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United States Securities & Exchange Commission

100 F Street NE

Washington, D.C. 20549-0213

Re: File No. SR-FINRA-2010-036 (Notice of Filing of Proposed Rule Change to Amend the Codes of Arbitration Procedure to Permit Arbitrators to Make Mid-case Referrals)

Dear SEC,

I am an attorney who has represented investors in arbitrations before FINRA (fka NASD) since 2003. I am submitting this comment with reference to FINRA's proposed rule change SR-FINRA-2010-036. I am also a member of PIABA, but this letter is being submitted solely as my own, personal observation, and is not submitted on behalf of any organization or group.

I urge the SEC not to approve this proposed rule change.

This proposed regulation can only reward an unscrupulous broker at the expense of his defrauded client. Importantly, legal precedent exists whereby arbitrators may form opinions on the evidence after they are appointed and before hearings are concluded. See Spector v. Torenberg, 852 F. Supp. 201, 209 (S.D.N.Y 1994): "…an arbitrator is not precluded from developing views regarding the merits of a dispute early in the proceedings, and an award will not be vacated because he expresses those views. See Ballantine Books, Inc. v. Capital Distributing Co., 302 F.2d 17, 21 (2d Cir. 1962.: "Even if Arbitrator Hochman interfered with questioning of witnesses and telegraphed his views, the court cannot hear evidence about, or vacate, the award because Arbitrator Hochman's bias arose, if at all, from the claims and the evidence rather than from an impermissible source such as financial or personal interest in the outcome." Accord, Newco AG v. PN Enters., 1996 U.S. Dist. LEXIS 1186 (S.D.N.Y. 1996): "In addition, 'an arbitrator is not precluded from developing views regarding the merits of a dispute early in the proceedings, and an award will not be vacated because he expresses those views." Spector v. Torenberg, 852 F.Supp. 201, 209 (S.D.N.Y. 1994).

It would be ludicrous to require an arbitrator to step down after he has concluded that a broker is engaged in a continuing fraud based upon testimony, or submissions prior to the conclusion of a hearing. Finders of fact are supposed to draw conclusions about conduct – and misconduct – that they observe during the course of proceedings. So long as there is no evidence of bias *before* the commencement of proceedings, and arbitrator is only doing his job if he concludes that the evidence shows that the broker is a miscreant, and proceeds to promulgate his award accordingly.

Sincerely,

THEODORE M. DAVIS, ESQ.