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July 11, 2013

VIA ELECTRONIC SUBMISSION

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

**Re: File No. SR-FINRA-2013-023 – Proposed Rule Change Relating to
Amendments to the Code of Arbitration Procedure for Customer Disputes
Concerning Panel Composition**

Dear Ms. Murphy:

The Investor Rights Clinic at Pace Law School, operating through John Jay Legal Services, Inc. (“PIRC”),¹ welcomes the opportunity to comment on FINRA’s proposed amendments to the Customer Code concerning panel composition.

PIRC supports the proposal to the extent it reverses the default method of panel selection from Majority Public Panel to All Public Panel. The statistics FINRA cited in its proposal plainly justify the proposal. Those statistics reveal a *fifteen percentage point differential* in customer win rates since the advent of the All Public Panel option in 2011 (i.e., customers prevailed 49% of the time in cases decided by all public panels but only 34% of the time in cases decided by majority public panels). With such a vast differential, customers should be opting in to the All Public Panel option virtually all of the time. However, FINRA statistics revealed that customers are not electing the All Public Panel method 25% of the time (by default 77% of that 25%), perhaps out of lack of clarity or understanding of the panel composition options. Thus, FINRA’s proposal to reverse the default panel selection method will protect investors who lack knowledge about their options.

However, PIRC cannot support the rule proposal in its entirety because it eliminates a panel composition option for investors. Under the proposed new regime, customers who, for

¹ PIRC opened in 1997 as the nation’s first law school clinic in which J.D. students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes. See Barbara Black, Establishing A Securities Arbitration Clinic: The Experience at Pace, 50 J. LEGAL EDUC. 35 (2000); see also Press Release, Securities Exchange Commission, SEC Announces Pilot Securities Arbitration Clinic To Help Small Investors - Levitt Responds To Concerns Voiced At Town Meetings (Nov. 12, 1997), available at <http://www.sec.gov/news/press/pressarchive/1997/97-101.txt>.

whatever reason, want a non-public arbitrator on their panels might not be able to get one.² If the consolidated rankings of each separately represented party for the non-public list yielded no non-public arbitrator (if, for example, the industry respondent chose to strike all of the non-public arbitrators), then the customer would end up with no non-public arbitrator. Thus, to maintain the current level of investor choice, FINRA should reverse the default panel selection method as proposed but then allow a customer to affirmatively opt in to the Majority Public Panel option pursuant to the same opt-in procedure it uses now for the All Public Panel option.

Finally, PIRC urges FINRA and the Commission to explore the reasons for the large differential between customer successes with an all-public panel and a majority public panel (49% vs. 34%). FINRA's long-held view that non-public arbitrators add value to panels and are not *inherently* biased against customers merely by virtue of their classification needs to be revisited in the face of this damning evidence.

Respectfully yours,

A handwritten signature in cursive script that reads "Jill I. Gross". The signature is written in black ink and is positioned centrally below the "Respectfully yours," text.

Jill I. Gross
Director, PIRC

² Although rare, I can envision a case in which a customer would affirmatively want a non-public arbitrator on the panel but the industry respondents would not. Such a case might involve allegations of egregious misconduct by a broker, and the industry party suspects that a non-public arbitrator would judge that broker more harshly than a public arbitrator would. In my experience, sometimes non-public arbitrators are most critical of a member of their chosen profession who violate their own professional norms.