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October 13, 2010

Via U.S. Mail and Email

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Elizabeth M. Murphy, Secretary,
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: SR-FINRA-2010-036

Dear Ms. Murphy and Mr. Andrichik:

I write these comments in partial support, and in partial opposition to the Rule proposal at SR-FINRA 2010-036 which allows mid-case referral to FINRA Enforcement.

It is unfair that an arbitrator who makes a referral for ongoing violations should be prohibited from further service on a panel for post-appointment "bias" since such post-appointment bias is expected and judicially permissible.

The new Rule will result in a windfall bonus to violators and result in the concealment of broker misconduct during the course of the proceedings. Claimants will be prejudicing their own cases for bringing information to the panel before a final hearing that would jeopardize their cases. Allowing a defrauder to get rid of an entire panel because the panel has been convinced by good facts that fraud persists against other investors would be a great reward to the guilty and a dagger into the heart of a claimant who alerted the panel to the continuing offenses.

Moreover, if an arbitrator thinks he is going to be thrown off a case by making a referral, there is every incentive to wait until the end of the final hearings, thereby again frustrating the intent of FINRA and the SEC to stop frauds mid-stream.

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While FINRA and the SEC should be applauded for making efforts to enhance enforcement involving ongoing violations, the windfall to violators because panel members have been educated by claimants about ongoing fraud is nonsensical. To reward the wrongdoer, and harm the innocent victim should be the last thing FINRA and the SEC would want. *See Advest, Inc. v. Asseoff, 1993 U.S. Dist. LEXIS 4839 (S.D. N. Y. 1993)(emphasis added):*

“The contention that Arbitrator Hochman’s opinion was formed from the very beginning is insufficient to establish clear evidence of impermissible impartiality. Respondents do not claim that they were prevented from asking any questions or from calling their witnesses. Even if Arbitrator Hochman interfered with questioning of witnesses and telegraphed his views, the court cannot hear evidence about, or vacate the award because Arbitrator Hochman’s bias arose, if at all, from the claims and the evidence rather than from an impermissible source such as financial or personal interest in the outcome.”

The part of the Rule proposal about mid-stream referrals should stay but the ill-advised and foolish permission given to defrauders to throw out the panel should be deleted completely.

Sincerely,



Dale Ledbetter