No. 13-959

IN THE

Supreme Court of the United States

LAURENCE STONE,

Petitioner,

v.

BEAR, STEARNS & CO., INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF *AMICUS CURIAE* INVESTOR RIGHTS CLINIC AT PACE LAW SCHOOL IN SUPPORT OF PETITIONER

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Statement of Interest of *Amicus Curiae*[1]

The Investor Rights Clinic at Pace Law School, operating through John Jay Legal Services, Inc. ("PIRC"), opened in 1997 as the nation's first law school clinic in which law students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes.[2] In addition, PIRC educates the investing public and advocates on behalf of individual investors, especially through comments to regulatory authorities about securities self-regulatory organization ("SRO") rule-making. PIRC is committed to ensuring that the investor protection mandate of the federal securities laws is implemented and to advocating for a fair arbitration forum.

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1. Pursuant to Supreme Court Rule 37.2(a), counsel of record for both parties received notice of *amicus curiae's* intention to file this brief at least 10 days prior to the due date. Petitioner and Respondents consented to the filing of this brief. No party or counsel for any party authored this brief in whole or in part, and no person or entity, other than *amicus curiae*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

2. *See* Barbara Black, *Establishing a Securities Arbitration Clinic: The Experience at Pace*, 50 J. Legal Educ. 35 (2000); *see also* Press Release, Securities Exchange Commission, *SEC Announces Pilot Securities Arbitration Clinic to Help Small Investors - Levitt Responds to Concerns Voiced at Town Meetings* (Nov. 12, 1997), *available at* http://www.sec.gov/news/press/pressarchive/1997/97-101.txt.

Summary of the Argument

As a party to an arbitration agreement with his broker-dealer, Petitioner Laurence Stone was entitled to a hearing before a neutral arbitration panel, appointed by the securities industry SRO, the Financial Industry Regulatory Authority ("FINRA"), pursuant to the contracted-for rules governing the selection of neutrals. One arbitrator – whose husband had received compensation from the prevailing party in the arbitration – failed to meet her disclosure obligations in accordance with FINRA's rules. In addition, FINRA did not follow its own rules in appointing her to the panel. Thus, Petitioner did not have the opportunity to present his case to truly neutral arbitrators. A panel of the Court of Appeals for the Third Circuit misconstrued the law when it found that the arbitrator was not "evidently partial" under section 10(a)(2) of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 10(a)(2) (2012), and that Petitioner had waived his right to challenge the arbitrator's neutrality.

We urge the Court to grant the Petition for a Writ of *Certiorari* in this case to (1) clarify the standards for determining if an arbitrator's conflicts of interest—undisclosed in violation of applicable forum rules—establish "evident partiality" under FAA § 10(a)(2), and (2) determine whether a party waives the right to seek vacatur based on undisclosed arbitrator conflicts unless it discovers and raises those conflicts during the arbitration. As explained in the Petition, the Third Circuit's approach conflicts with this Court's decision in *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968), and the courts of appeals are divided over the proper interpretation of *Commonwealth Coatings* and over the waiver standard.

By codifying in the FAA the longstanding common law rule that courts can vacate arbitration awards on the basis of evident partiality, Congress ensured that no arbitration award would stand if decided by a biased arbitrator. The Court consistently has acknowledged the importance of a neutral arbitrator to fairness in arbitration, and *Commonwealth Coatings* concurs with this proposition. Parties who are bound to submit their claims to arbitration should receive a fair hearing before a neutral arbitrator. Thus, under the FAA, an arbitral forum must appoint neutral arbitrators to be fair and to be perceived of as fair by the investing public.

The present standard for vacating an award for evident partiality under the FAA is unclear; a clear standard will provide more certainty and efficiency in arbitration. Furthermore, the importance of a neutral arbitrator is even more pronounced in securities arbitration, where the arbitral forum, FINRA, demands full and ongoing disclosures from its arbitrators as part of its contracted-for rules, which are approved by the Securities and Exchange Commission ("SEC") and endorsed by the Court. Finally, clarifying the standards will help address the perception held by parties involved in FINRA arbitration, particularly investors, that the process is biased.

