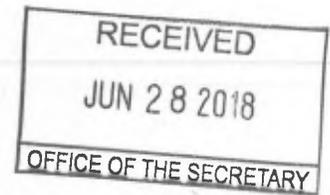


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June 18, 2018

Mr. Brent Fields  
Secretary  
U. S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C.20549-1090

RE: Petition for Rulemaking to amend FINRA's Code of Arbitration Procedure Rule 12403(b) (2) to prevent parties from seeking information from the proposed arbitrators as to how the arbitrator would rule in the case.

Dear Mr. Fields:

As a present public FINRA arbitrator and former chair<sup>1</sup>, I respectfully petition the Securities and Exchange Commission to amend FINRA's Code of Arbitration Procedure Rule 12403(b) (2) to prevent parties from seeking information from the proposed arbitrators as to how the arbitrator would rule on a case. This amendment would ensure that the arbitrators selected are free of bias and will decide the case solely on the facts presented.

**Introduction**

FINRA Arbitrators are governed by the Code of Ethics for Arbitration in Commercial Disputes ("Code") Cannon 1 of the Code states:

CANON I. AN ARBITRATOR SHOULD UPHOLD THE INTEGRITY AND FAIRNESS OF THE ARBITRATION PROCESS. A. An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceeding. This responsibility may include pro bono service as an arbitrator where appropriate. B. One should accept appointment as an arbitrator only if fully

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<sup>1</sup> Thomas Edward Wall is an attorney licensed by the State of California since 1977. He is the author of several published legal articles on legal ethics and other subjects. He was former associate editor of the Beverly Hills Bar Journal. His judicial experience include appointment as a Juvenile Court referee for the Los Angeles County Superior Court, arbitrator, judge pro temp and administrative law hearing officer. Mr. Wall has a strong legal ethics background having been appointed to the California State Bar Ethics Committee as well as the Los Angeles County Bar Ethics Committee. He also has been qualified as an expert in legal ethics by the Los Angeles County Superior Court. He has served as arbitrator for FINRA for several years.

satisfied: (1) that he or she can serve impartially; (2) that he or she can serve independently from the parties, potential witnesses,

When an arbitration is required, FINRA 's Code of Arbitration Procedure Rules 12403(b)(1) provides the Director will send list of proposed arbitrators to the parties. Rule 12403(b)(2) provides **“If a party requests additional information about an arbitrator**, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. (emphasis supplied) When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 12403(c)(3) (emphasis supplied). There is no qualification or standard stated in the rule regarding the scope of the “additional information”.

### **The Issue**

A reasonable interpretation of the highlighted statement is that the term “additional information about an arbitrator” means requesting a fact about the qualifications of the proposed arbitrator and not his or her views about the case. However, it has been my own personal experience that since the wording is not specifically limited to the qualifications of the arbitrator, I have been asked how, as the proposed arbitrator, I would rule under a certain set of facts.

Even when I was informed by the case manager that as a proposed arbitrator, I do not have to respond to a request propounded under the above code section, I believe this is not a proper solution. A party should never believe that he or she can even ask a proposed arbitrator how the person would rule under a certain set of facts.

### **Solutions**

One solution is to eliminate the opportunity to seek “additional information” from the proposed arbitrator. However, in some circumstances, there may be a valid reason to request further information from the proposed arbitrator which relates to his or her qualifications and not how the proposed arbitrator would rule on a set of facts.

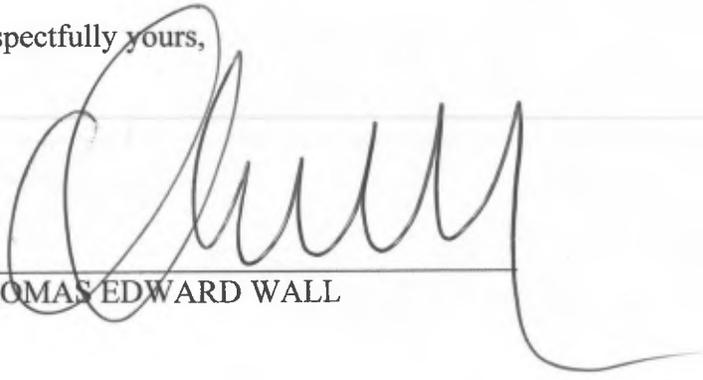
Another solution is to modify the language in the subject rule to read, “If a party request additional information about only the qualifications of an arbitrator and no other purpose, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time.”

### **Rulemaking Proposal**

I respectfully ask that the Commission amend Rule 12403(b)(2) to either eliminate the opportunity to seek “additional information” or to restrict the request for “additional information” to only the qualifications of the arbitrator and for no other purposes.

I welcome the opportunity to meet with Commission staff to discuss this matter further.

Respectfully yours,

A handwritten signature in cursive script, appearing to read 'Tommy', written in black ink. The signature is positioned above a horizontal line.

THOMAS EDWARD WALL