



Cornell University
Law School

Lawyers in the Best Sense

WILLIAM A. JACOBSON
Clinical Professor of Law

154 Myron Taylor Hall
Ithaca, New York 14853-4901

T: [REDACTED]
F: [REDACTED]

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Via Electronic Filing

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Release No. 34-73277; File No. SR-FINRA-2014-028 (Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change Relating to Revisions of the Definitions of Non-Public Arbitrator and Public Arbitrator)

Dear Mr. Fields:

The Cornell Securities Law Clinic (“Clinic”) welcomes the opportunity to comment on the changes the Financial Industry Regulatory Authority (“FINRA”) is proposing to its Code of Arbitration Procedure for Customer Disputes (“Customer Code”)¹ regarding the definition of public and non-public arbitrator pursuant to File No. SR-FINRA-2014-028 (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>.

The Rule Proposal seeks to refine and re-organize the definitions of “non-public arbitrator” and “public arbitrator.” According to FINRA, the changes would provide “that persons who worked for the financial industry for any duration during their careers would always be classified as non-public arbitrators, and person who represent investors or the financial industry as a significant part of their business would also be classified as non-public arbitrators, but could become public arbitrators after a cooling off period.” Rule Proposal at 1. The Rule Proposal also seeks to address investor perceptions of bias during the arbitration process.

The Clinic supports the Rule Proposal because permanent classification of individuals affiliated with the industry, along with individuals who represent the industry, will help reduce potential biases by public investors as well as strengthen the perception of fairness. However, the

¹ While the Rule Proposal also provides for analogous changes to the FINRA Code of Arbitration Procedure for Industry Disputes, the Clinic takes no position on the Industry Code.



Commission should use its power under 15 U.S.C. § 78s(c) to amend the Rule Proposal to remove the classification as non-public of individuals who represent investors due to FINRA's refusal to amend the provision. If the Commission declines to amend the Rule Proposal, the Clinic only supports the Rule Proposal insofar as it classifies individuals affiliated with the industry as non-public.

1. The Clinic Supports Permanently Classifying Individuals Affiliated With The Industry As Non-Public

FINRA has on several occasions amended the arbitrator classifications to address perceptions that an arbitrator's affiliation with the industry may affect that arbitrator's neutrality.² As the rule currently stands, it is possible that a public arbitrator could be someone who worked for the industry for thirty years and has now been retired for six years. The investing public would be hard pressed to believe that such an individual is not biased in favor of the industry.

Accordingly, the Clinic fully supports FINRA's proposal to permanently classify individuals affiliated with the industry for any duration during their careers as non-public. This classification will mitigate public investor perceptions of bias during arbitration. Likewise, the Clinic supports the classification as non-public of individuals who represent the industry with a five-year cooling off period.

2. The Clinic Opposes Classifying Investor Representatives as Non-Public and Requests the Commission Amend This Part of the Proposal

The Clinic joins in the July 24, 2014 letters of the North American Securities Administrators Association ("NASAA")³ and the Public Investors Arbitration Bar Association ("PIABA")⁴ inasmuch as they are opposed to classifying investor representatives as non-public arbitrators.

As NASAA stated, because of the compulsory nature of the arbitration program, and despite how hard FINRA works to improve the system, it will always be perceived to be stacked against investors. The few investor-friendly components, such as investor representatives serving as public arbitrators, work to correct this perception.

Likewise, as PIABA states, classifying arbitrators as either public or non-public was designed to mitigate the investing public's perception of bias on the part of arbitrators with industry affiliations. Accordingly, any proposal to change the definitions of public and non-public arbitrator should be focused on mitigating the investing public's perception of bias, not the industry perception of bias.

² See Securities Act Rel. No. 34-72491, File No. SR-FINRA-2014-028 at 2 n.3.

³ <http://www.sec.gov/comments/sr-finra-2014-028/finra2014028-14.pdf>.

⁴ <http://www.sec.gov/comments/sr-finra-2014-028/finra2014028-16.pdf>.

Additionally, the Clinic joins in Richard A. Stephens letter of July 6, 2014 inasmuch as he argues that the terms “‘Industry’ arbitrator and ‘Non-Public’ arbitrator” are synonymous.⁵ FINRA’s proposed change will eliminate all investor representatives from the public arbitrator roster, for at least a five year period, if not permanently. Rather than mitigate investor concerns of bias, this provision of the Rule Proposal only serves to strengthen bias concerns.

However, in its letter dated September 30, 2014, FINRA⁶ declined to amend this provision of the Rule Proposal to incorporate changes suggested by other commenters, including NASAA and PIABA. The Commission has authority under 15 U.S.C. § 78s(c) to amend a self-regulatory organization’s rules as the Commission deems necessary to conform the organization’s rules to protect investors and the public interest. Therefore, the Clinic recommends the Commission amend the Rule Proposal to eliminate the classification of investor representatives as non-public.

Conclusion

For the foregoing reasons, the Clinic supports the Rule Proposal and urges the Commission to make the recommended changes.

Respectfully submitted,



William A. Jacobson, Esq.
Clinical Professor of Law
Director, Cornell Securities Law Clinic



Nathan F. Baum
Cornell Law School '15

⁵ <http://www.sec.gov/comments/sr-finra-2014-028/finra2014028-4.pdf>.

⁶ <http://www.sec.gov/comments/sr-finra-2014-028/finra2014028-25.pdf>.