The Court should grant *certiorari* to resolve the conflict in these important areas.

Argument

I. The Court should grant the Petition because Petitioner was denied his right to a hearing before a neutral, impartial arbitration panel.

A. The Supreme Court has acknowledged the importance of a neutral arbitrator to fairness in arbitration.

In light of the "national policy favoring arbitration" as a means of resolving disputes, *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984), the arbitration process, especially one resulting from contract, must be fair because, under the FAA, an award issued by an arbitrator can be overturned only on specific grounds, including "where there was evident partiality . . . in the arbitrators, or either of them." 9 U.S.C. § 10(a)(2). Thus, "an arbitration hearing arising under the FAA must include the classic hallmarks of fairness: notice, a right to be heard, and a neutral decision-maker." Jill I. Gross, *McMahon Turns Twenty: The Regulation of Fairness in Securities Arbitration*, 76 U. Cin. L. Rev. 493, 506 & n. 82 (2008) (collecting cases).

The Court has acknowledged the importance of a neutral decision-maker in arbitration, stating that "due process requires a neutral and detached judge in the first instance, and the command is no different when a legislature delegates adjudicative functions to a private party." *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 617, 630 (1993) (internal quotation marks and citations omitted) (finding no constitutional defect with statutory presumptions in the Multiemployer Pension Plan

Amendments Act because those presumptions did not limit the autonomy of the arbitrator who was "concededly neutral"). An arbitrator is tasked with the resolution of factual or legal disputes removed from judicial procedures and appellate review; in this sense the arbitrator performs a quasi-judicial function in adjudicating claims that are submitted to arbitration. *See, e.g.*, *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985) ("By agreeing to arbitrate a statutory claim, a party does not forgo substantive rights afford by the statute . . . . It trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration.").

This Court also has long recognized that "officers acting in a judicial or quasi judicial capacity are disqualified by their interest in the controversy to be decided." *Tumey v. Ohio*, 273 U.S. 510, 522 (1927) (reversing a conviction decided by a town mayor who had a direct pecuniary interest in convicting the defendant before him even though no actual bias was shown). The pertinent inquiry when examining the likelihood of partiality, as outlined in *Tumey*, is whether the situation is one that presents a potential for an adjudicator not to be disinterested and detached. *Id.* at 532.

The Court has identified criteria indicating sufficient self-interest that may disqualify a judicial or quasi-judicial officer from hearing a case before him or her. First, an adjudicator who has a "direct, personal, substantial pecuniary interest" in ruling against the party in the case before him or her is clearly disqualified. *See, e.g.*, *Tumey*, 273 U.S. at 532; *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 824 (1986) (judge who was pursuing two separate

class action lawsuits on the dispositive issue in the state's supreme court has a "'direct, personal, substantial, [and] pecuniary'" interest in the resolution of the issue before him because his participation enhanced the legal status and settlement value of his own case pending before the court) (alteration in original). Second, an adjudicator who has knowledge that his or her tenure in office depends on a certain outcome necessarily infects the decision rendered. *See Ward v. Vil. of Monroeville*, 409 U.S. 57, 58-60 (1972) (defendant was denied his right to an impartial arbiter even when mayor did not share in fines levied because the fines collected from guilty defendants constituted a large part of the village's finances). Third, an adjudicator's self-interest may raise the issue of the "probability of unfairness" even when no actual bias has been shown. *See In re Murchison*, 349 U.S. 133, 134-36 (1955) (impartiality of a sitting judge called into question when he adjudicated charges against two defendants after questioning them in "secret hearings" as a "one-man judge-grand jury").

