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Via E-Mail ([pubcom@finra.org](mailto:pubcom@finra.org))

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**RE: Regulatory Notice 17-33 (Options Available to Customers if a Firm or Associated Person Is or Becomes Inactive)**

Dear Ms. Asquith:

The Cornell Securities Law Clinic (the "Clinic") welcomes the opportunity to provide feedback on the request for comment (the "Request") of the Financial Industry Regulatory Authority ("FINRA") proposal to amend the Code of Arbitration Procedure for Customer Disputes ("Code") to expand options available to a customer when a firm or associated person becomes inactive while arbitration is pending. 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>.

In the past, FINRA has implemented changes to the Code to expand options available to a party when dealing with member firms or associated persons who are no longer in business at the time the claim is filed or at the time of the award. However, the Code currently does not address situations where a member firm or associated person becomes inactive pending arbitration.

**I. The Clinic Generally Supports FINRA's Proposal to Expand Options for Parties Pending Arbitration**

The Clinic supports the following proposals because expanding a customer's choices pending arbitration would allow a customer to further evaluate, among other things, the likelihood of collecting on an award. Additionally, these options allow a customer greater opportunity to make an informed decision on whether to amend to add another party, or withdraw a claim.

FINRA Rule 12202 states that a party's claim against a firm whose membership is terminated, suspended, cancelled, revoked, or expelled from FINRA is ineligible for arbitration unless the



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party agrees in writing to arbitrate after the claim arises. The Clinic supports FINRA's proposal to expand a party's option to withdraw a claim when a member firm becomes inactive pending arbitration, or where an associated person becomes inactive either before a claim is filed or pending arbitration. Additionally, the Clinic supports providing a claimant with 60 days to withdraw the claim(s) with or without prejudice.

FINRA Rule 12309 currently limits the party's ability to amend a statement of claim after FINRA has appointed a panel of arbitrators to the case. The Rule also provides that a party cannot add another party to the case after the arbitrator ranking lists are due and until FINRA appoints the panel, then the panel can grant a party's motion to add the new party. The Clinic supports the proposal that a party should be able to change its litigation strategy during a pending case once the claiming party learns that a firm or an associated person has become inactive. The Clinic also agrees that if FINRA notifies a party that the firm or associated person has become inactive the party should, as of right, have the option to amend the pleading, or add a new party within 60 days of receiving the notice.

FINRA Rule 12601 states a party can postpone a hearing in extraordinary circumstances but at the arbitrator's discretion. The Clinic agrees with FINRA's proposal to amend the Rule to allow a party to postpone a hearing as of right if FINRA notifies a party that a firm or an associated person has become inactive and the scheduled hearing date is within 60 days of the date the party receives the notice from FINRA. The Clinic also agrees FINRA should not charge the party any fees if it decides to postpone the hearing under such circumstances.

FINRA Rule 12801 permits a claimant to request default proceedings against any associated person respondent whose registration is terminated, revoked or suspended, and who failed to file an answer to a claim within the time provided in the Code. The Clinic supports the proposal to amend Rule 12801 to specify that a claimant may request a default proceeding against a terminated person who fails to file an answer within the time provided in the Code regardless of the number of days since termination.

FINRA Rule 12900 specifies that if a claim is settled or withdrawn more than 10 days before the date that the hearing is scheduled to begin, a party paying a filing fee will receive a partial refund of the filing fee. In addition, the Rule states that FINRA will not refund any portion if the claim is settled or withdrawn within 10 days of the scheduled hearing. The Clinic supports the proposal that FINRA will refund a party's filing fee in full, if FINRA notifies a party that a firm or associated person has become inactive, and the party withdraws the case against all parties within 60 of the notification from FINRA. The Clinic also supports the full refund of the filing fee if the party withdraws the case under such circumstances within 10 days of the date that the hearing is scheduled to begin.

**II. FINRA Should Reduce the “Inactive Associated Persons”  
Minimum from 365 Days to 120 Days**

Beginning on page nine of the Request, FINRA raises a number of questions, of which we will address the ones concerning the definition of “inactive associated persons.”

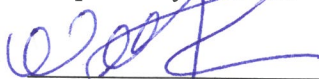
FINRA is proposing to define an “inactive associated person” as a person associated with a member whose registration is revoked, or suspending, or whose registration has been terminated for a minimum of 365 days. The Clinic does not support this definition and suggests that the definition should instead define “inactive associated persons” as person associated with a member whose registration is revoked, or suspending, or whose registration has been terminated for a minimum of 120 days.

Factors that FINRA should consider include: (1) the average time it takes to find new employment, and (2) the economic costs to parties having to pursue a claim when the associated person has left the industry permanently but has not yet hit the 365 day minimum requirement. The Clinic believes a 120 day minimum requirement is sufficient because a person seeking new employment is likely to find new employment within 120 days.<sup>1</sup> The Clinic does not believe that the 365 minimum day requirement properly balances the benefits with the costs to claimant parties.

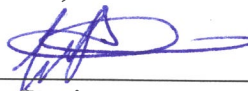
**Conclusion**

For the foregoing reasons, the Clinic generally supports FINRA proposal to amend the Code to expand options available to a party when a firm or associated person becomes inactive while arbitration is pending, but believes the time period for the definition of an “inactive associated person” should be shortened to 120 days.

Respectfully Submitted,



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Clinical Professor of Law  
Director, Cornell Securities Law Clinic



Tina Davis  
Cornell Law School '19

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<sup>1</sup> See United States Department of Labor, Bureau of Labor Statistics: Economic News Release (Nov. 3, 2017) <https://www.bls.gov/news.release/empsit.t12.htm> (discussing the median durations, in weeks, of the number of unemployed).