



Margo Hassan
Associate Chief Counsel

October 28, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2016-029 – Proposed Rule Change Relating to Use of the Dispute Resolution Party Portal in Arbitration and Mediation; Response to Comments

Dear Mr. Fields:

This letter responds to comments submitted to the Securities and Exchange Commission (“Commission”) regarding the above-referenced filing. In this filing, FINRA is proposing to amend the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes (together, the “Codes”), to require all parties, except customers who are not represented by an attorney or other person (“*pro se* customers”), to use the FINRA Office of Dispute Resolution’s Party Portal (“Party Portal”) to file initial statements of claim and to file and serve pleadings and other documents on FINRA or any other party. FINRA is also proposing to amend the Code of Mediation Procedure to permit mediation parties to agree to use the Party Portal to submit and retrieve all documents and other communications. In addition, FINRA is revising other provisions in the Codes to conform to existing practice.¹

The Commission received five comment letters in response to the proposed rule change.² Four commenters expressed general support for the proposed rule change citing, among other things, enhanced efficiency at the forum.³ Caruso and FSI stated that use of the Party Portal will facilitate interactions among parties, arbitrators, mediators, and FINRA staff. PIABA stated that “FINRA should be commended for undertaking the transformation of its arbitration and mediation arm into an electronic filing forum. A review of the rule proposal

¹ See Securities Exchange Act Release No. 78549 (August 11, 2016), 81 FR 54858 (August 17, 2016) (File No. SR-FINRA-2016-029).

² See Letter from Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated August 12, 2016 (“Caruso”); Letter from David Lagziel, CEO, Conflictteam, dated August 30, 2016 (“Lagziel”); Letter from David T. Bellaire, Esq., Financial Services Institute, dated September 7, 2016 (“FSI”); Letter from Nicole G. Iannarone, Assistant Clinical Professor and Michael F. Williford, Student Intern, Investor Advocacy Clinic, Georgia State University College of Law, dated September 7, 2016 (“GSUCL”); and Letter from Hugh D. Berkson, Esq., President, Public Investors Arbitration Bar Association, dated September 7, 2016 (“PIABA”).

³ See Caruso, FSI, GSUCL, and PIABA.

indicates that the process has been carefully considered.” One commenter did not address the substance of the proposed rule change.⁴

Substance of Comments

PIABA and GSUCL, while generally supportive of the proposed rule change, raised some concerns about aspects of the proposal. Their concerns are addressed below.

Fee Payments

Under the proposed rule change, FINRA would amend Rule 12302(c) to require the claimant to pay all required filing fees by credit card or automated clearing house (“ACH”) through the Party Portal unless the party is a *pro se* customer who opts out of using the Party Portal. In its proposed rule change, FINRA explained that these payment options are currently available to forum users and that requiring payment through the Party Portal would make case administration more efficient. FINRA staff would know immediately if a filing was deficient for lack of payment and would not have to ensure that checks that parties submit separately, by U.S. mail or other method, are correctly matched up to statements of claim submitted through the Party Portal.

PIABA urged FINRA to allow all fees to be paid by personal check. GSUCL suggested that FINRA permit parties with damages under \$100,000 to pay fees by personal check. GSUCL, a law school clinic, explained that it does not have the infrastructure to pay customer fees via ACH or credit card. It also noted that many law firms that represent claimants with smaller claims require customers to remit fees directly to FINRA via a personal check. GSUCL stated that “[w]ithout an exception allowing payment of fees by check for these small claims, we fear that the proposal will encourage parties to evade the Party Portal entirely by initiating an action on a *pro se* basis and then having counsel appear to represent them. At worst, it may discourage private attorneys from accepting clients with smaller claims entirely, resulting in more unrepresented claimants.” PIABA expressed similar concerns.