At a minimum, fairness mandates the absence of actual bias in the trial of cases. Accordingly, the Court has declared that "our system of law has always endeavored to prevent even the probability of unfairness," *In re Murchison*, 349 U.S. at 136, for "justice must satisfy the appearance of justice." *Offut v. United States*, 348 U.S. 11, 14 (1954). Hence, the inquiry set out in *Tumey* "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." *In re Murchison*, 349 U.S. at 136.

The Court declared in *Commonwealth Coatings* that the same inquiry is relevant to arbitrators. In

Commonwealth Coatings, the Court acknowledged that there was no allegation of actual fraud or bias in the decision rendered by the arbitrator, but decided that the "elementary requirements of impartiality taken for granted in every judicial proceeding," were not suspended when parties submit a dispute to arbitration. 393 U.S. at 145.

Further, the Court consistently has repeated that it "decline[s] to indulge the presumption that the parties and arbitral body conducting a proceeding will be unable or unwilling to retain competent, conscientious and impartial arbitrators." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 30 (1991) (quoting *Mitsubishi*, 473 U.S. at 634). However, as a safeguard against partiality, the Court has indicated that "[t]he FAA also protects against bias, by providing that courts may overturn arbitration decisions where there was evident partiality or corruption in the arbitrators." *Id.* at 30-31 (internal quotation marks and citation omitted).

Specifically, section 10(a)(2) of the FAA states that an award may be vacated upon application of any party to the arbitration "where there was evident partiality or corruption in the arbitrators, or either of them." 9 U.S.C. § 10(a)(2). The FAA does not define evident partiality. Under *Commonwealth Coatings*, disclosure issues are directly relevant to the inquiry of partiality in the arbitrator, yet the lower courts have not reached a consensus for what a party must show to demonstrate evident partiality after the Court's decision in *Commonwealth Coatings*. As set forth in more detail in the Petition, the case-by-case approach to the Court's evident partiality standard has rendered inconsistent results for disclosure standards, which undermines the efficiency of arbitration.

Here, Petitioner was denied a fair hearing before a panel of disinterested and detached arbitrators. An arbitrator failed to disclose interests that not only were disqualifying under the applicable arbitral forum rules, but also demonstrated "evident partiality" under the FAA and *Commonwealth Coatings*. These disqualifying interests were identified by Petitioner in his application to vacate an award rendered by a panel that was not neutral under the contracted-for rules of the arbitral forum. Yet, Petitioner was denied relief by the lower courts contrary to the FAA and this Court's view that a neutral arbitrator is important to a fair arbitration.

B. *Commonwealth Coatings'* majority opinion is in line with Supreme Court jurisprudence favoring the avoidance of an appearance of partiality.

1. Justice Black's *Commonwealth Coatings* opinion is a majority opinion of the Court.

It is evident from the plain reading of *Commonwealth Coatings* that the opinion of the Court, written by Justice Black, is a majority opinion. The rule to determine the proper holding of a case when there is debate over a majority opinion is governed by *Marks v. United States*, 430 U.S. 188, 193 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds . . . .'") (citations omitted). Thus, in order for the *Marks* analysis to apply, it is necessary that there be "no single rationale [that] enjoys the assent of five Justices." *Id.* If

an opinion does not have "the assent of five Justices," then the "narrowest grounds" test, adopted from language in *Gregg v. Georgia*, 428 U.S. 153 (1976), is applicable. *Id.* at 169 n.15 (opinion of Stewart, Powell, and Stevens, JJ.). In *Gregg*, the Court announced the "Judgment of the Court, and opinion of Mr. Justice STEWART, Mr. Justice POWELL, and Mr. Justice STEVENS, announced by Mr. Justice STEWART." *Id.* at 158. It is clear that *Gregg* is a plurality opinion as it is the judgment of the Court and an opinion in which only three justices joined. *Id.*

