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**Via Electronic Filing**

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

**Re: File No. SR-FINRA-2014-005 Rule Proposal (Arbitrator Referrals)**

Dear Secretary Murphy:

The Cornell Securities Law Clinic (the "Clinic") welcomes the opportunity to comment on the Rule Proposal filed by the Financial Industry Regulatory Authority ("FINRA") regarding revisions to its Code of Arbitration Procedure for Customer Disputes ("Customer Code") concerning the ability of arbitrators to make referrals during arbitration proceedings pursuant to File No. SR-FINRA-2010-36 (the "Rule Proposal"). The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors and public education as to investment fraud in the largely rural "Southern Tier" region of upstate New York. For more information, please see <http://securities.lawschool.cornell.edu>.

On October 14, 2010, the Clinic filed its opposition to the prior Rule Proposal regarding mid-case referrals.<sup>1</sup> On August 22, 2011, the Clinic filed its opposition to Amendment No. 1 to the prior Rule Proposal.<sup>2</sup>

The Clinic believes FINRA should allow mid-case referrals as added protection against fraud.

However, the Clinic cannot support the Rule Proposal so long as mid-case referrals are limited to the hearing phase of an arbitration, any referral made is ground for recusal or removal of an arbitrator or arbitration panel or award challenge, and the authority to forward the referral to FINRA enforcement lies within the Director's discretion.

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<sup>1</sup> <http://www.sec.gov/comments/sr-finra-2010-036/finra2010036-9.pdf>

<sup>2</sup> <http://www.sec.gov/comments/sr-finra-2010-036/finra2010036-14.pdf>



### **1. The Clinic Supports Mid-Case Referrals as Added Protection for Customers Against Fraud**

Under the Rule Proposal, arbitrators can make referrals during the hearing phase of an arbitration, rather than waiting until the end. While the Clinic generally supports mid-case referrals, we believe that arbitrators should also be permitted to make referrals in the prehearing phase of an arbitration, based solely on the parties' pleadings. Since by definition, the commencement of an evidentiary hearing is near the completion of the case, and in such a case the arbitrator should wait until the case concludes to make the referral, the mid-case referral concept is of no practical avail.

The Clinic emphasizes that protection should also be granted to customers that only have one or a few hearing dates, where hearing days are scheduled consecutively. Under the Rule Proposal, such clients do not get any additional protection.

### **2. The Clinic Does Not Support Allowing Parties to request New Arbitrators and New Arbitration Panels During an Arbitration**

Under the Rule Proposal, if an arbitrator makes a mid-case referral, the Director must notify the parties. After being notified, either party may request that the referring arbitrator(s) recuse themselves. The Clinic believes that this would delay the arbitration and create negative consequences for public customers as outlined in our prior letters.

The Clinic recommends that proposed Rule 12104 of the Customer Code expressly state that any referral made pursuant to this Rule shall not be grounds for (1) recusal or removal of an arbitrator or an arbitration panel and (2) challenge the arbitration award.

### **3. The Clinic Does Not Support that only the President or Director have the Authority to forward the Arbitration Referral to FINRA Divisions**

The Rule Proposal authorizes only the President or Director to evaluate the arbitrator referral to determine whether it should be transmitted to other FINRA divisions to begin a regulatory investigation. We see no benefit in this new procedure and believe that it will only delay the benefit to be gained from mid-case referral.

### **4. The Clinic Proposes the following Rule language**

The Clinic believes that a slight modification to the *existing* Rule 12104 of the Customer Code would accomplish FINRA's goal of increased regulatory vigilance without the negative consequences to public customers. We recommend revising the current Rule as follows:

~~“(b) Only at the conclusion of an arbitration, a~~Any arbitrator may refer to FINRA for disciplinary investigation any matter or conduct that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of ~~NASD or the rules of~~ FINRA rules, the federal securities laws, or other

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applicable rules or laws. Any referral made pursuant to this Rule shall not be grounds for recusal or removal of an arbitrator or an arbitration panel and shall not be a ground to challenge the arbitration award."

**Conclusion**

While the Clinic supports the concept of mid-case referral, the Clinic cannot support the Rule Proposal so long as the mid-case referrals are limited to the hearing phase of an arbitration, any referral made is ground for recusal or removal of an arbitrator or arbitration panel or award challenge, and the authority to forward the referral to FINRA divisions lies within the Director's discretion.

Accordingly, we ask the SEC to reject the Rule Proposal and instruct FINRA to amend the Rule Proposal based on the language proposed above.

Respectfully submitted,



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