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April 28, 2010

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: **File No. SR-FINRA-2010-006**
Proposed Rule Change to Amend the Codes of Arbitration Procedure to
Provide for Attorney Representation of Non-party Witnesses in Arbitration

Dear Ms. Murphy:

On behalf of the Public Investors Bar Association ("PIABA"), I thank the Commission for this opportunity to comment on the above-referenced rule change proposal that would amend Rules 12601 and 13602 of the Code of Arbitration Procedure, and thereby provide for attorney representation for non-party witnesses in arbitration. I apologize for the tardiness of this letter, but we understand the Commission will still consider late comments.

PIABA is a national, not-for-profit bar association comprised of more than 460 attorneys, including law school professors and former regulators, who devote a significant portion of their practice to the representation of public investors in securities arbitrations. Accordingly, our members and their clients have a strong interest in FINRA rules that govern the arbitration process and impact fairness concerns of the public investor.

PIABA does not support the proposed rule change in its current form. In addition, we propose additional language for inclusion in the present rule change proposal or in a subsequent rule filing. The current rule proposal unnecessarily grants virtually unfettered discretion to the arbitrators appointed in a case to define the scope of participation for an attorney representing a non-party witness. PIABA believes that there should be only limited discretion in allowing participation of counsel who does not represent a party to an arbitration action, and that such participation should be strictly limited to the protection of that attorney's client's interests.

While PIABA does not oppose allowing a non-party witness' attorney to be *present* if desired, PIABA believes that the witness' attorney should not be permitted to *participate* in the hearing or advocate any particular position on behalf of a party. Counsel for non-party witnesses should clearly be permitted to appear only on behalf of his or her client, and accordingly be permitted to raise an objection only on behalf of the third party witness, with those objections based solely on generally accepted privileges that have gained acceptance in federal and state courts, such as, but not limited to, attorney-client privilege, work product doctrine, spousal privilege, clergy privilege, and the accountant-client privilege. Counsel should also be permitted to take such actions necessary to protect client interests, but should be careful not to overstep and engage in advocacy on behalf of any of the parties.

While third party witnesses have certain interests that should be protected, fairness to the parties to the proceeding, and their chosen attorneys, dictates that an attorney representing a non-party who appears solely during that witness' testimony should not be permitted to interject argument on the issues in the case, or offer input or assistance to counsel for any party. Adoption of the current rule proposal should clarify

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that counsel for non-party witnesses may not advocate for any party, and may be present only during his or her client's testimony.

PROPOSED LANGUAGE:

To protect the interests of the parties, PIABA suggests the language below be incorporated into the ultimate rule:

Remove: "The panel will determine the extent to which the attorney may participate."

Replace with: "Participation of counsel for non-party witnesses will be limited to advocacy on behalf of his or her non-party client, and counsel should not be permitted to engage in argument, questioning, or advocacy on behalf of any party to the proceedings."

We welcome any questions you may have regarding our position. Please do not hesitate to contact me should you have any questions or wish to discuss this matter.

Respectfully submitted,

PUBLIC INVESTORS ARBITRATION
BAR ASSOCIATION

/s/

Scott R. Shewan
President

Mr. Shewan's Contact Information

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