In contrast, the *Commonwealth Coatings* opinion begins, "Mr. Justice BLACK delivered the opinion of the Court." *Commonwealth Coatings*, 393 U.S. at 145. After Justice Black's opinion of the Court, it is noted that "Mr. Justice WHITE, with whom Mr. Justice MARHSALL joins, concurring." *Id.* at 150 (White, J., concurring). After Justice White's concurring opinion ends, three justices join a dissenting opinion written by Justice Fortas. *Id.* at 152 ("Mr. Justice FORTAS, with whom Mr. Justice HARLAN and Mr. Justice STEWART join, dissenting.") (Fortas, J., dissenting). While three justices dissent in *Commonwealth Coatings*, the opinion authored by Justice Black is clearly marked as "the opinion of the Court." *Id.* at 145 (majority opinion). Furthermore, Justice White begins his concurrence by stating, "While I am glad to join my Brother BLACK'S opinion in the case, I desire to make these additional remarks." *Id.* at 150 (White, J., concurring). Therefore, because five Justices assented to Justice Black's opinion, the proper reading of *Commonwealth Coatings* is to find Justice Black's opinion a majority, rather than a plurality.

2. *Commonwealth Coatings* holds that a fair arbitration requires a neutral arbitrator.

The Court in *Commonwealth Coatings* also agreed with the proposition that fair arbitration requires a neutral, impartial arbitrator. Recognizing that arbitrators also have other means of income, the opinion of the Court stated:

> [W]e should, if anything, be even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have completely free rein to decide the law as well as the facts and are not subject to appellate review. We can perceive no way in which the effectiveness of the arbitration process will be hampered by the simple requirement that arbitrators disclose to the parties any dealings that might create an impression of possible bias.

Commonwealth Coatings, 393 U.S. at 148-49. As such, impartial arbitrators are essential to a fair arbitration process. Moreover, when further discussing the Rules of the American Arbitration Association and its relation to principles of the Canon of Judicial Ethics, the opinion of the Court stated:

> This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias. We cannot believe that it was the purpose of Congress to authorize litigants to submit their cases and controversies to arbitration boards that might reasonably

> be thought biased against one litigant and favorable to another.

Id. at 150.

These two statements, coupled together, make it clear that the Court in *Commonwealth Coatings* concluded that impartiality in an arbitrator is a requirement of a fair arbitration process.

Nevertheless, it is undisputed that judges and arbitrators may be held to different standards. As Justice White added in his concurring opinion, "The Court does not decide today that arbitrators are to be held to the standards of judicial decorum of Article III judges, or indeed of any judges." *Id.* (White, J., concurring). However, it is also undisputed that arbitrators wield significant power over the outcome of arbitrations because they have "free rein" over the law and facts of a dispute and the awards issued are subjected to limited appellate review. *See id.* at 149 (majority opinion). Thus, arbitrators should be subject to the heightened standard of disclosure as required by the applicable arbitral forum rules; failure by the arbitrator to meet disclosure requirements under these forum rules should be valid grounds for vacatur under evident partiality. FINRA, the arbitral body in Petitioner's case, elaborates in its arbitrator's guide, "Arbitrators must be impartial in both appearance and in fact. . . . Therefore, it is particularly important in arbitration that the forum be fair and be perceived to be fair."[3]

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3. FINRA, FINRA Dispute Resolution Arbitrator's Guide 14 (Feb. 2014 ed.), *available at* http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbtors/documents/arbmed/p009424.pdf.

In this case, however, the arbitral forum failed to provide a fair hearing for Petitioner as provided for in his arbitration agreement. The arbitrator's nondisclosure of her husband's financial interest in and earnings from the prevailing party in the arbitration, magnified by FINRA's lapse in enforcement of its own disclosure rules, violated the forum's disclosure rules for its arbitrators, resulting in a non-neutral arbitration panel.

