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November 6, 2014

VIA E-MAIL: rule-comments@sec.gov

Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: SR-FINRA-2014-028
Comments on Proposed FINRA Rules 12100 and 13100

Dear Mr. Fields:

We submit these comments on behalf of Georgia State University College of Law's Investor Advocacy Clinic (IAC), which represents investors who have suffered losses resulting from broker misconduct but cannot afford or find private legal representation due to the size of their claim. We work with clients every day that will be directly impacted by this proposed change and would otherwise not have a voice. Because the new classifications of public and non-public arbitrators will affect small investors in arbitration, we submit this comment in opposition to the rule as currently proposed.

We appreciate FINRA's intent to refine and reorganize the definitions of non-public arbitrator and public arbitrator in an attempt to clarify the definitions and make it easier for arbitrator applicants and parties to determine the correct arbitrator classification. We believe, however, that the proposed rule would actually serve to diminish the availability of public arbitrators and remove qualified arbitrators with no ties to the industry from the pool. This is of significant importance to small investors since they may arbitrate their claims before an all-public panel. The proposed change will drastically decrease the amount of public arbitrators available to hear these types of disputes.

We have two main concerns with the proposed rule. First, while the proposed rule attempts to broaden the definition of "non-public" arbitrators, it falls short of achieving this ultimate goal by classifying anyone with any involvement with the financial industry as non-public. Second, the new definitions would classify claimants' lawyers and other professionals as non-public due to their professional experience, which would further deplete the availability and fairness of the pool of public arbitrators.

The broadened definition of “non-public” does not achieve the goal of including all industry professionals in the classification.

FINRA has always distinguished between public and non-public arbitrators to preserve the perception of fairness.¹ There have been many amendments to expand the definition of non-public arbitrators over the past decade. Much of this has been to fight the perception of unfairness.² These previous amendments have all been focused on properly classifying any individuals associated with the industry as non-public.³ We believe FINRA should continue to use this measure as a determining factor when classifying non-public arbitrators, especially since the FINRA website itself distinguishes the definitions of public or non-public based on the arbitrator’s “connection” to the industry.⁴

Furthermore, the definition of non-public arbitrator should be revised further to include other industry professionals with ties to the industry.⁵ This is especially important because, in most cases, arbitration through FINRA’s Dispute Resolution services is the investor’s only avenue to dispute investment issues. It is essential that the investing public feel they have a fair and unbiased tribunal in which to arbitrate their claims. While arbitrators with some knowledge of the industry might be beneficial in terms having a basic knowledge of the general framework of the dispute, these potential benefits do not outweigh the concerns of bias against the investing public. Instead, the definition of non-public arbitrators should be inclusive of anyone who has any ties, whether current or former, to the financial industry. We would support a definition that is inclusive of individuals associated with hedge funds, mutual funds, non-traded REITs and other investment products with embedded securities.

Excluding professionals from the “public” pool does not benefit the investing public.

Although there is no FINRA definition for what constitutes a “professional,” the proposed rule would disqualify attorneys who devote 20 percent or more of their professional time to “serving parties in investment or financial industry employment disputes” from being public arbitrators.⁶ Under FINRA’s proposed rule change, arbitrators with no ties to or experience in the securities industry would be included in the non-public pool, which further

¹ See, e.g., Philip M. Aifikoff, Robert A. Uhl, Ryan K. Bakhtiari & Chantal Francois, *Arbitrators Misclassified: Looking Back to Move Forward*, 18 PIABA BAR J. 1, 3 (2011).

² See generally Aifikoff et al., *supra* note 1; Securities Exchange Act Release No. 34-68632 (Jan. 11, 2013), 78 FR 3925 (Jan. 17, 2013) (Notice of Filing of SR-FINRA-2013-003).

³ Letter from CJ Cross, Elissa Germaine and Jill I. Goss, Investor Rights Clinic, Pace Law School to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Jul. 24, 2014), *available at* <http://www.sec.gov/comments/sr-finra-2014-028/finra2014028-15.pdf>.

⁴ *Resources for Investors Representing Themselves in FINRA Arbitrations and Mediations*, FINRA, <http://www.finra.org/arbitrationandmediation/finradisputeresolution/overviewofarbitrationmediation/p230280> (last visited Nov. 3, 2014).

⁵ Such as “persons associated with non-traded REITs and other private placements . . .” Letter from Jason Doss, President, Public Investors Arbitration Bar Association, Norman, Oklahoma to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Jul. 24, 2014), *available at* <http://www.sec.gov/comments/sr-finra-2014-028/finra2014028-16.pdf>.

⁶ See *The Camel and the Last Straw or the Frog and the Boiling Water: Pick Your Parable*, 2014:3 Securities Arbitration Commentator (July 2014).

constricts the pool of available arbitrators to be classified as public.⁷ There is no evidence supporting the assumption that attorneys, accountants and other professionals who serve the investing public have any bias either for or against the securities industry.⁸ Claimants' attorneys and other professionals serving the investing public do not depend on the financial industry for their livelihood and thus do not have the threat of adverse employment actions overshadowing their decision. We believe claimants' attorneys add a unique but unbiased perspective to the public pool of arbitrators and they should not be excluded from being classified as public.

Small investors need a balanced, impartial and objective process available to them after they have been wronged. Small investors will be harmed by the reduction of the public pool by having lawyers who represent claimants placed in the non-public pool. In keeping with our mission to protect small, underrepresented investors, we believe the proposed provisions of SR-FINRA-2014-028 will lead these investors to feel as though they do not have a fair forum to resolve their dispute at a time in their life when they feel the most vulnerable and victimized.

Thank you for your consideration and we look forward to any further discussion.

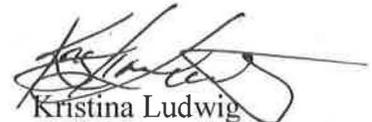
Best regards,



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⁷ See Letter from Jason Doss, *supra* note 5.

⁸ *Id.*