

## **Executive Summary**

It is axiomatic that any arbitration forum can only be as fair as the arbitrators who decide disputes in this forum. In this case, aggrieved investors have only one choice if they have a dispute with their brokers or brokerage firms – that is, FINRA Dispute Resolution. FINRA agrees with PIABA that FINRA has a duty to ensure that its arbitrator roster consists of impartial and neutral arbitrators. In fulfilling that duty, it correctly states in its Arbitrator Guide that “arbitrator disclosure is the cornerstone of FINRA arbitration.”<sup>1</sup> This report demonstrates that there are serious flaws in this disclosure “cornerstone,” which render the system itself unsound.

This Summary Section will distill the problems uncovered and the solutions proposed in the attached 50-page report. The report analyzes the background information provided by FINRA to the parties for over 5,000 FINRA arbitrators. It also recounts the history of FINRA’s ongoing lack of transparency with respect to arbitrator recruitment and disclosure process. To support its conclusions, PIABA obtained the opinion of a prominent, tenured professor, Dr. Akshay Rao, to examine the reliability of FINRA’s arbitration disclosure process. Dr. Rao concluded that FINRA’s arbitrator disclosure process is “illusory” and fails to elicit meaningful and reliable information about arbitrators’ bias and conflicts of interest. Dr. Rao concluded that FINRA’s arbitrator disclosure process is flawed at every stage. Unreliable and incomplete information is communicated to the parties, which gives FINRA members an unfair advantage over investors because they are repeat players.

In addition, PIABA used the background information described above to analyze the demographics of FINRA’s arbitrator roster. This study determined that contrary to FINRA’s public statements that its arbitrator roster is diverse, FINRA’s undisclosed targeted arbitrator recruiting practices have resulted in a non-diverse pool. PIABA consulted with Susan MacPherson, a jury consultant expert, who explained that arbitrators with diverse backgrounds and experiences are better at decision-making than homogenous groups of arbitrators (e.g. FINRA’s arbitrator pool that predominantly consists of older male attorneys who are similarly trained in evaluating and solving problems.)

### **Problems with FINRA’s Arbitrator Recruitment and Disclosure Process**

Below is a list of problems highlighted in the Report:

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<sup>1</sup> FINRA Arbitrators Guide (2014), p. 17.

1. Since 1992, FINRA's f/k/a NASD has made its arbitrator eligibility standards more stringent and engaged in targeted recruiting practices that have resulted in an arbitrator roster that is homogenous. (pages 12-21)
2. FINRA fails to disclose to the public (and even to the parties using its system) how and why it targets certain categories of individuals to become FINRA arbitrators even though it collects this data. Information about how and why arbitrators are recruited is important to parties trying to identify potential conflicts of interest and bias. (page 22)
3. FINRA claims that its arbitrator roster is diverse but also admits that it has not conducted any studies to measure diversity. (pages 22-24)
4. PIABA's demographics study found that FINRA's targeted recruiting practices that have resulted in an arbitrator roster that is homogenous. (pages 24-31) Based on a review of analysis of 5,375 arbitrators, a summary of the results is as follows:
  - The arbitrator pool consists of approximately 80% males and 20% females meaning that women are underrepresented in the pool.
  - The average age of arbitrators is 69 years old.
  - Approx. 40% of the arbitrator pool is 70 years or older.
  - Approx. 17% of the arbitrator pool is 80 years or older.
  - The advanced age of FINRA's arbitrators raises concerns about their ability to effectively participate in deciding cases.
  - Approx. 70% of arbitrators have advanced degrees.
  - Approx. 75% of arbitrators in the public pool have advanced degrees whereas only 25% of industry arbitrators have advanced degrees. This supports that FINRA's targeted recruiting practices have contributed to a homogenous arbitrator pool, especially in the public pool.
5. After reviewing FINRA's arbitrator disclosure process, Dr. Akshay Rao concluded that FINRA's arbitrator disclosure process is illusory. While FINRA may say the right things about disclosure, its actual implementation of disclosure policies fail to elicit meaningful or reliable information about arbitrators' conflicts or biases. (pages 31-42)

6. In addition, FINRA's procedural safeguards to ensure that only impartial arbitrators are added to the arbitrator pool are inadequate and not verifiable. (pages 17-21)

7. FINRA's arbitrator disclosure process fails to ensure that it provides updated and accurate background information and information related to potential conflicts of interest and bias to parties. (Examples provided on pages 42-47)

### **Solutions to the Identified Problems**

Below is a list of proposed recommendations to correct the problems identified in this Report:

1. If investors had a choice to seek justice in a forum other than FINRA, then many of the problems in this report would be alleviated. Unfortunately, as Professor Katsoris states in the Forward to this Report: FINRA "is basically the only remaining game in town." Right now, investors are forced into FINRA's flawed system to seek justice. PIABA believes that a viable alternative would do much to clean up FINRA's arbitration system and, thus, urges Congress to pass the Investor Choice Act of 2013 making securities arbitration optional for investors.

2. Because a lack of transparency appears to be at the core of many of the problems described in this Report, PIABA recommends that the SEC take action to ensure that an independent group be commissioned to assist in the oversight of FINRA's entire arbitration process. PIABA recommends that, if possible, the SEC require FINRA Dispute Resolution to be governed by a new independent board of directors that is separate, distinct and that does not report to FINRA's current board of directors. Making the securities arbitration process independent from FINRA's regulatory body would likely improve the fairness of the arbitration forum for investors. It would also likely improve the perception of fairness about FINRA's industry-sponsored dispute resolution process.

3. PIABA recommends that the SEC take action to restore SICA's status as a meaningful participant in the oversight of the securities arbitration process. In the alternative, PIABA recommends that a new independent group with a similar mission as SICA be created. This group should not report to the FINRA Board of Directors. And, this independent group should be given the power to obtain documents and information from FINRA related to its arbitration forum.

4. PIABA recommends that the SEC improve the transparency of FINRA's arbitration forum by making documents relating to its supervision of FINRA arbitration be subject to the Freedom of Information Act (FOIA).

5. PIABA recommends that SEC commission an independent study about how FINRA's past and current arbitrator recruiting practices have impacted the demographics of its arbitration roster and whether these practices have impacted arbitration outcomes.

6. PIABA recommends that the SEC examine FINRA's arbitrator recruitment practices and develop a transparent recruitment process that ensures that FINRA's arbitrator roster is diverse and that it includes neutral and impartial arbitrators.

7. PIABA recommends that the SEC commission an independent study to determine whether requiring two years of college credits or five years of business or professional experience equates to highest quality of arbitrators. PIABA recommends that this study analyze and propose other alternative criteria.

8. PIABA recommends that the SEC require FINRA to take action on the identified problems with the arbitrator application process and other failures of disclosure.

9. PIABA recommends that the SEC ensure that FINRA has adequate and verifiable procedural safeguards in place to ensure that FINRA's arbitrator disclosure process results in the recruitment and selection of quality, neutral and impartial arbitrators.

# THE IMPORTANCE OF ARBITRATOR DISCLOSURE

A Report By Public Investors Arbitration Bar Association (PIABA) Shows That The Cornerstone of FINRA Arbitration Has Serious Flaws And That The Forum Is Unfair To Investors.<sup>1</sup>

Authored By Jason R. Doss, PIABA President<sup>2</sup>

## Acknowledgements<sup>3</sup>

### Foreword

*By Constantine N. Katsoris*<sup>4</sup>

In 1987, the Supreme Court decided *Shearson/American Express, Inc. v. McMahon*,<sup>5</sup> and held that pre-dispute arbitration agreements in the brokerage industry were fully enforceable. At the time *McMahon* was decided, there were at least ten industry-operated arbitration forums.<sup>6</sup> Since then, pre-dispute arbitration agreements have become pervasive, and customers are compelled to arbitrate virtually every dispute they have with the brokerage industry. Realistically, therefore, arbitration has become the mandatory form of dispute resolution.