FINRA designed the ACH feature in the Party Portal to be self-contained and easy to use. A clinic or law firm representing a party does not need any special facility to remit payment via ACH. The Party Portal User Guide⁵ contains detailed instructions, including screen shots from the system, on how to pay by ACH. The Party Portal user enters the ABA routing number and the bank account number that appear on a personal check into the Party Portal. The User Guide illustrates the location of these numbers. A party can provide the numbers to a representative over the phone, or a voided check with the numbers, for entry into the Party Portal. Given the efficiencies afforded by electronic payment, and that any Party Portal user can remit fees, FINRA declines to amend the proposed rule change as suggested by the commenters.

⁴ See Lagziel. Since Lagziel does not address the substance of the proposed rule change, FINRA does not address the letter in this response to comments.

⁵ The Party Portal User Guide is available at: <http://www.finra.org/sites/default/files/dr-portal-user-guide-parties.pdf>. Directions on paying via ACH appear on page 57.

Personal Confidential Information

FINRA is proposing to incorporate the current provisions in Rule 12300(g) concerning the redaction of personal confidential information ("PCI") into new Rule 12300(d). Under the Codes, parties must redact portions of Social Security numbers, taxpayer identification numbers, and financial account numbers appearing in documents. The current rule provides that the redaction requirements do not apply to Simplified Arbitration cases. While FINRA is repositioning the provisions relating to PCI, it is not proposing to amend the rule in any substantive way.

PIABA and GSUCL believe that to deter the potential for identity theft for Party Portal users, FINRA should amend the Codes to eliminate the exemption to the redaction requirements included in the Simplified Arbitration rules. FINRA declines to amend the proposed rule change as suggested by the commenters. FINRA notes however, that it is concerned about identity theft. FINRA believes that the Party Portal provides parties with enhanced security over other methods of document transmittal. Unlike transmittal through the mail, the Party Portal is a secure, encrypted, environment that ensures that documents are transmitted only to the intended parties. Moreover, an exemption from the redaction requirements does not mean that *pro se* parties or clinic clients cannot redact PCI from their documents. FINRA has a dedicated web page encouraging parties to take steps to protect their PCI regardless of any exemptions in the Codes.⁶

Discovery Correspondence

Under the proposed rule change, FINRA would require parties to file discovery correspondence through the Party Portal.⁷ PIABA supports the requirement stating, among other things, that filing discovery correspondence may give FINRA and the arbitrators a chance to see discovery abuses. PIABA raised a concern, however, that the proposed rule change is unclear about how matters involving *pro se* parties who chose not to use the Party Portal would be handled.

Under Rule 12300, *pro se* parties are not required to file initial statements of claim or to file and serve pleadings and any other documents on the Director or any other party through the Party Portal. However, unless expressly specified in the Codes, *pro se* parties must comply with Code provisions. Rules 12506 and 12507 do not provide exemptions relating to discovery correspondence for *pro se* parties. Therefore, *pro se* parties would be required to file discovery correspondence by a method enumerated in Rule 12300(a)(2)(C).⁸

Service

PIABA noted that the proposed rule change provides for instances where parties must serve documents outside of the Party Portal. PIABA suggested that FINRA issue a list of such

⁶ Link to web page follows:
<http://www.finra.org/arbitration-and-mediation/protecting-personal-confidential-information>.

⁷ See Rules 12506 and 12507.

⁸ Rule 12300(a)(2)(C) provides for filing and service by first-class mail, overnight mail service, overnight delivery service, hand delivery, email, or facsimile.

filings once the rule is implemented. FINRA agrees that providing a list would be helpful to forum users. If the Commission approves the proposed rule change, FINRA will provide a list of such filings in a Regulatory Notice announcing approval of the proposed rule change as well as in guidance on the FINRA website.

Conclusion

FINRA believes that the foregoing responds to the issues raised by the commenters to the rule filing and that the proposed rule change should be approved as filed. If you have any questions, please contact me at (212) 858-4481, email: margo.hassan@finra.org.

Sincerely,

/s/ Margo A. Hassan

Margo A. Hassan
Associate Chief Counsel