



SYRACUSE UNIVERSITY

COLLEGE OF LAW
OFFICE OF CLINICAL LEGAL EDUCATION

Via Electronic Filing

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

**RE: File Number SR-FINRA-2010-036
Proposed Rule Change to Amend the Codes of Arbitration Procedure to
Permit Arbitrators to Make Mid-case Referrals**

Dear Ms. Murphy,

The Syracuse Securities and Consumer Law Clinic (the "Clinic") welcomes the opportunity to comment on the proposals (the "Rule Proposals") of the Financial Industry Regulatory Authority ("FINRA") to amend Rule 12104 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rule 13104 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code"). The Clinic is a Syracuse University College of Law curricular offering that assists small investors and other consumers with problems in the financial and consumer market. The securities cases in the past have generally involved small investors who have been sold unsuitable or other improper investments.

Under the Rule Proposals, FINRA seeks to broaden an arbitrators' authority to make referrals during an arbitration proceeding. The rationale behind this new broadening of powers is so an arbitrator can make an immediate referral when they believe there is a serious, ongoing and imminent threat to investors, which requires immediate action. Under the current rules, an arbitrator must wait to make such referrals until the close of the matter. Although this sounds reasonable in theory, the way that FINRA has structured the application of such a rule amendment may create additional costs to investors that would not normally be incurred if such referrals were not made. It may also further frustrate investors who have already invested large amounts of time and money into the arbitration process.

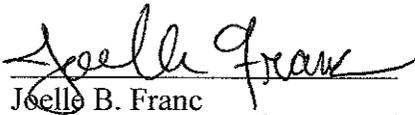
In FINRA's rule amendment, if an arbitrator makes a mid-case referral under proposed Rule 12104(b), the Director will disclose this act to the parties. After such

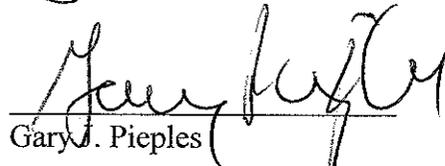
disclosure has been made, either party may move to request that the referring arbitrator withdraw from the panel. If such a request is made, the entire panel must withdraw and a new panel will be selected. Although in such situations, under proposed rule 12902(e), FINRA will waive any fees assessed against the customers for hearing session fees conducted prior to the referral, this waiver does not take into account additional fees which may come into play as a result of having a new panel. Simply put, many investors who choose to go to arbitration will typically hire an attorney to help them in the proceedings. Therefore if an arbitrator makes a mid-case referral about a broker, and that broker moves to withdraw the panel, the only individual who gets hurt is the investor who now has to pay for all of the additional time starting over will cost to them. Although FINRA is working towards better protecting investors, it is the view of the Clinic that many investors may not be able to afford to start the process again as a result of a broker's bad behavior outside of the proceedings. Thus, an unintended consequence of such a rule is that investors may end up bearing extra costs in having to stop an arbitration midway through and start all over again with a new panel. Additionally, because it is unlikely an arbitrator would make a mid-arbitration referral about an investor, it is unlikely that an investor would be in the position to request a new panel under this rule.

Conclusion

The Clinic does not support FINRA's current proposed amendments to Rule 12104 of the Customer Code and Rule 13104 of the Industry Code. We strongly urge FINRA to consider the disparate negative impact this rule ultimately imposes on investors. Please do not hesitate to contact us if you have questions regarding these comments.

Thank you for your consideration and attention.


Joëlle B. Franc


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