Today, FINRA resolves virtually all securities arbitration disputes. As basically the only remaining game in town, FINRA owes the public an even greater duty to ensure a level playing field, which includes providing parties with

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<sup>1</sup> PIABA is an international, not-for-profit, voluntary bar association of lawyers who represent claimants in securities and commodities arbitration proceedings and securities litigation. The mission of PIABA is to promote the interests of the public investor in securities and commodities arbitration, by seeking to protect such investors from abuses in the arbitration process, by seeking to make securities arbitration as just and fair as systemically possible and by educating investors concerning their rights.

<sup>2</sup> Jason Doss is an attorney with the Atlanta-based law firm, The Doss Firm, LLC. He is the current President of PIABA. Mr. Doss is also an adjunct professor at Georgia State University College of Law. Notably, he is the co-author of *The Practitioner's Guide To Securities Arbitration* (American Bar Association 2013) as well as *The Retirement Challenge: Will You Sink or Swim?* (FT Press 2009).

<sup>3</sup> I would like to thank Robin Ringo, PIABA's Executive Director, and PIABA's entire staff for their hard work in compiling the data for the PIABA Demographic Study. I would also like to thank Robin Ringo for being my friend and for being a great person to work with over the years. I would like to thank the entire PIABA Board and membership for their support this year, particularly Joseph Peiffer, Scott Illgenfritz, Hugh Berkson and Richard Lewins for serving on PIABA's Executive Committee. I want to thank Christine Lazaro for all of her work this year. Finally, I want to thank Professor Gus Katsoris, Representative Keith Ellison, Akshay Rao and Susan MacPherson for participating in this report and for putting investors' interests first.

<sup>4</sup> Wilkinson Professor of Law, Fordham Law School. Public Member of Securities Industry Conference on Arbitration (1977-2012); Chair (2003-2012); Emeritus Public Member (2013-Present).

<sup>5</sup> 482 U.S. 220, 107 S. Ct. 2332, 96 L. Ed. 2d 185 (1987).

<sup>6</sup> See, GAO, *SECURITIES ARBITRATION HOW INVESTORS FARE*, Rep. No. GAO/GGD 92-74 (May 1992), p. 20.

neutral and impartial arbitrators as well as a transparent arbitrator disclosure process – the cornerstone of the integrity of arbitration. Indeed, because of its virtual monopoly position, the need for independent oversight over FINRA’s arbitration forum is even greater today than when multiple competing forums existed.

In 1977, the Securities Industry Conference on Arbitration (SICA) was established to create greater uniformity and clarity in the rules of arbitration at the various SROs. Since its inception, SICA has actively participated to improve the integrity of the SRO arbitration process, detailing its activities since its creation in fourteen publically issued reports.

SICA’s independence, as an amalgam of the various constituents of arbitration, has been its strength during almost four decades of existence. That strength has maintained uniformity of procedures and assured independent public participation in conjunction with the government’s oversight of the process. This system of checks and balances worked well and resulted in steady and meaningful change that improved the arbitration process, gaining the trust and confidence of the public investor. Public confidence in a securities arbitration forum relies upon independent public participation in the oversight function and rule making process. SICA played a vital role in improving the public’s perception of fairness regarding securities arbitration.

Unfortunately, in recent years, FINRA has effectively minimized SICA’s role in facilitating independent public participation in the oversight of FINRA’s arbitration forum by delegating that role to its own appointed committee, the National Arbitration & Mediation Committee (NAMC). As a result, FINRA’s arbitration process has become less transparent.

The public interest in arbitration’s fairness should not be solely safeguarded by government oversight and it is doubtful that the NAMC – no matter how talented or well-meaning its members - can be perceived as adequately independent under a system where parties have nowhere else to go. I am not in this Foreword minimizing the contributions of present or former NAMC members to improving the arbitration process. However, all NAMC members are selected by FINRA and NAMC’s agenda is set by FINRA.

In contrast to NAMC, SICA has been able to maintain its independence, in part, because it requires that new public members be selected by existing seated and emeritus public members of SICA. This process worked well and it ensured

that the new public members were considered by the remaining public members to be truly public representatives and to be people whom they believe would make a contribution to SICA's deliberations.

It is noteworthy that in 1987 (ten years after the creation of SICA) that the majority opinion in *McMahon* recognized the great strides achieved in arbitration procedures since the Supreme Court's decision in *Wilko* some 24 years earlier.<sup>7</sup> Moreover, Justice Blackman in his dissenting opinion also recognized that of "particular importance has been the development of a code of arbitration by the Commission with the assistance of representatives of the securities industry and the public"<sup>8</sup> – i.e., SICA. Furthermore, after *McMahon*, SICA received a letter from Richard D. Ketchum, the then Director of the division of Market Regulation with the Securities Exchange Commission, encouraging SICA to continue its role as an independent voice in the securities arbitration community.<sup>9</sup>

Without such independent scrutiny, public confidence in arbitration will erode, chipping away at the trust and confidence earned over the last four decades. If securities arbitration were *optional*, perhaps FINRA's current practices of self-evaluation would not be so troublesome; but in the present climate, where FINRA arbitration is effectively *mandatory*, it is disturbing.

I am not in this Foreword taking a position on whether arbitration should be mandatory or voluntary or a hybrid of both. I believe, however, at the very least, that life without an independent group like SICA to provide the public with a meaningful opportunity to critique FINRA's arbitration process will surely energize the movement to make arbitration voluntary again, as it basically was before *McMahon*<sup>10</sup>. Moreover, without such independent scrutiny, the perceived integrity of the present system of resolving securities disputes will suffer to the detriment of all parties involved.

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<sup>7</sup> 482 U.S. 220 at 233

<sup>8</sup> 482 U.S. 220 at 258

<sup>9</sup> See Letter from Richard G. Ketchum to SICA (September 10, 1987).

<sup>10</sup> See C. Katsoris, *Riding the Trojan Horse Back to Wilko?*, 10 SEC. ARB. COMMENTATOR, NO. 7 AT 1 (July 1999); see also C. Katsoris, *The Trojan Horse Revisited*, SEC. ARB. COMMENTATOR, NO. 4 AT 1 (Mar. 2013).

## Introduction

The question of whether industry-sponsored securities arbitration is fair to investors has been a subject of debate for over three decades. Investor advocates argue that securities arbitration is unfair, inefficient, expensive, and biased towards the securities industry. The securities industry, on the other hand, contends that the arbitration process works well, is faster and less expensive than litigation, and is fair to all the parties involved.<sup>11</sup>

Measuring the fairness of industry-sponsored securities arbitration is difficult. In 1992, just five years after *McMahon*, the United States General Accounting Office (“GAO”) conducted a study regarding the fairness of securities arbitration (the “1992 GAO Study”), and issued a report entitled, *Securities Arbitration, How Investors Fare*. The 1992 GAO Study examined results in arbitrations over an eighteen-month period from January 1989 to June 1990. It concluded, among other things, that about 60% of investors who submitted claims to industry-sponsored arbitration forums, such as the NASD and NYSE<sup>12</sup>, received an award in some amount, and that the amount awarded averaged about 60% of the amount claimed.<sup>13</sup> Since 1992, the win rates for customers have fallen as low as 37% in 2007 and were approximately 42% in 2013.<sup>14</sup> Claimants’ percentage recovered has also sharply declined.<sup>15</sup> According to a March 2014 article entitled *So You Think You Know The Worst FINRA Arbitration Venues?*, written by a prominent law firm that represents the securities industry, the most favorable states for respondents are Hawaii, West Virginia, Mississippi, Rhode Island, Iowa, Washington, Nevada, Alabama, Connecticut and Georgia because each have low win rates (e.g. 86% zero rate in Hawaii) and when claimants win, arbitration panels in those states award claimants between 1%-10% of the alleged damages.<sup>16</sup>

The 1992 GAO Study cautioned, however, that a statistical analysis of overall arbitration results indicated little about the fairness of individual cases.<sup>17</sup> The GAO correctly stated that the “fairness of arbitration cases, regardless of the

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<sup>11</sup> Jill Gross, Barbara Black, *When Perception Changes Reality: An Empirical Study of Investors’ Views of the Fairness of Securities Arbitration*, Journal of Dispute Resolution (2008) at 3.

