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NICHOLAS J. GUILIANO, ESQUIRE

February 8, 2013

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

**RE: Comments on File No. SR-FINRA-2013-003
Notice of Filing of Proposed Rule Change Relating to
Amendments to the Customer and Industry Codes of Arbitration
Procedure to Revise the Public Arbitrator Definition**

Dear Ms. Murray:

Please accept our comments to SR-FINRA-2013-003.

Our practice has been substantially limited to the litigation of securities related matters on behalf of public investors before the Financial Industry Regulatory Authority ("FINRA") Dispute Resolution, Inc. (formerly known as The National Association of Securities Dealers ("NASD") Dispute Resolution, and the New York Stock Exchange ("NYSE") Department of Arbitration.

Arbitration is quick, it is relatively inexpensive, and perhaps most importantly, it provides a forum for the resolution of investor claims.[1] However, the entire process, its perceived fairness, and all the economies associated therewith, will evaporate and become meaningless, arbitration panels are perceived to be unfair.

The perceived unfairness of arbitration motivated Congress in 2008 to seek to make these arbitrations "voluntary." On July 12, 2008, Congress introduced Senate Bill 1782, entitled the "Arbitration Fairness Act," based upon a Congressional finding that:

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[1] The Financial Industry Regulatory Authority ("FINRA"), Office of Dispute Resolution, (formerly NASD Dispute Resolution, Inc.) reports the filing of 35,486 arbitration cases from January 2002 through November 2008. (http://www.finra.org/ArbitrationMediation/About FINRADR/Statistics/index.htm).

> Mandatory arbitration undermines the development of public law for civil rights and consumer rights, because there is no meaningful judicial review of arbitrators' decisions. With the knowledge that their rulings will not be seriously examined by a court applying current law, arbitrators enjoy near complete freedom to ignore the law and even their own rules.

Senate Bill 1872 at Section 2 (July 12, 2008, 110th Congress, First Session).

However, the increase in the perception of fairness associated with the amendments to Rule 12402the Code to provide public customers with the option to choose an <u>all</u> public arbitration panel in all cases (SR-FINRA-2010-053) will become meaningless, if persons associated with the securities industry as an investment adviser, or person associated with or registered through, a mutual fund or hedge fund are classified as "Public Arbitrators."

These persons are not "Public Arbitrators."

Moreover, the very day after a person, formerly employed as an attorney, accountant, or other professional, including in house counsel, who either individually or through their firm derived significant income from the securities industry, resigns or retires, under the present Rules, that person would literally overnight be transmogrified to be a "Public Arbitrator."

These persons also are not "Public Arbitrators," and while the proposed two year period is laudable, the better practice would be to increase this limitation to five years.

Whether any bias is actual or merely a perceived bias that taints the legitimacy of the process, public customers ought to have the right to choose whether they want to have their claims tried before a Panel consisting of solely public arbitrators, who are really "Public Arbitrators," or with one person with an association with the securities industry.

Accordingly, we <u>strongly</u> support SR-FINRA-2013-003 proposed changes to the Customer and Industry Codes of Arbitration Procedure to Revise the Public Arbitrator Definition, and suggest that the Rule should be amended to provide that :a person whom FINRA would not designate as a public arbitrator because of an affiliation under subparagraphs (3)-(7) shall not be designated as a public arbitrator for <u>five calendar years</u> after ending the affiliation.

Respectfully submitted,
Nicholas J. Guiliano
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