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rule-comments@sec.gov

RE: SR-FINRA-2010-053 Amendment of Panel Composition Rules

Dear Sir or Madam:

I write in support of SR-FINRA-2010-053. My law practice for the past 25 years has focused on representing investors in FINRA arbitrations and court cases. I believe that the FINRA arbitration process is in most ways as fair as the court process. The primary exception to this has been the mandatory industry arbitrator requirement. There are two basic problems with the current rule requiring industry arbitrators in all customer cases with three arbitrators. One is a problem of perception, and the other is one of substance. The proposed rule cures both of them.

The Perception Problem. Main Street investors who have suffered significant losses come to our offices often questioning whether they have any chance to prevail against behemoths like Merrill Lynch, Morgan Stanley, UBS or Wells Fargo. I explain to each that we will have the same opportunity as the big Wall Street firms to present our case, and that at the end of the day, it will be decided in a private room by three individuals who will listen to both sides, and who take an oath to examine the facts impartially and make a decision. Most clients are reassured by my explanation.

I can assure you that their moods change when I then have to explain that a member of the very industry they are suing will be one of three arbitrators deciding their case. When the client ask why we need an industry panelist, I cannot give a good answer. The real answer is "Because that is the way the industry has constructed the playing field.." That is hardly reassuring, but there is little else to say. The oft-cited rationale that the industry arbitrator adds necessary expertise is simply not true – especially now, where panels are more sophisticated and trained in the securities arbitration process, and where there are multiple experts testifying in cases presenting technical issues.

Perception is important to dispute resolution fairness. Whether the forum is court or arbitration, the appearance of impropriety should be enough to disqualify a decision maker. In a case against an attorney for legal malpractice, no legislature or court rule would require the

plaintiff to have four lawyers on the jury, no matter how fair they might be. If nothing else, it would look wrong. The mandatory industry arbitrator is no different. He or she represents one-third of the decision making body, and no matter how fair that person is, claimants and the public can and do perceive that they are not getting a fair hearing. The proposed rule will finally do away with that perception, and for that reason alone, it should be adopted.

The Substantive Problem. This has two sub-parts. The first relates to the "product cases" that comprise a significant percentage of the cases filed today. When an investor has a claim that calls into question the sale of a single investment product, whether it be a direct placement, credit-based fund, or arbitrage scheme, and that product (or one virtually identical to it) may have been sold by any number of firms. In those cases, the investor cannot get a fair hearing from an arbitrator affiliated with a firm that sold the same or similar product. The problem was most evident with the collapse of the auction rate securities market, and Finra to its credit addressed the issue with special arbitrator disclosure requirements. But ARS claims are only the tip of the iceberg. Many products have had multiple selling groups and underwriting broker-dealers. Nothing in the current rules prevents persons affiliated with those firms from sitting in judgment on a product their firm sold.

The second part of the problem exists everywhere, but is particularly acute in small to medium sized cities like Portland, Seattle, Salt Lake, or Boise. It is this: brokers who have been in town for any period of time will almost always know someone in the office of the firm where the claimant had his account, if not the broker whose conduct is at issue. To complicate things further, in this time where brokers change jobs as frequently as professional athletes change teams, the industry arbitrator may consider that one day he or she might be interested in a job at the respondent firm. It is not inconceivable that his decision will be influenced by that possibility. These are significant problems that, as counsel for the investors seeking a fair hearing, we struggle with in many cases.

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The simple solution to all of these problems is to give the investor the right to strike as many of the industry arbitrators he or she deems necessary for a fair hearing. That is precisely what the proposed rule change does. In many cases, as the pilot program has shown, industry arbitrators will continue to serve, which is as it should be. There are industry arbitrators that are among the most knowledgeable and fair in the pool, and absent a real or potential conflict, I would be quick to rank them. The beauty of the proposed rule is that those arbitrators will continue to serve in the right cases, but the substantive and procedural problems identified above will largely disappear.

I urge the Commission to approve of the proposed rule change. Thank you for your consideration.

Very truly yours,

s/ posted electronically

Robert S. Banks, Jr.

RSB:klw