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U.S. Securities & Exchange Commission
Washington, D.C.

Re: Comments on SR-FINRA-2014-028, "Notice of Filing of a Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator"

Dear Sirs:

I write to comment on FINRA's proposed amendments to its arbitration rules relating to the definitions of "Public Arbitrator" and "Non-Public Arbitrator." I have been on FINRA's arbitration roll for about 14 years, where I am and have been classified as a public arbitrator. I am eligible under the Code of Arbitration Procedure to serve as a panel chairman and have so served on several panels. I am a practicing lawyer, as described in the Background Information section of my FINRA Disclosure Report. There I disclose the nature of my practice: primarily securities class actions on behalf of investors. While over the years I have represented both customers and brokers in account and transaction disputes, I have not had any such matters in recent years.

The proposed amendments should not be adopted as now phrased. The specific language I am referring to is as follows:

> 12100(u)(3). A person shall not be designated as a public arbitrator, who was, for a total of 15 years or more, an attorney, accountant, expert witness or other professional who has devoted 20 percent or more of his or her professional time annually to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry.

Proposed amended subsections (p)(3) and (u)(5), (10) have similar language. Among other things, these proposed amendments, if adopted, would, for the first time, classify professionals who represent customers in disputes with their brokers as "non-public" arbitrators.

It is my understanding that the public/non-public classifications were designed for two primary purposes. First, "industry" participants in arbitrations, usually brokerage firms, were uncomfortable having customer disputes decided by arbitrators who may not understand the securities industry. By including on a 3-person panel an arbitrator who works or worked in the securities industry, the industry participants are assured that at least one arbitrator understood industry practices and would not vote to award damages in a case simply because an investor lost money. By the same token, public investors/customers were concerned that a panel composed of only industry-related arbitrators would be stacked against them, favoring the brokerage firm. Thus, the rules provide that public arbitrators, *i.e.*, those not connected with the securities industry, would be on the panel, and indeed would be a majority of a 3-person panel. In other words, a "public" arbitrator is one not associated with the industry side.

The proposed rule would turn the historical "public/non-public" distinction on its head. Under the proposal, for example, experienced lawyers whose practice includes some representation of public customers would have the same classification as arbitrators who have close industry ties. Both would be classified as "non-public." While I do not know the makeup of what would become the new list of "public" arbitrators, I have to believe that the quality of chairman-eligible arbitrators would suffer by this proposed rule change.

My personal situation is an example. While I believe the proposed amendments are intended to classify as non-public those arbitrators who professionally have devoted at least 20% of their time to providing services on behalf of customers in disputes against their brokers, I have been informed by FINRA that it understands the language to be broader than that and would include me because securities class actions – the main focus of my practice – involve "investment…transactions" within the meaning of proposed amended 12100(u)(3). If that is the case, I would no longer be eligible to serve as a panel chairman under 12400(c).

I do not see how classifying me as a non-public arbitrator would be consistent with the historical purpose behind the "public/non-public" distinction. While I have in the past represented brokerage firms, I have not for years. And when I did, it was a relatively small part of my practice. I have also in the past represented customers in disputes with their brokers. That, too, represented a small part of my practice. At the very least, the proposed definition is ambiguous. I would therefore suggest that FINRA make the definitions clearer. If the intent is indeed to classify professionals who provide services on the customer side as non-public arbitrators – a departure from the current rules, and a change that I believe would be harmful to the arbitration process – I would urge FINRA to propose amendments that would treat arbitrators with customer/investor relationships different from those with financial industry relationships.

For example, those with customer/investor relationships should still be able to serve as panel chairs.

For the reasons explained above, I believe that the proposed rule changes that would classify professionals who represent investors as non-public arbitrators would distort the purpose of the public/non-public distinction and should not be adopted or should be modified.

Sincerely,

Daniel E. Bacine

DEB/mmb