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November 18, 2010

SEC Complaint Center
100 F Street NE
Washington, D.C. 20549-0213

Re: Comments on FINRA File No. SR-FINRA-2010-053
Notice of Filing of Proposed Rule Change Relating to Amendments to the Panel
Composition Rule, and Related Rules, of the Code of Arbitration Procedure for
Customer Disputes

To Whom It May Concern:

FINRA's proposal to permit parties to FINRA arbitrations to strike all non-public arbitrators should be rejected on the grounds that it hinders, rather than advances, the public interest.

It is indisputable that securities regulations are complex and layered. Intelligent and conscientious arbitrators who lack industry experience are unlikely to understand the nuances of the securities arena. While arbitrators are encouraged to consider the overall equities among the parties during deliberations, they are never expected to disregard, or be ignorant of, the governing law. Without an experienced, disinterested securities professional on the panel, however, public arbitrators are deprived of the opportunity to understand the context in which the alleged misconduct occurred. Expert witnesses engaged by the parties are no substitute for arbitrators who have taken an oath that they have "no existing or past financial, business, professional, family or social relationship which would impair [them] from performing [their] duties; and that [they] will decide the controversy in a fair manner and render a just award."

FINRA asserts that "giving customers the option of an all public panel will enhance confidence in and increase the perception of fairness in the FINRA arbitration process." Implicit in that statement is the expectation that all persons within the securities industry are perceived to be tainted. If that is an accurate characterization of investors' perception, we suggest that the remedy is not to remove knowledgeable arbitrators from panels, but for FINRA to affirmatively correct this public misunderstanding. The AAA/ABA Code of Ethics for Commercial Arbitrators, with which FINRA directs its arbitrators to comply, acknowledges that "often, arbitrators are purposely chosen from the same trade or industry as the parties in order to bring special knowledge to the task of deciding." This practice is absolutely warranted in FINRA arbitrations, where investment products are constantly evolving and concepts such as suitability seem easier to apply in hindsight.

By design, the barriers to commencing a FINRA arbitration are few. Contingency lawyers advertise widely. Some lawyers overestimate the strength of their clients' claims, and

others fill statements of claim with generic assertions which require minimal input from the claimant. One consequence of these practices is that many filed claims lack merit and the claimants are denied recovery. Rather than indicate a bias in favor the industry, this is natural and expected result of establishing low thresholds for filing claims. FINRA can educate the public on its arbitration process which promotes the filing of claims and does not sanction lawyers or claimants for pursuing claims that are frivolous.

In other cases, brokers do engage in misconduct and investors are harmed thereby. But the many conscientious and disciplined members of the securities industry who serve as arbitrators are at least as capable as public arbitrators at identifying such instances. Further, persons within the industry have a self interest in weeding out such misconduct, as our success as an industry is predicated on the trust and confidence of our client base – and the transgressions of any rogue brokers tarnish the entire industry.

As noted above, FINRA has other tools to fix the “perception of fairness” to which it alludes. Thank you for providing us with the opportunity to submit comments on this rule proposal.

Very truly yours,

A handwritten signature in black ink that reads "Harvey Wacht". The signature is written in a cursive, flowing style.

Shufro, Rose & Co., LLC
By Harvey Wacht
Senior Managing Director