research, and persuasion.

² Hester M. Peirce, *Statement: Filling the Gap: Comments on the Proposal to Amend FINRA’s Codes of Arbitration Procedure and Code of Mediation Procedure to Modify the Qualifications for Representatives in Arbitration and Mediations*, SECURITIES & EXCH. COMM’N (Apr. 8, 2024), https://www.sec.gov/news/statement/peirce-finra-04082024?utm_medium=email&utm_source=govdelivery.

By creating a class of future lawyers with experience in securities law (including familiarity with FINRA's procedures as well as the kind of matters that appear in commercial law venues), SACs strengthen the securities bar. Many law students who would not otherwise have an interest in the practice of securities law can develop this interest while working in the Clinic.

V. Importance of Codification

The proposal to codify law student participation in the DRS seeks to formally and explicitly acknowledge and regulate the involvement of law students. This explicit recognition serves several critical purposes, each aimed at enhancing the legal framework, educational standards, and integrity of DRS outcomes.

In SACs, law students are supervised by clinic directors. This supervision ensures adherence to the highest standards of professional conduct and ethical practice. Yet without codification, there remains something spiritually unofficial about the participation of law students in the DRS forum. This is why codification is so important.

Formal recognition of student participation could also inspire more law schools to develop securities clinics, thus expanding practical training opportunities in securities law. Such an initiative would not only enhance the quality of legal education but would also reinforce the commitment of FINRA and the SEC to fostering the next generation of securities law professionals. This move aligns with broader educational goals focusing on practical legal experience and ensures maintenance of high professional standards within the practice of securities law. Codification of law student participation symbolizes a strong commitment to collaborative legal education—enhancing the educational and professional rigor of law school curriculums focused on securities law.

Also, encouraging the involvement of law students—who are of increasingly diverse backgrounds—in arbitration and mediation, can promote inclusivity within the legal profession. This exposure can provide valuable experience to a broader pool of future lawyers, potentially leading to a more diverse legal profession in the securities industry.

Importantly, codification would clearly differentiate the roles of law students from those of Non-Attorney Representatives (“NARs”). This distinction is crucial for addressing current procedural ambiguities, ensuring that law students are recognized under a framework that reflects their supervised educational involvement. This clarification helps maintain the procedural integrity and ethical standards of the arbitration and mediation processes.

Codifying student participation would fortify the legitimacy and perceived fairness of arbitration outcomes. By ensuring that all participants are clearly accountable and operating under recognized standards, codification preempts challenges to the legitimacy of arbitration outcomes involving student advocates. This aspect is crucial for maintaining the trust and credibility of the arbitration process. The codification of the role of law students will increase the transparency of the arbitration and mediation processes. Stakeholders, including clients and the broader legal community, will have a clearer understanding of the role that students play, which could enhance trust in the outcomes of these proceedings.

This codification can ensure that all participating law students meet consistent, high standards of training and performance. By explicitly including law students in the parameters of the FINRA rules, supervised law students will be explicitly bound to the rules' architecture. This will be in contrast to the informal implied relationship that currently exists between law students and the rules. This codification will thus

likely lead to a more uniform application of the rules and procedures in arbitrations and mediations, reducing variability in the quality of representation provided by different student representatives. These formal rules governing student participation could facilitate more effective compliance and oversight mechanisms, ensuring that student representatives adhere to the same ethical and professional standards expected of licensed attorneys. This could also help regulatory bodies like FINRA monitor and enforce these standards more effectively.

VI. Conclusion

For these reasons, the Clinic supports the adoption of the **Proposed Rules 12208(b)(1)(B), 13208(b)(1)(B), and 14106(b)(1)(B)**. The codification of FINRA's implicit allowance of supervised law student representation in the DRS forum is a step on the path to strengthening the securities bar as well as providing aggrieved investors with legal recourse where they previously had none.

We thank you for your consideration.

Alice L. Stewart
Associate Professor of Law, Legal Clinics
Director of Legal Clinics

Rachael T. Shaw
Adjunct Professor of Law

Daniel McTiernan, '24
Certified Student Attorney, Securities Arbitration Clinic

Dylan Kim, '25
Certified Student Attorney, Securities Arbitration Clinic

Wesley Li, '24
Certified Student Attorney, Securities Arbitration Clinic

Shannon Ging, '24
Certified Student Attorney, Securities Arbitration Clinic