<sup>12</sup> In 2007, the National Association of Securities Dealers (NASD) and New York Stock Exchange (NYSE) merged to become FINRA.

<sup>13</sup> See GAO Report, *supra*, note 2, p. 7.

<sup>14</sup> <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/AdditionalResources/Statistics/>; see also Securities Arbitration Commentator (June 2014).

<sup>15</sup> S. Lawrence Polk, *So You Think You Know The Worst FINRA Arbitration Venues?*, Law360 (March 21, 2014)

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

forum, depends largely on the impartiality and competence of individual arbitrators.”<sup>18</sup>

FINRA, today’s only remaining SRO arbitration forum, acknowledges and agrees that it has a duty to ensure that its arbitrator roster consists of impartial and neutral arbitrators. In fulfilling that duty, it correctly states in its Arbitrator Guide that “arbitrator disclosure is the cornerstone of FINRA arbitration.”<sup>19</sup> FINRA’s Code of Arbitration also requires that arbitrators disclose any circumstance which might preclude an arbitrator from rendering an objective and impartial determination in the proceeding. This obligation is a continuing duty that requires an arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.<sup>20</sup>

Therefore, the fairness of FINRA’s arbitration forum should be judged on whether FINRA’s arbitrator disclosure process adequately protects investors by eliciting complete, meaningful, reliable and timely disclosures about FINRA’s arbitrators. Disclosures about potential conflicts of interest or bias are of particular importance.

The importance of arbitrator disclosures becomes even more apparent when one considers that arbitrators’ failure to disclose potential and actual conflicts of interests and biases is one of the most common, if not the most common, reason that motions to vacate arbitration awards are filed in courts. Courts are hesitant to grant such motions, however, because of the stringent standard of review and limited legal grounds for vacating arbitration awards.<sup>21</sup> As a result, parties that are harmed by arbitrators’ inadequate or even false disclosures realistically are left with no meaningful recourse.<sup>22</sup>

This report analyzes FINRA’s arbitrator disclosure process to determine whether it is designed and operates to elicit meaningful, reliable and timely

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<sup>18</sup> *Id.*

<sup>19</sup> FINRA Arbitrators Guide (2014), p. 17.

<sup>20</sup> See Rule 12405, FINRA Code of Arbitration.

<sup>21</sup> See e.g., *Stone v. Bear, Stearns & Co., Inc.*, 872 F. Supp. 2d 435 (E.D. Pa. 2012) *Rosen Capital Partners, LP v. Merrill Lynch Prof'l Clearing Corp.*, 2013 WL 428460 (Cal. Ct. App. Feb. 5, 2013).

<sup>22</sup> Barlyn, Suzanne, Reuters, *Wall St. arbitrator booted for fake credentials heard nearly 40 cases* (March 25, 2014). (FINRA arbitrator falsely represented that he was an attorney and decided approximately 40 arbitration cases. Since the arbitrator’s misrepresentations were not discovered until after the deadline to file a motion to vacate, most, if not all, of the parties impacted were time barred under the FAA to vacate the awards).

disclosures, particularly disclosures related to potential conflicts of interest or biases.

FINRA's arbitrator disclosure process begins with FINRA's recruitment of arbitrators. After recruitment, FINRA's process for eliciting information about conflicts and biases from arbitrators begins with the FINRA Arbitrator Application.<sup>23</sup> After an applicant completes the FINRA Arbitrator Application, the FINRA staff screens the applications. The background information from the application is entered into a FINRA database and portions of information from the application is used to create an Arbitrator Disclosure Report for each arbitrator.<sup>24</sup> After Arbitrator Disclosure Reports are created for the applicants, FINRA forwards the Arbitrator Disclosure Form(s) to the Neutral Roster Sub-Committee of NAMC for review and approval.<sup>25</sup> In participating with the approval of an arbitrator applicant, the members of the sub-committee are only provided with the Arbitrator Disclosure Report for each arbitrator applicant.<sup>26</sup> PIABA confirmed that sub-committee members are not provided with copies of the applicants' FINRA Arbitrator Applications. PIABA also confirmed that FINRA does not provide sub-committee members with any information about how applicants are recruited to become arbitrators.

If and when an arbitrator applicant is accepted to FINRA's arbitrator roster, under FINRA rules, parties receive an Arbitrator Ranking List and Arbitrator Disclosure Reports for each arbitrator within thirty days of an answer being filed.<sup>27</sup> The parties are expected to rely on the information contained in the reports to rank and strike the arbitrator candidates. FINRA relies solely on the Arbitrator Disclosure Report(s) to notify the parties of any actual or potential conflicts of interest and biases. FINRA does not allow parties a formal *voir dire* process before selecting arbitrators. FINRA's Code of Arbitration permits parties to request additional information from the arbitrators before the deadline to rank and strike the arbitrator lists.<sup>28</sup> However, the rule does not require arbitrators to answer the questions at all or under oath.<sup>29</sup>

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<sup>23</sup> A copy of FINRA'S Arbitrator Application is attached as Exhibit A to Appendix.

<sup>24</sup> See FINRA Arbitrator Application, Ex. A at 4.

<sup>25</sup> *Id.*

<sup>26</sup> An example of an Arbitrator Disclosure Report is attached as Exhibit B to Appendix.

<sup>27</sup> See Rule 12403, FINRA Code of Arbitration; An example of an Arbitrator Ranking List is attached as Exhibit C to Appendix.

<sup>28</sup> Rule 12403, FINRA Code of Arbitration.

<sup>29</sup> *Id.*

After FINRA appoints arbitrators to a panel based on the parties' ranking forms, FINRA requires each arbitrator on the panel to complete the FINRA Oath of Arbitrator and accompanying questions that relate to conflicts/biases.<sup>30</sup>

Pursuant to Rule 12405, arbitrators have an on-going duty to disclose conflicts of interest and bias to the parties. In the event that the parties feel the need to seek removal of an arbitrator after appointment on the basis of a conflict of interest and bias, Rule 12406 of the FINRA Code of Arbitration states that any party may ask an arbitrator to recuse himself or herself from the panel for good cause. Requests for arbitrator recusal are decided by the arbitrator who is the subject of the request.<sup>31</sup> Rule 12407 addresses instances in which the Director of Arbitration can remove an arbitrator.<sup>32</sup>

As explained below in more detail, there are critical deficiencies throughout FINRA's arbitrator disclosure process that warrant immediate remedial action. For example, there is a lack of transparency in how arbitrators are initially recruited by FINRA to its arbitrator roster. FINRA does not disclose to the parties how particular arbitrators are recruited even though FINRA collects that information, which could provide parties with valuable information about actual and potential conflicts of interest or biases. PIABA is concerned that FINRA does not have adequate or verifiable procedural safeguards in place to ensure that its targeted recruiting practices result in the recruitment of diverse, neutral arbitrators. Courts

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<sup>30</sup> A copy of FINRA's Oath of Arbitrator is attached as Exhibit D to Appendix.

<sup>31</sup> Rule 12406, FINRA Code of Arbitration.

<sup>32</sup> FINRA Rule 12407 states:

**(a) Before First Hearing Session Begins**

Before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be definite and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer under this rule will be resolved in favor of the customer.

(2) The Director must first notify the parties before removing an arbitrator on the Director's own initiative. The Director may not remove the arbitrator if the parties agree in writing to retain the arbitrator within five days of receiving notice of the Director's intent to remove the arbitrator.

**(b) After First Hearing Session Begins**

After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under [Rule 12405](#) that was not previously known by the parties. The Director may exercise this authority upon request of a party or on the Director's own initiative. Only the Director or the President of FINRA Dispute Resolution may exercise the Director's authority under this paragraph (b).

have refused to enforce pre-dispute arbitration provisions in contracts when the arbitration forum fails to have adequate procedural safeguards in place to ensure that arbitrators are neutral and impartial.

