SR-FINRA-2013-023 ‘ August 21. 2014

From:	Walter N. Vernon III. Esq. A-15469 Comments to the SEC in opposition to proposed rule changes to the definitions of public and non-public Arbitrators.

I have been an arbitrator since 1998. I have served on 15 panels, often as chair. I have always been classified as a public arbitrator. Insofar as I am aware, I have never been the subject of a complaint for any reason, especially that I have a bias toward Industry and against a public claimant or respondent. I am a member of the Missouri Bar Association in good standing, never having had a client's or other complaint submitted to the Bar Association.

1. I am have always disagreed with the opinion and perception of unnamed critics, FINRA, and I suppose, the SEC that non-public arbitrators have an inherent bias against public traders (clients) based on my experience. On cases I have heard with non-public arbitrators, where there is an issue alleged of improper conduct by a registered representative, the professionals from the financial industry, or non-public panel members, have been harsher in penalties to be imposed than public ones. Their reason is that they do not want "bad apples" in their industry, giving a black eye to the entire helpful, rule following registered professionals.
2. I am even more upset that Federal rules are (and no doubt have been) to be based on the amorphous concept of perception or "raised concerns" by unidentified investor representatives. No information was given as to how they were selected, who selected them, their qualifications, how many there were.
3. Moreover the unfairness of accepting and relying on their views as determinative of the need for such a change is a shown by the fact that FINRA did not solicit comments (see paragraph 5 on page 24 of the FINRA proposal) before submission to the SEC. Industry, or at least arbitrators who might be negatively impacted like myself, should have been give n a chance to comment to the body with the prime responsibility of regulating the financial industry before submission to the SEC. I submit this was improper on their part, for which the matter should be rejected and sent back to them for further consideration, AFTER affected parties are given a chance to comment, and their comments are considered and taken into account before the final proposed regulations sent back to the SEC, it indeed they are.
4. Charged parties in our legal tradition are presumed innocent until proven guilty and are entitled to due process in some form. I am not aware of any hearing or finding based on specific evidence, that a material or substantial number of arbitrators are or have appeared to be, biased.
5. The basis for my opposition has to do with what I see is a fairly narrow point – the use of "who *worked* for *any* duration during their careers." (Emphasis added). I note that there are many so-called cooling-off periods and other exception added or extended in the proposal. This shows that making reasonable exceptions is appropriate, although in this one particular case, no exceptions are granted. This is logically inconsistent, and moreover, unfair to person caught in

this change for which no exception is given. I do not understand the difference in the minds of FINRA between former employ or former attorneys.

6. "Worked for" Is not defined. Does this include a janitor? A trainee? A secretary? A switchboard operator? An accountant or bookkeeper? These are not positions of any significance (see my paragraph 10 below.) I submit that "worked" should be modified to read:

   "Worked in a capacity for which testing and registration is required."

7. My angst is due to the fact that in approximately 1983, I was a trainee with Merrill Lynch for three weeks. I have no memory of being paid but could have been. I never had any contact with the public nor was involved in any trades or other financial transactions. Under the proposal, I will forever be (re)classified from public to non-public. This is unnecessary to protect the public, and is unfair and illogical in view of the many other except ions given in the rules.
8. "Any duration": Some persons who actually represented industry persons and firms, can be purified of their perceived biases after various terms (see long list later herein) , whereas someone who only worked for a short time or in a non-public or non—trading capacity, can never erase or overcome this apparently grievous stigma from their past, no matter how distant. Although I am one, the other exceptions favor attorneys, a class as to which members of the public often have negative perceptions.
9. In the purpose section of the proposal, paragraph 3, (b) it states it is to limit public arbitrators to persons who: "do not have a significant affiliation with the financial industry." It does not say "limited to persons who have *and once had any* affiliation.
10. Significant - It is a maxim of the law, that words in legal instruments are meant to have their ordinary meaning, unless otherwise defined. This word is also less than precise, but I find in WEBSTER'S 1979 NEW TWETIETH CENTURY DICTIONARY UNABRIDGED SECOND EDITION: "'signify ... to be of consequence, to have meaning, to matter." I submit that persons who o once held positions of the type listed in Paragraph 7 above, once unaffiliated with industry, are of no consequence and of no matter.
11. In conclusion I am asking for a restrictive definition or clarification or a de minimus exception be added to: "worked", "significant affiliation", and/or "do not have" in the proposed rules at appropriate places. This would be fair, not change the intended purpose of the rule (existing and as proposed), and would be use of what the public often feels is rarely the case, common sense.
12. The proposed rule 12100 and all its parts took FINRA and the SEC 61 pages to explain. The proposed new/changed rules are fairly short themselves, so I did call attention or cite each one. However I assume the readers are well familiar with all of them and understand well my concern and points made.

Thanks for the opportunity to finally have a chance to comment on these prosed rules that will if made final as written, make me and no doubt others, ineligible to be deemed a public arbitrator.

Respectfully submitted