Securities Arbitration Clinic
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VIA On-line Submission

February 4, 2013

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

***Re: SR-FINRA-2013-003***
Proposed Rule Change Relating to Amendments to the Customer and Industry Codes of Arbitration Procedure to Revise the Public Arbitrator Definition to exclude persons associated with a mutual or hedge fund from serving as public arbitrators

Dear Ms. Murphy:

The Securities Arbitration Clinic at St. John's University School of Law appreciates the opportunity to respond to the request for comment by the U.S. Securities and Exchange Commission (the "SEC") with regard to the Financial Industry Regulatory Authority, Inc.'s ("FINRA") proposal to amend the Customer and Industry Codes of Arbitration Procedure (collectively "Codes"). The Clinic is in favor of the proposed amendments to Rule 12100 of the Customer Code and Rule 13100 of the Industry Code, which amend the definition of "public arbitrator" to exclude individuals associated with a mutual fund or hedge fund from serving as public arbitrators, and to provide a two year waiting period for certain individuals with associations to the securities industry before they can serve as public arbitrators. However, as will be explained below, the clinic believes the amendment should go further in ensuring protection for investors by increasing the waiting period to five years.

The Clinic is a not-for-profit organization in which second and third year law students provide free legal representation under attorney supervision to public investors who are otherwise unable to obtain legal representation in their securities disputes. In addition to representing investors in securities arbitrations, the Clinic also promotes investor education and protection. Accordingly, the Clinic and its clients have a strong interest in the rules governing the arbitration process at FINRA.

Over the past decade, FINRA has gradually narrowed the definition of "public arbitrator" in an effort to improve the perception of fairness in its arbitration process. For example, in 2003 FINRA (then the National Association of Securities Dealers (NASD)) modified the definition to require arbitrators to disclose any relationships or financial interests that might affect their impartiality or create an appearance of bias. NASD further amended the definition of "public arbitrator" in 2006, to exclude individuals who are directors, officers, or an immediate family member of a person who is a director or officer, of an entity that indirectly controls, is controlled by, or is under common control with, any broker-dealer. In 2011, FINRA amended its codes to give investors the option of selecting an "all-public panel" for certain arbitrations. These examples illustrate the continuing efforts FINRA has made to reduce the perception of bias and increase investor confidence in its dispute resolution process. We believe that the rule proposal now being considered will help further these goals.

Additionally, the proposed amendments will eliminate what we feel is a misclassification of certain individuals as "public arbitrators," which has undermined the original purpose of the classification system. The distinction between "public" and "non-public" arbitrators was created to separate individuals with no connection to the securities industry from those who were involved in some way. As currently enacted, the definition of a "non-public" arbitrator includes brokers (currently working or retired), attorneys or accountants who perform a substantial amount of work for individuals in the securities field, or employees of banks or other financial institutions who engage in securities trading through their employment. Further, the definition of "public arbitrator" excludes investment advisors, attorneys or other professionals who derived 10 percent of their revenue or $50,000 or more in revenue from clients in the securities field in the previous two years. The effect of the two definitions is to exclude not only individuals who work personally in the securities field but even those who have an indirect relationship that would nonetheless tend to create a perception of bias. If anything, individuals associated with hedge funds or mutual funds have a stronger connection to the industry than some individuals who are excluded under the current rule.

Finally, we support this amendment because it will address concerns about investor perceptions of unfairness in the arbitration process. A study published in 2008, titled *"Perceptions of Fairness of Securities Arbitration: An Empirical Study"* by the Securities Industry Conference of Arbitration, surveyed approximately 3,100 individuals involved in the securities arbitration process, including investors, securities representatives and lawyers, and found that there was a strong perception of bias surrounding the arbitration process. Nearly 50 percent of responding individuals believed that arbitration panels were biased, and 62 percent of investors felt that the arbitration process was unfair. The proposed rule changes will help combat the continuing problem of investor perceptions of bias in the arbitration process by ensuring that only individuals who are not connected to the securities industry will be allowed to serve as public arbitrators. Moreover, properly classifying public and non-public arbitrators has grown more important over the recent year, as a survey has revealed that investors have been increasingly selecting the "all-public" panel option for their arbitrations. It is imperative that these individuals do not have their choices undermined because individuals have been improperly classified as "public arbitrators."

While we support this amendment, we believe it should go further in protecting investors by increasing the proposed waiting period for certain individuals from two years to five years. The current amendment would place a two year delay before certain individuals could serve as "public arbitrators" upon ending their associations. The two year period applies to: investment advisers, individuals associated with hedge funds or mutual funds, attorneys or accountants deriving substantial revenue from clients involved in the securities industry, individuals who are directors, officers, or employees (or who have spouses who are directors, officers, or employees) of an entity that directly or indirectly controls, or is controlled by any organization or business that is engaged in securities trading. We believe that this waiting period should be extended to five years so that it is consistent with the five-year waiting period in the definition of "non-public" arbitrator. We do not believe there is any reason for the distinction, particularly when individuals, such as those involved in hedge funds or mutual funds, are as susceptible to perceptions of bias as those individuals upon whom a five-year waiting period is imposed. Finally, we feel that it would help to simplify the increasingly complex definitions of "public" and "non-public" arbitrators, while increasing investor confidence in the arbitration process.

As discussed above, we support the proposed rule changes as they are beneficial to investors. However, we ask that the amendment be altered to increase the waiting period from two years to five years. Thank you for your consideration in this important matter.

Respectfully submitted,
ST. JOHN'S UNIVERSITY SCHOOL OF LAW
SECURITIES ARBITRATION CLINIC

/s/

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