In preparing this report, PIABA conducted its own demographic research concerning FINRA's arbitrators by reviewing and analyzing Arbitrator Disclosure Reports of 5,375 past and current arbitrators in an effort to gain more clarity about the demographics of FINRA's roster of arbitrators ("PIABA Demographic Study"). PIABA's Demographic Study illustrates that FINRA's recruiting practices have resulted in FINRA's arbitrator roster being homogenous and lacking diversity, which is exactly what the SEC warned against in the 1992 GAO study. The data suggests that FINRA's recruiting practices have resulted in the disproportionate exclusion of quality arbitrators on the basis of age, gender, and socio-economic status. While PIABA did not have adequate data to study the issues, based on the current demographics of FINRA's arbitrator roster, PIABA has no reason to believe that FINRA's targeted recruiting practices do not also exclude minorities.

FINRA collects information related to how each arbitrator is recruited but it chooses not to disclose that information to parties. Parties participating in FINRA arbitrations should be privy to any and all information in the possession of FINRA that could lead to the discovery of information that could detect arbitrators' potential conflicts of interest or biases.

As explained below, PIABA consulted with expert, Dr. Akshay Rao, a tenured professor at the University of Minnesota, who examined FINRA's arbitrator disclosure process and determined that it is illusory and does not elicit meaningful and reliable information regarding potential conflicts of interest and biases. For example, the questions in FINRA's Arbitrator Application, which serves as the primary way that FINRA collects disclosures, are not properly designed to elicit meaningful and reliable information about conflicts of interest and biases. Further, some of the information that is provided by arbitrators during their application process (which could be meaningful in disclosing conflicts of interest and bias) is not disclosed by FINRA to the parties. Additional information about arbitrators' backgrounds is disclosed to parties after the arbitrators have been selected by the parties, and arbitrators are left to determine for themselves whether disclosures are material. The way questions in the arbitrator application are drafted has the potential to lead to misclassification of arbitrators who have industry affiliations as public, depriving customers of their right to have majority public or all public arbitration panels. Arbitrator disclosures are not updated on a regular

basis, making the information parties receive to evaluate arbitrators, outdated. As shown below, PIABA found recent examples where arbitrators had not updated their Arbitrator Disclosure Reports in many years despite representations by FINRA to the contrary. PIABA also identified instances where FINRA included deceased arbitrators on the ranking lists. Dr. Rao concluded that FINRA's arbitrator disclosure process is illusory because while FINRA's Arbitrators Guide and disclosure rules say the right things about disclosure, FINRA's implementation of its arbitrator disclosure process fails to elicit meaningful and reliable information about arbitrators' conflicts of interest and biases.

In short, FINRA's arbitrator disclosure process is flawed at every stage and is implemented backwards – the arbitrators are selected before the parties have the all of the information they need to make an intelligent selection, and when such information is provided, it is not reliable and it is the potentially biased arbitrator who determines whether he/she should be recused. Social science research determined long ago that people cannot accurately assess the nature and the level of their own bias. Yet customers have no choice but to tolerate this system.

Dr. Rao concludes that the flawed arbitrator disclosure process provides respondent broker-dealers with an unfair advantage over public investors in securities arbitration disputes in part, because broker-dealers are repeat participants and, therefore, have more information about arbitrators in the pool than do investors, due to experience.

Something must be done to protect investors. At present, investors have had no choice but to tolerate this flawed system. The securities industry has had almost thirty years to get the arbitrator disclosure process right and has not done so. Since FINRA states that it's arbitrator disclosure process is the cornerstone to the integrity of arbitration, given the findings in this Report, how can investors conclude anything except that FINRA's arbitration forum is unfair? As a result, statutory or regulatory enactments are needed to prompt the changes that should be made to make FINRA's arbitration forum truly fair and impartial.

In contrast to FINRA's system, the jury selection process allows litigants a meaningful opportunity to identify potential bias and to ask that the court excuse prospective jurors who may have a bias. The additional safeguard of peremptory challenges allows litigants to excuse potentially biased jurors without cause if the court declines a challenge for cause. The jury selection system reflects that reality; FINRA's selection system does not.

PIABA believes that arbitration is a valuable forum for investors to resolve disputes with the securities industry. Over the years, PIABA has worked to attempt to level the playing field for investors. Going forward, PIABA will continue to support arbitration as a viable option and participate in improving the process. It is clear, however, that legislative and/or regulatory change appears to be the only way to attempt to ensure investors have access to a dispute resolution forum that is truly fair and impartial, and to attempt to ensure that the entity operating that forum (FINRA) is held accountable when it fails to meet that goal.

PIABA supports investors having the unilateral right to choose between FINRA arbitration and court to resolve their disputes with the securities industry. PIABA encourages Congress to take action and pass *The Investor Choice Act of 2013* (H.R. 2998), which would prohibit the use of mandatory pre-dispute agreements by broker-dealers and investment advisers that force investors to arbitrate disputes or otherwise surrender their right to pursue recourse in a forum of their choosing. PIABA applauds the leadership of the bill's author and member of the House Financial Services Committee Rep. Keith Ellison (D-MN) for introducing the legislation.

The Investor Choice Act of 2013 will level the playing field for retail investors by amending Section 921 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to statutorily prohibit the use of mandatory pre-dispute agreements in broker-dealer and financial adviser customer contracts that restrict investors' ability to pursue claims in the lawful forum of their choosing. The Investor Choice Act of 2013 would not in any way prevent investors from voluntarily electing to resolve a dispute through arbitration or mediation after the facts and circumstances of the dispute have been discovered.

Investors need protections now. As a result, PIABA also requests that the SEC use its power under the 1934 Securities Exchange Act as well as the Dodd-Frank to improve FINRA's arbitration forum for the better. Below is a summary of recommended solutions to many of the problems that PIABA identified with FINRA's arbitrator disclosure process.

## **I. RECOMMENDED SOLUTIONS**

Below is a list of proposed recommendations to correct the problems identified in this Report:

1. If investors had a choice to seek justice in a forum other than FINRA, then many of the problems in this report would be alleviated. Unfortunately, as Professor Katsoris states in the Forward to this Report: FINRA “is basically the only remaining game in town.” Right now, investors are forced into FINRA’s flawed system to seek justice. PIABA believes that a viable alternative would do much to clean up FINRA’s arbitration system and, thus, urges Congress to pass the Investor Choice Act of 2013 making securities arbitration optional for investors.

2. Because a lack of transparency appears to be at the core of many of the problems described in this Report, PIABA recommends that the SEC take action to ensure that an independent group be commissioned to assist in the oversight of FINRA’s entire arbitration process. PIABA recommends that, if possible, the SEC require FINRA Dispute Resolution to be governed by a new independent board of directors that is separate, distinct and that does not report to FINRA’s current board of directors. Making the securities arbitration process independent from FINRA’s regulatory body would likely improve the fairness of the arbitration forum for investors. It would also likely improve the perception of fairness about FINRA’s industry-sponsored dispute resolution process.

3. PIABA recommends that the SEC take action to restore SICA’s status as a meaningful participant in the oversight of the securities arbitration process. In the alternative, PIABA recommends that a new independent group with a similar mission as SICA be created. This group should not report to the FINRA Board of Directors. And, this independent group should be given the power to obtain documents and information from FINRA related to its arbitration forum.

4. PIABA recommends that the SEC improve the transparency of FINRA’s arbitration forum by making documents relating to its supervision of FINRA arbitration be subject to the Freedom of Information Act (FOIA).

5. PIABA recommends that SEC commission an independent study about how FINRA’s past and current arbitrator recruiting practices have impacted the demographics of its arbitration roster and whether these practices have impacted arbitration outcomes.

6. PIABA recommends that the SEC examine FINRA’s arbitrator recruitment practices and develop a transparent recruitment process that ensures that FINRA’s arbitrator roster is diverse and that it includes neutral and impartial arbitrators.

