



Securities Arbitration Clinic
St. Vincent DePaul Legal Program,
Inc.

8000 Utopia Parkway
Queens, NY 11439
Tel (718) 990-6930
Fax (718) 990-6931
www.stjohns.edu

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Via email to pubcom@finra.org
Ms. Marcia E. Asquith
Officer of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 2006-1506

Re: **FINRA Regulatory Notice 17-33
Amendments to the Code of Arbitration Procedure for Customer
Disputes to Expand the Options Available to Customers if a Firm or
Associated Person Is or Becomes Inactive**

Dear Ms. Asquith:

Thank you for the opportunity to comment on the proposed rule change to amend the Code of Arbitration Procedure of Customer Disputes, which expands a customer's options to withdraw an arbitration claim if a firm or an associated person becomes inactive before a claim is filed or during pending arbitration. I am writing this comment on behalf of the Securities Arbitration Clinic of St. John's University School of Law. The Securities Arbitration Clinic is part of the St. Vincent De Paul Legal Program, Inc., a not-for-profit legal services organization.

The Securities Arbitration Clinic represents small aggrieved investors and is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules governing the procedural rights of customers pursuing claims against inactive members, and ensuring that customers have sufficient information available to them to make informed decisions when determining either to continue in an arbitration.

The Clinic is supportive of the amendment to FINRA Rule 12202 requiring the written consent of a customer in proceeding with an arbitration claim with a member or an associated person who is no longer registered. Because of the concerns related to proceeding against members and associated persons which FINRA has discussed in its notice, it is essential that customers be given a fair opportunity to reconsider their arbitration strategies.

The proposed changes to FINRA Rule 12100 offer an important protection to customers who have claims against unregistered members and associated persons. It is important that customers have the same options available with respect to individuals who are unregistered associated persons which they now have with respect to firms that are unregistered members. Additionally, FINRA will close a loophole in the current rule by expanding the options available to customers so that they may proceed in court against members and associated persons who become unregistered during the course of an arbitration. The same concerns exist if a member or associated person becomes unregistered during the course of an arbitration that existed if they were unregistered prior to the filing of the arbitration.

The definition of “inactive associated person” should be modified to shorten the length of time of termination required to a period of six months. The goal of offering the customer these proposed protections should be to increase the amount of information a customer has about her upcoming arbitration, and allow her sufficient time to prepare based on that information. Thus, these rules should apply to any customer whose claim is against a person who has been terminated for as short a time as practical. Waiting a full year may mean that the customer loses the practical ability to move the proceeding to court because the case may have progressed too far, notwithstanding the fact that the broker has no intention or ability to become registered again. By decreasing this time period from 1 year to six months, the customer will become aware of potential issues in her case sooner, while still taking into account that a broker may re-register.

In addition, a customer should be able to opt for court against any broker whose registration has been terminated, without a waiting period, if the broker has failed to file an answer. This will provide a second option to the default option for customer cases against brokers who are no longer registered and who have chosen not to participate in the arbitration process.

The Clinic believes that the proposed 60 day period, within which a customer must decide whether or not to withdraw the claim, or to amend it or add and drop parties, should be increased. The customer, and their legal representation, must be given adequate time to prepare or adapt their arbitration strategies, as well as potentially add or drop named parties from the complaint. Offering the customer a period of 90 days would better address the practical aspects of deciding whether to opt for court, continue with the arbitration as well as whether to amend pleadings. This additional time will allow a customer to consult with her attorney, and determine if new counsel may be needed if pursuing the case in court (and secure that counsel). While this window of time cannot be open indefinitely, in the interest of fairness customers

should be allowed more time to prepare. This would avoid wasteful arbitration which could end up unnecessarily costing the customer, the inactive member, or FINRA more in the process.

We support the amendment to rule 12601 to eliminate the fees associated with postponing hearings. It is important that these rules do not put undue financial burdens on customers. Any additional costs involving arbitration could persuade customers to drop otherwise justifiable claims and discourage customers from spending an appropriate amount of time deciding how to proceed.

The Clinic believes that the proposed rule changes will help keep customers informed about the members and associated persons they are pursuing claims against. The changes will also prevent the perversion of pursued claims by procedural barriers such as fees and tight deadlines. We believe that any costs to comply with this rule will be minimal and outweighed by the benefits it provides to customers. We encourage FINRA to continue to protect customers with potentially unrecoverable damages.

Thank you for your consideration of this matter.

Sincerely,

/s/

Justin M. Daley
Legal Intern