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Via Electronic Filing

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

RE: Release No. 34-68632; File No. SR-FINRA-2013-003 (**Proposed Rule Change to Amend FINRA's Customer and Industry Codes of Arbitration Procedure to Revise the Public Arbitrator Definition**)

Dear Secretary Murphy:

The Cornell Securities Law Clinic (the "Clinic") submits this comment to generally support the proposal (the "Rule Proposal") of the Financial Industry Regulatory Authority ("FINRA") to amend Rule 12100 of the Customer Code of Arbitration Procedure ("Code")¹ to revise the definition of "public arbitrator" and to require individuals to wait for two years after ending certain affiliations before they may be permitted to serve as public arbitrators. The Clinic is a Cornell Law School curricular offering 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. For more information, please see <http://securities.lawschool.cornell.edu>.

The Rule Proposal will amend the Code to revise the definition of "public arbitrator" to exclude persons associated with a mutual fund or hedge fund from serving as public arbitrators and to require such individuals to wait for two years after ending certain affiliations before they may be permitted to serve as public arbitrators.

The Clinic agrees that the proposed amendments to the "public" arbitrator definition would improve the public investors' perception about the fairness and neutrality of FINRA's public arbitrator roster. However, the Clinic believes that the transition period for individuals ending certain affiliations under the Rule Proposal should be extended to a minimum of at least five years.

First, the proposed transition period is an insufficient amount of time for potential arbitrators to separate themselves from their affiliation with the securities industry. Second, the

¹The Rule Proposal also proposed analogous changes to FINRA Rule 13100 of the Code of Arbitration Procedure for Industry Disputes. The Clinic takes no position on the Industry Code, as we are only concerned with the rule proposals that affect customer disputes.

transition period creates arbitrary distinctions among former industry participants eligible to serve as “public” arbitrators based on their specific affiliations within the securities industry. Third, the need for regulatory consistency calls for the transition period under the Rule Proposal to be consistent with the transition period under current FINRA Rule 12100(p)(1). The Clinic believes this consistency will prove to be simpler in its application.

While we support the Rule Proposal compared to the present status, we believe it does not go far enough, and at a minimum there should be a uniform 5-year cooling off period for any person who ever was affiliated with the securities industry. Even then, we agree with other commenters who have suggested that persons who have substantial securities industry affiliation never should be considered “public” arbitrators.

I. The Two-Year Transition Period Fails to Provide Sufficient Separation

In 2004, FINRA amended the definition of “public” arbitrator and “non-public” arbitrator under current FINRA Rule 12100(p)(1) to increase the transition period from three years to five years for a “non-public” arbitrator to be eligible to serve as a “public” arbitrator after leaving the securities industry. A three-year transitioning period after leaving the securities industry was seen as insufficient by FINRA.²

Applying the same line of reasoning to the current Rule Proposal would lead to the conclusion that a two-year cooling off period is clearly insufficient and cannot ensure that potential arbitrators are sufficiently separated from their affiliations with the securities industry. The 2004 amendment suggests that a two-year transition period cannot accomplish FINRA’s goals for initially establishing the “cooling off” period in the first place. If there is to be a “cooling off” period, it should be extended to a minimum of at least five years.

II. The Two-Year Transition Period Creates Arbitrary Distinctions Among Former Industry Participants

The Rule Proposal will create arbitrary distinctions among former industry participants based on their specific affiliations within the securities industry. The Rule Proposal will effectively categorize individuals as “non-public” arbitrators if associated or registered through a broker or dealer in the past five years but will allow individuals associated with a mutual fund or hedge fund to serve as “public” arbitrators within two years of ending their affiliation. There is no reason to believe that individuals associated with a mutual fund or hedge fund require a shorter period of separation from the securities industry to sufficiently distance themselves from their former professional ties. Therefore, the Clinic believes this distinction among former industry participants serves no legitimate purpose.

A concrete example of the arbitrary distinction the Rule Proposal potentially creates is the different treatment of Mutual Fund wholesalers versus registered representatives. Although

² See Exchange Act Rel. No. 49573 (April 16, 2004), 69 FR 21871 (Apr. 22, 2004) (File No. SR–NASD–2003–95) (Order Granting Approval to a Proposed Rule Change Relating to Arbitrator Classification and Disclosure in NASD Arbitrations). The changes were announced in Notice to Members 04–49 (June 2004).

both individuals are employed by the securities industry, an external Mutual Fund wholesaler who sells Mutual Funds through registered representatives may be classified as a “public” arbitrator only after two years of ending his affiliation under the Rule Proposal. Meanwhile, under the Code, a registered representative must wait five years before they are eligible to serve as a “public” arbitrator.

The transition period under the Rule Proposal creates an arbitrary designation among closely related and affiliated employees within the securities industry. The Clinic believes that both industry participants in the example above should be barred from serving as “public” arbitrators for a minimum of at least five years.

III. Regulatory Consistency and Ease of Application Call for a Single Bright-Line Test

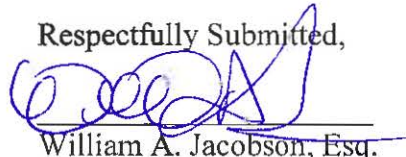
A single bright-line test of at least a five-year cooling off period under the Rule Proposal will provide greater regulatory consistency and may prove simpler in its application. Moreover, this longer cooling off period is more consistent with FINRA’s prior objective of providing public investors with the option of panels with truly “no industry participants.”³

Finally, individuals affected by the proposed amendments are not precluded from serving as arbitrators. There is little harm for individuals to continue to be categorized as “non-public” arbitrators for a longer period consistent with FINRA Rule 12100(p)(1).


Conclusion

The Clinic supports the Rule Proposal; however, due to the foregoing reasons, the Clinic strongly urges that if former industry participants are allowed to serve as “public” arbitrators at all, the cooling off period should be extended to a minimum of at least five years. This modification to the Rule Proposal will better accomplish FINRA’s goal of improving public investors’ confidence in the neutrality of FINRA’s public arbitrator roster while providing greater regulatory consistency and simplicity in its application.

Respectfully Submitted,



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³Notice of Filing of Proposed Rule Change to Adopt New FINRA Rule 63250 (Amendment to the Panel Composition Rule), 75 Fed. Reg. 218 (Nov. 12, 2010) *available at* <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p122430.pdf>