7. PIABA recommends that the SEC commission an independent study to determine whether requiring two years of college credits or five years of business or professional experience equates to highest quality of arbitrators. PIABA recommends that this study analyze and propose other alternative criteria.

8. PIABA recommends that the SEC require FINRA to take action on the identified problems with the arbitrator application process and other failures of disclosure.

9. PIABA recommends that the SEC ensure that FINRA has adequate and verifiable procedural safeguards in place to ensure that FINRA's arbitrator disclosure process results in the recruitment and selection of quality, neutral and impartial arbitrators.

## **II. DISCLOSURE PROBLEMS RELATED TO FINRA'S ARBITRATOR ELIGIBILITY STANDARDS AND RECRUITMENT PRACTICES**

### **A. Arbitrator Eligibility Standards And Recruitment Have Been A Problem Since The Beginning.**

FINRA's arbitrator disclosure process related to arbitrators' actual and/or perceived conflicts of interest or biases begins with FINRA's recruitment of arbitrators. As discussed above, just five years after the United States Supreme Court issued its landmark decision in *Shearson/American Express, Inc. v. McMahon*<sup>33</sup>, the United States General Accounting Office conducted a study regarding the fairness of securities arbitration, the "1992 GAO Study", and issued a report entitled, *Securities Arbitration, How Investors Fare*. The 1992 GAO Study accurately stated:

The fairness of arbitration cases, regardless of the forum, depends largely on the impartiality and competence of individual arbitrators. The primary ways that industry-sponsored forums can ensure that their arbitration process is as fair as possible are to select arbitrators with appropriate backgrounds and experience and ensure that they are trained to know and understand the arbitration process.<sup>34</sup>

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<sup>33</sup> 482 U.S. 220, 107 S. Ct. 2332, 96 L. Ed. 2d 185 (1987).

<sup>34</sup> GAO, SECURITIES ARBITRATION HOW INVESTORS FARE, Rep. No. GAO/GGD 92-74 (May 1992) at 8.

The 1992 GAO Study found that none of the SRO securities arbitration forums at that time including the National Association of Securities Dealers (“NASD”), now FINRA, had established formal standards to initially qualify individuals as arbitrators; they did not verify background information provided by prospective or existing arbitrators; and they had no system to ensure that arbitrators were adequately trained to perform their functions fairly and appropriately.<sup>35</sup> Instead, SROs decided informally on a case-by-case basis whether individuals were qualified, taking into account the individual’s employment history, education, any experience as an arbitrator at another forum, and any references from experienced arbitrators, judges, or business associates.<sup>36</sup> However, none of the SROs applied formal standards that specified minimum professional or educational requirements.<sup>37</sup>

The 1992 GAO Study did not discuss whether or how SRO arbitration forums recruited arbitrators. The SEC commented in the study, however, that arbitrators were selected on the basis of referrals, recommendations, membership in civic or professional groups, and general reputation in the community, in addition to the information provided in the arbitrators’ applications.<sup>38</sup>

The 1992 GAO Study did not define what constituted appropriate background or experience for SRO arbitrators. The GAO also did not study whether or how SRO arbitrator recruiting practices could cause arbitration to be unfair to investors. Recognizing the importance of quality arbitrators, the 1992 GAO Study recommended that the SEC hold SRO forums responsible for making their arbitration process as fair as possible. In its comments to the 1992 GAO Study, the SEC stated that enhancing procedures to select and train arbitrators could provide industry-sponsored arbitration forums better assurance that arbitrators were independent and competent.<sup>39</sup>

Importantly, the SEC expressed concern that requiring formal standards for arbitrators would either homogenize the pool of arbitrators, and, thus, would result in the loss of the benefits of a diverse pool, or would be meaningless, if the standards were too loose.<sup>40</sup> (Emphasis added). The SEC stated that “standards that might require all arbitrators to have advanced degrees or a minimum number of

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<sup>35</sup> *Id.* An SRO is an acronym for self-regulatory organization. Back in 1992, there were multiple SROs that regulated the securities industry. Those SROs also sponsored their own dispute resolution arbitration forums.

<sup>36</sup> *Id.* at 57.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 60-61.

<sup>40</sup> *Id.*

years of experience in certain professions could foreclose investor choice and exclude individuals with expertise, such as individual investors or other capable arbitrators.<sup>41</sup> (Emphasis added).

**B. Since the 1992 GAO Study, NASD and FINRA Have Made Arbitrator Eligibility Standards More Stringent And Have Engaged In Targeted Recruiting of Arbitrators.**

Despite the SEC’s prediction and warning about how investors could be harmed by a homogenized arbitrator pool, in 2003, the NASD raised the arbitrator standard for acceptance to the roster by requiring a minimum of two years of college-level credits.<sup>42</sup> FINRA subsequently raised the eligibility standard again and as a result, the current standards for acceptance to the arbitrator roster is now even more stringent because arbitrators must now have a minimum of five years of paid business and/or professional experience—inside or outside of the securities industry—and at least two years of college-level credits, unless waived by FINRA in its discretion.<sup>43</sup> PIABA is not aware of any studies conducted by the NASD or FINRA that analyzed whether requiring two years of college credits or five years of business or professional experience equates to higher quality arbitrators.

With regard to recruiting arbitrators, FINRA admits that it targets certain categories of individuals. For example, FINRA’s website currently states:

We recruit arbitrators to help resolve disputes from diverse backgrounds including:

- lawyers;
- educators;
- doctors;
- accountants;
- business professionals; and
- securities professionals.<sup>44</sup>

As explained in more detail below, FINRA’s practice of targeting certain categories of individuals to serve as arbitrators has operated to foreclose investor choice and to exclude individuals with expertise, such as individual investors or

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<sup>41</sup> *Id.*

<sup>42</sup> Linda Fienberg, NASD Dispute Resolution, The Arbitration Policy Task Force Report- A Report Card (July 27, 2007) at 8.

<sup>43</sup> <http://www.finra.org/ArbitrationAndMediation/Arbitrators/BecomeanArbitrator/FINRAArbitrators/index.htm>

<sup>44</sup> *Id.*

other capable arbitrators from serving as arbitrators. This problem is exactly what the SEC warned about in the 1992 GAO Study.

**C. Parties That Participate In FINRA Arbitrations Are Entitled To Have Their Cases Decided By Impartial and Neutral Arbitrators.**

The United States Supreme Court has long held that the American concept of a jury trial contemplates a jury drawn from a fair cross section of the community.<sup>45</sup> Indeed, the United States Courts website states:

The Constitution, federal law and a series of Supreme Court rulings guarantee the right to impartial juries, selected at random from a fair cross-section of the community. Increasingly, federal trial courts are seeking to move beyond those legal imperatives and find new ways to maximize jury diversity.<sup>46</sup>

As a result, all ninety-four (94) federal trial courts have written jury plans to assure compliance with constitutional mandates and the federal Jury Selection and Service Act, which for nearly twenty (20) years has prohibited the exclusion from federal jury service of any person “on account of race, color, religion, sex, national origin, or economic status.”<sup>47</sup>

The purpose of guaranteeing the right to impartial juries is to achieve justice and to help ensure that the judicial process is perceived to be fair. Judge Reginald Lindsay in the U.S. District Court for the District of Massachusetts aptly stated:

The perception of fairness counts. A white jury may be fair, but a non-white defendant likely will think ‘the jurors can’t be fair because they don’t understand me.’<sup>48</sup>

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<sup>45</sup> For example, a unanimous Court stated in *Smith v. Texas*, 311 U.S. 128, 130, 61 S Ct 164, 165, 85 L.Ed. 84 (1940), that “(i)t is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community.” To exclude racial groups from jury service was said to be “at war with our basic concepts of a democratic society and a representative government.” *Glasser v. United States*, 315 U.S. 60, 85-86, 62 S.Ct. 457, 86 L.Ed. 680 (1942), in the context of a federal criminal case and the Sixth Amendment's jury trial requirement, stated that “(o)ur notions of what a proper jury is have developed in harmony with our basic concepts of a democratic system and representative government,” and repeated the Court's understanding that the jury “‘be a body truly representative of the community’ . . . and not the organ of any special group or class.”

