Comment: SR-FINRA-2014-028

As an arbitrator, a former NASD Director of Arbitration, and the owner of a newsletter that tracks events and developments in the specialized area of securities arbitration, I am interested in the current proposal to revise the arbitrator classifications in ways that are unprecedented and potentially inimical to FINRA Dispute Resolution's mission. I have previously commented on this proposal and, in those comments, have focused primarily on FINRA's steadfast insistence on pursuing change without weighing the potential consequences. I will continue in that vein.

By weighing the consequences, I mean that FINRA has not conducted an in-depth analysis of the impact its proposed revisions may have on a roster that is already in shaky condition. FINRA originally submitted this proposal without offering any statistical support for the revisions or quantitative study of the consequences. When reminded of that omission, FINRA's reaction was a shoulder shrug. It agreed that an impact analysis would be "helpful," but declined to do one. Instead, it offered a few statistical observations and promised to do a full impact study once the rule is approved.

Here's the information that FINRA did supply in its response to comments on September 30.

- Between January and August 2014, all-public panels decided 84 cases, and mixed panels decided 71 cases.
- FINRA estimates that about 100 of its Public Arbitrators will be re-classified as Non-Public, because they "regularly represent or provide services to investors in securities disputes."
- About 10% (374/3,567) of the forum's Public Arbitrators reflect a CRD number or a past affiliation with a "firm that had a CRD number."
- As of August 2014, FINRA has increased the number of arbitrators prepared to serve in its Puerto Rico hearing location to 800 (no breakdown of Public vs. Non-Public). It has built its Puerto Rico ranks to 70 and will draw from the Southeast Region and Texas for the rest. *(Note: FINRA had <u>seven</u> arbitrators in the Puerto Rico hearing location when the surge hit. On the one hand, FINRA did a great job; on the other hand, the effort caused delays in case processing and represents, at best, agile management by crisis.)*

That's the sum of FINRA's current impact analysis. Doing an impact analysis after the fact closes the barn door after the horses have left. Should FINRA find post-approval that the impact would be unsupportable, it could conceivably approach the Commission to repeal the rule, but, in the meantime, it would be stuck with the consequences of the rule change. Moreover, conducting the impact analysis before the damage is done and the rule approved requires no more effort than FINRA will need to exert in order to effect the changes post-approval and the information that it garners in the pre-approval process can, if it leads to a positive signal, will streamline implementation.

FINRA clearly believes that the impact analysis is not necessary beforehand, because it assesses the damage to the roster as slight. I believe the staff is whistling in the dark.

The 474 Public Arbitrators that FINRA has quickly identified as subject to re-classification constitute 13% of the total pool. FINRA does not count the Public Arbitrators that have registration backgrounds as RIAs or commodities personnel, who were, for any moment in time, associated persons with brokerage firms – or affiliates of broker-dealers – or who have worked with mutual funds or hedge funds at any time in their past, or who have spouses or immediate family who will disqualify them. Is it beyond contemplation unreasonable to believe that, considering those people might double the number FINRA projects?

Consider that a quarter of the Public Arbitrator pool might be re-classified and no longer able to serve as Public Arbitrators. Consider, too, that the Public Arbitrator ranks are the source for some 85% of the arbitrator seats that FINRA needs to fill in order to keep customer disputes moving through its system. Consider that FINRA, despite a tepid case volume currently, is, nevertheless, displaying the longest average turnaround times in years (close to 20 months on average). Might that slowdown be attributable, in part, to the lack of available Public Arbitrators even now? What would be the impact if, as happened in Puerto Rico, case volume were to suddenly surge in all hearing locations?

FINRA wants this re-classification, whereas, from my standpoint, it is putting the cart before the horse. There is no urgency to pursuing the current proposal. FINRA has recently raised arbitrator pay and, perhaps, it can build its Public Arbitrator ranks first and avoid reducing them to crisis levels with a radical and hasty adjustment. FINRA has established an Arbitration Task Force to contemplate structural and procedural changes. Take the time to do an impact study and supply that information to the new Task Force. I respectfully submit that FINRA's current path is a hasty, if not reckless, one. By approving the change, the Commission unnecessarily risks permitting a sea change in the arbitrator ranks and, with a surge in volume, a situation that could inundate the forum.

Thank you for the opportunity to submit my thoughts and views.

Respectfully,

Richard Ryder, SAC