

# Public Investors Arbitration Bar Association

## 2010 Officers

**Scott R. Shewan**  
*President*

**Peter J. Mougey**  
*Vice-President/  
President-Elect*

**Jenice L. Malecki**  
*Secretary*

**Ryan K. Bakhtiari**  
*Treasurer*

## 2010 Directors

**Ryan K. Bakhtiari**  
*California*

**Gail E. Boliver**  
*Iowa*

**Steven B. Caruso**  
*New York*

**Jason Doss**  
*Georgia*

**Scott Ilgenfritz**  
*Florida*

**William A. Jacobson**  
*New York*

**Richard A. Lewins**  
*Texas*

**Jenice L. Malecki**  
*New York*

**C. Thomas Mason**  
*Arizona*

**Peter J. Mougey**  
*Florida*

**Kirk Reasonover**  
*Louisiana*

**J. Pat Sadler**  
*Georgia*

**Scott R. Shewan**  
*California*

**Brian N. Smiley**  
*Georgia*

**Mark A. Tepper**  
*Florida*

**Robin S. Ringo**  
*Executive Director*

December 17, 2009

**rule-comments@sec.gov**

Ms. Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: Release No. 34-61060; File No. SR-FINRA-2009-072 (Proposed Rule Change to Amend the Deficient Claims Rules)**

Dear Ms. Murphy:

I write on behalf of the Public Investors Arbitration Bar Association (“PIABA”) in support of the above-referenced proposed amendment to FINRA Rule 12307(b) of the Customer Code of Arbitration Procedure. The proposed rule change would clarify that claims of public investors will be deemed filed upon the initial filing date, if the customer cures certain filing deficiencies within thirty (30) days of notice from FINRA of that deficiency. PIABA believes the proposed rule change will advance the goal of investor protection, and accordingly urges adoption of this proposed change as written.<sup>1</sup>

PIABA is a group of approximately 450 attorneys, including several law school clinic professors, who primarily represent defrauded and aggrieved individual investors against broker-dealers and their registered representatives. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums. Collectively, PIABA members have represented tens of thousands of investors in securities arbitrations through the country. Our members and their clients have a strong interest in all FINRA rules which govern the arbitration process.

The proposed amendment of FINRA-DR Rule 12307(b) of the Customer Code seeks to codify that any deficient claims will be deemed to have been filed on the original filing date if they are cured within thirty days of notification of a

---

<sup>1</sup> A corresponding rule change is proposed within SR 2009-072 for filings under the Industry Code of Arbitration Procedure. PIABA has no objection to that portion of the proposal. However the comments herein are directed solely at the proposal as relates to the Customer Code of Arbitration Procedure.

deficiency from the director of the tribunal. Adoption of this rule change will provide much needed clarity to recurring questions concerning when a claim is deemed filed.

Deficiency letters are routinely issued to even the most seasoned claimant attorneys. Some of the deficiency letters pertain to relatively trivial matters as compared to the importance of an investor victim attempting to submit his request for relief. We are pleased that FINRA is addressing these processing issues in this rule proposal with a view to equitably serving the interests of public investors.

In addition to filing a statement of claim with FINRA-DR to commence an arbitration proceeding, claimants are required to submit a Uniform Submission Agreement and tender of the applicable filing fee. Additionally, some states, such as California, require that an out of state attorney also file a certificate from a state bar association approving the appearance. In the event that the local FINRA-DR office deems the forms or information and fees submitted with the filing to be insufficient, the statement of claim is not served upon the respondent and a deficiency notice is served upon the claimant requesting that any deficiency be cured within thirty days.

FINRA-DR often identifies deficiencies with the Uniform Submission Agreement. In some cases, it may be that the Uniform Submission Agreement does not identify the most current title of a corporate respondent (a common problem with the recent spate of mergers and consolidations in the industry), or that a CRD number is needed for an individual respondent with a common name. Other times, it is claimed that the inappropriate individual signed the Uniform Submission Agreement in the case of a trust or corporation, or that additional claimant signatures are needed on the form. Additionally, Uniform Submission Agreements are sometimes rejected for being illegible or for being facsimile copies. We believe it likely that *pro se* claimants understandably encounter additional problems in finalizing their forms and papers in accordance with FINRA requirements.

Likewise, questions often arise with respect to the filing fees paid in connection with the filing of the claim. Generally, filing fees are assessed depending upon the amount in controversy. However, FINRA-DR staff sometimes questions the amount in controversy and requests a higher filing fee. The request for an additional fee can also result in the issuance of a deficiency letter.

The filing date of a statement of claim can have a crucial bearing on the claims asserted with respect to eligibility requirements and the statute of limitations.<sup>2</sup> Under the current rule, there has been no uniform standard applied at FINRA-DR as to the filing date to be utilized, i.e., the initial filing date or the date on which the deficiency was cured. The rule amendment properly seeks to clarify that the filing date to be utilized is the original filing date.

---

<sup>2</sup> PIABA has long maintained that statutes of limitations do not apply in arbitration proceedings. Nonetheless, the issue is commonly raised and argued in the context of securities arbitration.

The proposed rule amendment is consistent with the overarching investor protection goals of Section 15A(b)(6) of the Securities Exchange Act. 15 U.S.C. 78o-3(b)(6).

We applaud FINRA's thoughtful attention to the issues herein. We submit that the Commission should adopt the proposed rule changes as written. Thank you for the opportunity to provide comments in this matter.

Respectfully,

/s/

Scott R. Shewan  
President

Mr. Shewan's Contact Information

Scott R. Shewan  
Pape & Shewan, LLP  
642 Pollasky Avenue  
Suite 200  
Clovis, California 93612  
Telephone: (559) 299-4341  
Facsimile: (559) 299-0920