<sup>46</sup> [http://www.uscourts.gov/news/TheThirdBranch/07-07-01/Courts\\_Try\\_to\\_Maximize\\_Jury\\_Diversity.aspx](http://www.uscourts.gov/news/TheThirdBranch/07-07-01/Courts_Try_to_Maximize_Jury_Diversity.aspx)

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

Courts have long overturned criminal convictions when the jury selection system was designed to exclude certain classes of people from serving on a jury.<sup>49</sup> The rationale for this principle was concisely stated in the United States Supreme Court case of *Taylor v. Louisiana*:

The purpose of a jury is to guard against the exercise of arbitrary power—to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge. *Duncan v. Louisiana*, 391 U.S., at 155-156, 88 S.Ct. at 1450-1451. This prophylactic vehicle is not provided if the jury pool is made up of only special segments of the populace or if large, distinctive groups are excluded from the pool.<sup>50</sup> (Emphasis added).

Parties in an arbitration do not have a right to have cases decided by arbitration panels selected at random from a fair cross-section of the community.<sup>51</sup> However, those parties do have a right to have cases decided by impartial and neutral arbitrators. FINRA puts it this way:

Arbitrators must be impartial and neutral throughout a proceeding. Impartiality extends to parties, counsel, agents, witnesses, co-panelists and even the type of case involved. Arbitrators must be impartial in both appearance and in fact. Arbitrators are viewed by parties in an arbitration case much as a judge would be viewed in a court of law. In some ways, arbitrators have greater power than a judge (e.g., except for limited reasons, arbitration awards cannot be overturned). Therefore, it is particularly important in arbitration that the forum be fair and be perceived to be fair.<sup>52</sup> (Emphasis added).

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<sup>49</sup> *Ballard v. United States*, 329 US 187, 67 S.Ct. 261 (1946) (court reversed conviction because women were excluded from the jury pool); *Duncan v. Louisiana*, 391 US 145, 88 S.Ct. 1444 (1968); *Taylor v. Louisiana*, 419 US 522, 95 S.Ct. 692 (1975) (Court reversed criminal conviction because the jury selection system systematically excluded women from the jury pool); *Carter v. Jury Comm'n*, 396 US 320, 90 S.Ct. 518 (1970) (Court observed that the exclusion of Negroes from jury service because of their race “contravenes the very idea of a jury.”)

<sup>50</sup> *Taylor v. Louisiana*, 419 US 522, 530, 95 S.Ct. 692, 698 (1975).

<sup>51</sup> *Hooters of America, Inc. v. Phillips*, 177 F.3d 933, 940-941 (4th Cir. 1999) (arbitral forum need not replicate the judicial forum for arbitration agreement to be enforceable.)

<sup>52</sup> FINRA Arbitrators Guide, p. 14.

Courts have repeatedly held that arbitration provisions are unenforceable if the arbitration forum does not have adequate procedural safeguards in place that provide for impartial arbitrators.<sup>53</sup>

As explained below, PIABA is concerned that FINRA does not have adequate and verifiable procedural safeguards in place to ensure that it is recruiting impartial and neutral arbitrators. FINRA does not disclose the specific ways that it recruits individual arbitrators and, therefore, neither the parties participating in the arbitration forum nor the public have no way of knowing or verifying that FINRA's arbitrator recruiting practices in fact recruit neutral and impartial arbitrators. In addition, FINRA collects information about how individual arbitrators are recruited but it chooses not to disclose that information to parties participating in arbitration even though it could be very important in helping parties to detect arbitrators' potential conflicts of interests and biases.

**D. Adequate and Verifiable Procedural Safeguards Must Be In Place To Ensure That FINRA's Opaque Targeted Recruitment Practices Result In The Recruitment Of Impartial, Neutral And Diverse Arbitrators.**

FINRA's practice of targeted arbitrator recruitment has the potential to lead to the recruitment of arbitrators who are not neutral or impartial. In a 2012 Reuters news article entitled, *Who Makes A Good Arbitrator?* Barbara Brady, FINRA's Vice President and Director of Neutral Management, stated that FINRA was focused at that time on recruiting real estate professionals and professors of law and economics.<sup>54</sup>

It is unknown why FINRA chose to recruit those very specific categories of individuals and there is no way to know whether FINRA's decision to recruit real estate professionals and professors of law and economics was made by FINRA arbitrarily or whether there was a well-founded and legitimate basis.

Transparency with regard to why and how FINRA recruits arbitrators is critical to the legitimacy and fairness of the entire arbitration forum, given the impact it could have on the composition of the arbitrator roster and the outcomes of cases. In January 1996, a task force assembled by the NASD issued a report entitled, *Report of the Arbitration Policy Task Force to the Board of Governors*

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<sup>53</sup> See e.g. *Hooters of America, Inc.* at 940-41, *supra*; see also *McMullen v. Meijer, Inc.*, 355 F.3d 485, 493-494 (6th Cir. 2004).

<sup>54</sup> <http://www.reuters.com/article/2012/08/22/us-finra-arbitrators-comply-idUSBRE87L0M420120822>

*National Association of Securities Dealers* (“Ruder Report”).<sup>55</sup> With regard to arbitrator recruitment, the Ruder Report stated that there was a shortage of qualified arbitrators because the size of NASD’s arbitrator pool “was dramatically reduced in 1993, when NASD required, for the first time, all new arbitrators who had not decided a case prior to January 1, 1993 to attend an arbitrator training session.”<sup>56</sup> As a result, the number of eligible NASD arbitrators at that time precipitously dropped from 7,000 to 2,600.<sup>57</sup>

In response to that shortage, “the NASD established a nationwide program to identify, recruit, and train potential arbitrators in all of the cities in which it conducts arbitrations.”<sup>58</sup> As a result of NASD’s recruiting program, during the period of 1993 to 1996, the pool of eligible arbitrators significantly increased from 2,600 to close to 5,000.<sup>59</sup> The Ruder Report noted that the NASD “initiated a new recruitment plan whose goal is to recruit and train 3,000 new arbitrators in 1995 and 1996” and “to assist in attaining this goal, the NASD has established Regional Arbitrator Recruitment Councils.”<sup>60</sup>

It is clear from the Ruder Report that the NASD initiated its recruiting campaign to “meet existing demand and projected caseload growth” and appears to have based its recruiting success on hitting a targeted quota, not necessarily on obtaining quality neutral and impartial arbitrators.<sup>61</sup> There is no explanation or indication of how arbitrator candidates were identified or recruited and/or whether procedural safeguards were put in place at that time to ensure that impartial and neutral arbitrators were recruited, which is significant given that about half of the NASD’s entire arbitrator roster at that time was obtained through that recruitment process.

The NASD’s recruitment practices could be important to arbitration outcomes in FINRA arbitrations today. Since 1992, claimant win rates in

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<sup>55</sup> REPORT OF THE ARBITRATION POLICY TASK FORCE TO THE BOARD OF GOVERNORS NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. (Jan. 1996), reprinted in [1995-1996 TR. BINDER] FED. SEC. L. REP. (CCH) ¶ 85,735, at 87,433. (“Ruder Report”)

<sup>56</sup> *Id.* at 101.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 102.

