Public Investors Arbitration Bar Association

October 20, 2008

VIA E-MAIL TO RULE-COMMENTS@SEC.GOV

Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-FINRA-2008-047
Proposed FINRA Amendment to Customer Code Rule 12401
Increase in Limits for Single Arbitrator Cases

Dear Ms. Harmon:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA") in support of the proposed revision to Rule 12401 of the NASD Customer Code of Arbitration Procedure[1] to provide that claims for $100,000 or less be heard by a single arbitrator. We believe this rule should be approved and implemented on an accelerated basis.

PIABA is a national association of attorneys who represent public investors in securities arbitration proceedings. Since its formation in 1990, PIABA has pursued its mission of promoting and protecting the interests of public investors in all securities and commodities arbitration forums. Our members and the investors we represent have a strong interest in the rules that govern the arbitration process at FINRA.

One of the benefits of resolving disputes by arbitration is that arbitration typically is more efficient and less costly than litigation. This rule proposal advances the interests of efficiency and cost saving. Hearing fees will be reduced for both parties, as the fees are significantly lower for single arbitrators as opposed to three-arbitrator panels. Furthermore, it will be easier to schedule hearings, and have them set earlier, when the parties need only be concerned with a single arbitrator's calendar. During list selection, the parties will save time vetting only eight potential arbitrators, instead of the twenty-four names provided for a three-member panel. These cost savings may enable investors to obtain legal representation for claims which might otherwise be considered too small to handle.

[1] FINRA's filing also seeks to amend Rule 13401 of the Industry Code in the same manner.

While PIABA applauds the increase from $50,000 to $100,000 for the amount in controversy, exclusive of interest and expenses, we encourage FINRA to consider raising the threshold further. We believe the benefit to the parties of having these cases resolved by a single arbitrator should be expanded to cases seeking $250,000 or less, at the option of the investor. While we see no reason to delay the implementation of this proposed rule, we hope that FINRA will propose such an increase in the threshold before long.

An important aspect of this rule change is the removal of the current provision which permits any one party to request a three-person panel for cases over $25,000. While we have no firm data on this issue, we have anecdotal evidence that industry respondents have routinely defeated the benefits of having a single arbitrator by demanding a full panel for cases between $25,000 and $50,000. The new rule would provide for a single arbitrator in all cases where the amount in controversy is between $25,000 and $100,000, exclusive of interest and costs, unless all parties agree in writing to submit the dispute to a full panel. Thus, it will no longer be possible for a single party to unilaterally defeat the single-arbitrator provision. PIABA supports this aspect of the proposed rule change.

FINRA's rule filing states that FINRA will realize cost savings with the implementation of this rule change. This makes sense. FINRA staff spends much of its time contacting arbitrators about a myriad of issues, and calling parties and arbitrators to schedule or reschedule telephonic hearings. This time will be reduced significantly when only a single arbitrator needs to be contacted. PIABA believes these savings ought to be passed on to the parties who use FINRA's forum. We encourage FINRA to quantify its own cost savings, and to adjust the fees charged to the parties accordingly.

Finally, we note that this rule may exacerbate a problem we addressed in a previous comment letter. In our letter concerning the change to the chairperson training requirements,[2] we pointed out that the current list selection rules give preferential treatment to the "chair-qualified" arbitrators. As chair-qualified arbitrators can appear on both the chairperson list and the

[2] Letter of Laurence S. Schultz to Nancy M. Morris regarding SR-FINRA-2008-009, dated April 16, 2008. All PIABA comment letters are available on the Newroom link at piaba.org.

non-chair public arbitrator list, they are much more likely to be chosen to serve on arbitration panels. This reduces the participation of non-chair-qualified arbitrators and makes it more difficult for them to get the service they need to become chair-qualified.[3] The current proposed rule will exaggerate that effect, as all of the cases which will now be assigned to a single arbitrator will be heard by a "chair-qualified" arbitrator. This will disqualify non-chair arbitrators from sitting on a substantial number of cases. PIABA believes it is in the best interest of public investors to have a robust arbitrator pool, supplemented regularly with new faces. We therefore are concerned about the negative effect this rule change will have on the appointment of non-chair arbitrators. As we have stated before, we feel that the solution to this problem would be to modify or scrap the "chair-qualified" system altogether.

On balance, however, we believe the proposed rule change is an improvement to the arbitration process, and we support its adoption.

Thank you for allowing us to comment on this proposed rule change.

Respectfully,

PUBLIC INVESTORS ARBITRATION
BAR ASSOCIATION

s/Laurence S. Schultz
Laurence S. Schultz
President, 2007-2008

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[3]Rule 12400 requires non-lawyer arbitrators to sit on three cases through award before they are eligible to serve as chairpersons; a lawyer must sit on two cases through award to qualify.