Public Investors Arbitration Bar Association

December 21, 2009

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

Re: File Number SR-FINRA-2009-075

Dear Ms. Murphy:

I write on behalf of PIABA (Public Investors Arbitration Bar Association) to comment on SR-FINRA-2009-075. The proposal involves two rule changes. Both relate to fees to be paid by parties in arbitration. The first would provide that the late postponement fee not be waived if the parties request a postponement within three business days before the scheduled hearing session. The second would codify FINRA's current internal practice of charging $450 per hearing session for a single-arbitrator case with an unspecified damage claim.

We oppose both rule changes. We understand that these rules are purportedly intended to clarify existing practice. However, we oppose any rule which would result in higher fees to the customer in a FINRA arbitration proceeding.

Moreover, we believe that the proposed rule changes are based upon a faulty premise. That premise (and the premise under which FINRA operates in general) is that there should be a connection between whether (and in what amount) a party pays a fee/penalty and whether (and in what amount) an arbitrator receives a payment for the arbitrator's service to the forum. This premise is faulty, irrational, and cannot be justified by any of the purposes for which FINRA was ostensibly created and authorized to resolve customer disputes.

We believe that it is reasonable for arbitrators to receive a fair payment for their service and for their setting aside time in their schedules for the arbitration hearings. It is not reasonable, or justifiable, to create a direct connection between the amounts the arbitrators are paid and whether the litigants comply with FINRA timelines, such as whether notice of postponement is provided within a certain period of time.

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It is in the best interest of investors, and the public, that FINRA not impose an impediment to resolution by penalizing the parties for settling the case at the last minute. It is not uncommon for the parties to reach a resolution of their case just as they are ready to go to hearing. Settlements should be encouraged, even if they happen at the eleventh hour. This is the purpose of waiving postponement fees when the reason for the postponement is the parties' desire to engage in FINRA mediation. If late postponement fees are to be assessed, they should be assessed against the industry respondent; after all, it was the respondent which could have paid a settlement earlier and avoided the inconvenience to the panel.

With respect to the second proposed rule change, it does not seem to be fair or reasonable to charge a hearing session fee of $450 for one arbitrator while a charge of $1,000 is made for three arbitrators. However, a greater issue subsumes this one. In a system where mandatory pre-dispute arbitration is the rule and where the customer/investor has no choice of forum, the cost to access the forum should be nominal. The costs of the operation of the forum (including the payment to arbitrators) should be borne by the entity that benefits the most from the SRO arbitration system, i.e., FINRA and its member firms.

Even more to the point, postponement fees are an unfair burden on the parties to an arbitration proceeding, especially the customer claimants who generally have far less financial wherewithal to pay exorbitant fees for a postponement. Postponements can be necessitated for a number of reasons, including unexpected illnesses and family emergencies. It is unfair and inappropriate to penalize the parties for matters which are completely outside their control. Postponement fees should be abolished altogether.

Thank you for your consideration of our concerns.

Very truly yours,

/s/

Scott R. Shewan
President

Mr. Shewan's Contact Information

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