<sup>61</sup> *Id.*

arbitrations have fallen from 60% to the current rate of 42%.<sup>62</sup> In addition, since 1992, the percentage of claimants' alleged damages recovered has also decreased.<sup>63</sup>

Notably, in 2000, the GAO conducted a follow up study to the 1992 GAO Study ("2000 GAO Study")<sup>64</sup>. The 2000 GAO Report, in part, revisited the issue of fairness in securities arbitration. The 2000 GAO Report identified the declining trend in claimant win and recovery rates but speculated that the decline may have been due a higher percentage of cases settling.<sup>65</sup>

It does not appear from its report, however, that the GAO analyzed the impact of the NASD's Year 1993 loss of 4,400 of its 7,000 arbitrators (a 63% decline of its entire roster) on claimant win and recovery rates during that same time period. It also does not appear that the GAO analyzed the impact of the NASD's recruitment of approximately 2,400 new arbitrators to its existing pool of 2,600 between 1993 and 1996 (a 92% increase in new arbitrators) on claimant win and recovery rates<sup>66</sup> It is certainly plausible that a different composition of NASD arbitrators (post-1992) contributed to the decline in claimant win and recovery rates, not simply an increase in settlements. The likelihood that these new arbitrators impacted the overall SRO arbitration outcomes becomes even greater when one considers that in 1992, the NASD decided 67% of all securities arbitrations and in 2000, 92% of all cases.<sup>67</sup>

The NASD merged with the NYSE in 2007 to become FINRA. Today, FINRA decides 99% all securities arbitrations involving disputes between FINRA members and their customers.<sup>68</sup> The arbitrators who were on the NASD's roster were integrated into FINRA's arbitrator roster. As of September 16, 2014, FINRA has 6,383 arbitrators on its roster. Of those 6,383 arbitrators, FINRA classifies 3,550 as public arbitrators (arbitrators who are supposed to have no ties to the securities industry) and 2,833 as non-public or industry arbitrators (arbitrators with ties to the securities industry.)<sup>69</sup> It is not known how many of the arbitrators on the NASD's arbitrator roster are currently active on FINRA's arbitrator roster. It is

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<sup>62</sup> See 1992 GAO Study, *supra*, note 2; see also FINRA statistics on its website at <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/AdditionalResources/Statistics/>.

<sup>63</sup> See note 16, *supra*.

<sup>64</sup> GAO, SECURITIES ARBITRATION, ACTION NEEDED TO ADDRESS PROBLEMS OF UNPAID AWARDS, Rep. No. GAO/GGD 00-115 (June 2000)

<sup>65</sup> *Id.* at 7.

<sup>66</sup> Ruder Report, *supra*, note 23 at 101-102.

<sup>67</sup> See 1992 GAO Study, *supra*, note 2 at 24; see also 2000 GAO Report, *supra*, note 30, at 24.

<sup>68</sup> <http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@fdr/documents/arbmed/p124105.pdf>

<sup>69</sup> <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/AdditionalResources/Statistics/>

clear, however, that FINRA continues to target certain categories of individuals to become arbitrators.

Targeted recruiting has the possibility to affect arbitration outcomes. There are a myriad of foreseeable problems that could result from such practices. For example, when FINRA targets certain groups, it interjects its own bias into the arbitrator recruitment and selection process.<sup>70</sup> This selection bias has the potential to skew the composition of the arbitrator roster, which certainly could impact arbitration results.

In addition, FINRA's method(s) used to recruit arbitrators could affect the composition of the arbitrator roster and arbitration outcomes. For example, FINRA readily admits on its website that it recruits attorneys as arbitrators. However, not all attorneys are created equal, and if FINRA actively recruits at the meetings of bar associations that are predominated by defense counsel, it logically follows that, if left unchecked, defense attorneys will predominate the arbitrator pool. It is plausible that an arbitrator pool that is predominated by defense-minded attorneys, even if they do not have ties to the securities industry, could negatively impact the outcomes of arbitrations for claimants. The same logic would hold true if FINRA recruited attorneys at meetings of bar associations consisting primarily of plaintiffs' attorneys.

Also, by picking certain groups to recruit, FINRA is choosing not to recruit other groups even though those individuals could be quality arbitrators. Since FINRA does not disclose the specifics of its recruiting practices, there is no way to tell what categories it has chosen to exclude or why. Choosing some groups and excluding others could certainly influence the overall demographics of the arbitrator roster as well as the outcomes of arbitration hearings. Equally important, it also could negatively impact investors' perceptions of fairness about FINRA's arbitration forum.

Finally, as explained in more detail below, FINRA's targeted recruiting practices impact diversity of its arbitrator roster. In preparing this report, PIABA conducted the PIABA Demographic Study concerning FINRA's arbitrators by reviewing and analyzing Arbitrator Disclosure Reports of 5,375 past and current FINRA arbitrators in an effort to gain more clarity about the demographics of

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<sup>70</sup> Selection bias is a type of bias that is widely recognized in statistical analysis in which there is an error in choosing the individuals or groups to take part in a scientific study. If selection bias is not taken into account, then some conclusions of that study may not be accurate.

FINRA's roster of arbitrators.<sup>71</sup> The PIABA Demographic Study shows that FINRA arbitrator roster lacks diversity. It also suggests that FINRA's recruiting practices have contributed to that lack of diversity, resulting in a homogenous arbitrator pool, which is exactly what the SEC warned against in the 1992 GAO study.

FINRA's self-appointed sub-committee of the NAMC, the Neutral Roster Sub-Committee, serves as FINRA's procedural safeguard to ensure that neutral and impartial arbitrators are added to the arbitrator roster. The sub-committee includes public members of NAMC. In participating with the approval of an arbitrator applicant, however, the members of the sub-committee are only provided with a Disclosure Report for each arbitrator applicant. PIABA confirmed that sub-committee members are not provided with copies of the applicants' FINRA Arbitrator Applications. PIABA also confirmed that FINRA does not provide sub-committee members with any information about how applicants are recruited to become arbitrators. Sub-committee members do not meet or speak with the applicants. As a result, the NAMC Neutral Roster Sub-Committee is not an adequate procedural safeguard to ensure fairness in FINRA recruiting practices. Also, as explained below, because of disclosure deficiencies in the FINRA Application and Arbitrator Disclosure Report, the sub-committee is also not an adequate procedural safeguard to ensure that neutral and impartial arbitrators are being added to the roster.

Parties participating in FINRA arbitrations should be privy to any and all information in the possession of FINRA that could lead to the discovery of information that could detect arbitrator potential conflicts of interest or bias. PIABA recommends that an independent study be commissioned by the SEC to analyze FINRA's arbitrator recruitment practices. If they do not already exist, the SEC should require FINRA to institute adequate and verifiable procedural safeguards to ensure that the arbitrator pools consist of neutral and impartial arbitrators. Above all, PIABA requests that the SEC require that FINRA's arbitrator recruitment practices be fully transparent.

#### **E. FINRA Does Not Disclose To The Parties Participating In Arbitration How Individuals Are Recruited Even Though FINRA**

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<sup>71</sup> FINRA provides parties the employment history and other background information for each arbitrator listed. The background information is provided to the parties in a document entitled "Arbitrator Disclosure Report." The parties receive an Arbitrator Disclosure Report for each potential arbitrator before the parties select the panel. PIABA obtained the 5,375 Arbitrator Disclosure Reports from its members who represent parties in FINRA arbitrations.

## **Collects Much Of That Information In The Arbitrator Application.**

FINRA does not disclose to parties participating in its arbitrations the specific ways in which individuals are recruited even though FINRA collects that information. FINRA's Arbitrator Application begins with a survey entitled, *How Did You Hear About Us?* The survey asks applicants to specifically list what prompted them to apply to FINRA's roster and gives applicants choices between FINRA Conference, Business or Recruiting Conference, FINRA Arbitrator Referral, Other Referral, FINRA Recruitment Letter, FINRA Email, FINRA Print Advertisement or FINRA Internet Advertisement. The applicant is also asked to specifically identify the referral source, e.g. name and location of the conference, name of referring arbitrator, name and occupation of referral source, name of publication and URL address of website.

Notwithstanding that virtually all the information that FINRA provides to the parties to help them select arbitrators comes from the arbitrators' applications, FINRA chooses not to disclose arbitrators' survey answers to the parties. It is PIABA's understanding that FINRA does not provide its NAMC sub-committee members with this information either. Such information would be helpful to the parties in identifying potential conflicts of interest and/or bias. In preparing this report, PIABA recently asked FINRA to provide it with statistics on how applicants answered the survey questions. FINRA responded that because supplying the information is voluntary, it did not have complete information. Therefore, it could not provide the requested information.

