Public Investors Arbitration Bar Association

June 8, 2012

Via Email Only
rule-comments@sec.gov

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Release No. 34-66910, File No. S7-08-07, *Amendments to Financial Responsibility Rules for Broker-Dealers*

Dear Ms. Murphy:

Thank you for the opportunity to comment on the proposal to adopt the rule changes reflected in File No. S7-08-07, *Amendments to Financial Responsibility Rules for Broker-Dealers* (the "Proposal"). I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"). PIABA is a bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums. Our members and their clients have a strong interest in SEC rules relating to both investor protection and disclosure. PIABA is generally supportive of the Proposal. PIABA believes that it will marginally increase the financial stability of broker-dealers and diminish the risk that public investors who prevail in arbitration proceedings conducted under the auspices of FINRA Dispute Resolution will be unable to collect damages awarded in their arbitrations.

Public investors are almost universally required to arbitrate disputes with broker-dealers before FINRA Dispute Resolution under pre-dispute arbitration agreements. Broker-dealers require customers to sign such agreements on a "take-it-or-leave-it" basis as a condition of opening customer accounts, and the courts have held that such pre-dispute arbitration agreements are binding and enforceable. *See Shearson/American Express v. McMahon,* 482 U.S. 220 (1987). These arbitration proceedings require a filing fee (waivable for customers who can demonstrate financial hardship) ranging from $50.00 to $1,800.00 (*see* FINRA Customer Code Section 12900, accessible at *http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4188)* and may cost customers additional sums of up to tens of thousands of dollars to prosecute to cover arbitration session fees, attorneys' fees and expert witness fees.

Public customers face an unacceptable risk that FINRA member firms will

lose an arbitration and thereafter give up their license and not honor the arbitration award. Historically, approximately 15% to 33% of FINRA arbitration awards have gone unpaid by member firms and associated persons. Presently there is no requirement that broker-dealers carry insurance to cover potential losses in FINRA arbitration. Many firms do not carry such insurance, and a large proportion of the unpaid FINRA arbitration awards are reportedly rendered against firms and associated persons who have simply become insolvent, gone out of business or left the securities business.

The insolvency or failure of thinly-capitalized brokerage firms due to customer arbitration claims has been a perennial problem but was recently highlighted by a proliferation of claims against smaller firms for sales of unregistered securities such as non-traded real estate investment trusts (REITs) and tenancies in common (TICs).

In these circumstances, any measures (such as those in the Proposal) that marginally increase the financial stability of broker-dealers will necessarily diminish the risk of non-payment of arbitration awards. PIABA believes that the Proposal should go a step further and require that all broker-dealers carry errors and omissions insurance to cover customer claims.

Based on the foregoing, PIABA is generally supportive of the rule changes reflected in File No. S7-08-07.

Very truly yours,

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