Financial Industry Regulatory Authority

June 21, 2010

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2010-022 – Proposed Rule Change to Amend the Codes of Arbitration Procedure to Increase the Number of Arbitrators on Lists Generated by the Neutral List Selection System; Response to Comment Letters

Dear Ms. Murphy:

The Financial Industry Regulatory Authority, Inc. ("FINRA") hereby responds to the comment letters received by the Securities and Exchange Commission ("SEC") with respect to the above rule filing. In this rule filing, FINRA is proposing to amend Rules 12403 and 12404 of the Code of Arbitration Procedure for Customer Disputes and Rules 13403 and 13404 of the Code of Arbitration Procedure for Industry Disputes ("Codes") to increase the number of arbitrators on each list generated by the Neutral List Selection System ("NLSS").[1] Specifically, the proposal would expand the number of arbitrators on each list (public, non-public, and chairperson) generated through NLSS from eight arbitrators to 10 arbitrators while keeping the number of strikes at four per list for each party.[2]

The SEC received six letters on the rule proposal,[3] four in support of the proposal,[4] and two which support the proposal in part and suggest modifications.[5] The

[1] See Securities Exchange Act Rel. No. 62134 (May 19, 2010), 75 FR 29594 (May 26, 2010) (File No. SR-FINRA-2010-022).

[2] In an arbitration only involving members, the panel consists of non-public arbitrators, so the parties receive a list of 16 arbitrators from the non-public roster and a list of eight arbitrators from the non-public chairperson roster. Under the proposal, FINRA would expand the non-public list to 20 arbitrators and the non-public chairperson list to 10 arbitrators. The number of strikes would remain the same.

[3] Comment letters were submitted by A.M. Miller, dated May 6, 2010 ("Miller letter"); Steven B.Caruso, Maddox Hargett Caruso, P.C., dated May 27, 2010 ("Caruso letter"); Patricia Cowart, Chair, Arbitration Committee, Securities Industry and Financial Markets Association, dated May 27, 2010 ("SIFMA letter"); Leonard Steiner, Steiner & Libo, P.C., dated May 27, 2010 ("Steiner letter"); Scott R. Shewan, President, Public Investors Arbitration Bar Association, dated June 14, 2010 ("PIABA letter"); and Jill I. Gross, Director, Ed Pekarek, Clinical Law Fellow, and Jeffrey Gorenstein, Student Intern, Pace Law School Investor Rights Clinic, dated June 16, 2010 ("PIRC letter").

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Caruso letter states that the proposed rule change "would provide investors with greater control and choice over the individuals who will ultimately be appointed to serve on the arbitration panels" and urges the SEC to approve the proposal on an expedited basis. The SIFMA letter states that the proposal "will increase the likelihood that all arbitrators appointed to a case will have been selected by the parties, result in fewer administrative "extended list" appointments, and enhance party choice and satisfaction with the selection process." Likewise, the PIABA letter states that "this rule change is important because it will reduce the number of instances in which an arbitrator is appointed with no input from or approval by the parties."

The Steiner and PIRC letters only support the proposal in cases where the claimants and respondents are each entitled to one set of strikes (four strikes per side). The Steiner letter states that, in cases with multiple respondents, expanding the lists from eight to 10 arbitrators will result in respondents having a greater opportunity to select the arbitrators in a case.[6] The Steiner letter asks FINRA to modify its rules to provide that the number of strikes that respondents may exercise cannot exceed the number of strikes that claimants exercise. It also asks FINRA to prohibit non-appearing respondents from participating in arbitrator selection and to eliminate extended list appointments. The PIRC letter states that "FINRA should reform the language that grants four strikes to each "separately represented party" to eliminate situations where a claimant's four strikes are rendered ineffective against a named member firm and its associated person(s), who possess four strikes each." FINRA is not proposing to amend its rules relating to party strikes, participation in arbitrator selection, or extended list appointments. Therefore, the comments are outside the scope of the proposed rule change. FINRA does not intend to amend the proposal at this time.

FINRA believes the proposal would enhance participants' satisfaction with the FINRA arbitration process and asks the SEC to approve the proposal as drafted. If you have any questions, please contact me by telephone at (212) 858-4481 or email at margo.hassan@finra.org.

Very truly yours,

Margo A. Hassan
Assistant Chief Counsel
FINRA Dispute Resolution

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[4] See the Miller, Caruso, SIFMA, and PIABA letters. The Miller letter includes comments relating to panel composition in industry disputes. Since the comments are outside the scope of the proposed rule change, FINRA is not addressing them in this letter.

[5] See the Steiner and PIRC letters.

[6] Rule 12404 provides that each separately represented party may strike up to four of the arbitrators from each list for any reason. If, for example, a respondent brokerage firm and a respondent broker retain separate counsel, each is entitled to four strikes per list.