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VIA ELECTRONIC SUBMISSION

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: PIRC Rebuttal to Comments Submitted on SR-FINRA-2014-028

Dear Mr. Fields:

The Investor Rights Clinic at Pace Law School, operating through John Jay Legal Services, Inc. (“PIRC”),¹ writes to rebut comments submitted to the Commission, including those contained in the letter filed by the Securities Industry and Financial Markets Association (“SIFMA”), regarding the need to balance both “industry-side” and “investor-side” bias in FINRA’s proposed rule change. SIFMA’s assertion that there is “investor-side” bias in the FINRA arbitration process is not supported by any empirical studies.

In 2008, Professors Jill Gross and Barbara Black, pioneers of PIRC, conducted a benchmark empirical study sponsored by the Securities Industry Conference on Arbitration, regarding participants’ perceptions of the fairness of securities SRO arbitrations involving customers. In contrast with SIFMA’s unsupported assertion that both investor-claimants and industry-respondents perceive bias, the study showed that customers are disproportionately more likely than other participants in the arbitration process to: (1) view panels as biased, (2) view the arbitration process as unfair, and (3) be dissatisfied with an award.²

The questions in the study that generated the most negative customer reaction related to disputants’ perceptions of arbitrator impartiality, based on the survey participants’ most recent arbitration experience. For example, only 40.58% of customers *disagreed* with the statement that “the arbitration panel was impartial,” whereas 38.1% of all survey participants (including lawyers, representatives, associated persons, and corporate representatives of member firms) *agreed* with this statement.³ Thus, investors have a strong negative perception of the bias of arbitrators.

¹ PIRC opened in 1997 as the nation’s first law school clinic in which J.D. students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes.

² See Jill I. Gross & Barbara Black, When Perception Changes Reality: An Empirical Study of Investors’ Views of the Fairness of Securities Arbitration, 2008 J. DISP. RESOL. 349 (2008).

³ *Id.* at 385.

Customers are more likely than other participants in the arbitration process to view the process as unfair. A strong dichotomy in perceptions of bias between customers and industry, which demonstrates the customers' perceptions of unfairness, is found later in the survey where 39.4% of all survey participants agreed with the statement that "as a whole, I feel the arbitration process was fair," while only 27.84% of customers agreed with it.⁴ 47.9% of all survey participants disagreed with the statement that they felt the arbitration process was fair, compared to 62.62% of customers.⁵ Almost two-thirds of customers did not believe that the overall process was fair. Finally, while 35% of all survey participants agreed with the statement "I am satisfied with the outcome," only 22.17% of customers agreed with it.⁶ Additionally, 55.1% of all survey participants disagreed with the statement, compared with 70.77% of all customers.⁷

Therefore, SIFMA's statement that "FINRA's Proposal to remove the potential for, and perception of, investor-side bias is likewise in the public interest and promotes the integrity of the forum" is a red herring. FINRA's proposal is a solution in need of a problem. Indeed, in 2011, the Commission approved a rule change to provide customers with all-public panels in response to the Fairness Study and specifically to combat the widespread perceptions of industry-side, *not* investor-side, bias.⁸

In conclusion, the statements of commenters, most notably SIFMA, regarding "investor-side" bias are unfounded given past empirical research and actions taken by FINRA itself. Those concerns are unsubstantiated and not rooted in any data showing any bias in favor of investors. Thus, the Commission should disregard those statements.

Respectfully submitted,

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⁴ *Id.* at 402 n. 118.

⁵ *Id.*

⁶ *Id.* at 386.

⁷ *Id.*

⁸ See http://www.businesswire.com/news/home/20110201006496/en/SEC-Approves-FINRA-Proposal-Give-Investors-Permanent#.VG3yX_nF9yU. Richard Ketchum, Chairman and CEO of FINRA, said of the rule change at the time: "We believe that giving investors the ability to have an all-public panel will increase public confidence in the fairness of our dispute resolution process."