3. A clear standard will provide more certainty and efficiency in arbitration.

Due to the conflict in applying *Commonwealth Coatings* among several of the courts of appeals and the prevalence of arbitration, especially in the securities industry, the Court should clarify the standard for determining whether an arbitrator is neutral. Doing so would answer the questions underlying the Petition in this case: (1) Can an arbitration award rendered by a conflicted arbitrator be permitted to stand unless the party can prove that the arbitrator was actually biased against him? (2) Does the burden rest on the arbitrator to disclose any potential conflicts or should the burden be on the parties to discover those conflicts? Clear answers to these questions would better serve courts, investors, and members of the securities industry as to how a fair arbitration should proceed. Additionally, certainty in the law is consistent with the Court's desire for fairness in arbitration and will improve investors' view of the fairness in the arbitration process. Finally, it will make arbitration more efficient, which coincides with the Court's view on the value of efficiency of arbitration. *See Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 ("In bilateral arbitration, parties forgo the procedural rigor

and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes.") (citations omitted); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 58 (1974) ("Indeed, it is the informality of the arbitral procedure that enables it to function as an efficient, inexpensive, and expeditious means for dispute resolution.").

C. In determining the standards for evident partiality and waiver, the Court should accord special weight to FINRA rules mandating full and ongoing arbitrator disclosures because they are approved by the SEC and endorsed by the Court.

Consistent with Supreme Court precedent on the importance of a neutral arbitrator, FINRA's rules on arbitrator disclosure mandate the avoidance of bias or even the appearance of bias. While these rules are SRO-made, they should be afforded special weight due to SEC oversight of FINRA rule-making. Indeed, the Court has endorsed arbitration as an acceptable method of resolving disputes in the securities industry in large part because of the protections from procedural unfairness provided by the Securities Exchange Act of 1934 ("Exchange Act") and SEC oversight of FINRA as an arbitration forum. *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 233-34 (1987) ("[T]he Commission has broad authority to oversee and to regulate the rules adopted by the SROs relating to customer disputes, including the power to mandate the adoption of any rules it deems necessary to ensure that arbitration procedures adequately protect

statutory rights."). Specifically, the SEC is required to ensure that "[t]he rules of the association [FINRA] are designed . . . to protect investors and the public interest." Securities Exchange Act § 15A(b)(6), 15 U.S.C. § 78o-3(b)(6). Therefore, FINRA rules on arbitrator disclosure should be accorded special weight in the Court's determination of evident partiality and waiver.

FINRA rules regarding arbitrator disclosures are aimed at avoiding both partiality and the appearance of partiality. FINRA Rule 12405 requires arbitrators to "make a reasonable effort to learn of, and must disclose to the Director, any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding." FINRA Rule 12405(a).[4] This includes any relationships or circumstances "that are likely to affect impartiality or might reasonably create an appearance of partiality or bias." FINRA Rule 12405(a)(2).

FINRA guidance to arbitrators about disclosures is very clear. FINRA's arbitrator training manual on the duty to disclose lists being "neutral in fact and appearance" as the first of three primary duties of arbitrators.[5] The training manual continues:

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4. The FINRA rules cited in this brief are available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4096.

5. FINRA, FINRA Dispute Resolution Your Duty to Disclose 6 (Aug. 2013 ed.), *available at* http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbtors/documents/arbmed/p125424.pdf.

> FINRA cannot emphasize enough the importance of arbitrators disclosing each and every fact—from the point of view of any participant—that might affect the arbitrator's objectivity, or even create a **perception** that the arbitrator cannot be impartial. FINRA Rule 12405 of the Code of Arbitration Procedure (Code) requires each arbitrator to disclose any circumstances that might preclude an impartial determination or create even an **appearance** of partiality or bias.[6]

Here, Petitioner, like virtually all investors, was required to go to FINRA arbitration to resolve his dispute in an arbitral forum whose rule-making is supervised by the SEC. The neutrality and disclosure standards to which his arbitrators are held should be fair in accordance with the SEC's investor protection goals.

II. Granting the Petition would enhance the perception of fairness in arbitration because investors involved in FINRA arbitration perceive the process as biased despite safeguards in the FAA and FINRA rules.

