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October 11, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File No. SR-FINRA-2010-0036

Dear Ms. Murphy:

I am an attorney in private practice and have been representing investors in claims against brokerage firms for more than 30 years. Prior to entering private practice I was assistant commissioner of the Oregon Securities Division and was responsible for enforcement of the Oregon securities laws, including those applying to broker-dealers.

I write to object to the Proposed Rule Change to Amend the Codes of Arbitration Procedure to Permit Arbitrators to Make Mid-case Referrals. In summary I strongly believe that this rule will impose substantial additional expense and delay on customers while providing minimal, if any, benefit to FINRA's enforcement program.

FINRA's suggestion that this kind of referral might have averted "recent well publicized frauds that resulted in harm to investors" as a justification for this rule makes no sense. This rule will only apply to cases that are near completion. I cannot imagine a rational scenario where an arbitrator would be presented with information or evidence that "poses a serious, ongoing, imminent threat to investors" during the discovery phase of the arbitration. The arbitrators generally do not see information or evidence during discovery. Normally the only time the panel would see evidence is after the 20 day exchange when exhibits are sent to the panel. In my experience the panel rarely looks at the exhibits before the hearing because they don't know if the exhibits will be admitted and because they are not compensated for reviewing documents outside of a hearing. There is no benefit to the claimants whatsoever in having to get a new panel and re-schedule hearing dates that work for all panel members, attorneys, clients and witnesses. Not to mention that experts may have already prepared for testifying and traveled to the hearing location and this would have to be done all over again at the claimant's expense.

FINRA acknowledges that the impact would be greatest on those customers whose hearings were almost completed. The prejudice to claimants caused by having to select a new panel will far outweigh any potential benefit of giving FINRA enforcement a few days or weeks head start on an investigation. If the incriminating evidence is disclosed during the claimants case in chief, the customer has already shown most or all of his evidence and strategy to the respondents who will then be given months find new facts, evidence, and strategies based on what was disclosed at the first hearing.

FINRA's proposed rule provides that "any party" may request the removal of an entire panel after a referral. The only party who would seek a new panel is the one engaging in the

abuse. It is inconceivable that a member firm would agree to keep a panel that has referred it to the enforcement division.

FINRA's suggestion that respondents subject to the referral "would attempt to settle, rather than risk continuing the case." Why would they? The respondent is going to get a new panel that presumably will not find the evidence worthy of a referral to to FINRA enforcement. It is much more likely that the respondent would settle after a panel has seen evidence that it believed warranted a referral to FINRA enforcement. What happens if the second panel comes upon the same information and makes the same referral? Does the claimant have to start over yet a third time? Is there any limit? The practical effect is to allow the member respondent to continue to delay until it gets a panel that is not offended by its conduct. This inherently helps the wrongdoer and harms the customer.

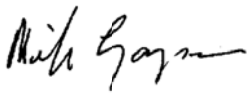
FINRA states that a customer "could" incur additional costs if required to start over and proposes to partially mitigate those costs by not double charging the client for duplicate hearings etc. In fact the customer will invariably incur additional costs and they could be substantial. What if the customers have to fly their expert in for a second hearing date? What if the expert is not available for the next hearing date? Will the customer be expected to bear the cost of hiring a new expert who will have to review the previous record? Who is going to pay to transcribe the "record" of the hearings of the prior panel? They will be needed for the new motion practice and the actual new hearing. In short, the additional costs in both time and money would be substantial. Claimants are nearly universally represented by lawyers who take the cases on a contingent fee basis. Lawyers are already loath to accept smaller cases because panels routinely refuse to award costs and attorney fees as required by state blue sky laws. The amount of losses that lawyers require to accept a case can only go up with the risk that the case may have to be prepared for and tried twice complete with motion practice preceding each hearing. That does not benefit investors who already struggle to find competent counsel for smaller claims.

The obvious solution to any perceived need to enlist arbitrators as enforcement militia is that they be allowed to make anonymous referrals. An arbitrator's concern that information or a particular document warrants immediate investigation is not a sign of inherent bias any more than a substantial award against a respondent is a sign of inherent bias. To stop the proceeding immediately and remove the entire panel is without justification. It would serve only to discourage the referrals the proposed rule allegedly is meant to encourage. At the completion of the hearing, Respondents will have either satisfied the arbitrators that the information or evidence is not what it seems or they won't, but they don't get a do-over where they can change their evidence and testimony at a later hearing date based on the evidence and strategy revealed in the abandoned hearing. FINRA Enforcement can investigate the arbitrator referral or not and determine that violations are occurring or not. But they are two separate functions that should not be combined to the benefit of the respondent and the detriment of the customer. Anonymous referrals would provide the benefit wanted without the unacceptable collateral damage.

FINRA enforcement has the initial filings and can begin an investigation at any time. A few days delay would not have any substantial effect on FINRA's enforcement efforts but removing the panel will cause substantial delay and cost to the affected customer.

This is a bad idea. The purpose of dispute resolution is the fair and timely resolution of disputes. FINRA's existing arbitration system is already slow and expensive to the customer. This proposed rule would only make it worse.

Very truly yours,



Richard M. Layne

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