Comments of Eliot Goldstein on SR-FINRA 2010-053

November 30, 2010

Elizabeth M. Murphy
Secretary
U. S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: SR-FINRA 2010-053 – Proposed Rule Change Eliminating the Mandatory Industry Arbitrator.

Dear Ms. Murphy:

I am writing to urge that the SEC approve proposed rule change SR-FINRA-2010-053 on an accelerated basis.

My perspective is of one who has worked as a securities and financial services attorney in the Washington, D.C. area for more than 25 years. I have served as Senior Enforcement Counsel for the SEC, as Assistant Director of Enforcement for a federal bank regulatory agency, and, in private practice, as a federal court-appointed Receiver and Claims Administrator for the SEC in major securities fraud cases. Although the majority of my practice in recent years has involved representing public investors in securities arbitrations, I have also had substantial experience on the industry side, including representing brokerage and investment advisory firms, individual brokers, and serving as the General Counsel for one of the largest financial services firms.

The time has come to eliminate the requirement that one arbitrator on each three-member panel be an industry (i.e. "non-public") arbitrator. If the Commission is to be true to its stated mission to "protect" investors, it must put an end to this unfairness. I fully concur with FINRA's stated position that giving customers the option of an all-public panel will enhance confidence in and increase the perception of fairness in the FINRA arbitration process.

If investors are to have confidence that the arbitration process is fair and impartial, the panel must be comprised of arbitrators that are <u>each</u> neutral, independent, and can truly be objective. Even if an industry arbitrator seeks to be objective, the inevitable appearance to the investor claimant is that the deck has been stacked with at least one "ringer."

The rationale that an industry arbitrator is needed to impart industry "expertise" to the other panelists is simply not true. If any such expertise regarding the

securities industry is needed in order that the other panelists better understand the facts or issues at hand, such expertise can be supplied by independent "experts" and other witnesses (such as branch managers, compliance officers, or supervision personnel) who can be questioned and cross-examined on the record at hearing, or by the parties' respective counsel, who almost invariably are knowledgeable securities practitioners.

In my experience, the industry arbitrator often holds sway over the other panelists and attempts to "school" them regarding his or her views as to how certain aspects of the industry are supposed to work. The problem is that this is often done in private during lunch or other hearing breaks, where the correctness and accuracy of any such views and professed expertise cannot be questioned, contested, or controverted by claimant's counsel.

One must question why the securities industry has fought so hard to prevent elimination of the industry arbitrator requirement and has gone to great lengths to recruit brokers and other associated persons to serve as industry arbitrators. The obvious reason is that they believe the industry arbitrator, more often than not, will be neither neutral nor objective.

In some cases, the industry arbitrator is actually an active broker, branch supervisor, or compliance officer who has been the subject of (or works for a firm that has been the subject of) the very same type of wrongful conduct alleged in the arbitration on which he or she is sitting in judgment. This certainly does not create a fair and level playing field. More importantly, this kind of conflict is not necessary or appropriate when thousands of intelligent and qualified arbitrators are available who have no industry ties and do not pose such conflicts of interest or appearance of partiality problems.

In light of the numerous securities industry "conflict of interest" scandals in recent years, the importance of seeking to insure that none of the three arbitrators on a panel is conflicted by industry relationships and that none of them has ties that create the appearance of pro-industry bias cannot be overstated.

Finally, with respect to the definition of "public" arbitrator in any final rule revision, the definition should exclude any person who is an attorney, accountant, or other professional whose firm has represented industry members within the past five years. In light of the numerous securities industry "conflict of interest" scandals in recent years, the importance of seeking to insure that public arbitrators are not conflicted by industry relationships and do not have the appearance of pro-industry bias cannot be overstated.

Thank you for your consideration. If you have any questions or require any additional information, please contact me.

Respectfully yours,

Eliot Goldstein

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