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July 24, 2014

Via E-Mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

Re: File No. SR-FINRA-2014-028  
**SIFMA comment on FINRA’s proposed rule change re: the definitions  
of non-public arbitrator and public arbitrator (the “Proposal”)**<sup>1</sup>

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>2</sup> appreciates the opportunity to comment on the Proposal.

The Proposal is intended to effectuate the following two major changes to existing rules: (1) “persons who worked in the financial industry for any duration during their careers would always be classified as non-public arbitrators” and (2) “persons who represent *investors* or the financial industry as a significant part of their business would also be classified as non-public, but could become public arbitrators after a cooling-off period.” (Emphasis added).<sup>3</sup>

The Proposal is the product of FINRA’s comprehensive review of the arbitrator definitions, in consultation with the National Arbitration and Mediation Committee (“NAMC”), which is comprised of investor, industry, and neutral representatives. FINRA staff met with the NAMC several times to review both arbitrator definitions. As a result of these discussions, and general discussions with other interested groups over a period of time, FINRA issued the Proposal.<sup>4</sup>

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<sup>1</sup> SEC Release No. 34-72491; File No. SR-FINRA-2014-028, *Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator* (June 27, 2014), available at <http://www.sec.gov/rules/sro/finra/2014/34-72491.pdf>.

<sup>2</sup> SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>3</sup> Proposal at 1.

<sup>4</sup> *Id.* at 3-4.

The stated purpose of the Proposal is to address concerns about arbitrator neutrality.<sup>5</sup> With respect to the first proposed major change, it would address criticism from claimants' lawyers that some arbitrators presently classified as public have past ties to the industry and thus, could show bias in favor of the industry. With respect to the second proposed major change, it would likewise address criticism from securities firms, individual registered representatives, and others, that some arbitrators presently classified as public make their living representing claimants in, or in connection with, FINRA arbitrations and thus, could show bias against the industry.

These two major proposed rule changes address opposite sides of the same coin. In doing so, the Proposal appropriately recognizes that arbitrator bias has the potential to run in either or both directions. The dual components of the Proposal thus collectively ensure a balanced approach to arbitrator classifications, and fair treatment of all parties to FINRA arbitration. For these same reasons, the Proposal should also help address and improve perceptions of fairness of the forum, including among claimants, respondents, regulators, and third-party observers of the forum, among others.

**SIFMA supports the Proposal.**

For the foregoing reasons, SIFMA supports the Proposal. Our support is predicated upon the process of inclusion and balance that generated the Proposal – particularly the NAMC discussions cited in the Proposal. And, our support is predicated on passage of both of the two major components of the Proposal – both the “worked-in-the-industry” and the “claimant’s representative” provisions. Both provisions are necessary to strike an appropriate balance in the interests of fairness, perceptions of fairness, and arbitrator neutrality for all parties and thus, to ensure the regulatory integrity of the Proposal. We emphasize this point in particular only because we have begun to see in the publicly available comments on the Proposal, as we anticipated, attacks by claimants’ lawyers on the “claimant’s representative” provision in the Proposal. We remain concerned that these self-serving comments have the potential to completely undermine the fair and balanced approach taken by the Proposal and thus, we want to flag that concern, and avert that outcome.

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If you have any questions, or would like to further discuss the comments addressed herein, please contact the undersigned at [REDACTED] or [REDACTED].

Sincerely,



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Kevin M. Carroll  
Managing Director and  
Associate General Counsel

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<sup>5</sup> *Id.* at 4.

cc: *via e-mail to:*  
Robert Colby, Chief Legal Officer, FINRA  
Linda D. Fienberg, President, FINRA Dispute Resolution  
Kenneth L. Andrichik, Senior Vice President, FINRA Dispute Resolution  
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