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Via Electronic Filing

Ms. Florence E. Harmon
Acting Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Release No. 34-58651; File No. SR-FINRA-2008-047
Proposed rule change relating to amendments to the Codes of Arbitration Procedure to raise the amount in controversy heard by a single chair-qualified arbitrator to $100,000

Dear Ms. Harmon:

Thank you for the opportunity to comment on the proposal (the "Rule Proposal") of the Financial Industry Regulatory Authority ("FINRA") to amend the Codes of Arbitration Procedure to raise the amount in controversy heard by a single chair-qualified arbitrator to $100,000. The Cornell Securities Law Clinic (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.[1]

The Rule Proposal provides for a single chair-qualified arbitrator in all arbitrations involving claims up to and including $100,000. This provision may be avoided only if the parties agree in writing to a three-arbitrator panel. The Rule Proposal departs from the current rule in three material ways. First, at present, a single arbitrator is appointed only in cases involving claims of up to $50,000. Second, for claims between $25,000 and $50,000, a three-arbitrator panel will be appointed at the request of either party. Finally, in those instances where the rules presently permit one arbitrator to preside over a claim, the rules do not require that the arbitrator be a chair-qualified arbitrator.

As set forth below, the Clinic supports the Rule Proposal insofar as it provides for a single arbitrator in cases involving claims up to $100,000, absent agreement of the parties to a three-arbitrator panel. However, the Clinic opposes the requirement that the single arbitrator be chair-qualified. The Clinic also recommends that FINRA clarify the wording of the Rule Proposal to make clear that a party may unilaterally procure a three-arbitrator panel only if at least one of the parties asserts aggregate claims in excess of $100,000 or seeks non-monetary damages. Clarification on this point will prevent parties from aggregating the total claims asserted by both parties in order to receive a three-arbitrator panel.

[1] For more information, please see http://securities.lawschool.cornell.edu.

A. The Clinic Supports the $100,000 Limit for a Single Arbitrator

By requiring that the parties enter into a written agreement in order to request a panel of three arbitrators for claims between $25,000 and $100,000, FINRA would effectively lessen the monetary and time expenditures of the arbitration process on both parties. Indeed, at the heart of the Rule Proposal is the desire to more efficiently employ resources and to decrease costs for both parties.[2] The Clinic agrees with FINRA that there will be an overall decrease in costs which would be felt immediately and directly.[3]

B. The Clinic Opposes the Requirement that Single Arbitrators Need to be "Chair Qualified"

The Clinic's primary objection to the Rule Proposal concerns the requirement that when a single arbitrator presides over a claim, the arbitrator must be chair-qualified.[4] FINRA's recent efforts to limit chairperson eligibility to arbitrators who have sat on three cases through award and completed chairperson training, and FINRA's decision to allow chair-qualified arbitrators to enter the random selection process for both chairperson *and* non-chairperson positions, have been greeted with sharp criticism. Investor advocates have expressed legitimate concern that these developments will produce a small insulated pool of repeat arbitrators and undercut FINRA's efforts at ensuring non-biased hearings through random selection.[5] In fact, the Clinic commented on these earlier rule changes several months ago and raised its own concerns over these developments.[6]

The Clinic believes that Rule Proposal, in its current form, will exaggerate the effect of the earlier chairperson rules resulting in the preclusion of a substantial number of non-chair-qualified public arbitrators across a broad swath of cases. Thus, the Clinic urges FINRA to eliminate its proposed requirement that the single arbitrator be chair-qualified. For small cases, it would be sufficient to have a single public arbitrator (the current rule), or at most, a single public arbitrator who has completed FINRA chairperson training prior to the Initial Pre-Hearing Conference.

C. FINRA Should Clarify That Aggregating Claims of Multiple Parties Cannot Be Used to Obtain a Three-Arbitrator Panel

The wording of the Rule Proposal is somewhat unclear as to how the $100,000 limit works in practice. We read the Rule Proposal as providing that a single arbitrator should preside over cases in which neither a claimant's claims in the aggregate nor a respondent's claims in the aggregate exceed $100,000, respectively. For example, if the claimant were to assert a $75,000

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[2] *See* Securities and Exchange Commission, Notice of Filing of Proposed Rule Change Relating to Amendments to the Codes of Arbitration Procedure to Raise the Amount in Controversy Heard by a Single Chair-Qualified Arbitrator to $100,000 (Sept. 2008), http://www.sec.gov/rules/sro/finra/2008/34-58651.pdf, at 5.

[3] *Id.* 5-6 (finding that parties would save at minimum $150 per hearing session, two-thirds of photocopying costs, and significant amounts of time in case processing and arbitrator selection).

[4] *See* Securities and Exchange Commission, at 1.

[5] *See* Comment Letter of Lawrence Schultz, Proposed FINRA Amendment to Customer Code Rule 12400(c) Chairperson Eligibility Requirements, http://www.sec.gov/comments/sr-finra-2008-009/finra2008009-3.pdf.

[6] *See* Comment Letter of William Jacobson, http://www.sec.gov/comments/sr-finra-2008-009/finra2008009-2.pdf.

claim, and the respondent a $30,000 counter-claim, we read the Rule Proposal as requiring a single arbitrator absent party consent. Nonetheless, we are concerned that others may interpret the Rule Proposal as to aggregate all claims of all parties. In the example above, aggregating claims would result in a three-arbitrator panel.

The Clinic requests that FINRA clarify the wording of the Rule Proposal to make clear that the $100,000 limit applies to each party who asserts a claim, not for all parties in the aggregate. This change will lessen the likelihood that the single arbitrator process could be avoided through perfunctory or frivolous counter-claims asserted only to obtain three arbitrators.

Conclusion

Overall, the Clinic supports the proposal to raise the claim amount to be heard by a single arbitrator to $100,000. However, in order for the Rule Proposal to have this designed effect, FINRA must remove the requirement that single arbitrators be chair-qualified and must ensure that parties cannot circumvent the rule merely by aggregating all of the claims asserted by all of the parties to exceed the $100,000 threshold.

Very truly yours,

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