As a result of the Court's decision in *McMahon*, the resolution of disputes between investors and their brokerage firms and brokers by arbitration is essentially mandatory in the securities industry today. Almost all broker-dealers include pre-dispute arbitration clauses

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6. *Id.* (emphasis in original); *see also* FINRA, FINRA Dispute Resolution Arbitrator's Guide 17 (Feb. 2014 ed.), *available at* http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbtors/documents/arbmed/p009424.pdf.

in customer account agreements. *See* Gross, *McMahon Turns Twenty*, *supra*, at 494 & n.8.

Unfortunately, despite the mandatory nature of securities arbitration, parties to the process, particularly investors, perceive it as biased. 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, 354 (2008). In 2008, Professors Gross and Black completed a benchmark empirical study, sponsored by the Securities Industry Conference on Arbitration, regarding participants' perceptions of the fairness of securities SRO arbitrations involving customers. *Id.*

The questions that generated the most negative customer reaction related to disputants' perceptions of arbitrator impartiality, based on the survey participants' most recent arbitration experience. *Id.* at 385. Almost two-thirds of customers did not believe that the overall process was fair. *Id.* at 389 n.118 ("Specifically, 63% of customers disagreed with the positive statement that, '[A] s a whole, I feel like arbitration process was fair,' and 28% of customers agreed with the statement. In comparison, 40% of all other participants disagreed with the statement, and 51% of all other participants agreed with it."). Thus, investors, who are required to arbitrate their claims, have a far more negative perception of securities arbitration than other participants. Investors also have a strong negative perception of the bias of arbitrators. *Id.* at 385-86 (Specifically, "41% of customers disagreed with the positive statement that 'the arbitration panel was impartial,' while 25% of customers agreed with it. In comparison, 31% of all other participants disagreed with the statement, and 48% of all other participant agreed with it.").

In an effort to respond to criticisms by customer advocates that the forum is unfair to customers, FINRA attempted to address one aspect of perceived procedural unfairness in arbitration. It took steps to eliminate the mandatory non-public (industry) arbitrator in customer cases by implementing a pilot program that allowed parties to choose a panel composed of public (non-industry) arbitrators.[7] On September 30, 2013, FINRA amended the panel composition rule in its Code of Arbitration Procedure for Customer Disputes to provide customers with the option to choose an all public arbitration panel.[8] In addition, FINRA is currently considering revising the definitions of non-public and public arbitrators to address procedural fairness issues.[9]

FINRA's piecemeal attempts to alleviate procedural unfairness do not resolve criticisms that the arbitral forum is unfair, nor would they have ensured a neutral arbitrator for the Petitioner. Investors (as well as securities industry respondents) are still vulnerable to unfairness and perceptions of unfairness; clarity from the Court on the standards for evident partiality and waiver in order to ensure a fair hearing by a panel of neutral arbitrators is needed to protect fairness in securities arbitration.

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7. *FINRA to Launch Pilot Program to Evaluate All-Public Arbitration Panels*, FINRA (July 24, 2008), http://www.finra.org/Newsroom/NewsReleases/2008/P038958.

8. FINRA, Regulatory Notice 11-05: Arbitration Panel Composition 2 (2011), *available at* https://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p122879.pdf.

9. *Update: FINRA Board of Governors Meeting*, FINRA (Feb. 13, 2014), http://www.finra.org/Industry/Regulation/Guidance/CommunicationstoFirms/P445719.

Conclusion

Petitioner was denied an arbitration hearing before a neutral arbitrator, in contravention of the contracted-for rules of the forum approved by the SEC and endorsed by the Court. He was then denied relief by the lower courts, in contravention of a fair reading of the FAA. The Court should grant the Petition to resolve the split among the courts of appeals and clarify the standards for evident partiality and waiver to ensure that parties to arbitration are guaranteed a fair hearing by neutral arbitrators.

For the foregoing reasons, *amicus curiae* urges the Court to grant the Petition for a Writ of *Certiorari*.

March 14, 2014

Respectfully submitted

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