There is simply no legitimate reason why parties participating in FINRA arbitrations should not be provided with this information at the time of arbitrator selection. This type of information could be crucial in helping parties to identify potential conflicts of interest and bias in arbitrators. PIABA recommends that FINRA should provide this information to parties immediately.

### **F. FINRA Claims That Its Arbitrator Roster Is Diverse But Also Admits That It Has Not Conducted Any Studies To Measure Diversity.**

FINRA maintains that it takes great strides to ensure that the roster is diverse. In 2007, NASD described its arbitrator recruitment efforts:

NASD carefully selects arbitrator candidates from a broad cross-section of people, diverse in culture, with varying professions and backgrounds. NASD expanded its recruitment team and intensified efforts to provide more arbitrators to handle the caseload in each of NASD's 68 hearing locations.<sup>72</sup>

In 2012, Barbara Brady, FINRA's Vice President and Director of Neutral Management, confirmed to a Reuters reporter that FINRA does not disclose the demographics of its arbitrator pool, but Brady said that FINRA "strives to have a broad selection of people" diverse in culture, professions and background. (Emphasis added). She also said the regulator is "very strongly" focusing on building the roster of minorities and women arbitrators, as well as real estate professionals and professors of law and economics.<sup>73</sup>

With regard to recruiting women and minorities, FINRA recently told PIABA:

FINRA recruits neutrals using a combined strategy of direct mailings, recruitment ads, broadcast emails, and attendance at business events/conferences to enhance the diversity of the roster. We solicit the help of professional organizations around the country, several of which focus on the recruitment of women and minorities to ensure that we continue to maintain a diverse roster nationwide. (Emphasis added). We work with the following minority and women's organizations to recruit arbitrators, including, but not limited to:

- NAFE (National Association of Female Executives)
- GA Association of Black Women Attorneys
- National Hispanic MBA (NSHMBA)
- ABA – Women in ADR Section
- California Women Lawyers
- Black Women Lawyers
- Puerto Rico Chamber of Commerce
- Colegio de Contadores Publicos Autorizados de Puerto Rico (CPA group)
- Colegio de Abogados de Puerto Rico (lawyer group)
- University of Puerto Rico

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<sup>72</sup> Linda Fienberg, *supra* n. 27, at p. 10.

<sup>73</sup> <http://www.reuters.com/article/2012/08/22/us-finra-arbitrators-comply-idUSBRE87L0M420120822>

- Servicios Integrados De Psicología, Mediación Y Arbitraje (Sipma) Inc. (Conflicts Resolution Center, PR)
- National Bar Association (African American lawyers and judges) and
- The Transition Network (community of professional women over age 50).<sup>74</sup>

In July 2014, PIABA asked FINRA for statistics on the breakdown of percentages of minorities and women. FINRA responded that it has not yet studied the issue. However, with regard to a breakdown on the basis of gender, FINRA stated:

Although the method is not scientific, we can tell that approximately 21-22% of our existing neutral roster consists of women. We do not have estimates for the other categories.<sup>75</sup>

It is unclear how FINRA can legitimately claim that its arbitrator roster is diverse but then admit that it has not studied the issue. As discussed in the next section of this report, contrary to its public statements, FINRA's arbitration roster is anything but diverse.

## **G. PIABA's Arbitrator Demographic Study**

### **1. Background Information**

PIABA's goal of undertaking this research was to better understand the demographics of FINRA's arbitrator roster and to attempt to verify the accuracy of FINRA statements that its arbitrator roster is diverse.<sup>76</sup> PIABA was also interested in better understanding the demographics of arbitrators in FINRA's public pool as a whole as well as the demographics of a subset of public arbitrators that FINRA deems to be chair-qualified. Information about the demographics of the public pool is very important because on February 1, 2011, FINRA permitted claimants to choose arbitration panels consisting of all public arbitrators.<sup>77</sup> Since then, claimants

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<sup>74</sup> See Linda Fienberg email to Jason Doss dated July 15, 2014.

<sup>75</sup> *Id.*

<sup>76</sup> PIABA has received complaints from its members about problems related to arbitrators failing to disclose material information about conflicts of interest or facts that would suggest that the arbitrator is biased. PIABA has also received complaints from its members that some arbitrators serving on arbitration panels were having a difficult time effectively participating in arbitration hearings, in large part, because of their advanced age.

<sup>77</sup> <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/AdditionalResources/Statistics/>. Prior to February 1, 2011, arbitration panels were comprised of two public arbitrators and one industry arbitrator (majority public panels). FINRA changed its procedures to allowing claimants to choose all-public panels in an attempt to

have chosen all-public panels more often than not. As a result, PIABA analyzed the demographic breakdown of the public pool in an effort to determine information about age, gender, and socio-economic factors. PIABA also examined the information to attempt to determine how FINRA recruits public arbitrators.

According to FINRA's website, in 2013 and 2014, claimants chose to have their cases decided by all-public panels approximately 54% of the time.<sup>78</sup> As a result, there is no doubt that public arbitrators are being used to decide customer cases far more often than in the past. For example, prior to 2011 when all cases were decided by majority public panels (two public arbitrators, one industry arbitrator), public arbitrators participated in deciding arbitrations twice as often as industry arbitrators. Now, given the prevalence of all-public panels, public arbitrators participate in deciding customer arbitrations approximately 5.5 times as often as industry arbitrators.<sup>79</sup>

In conducting its demographic research and analysis, PIABA relied on the information that FINRA provides to parties about its arbitrators, which is contained in a document entitled, Arbitrator Disclosure Report. See Exhibit B to Appendix. Arbitrator Disclosure Reports contain information about each arbitrator's employment history and other background information. Under FINRA's Code of Arbitration, FINRA provides parties with an Arbitrator Disclosure Report for each potential arbitrator within thirty days of an answer being filed.<sup>80</sup> The parties are

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eliminate the perception that securities arbitration was unfair to investors due to the participation of the industry arbitrator.

<sup>78</sup> Id. To arrive at the 54% statistic, PIABA used the data from FINRA's chart entitled *Comparison of Results of All-Public Panels and Majority Public Panels in Customer Claimant Cases*. See <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/AdditionalResources/Statistics/> PIABA took the total number of cases decided by an all-public panel for 2013 and 2014 (128 cases in 2013 and 84 in 2014) and divided those numbers by the total number of cases as stated in FINRA's chart for those same years (235 cases in 2013 and 155 in 2014).

<sup>79</sup> To arrive at this number, PIABA used the data from FINRA's chart entitled *Comparison of Results of All-Public Panels and Majority Public Panels in Customer Claimant Cases*. PIABA took the total number of cases decided by an all public panel in 2013 and 2014 and multiplied those numbers by three to arrive at the number of public arbitrators for those years (384 in 2013 and 252 in 2014). PIABA also took the total number of cases decided by a majority public panel and multiplied by two, because two public arbitrators participated in those cases (214 in 2013 and 142 in 2014). PIABA then added those two figures together for each year to determine the number of public arbitrators that participated in the arbitration cases identified in FINRA's chart (the total number of public arbitrators in 2013 was 598 and 394 in 2014). To determine the number of industry arbitrators that participated in majority public cases, PIABA simply took the total number of cases decided by a majority public panel given that those panels have only one industry arbitrator (the total number of industry arbitrators in 2013 was 107 and 2014 was 71). To complete the analysis to arrive at the multiples used in this report, PIABA divided the total number of public arbitrators by the total number of industry arbitrators in 2013 and 2014. In 2013, public arbitrators participated in customer cases approximately 5.6 times as often as industry arbitrators (598 public arbitrators/107 industry arbitrators). In 2014, public arbitrators participated in customer cases approximately 5.5 times more often than industry arbitrators.

<sup>80</sup> See Rule 12403, FINRA Code of Arbitration.

expected to rely on the information contained in the reports to rank arbitrators in the Arbitrator Ranking List for the case. An example of an Arbitrator Ranking List is attached as Exhibit C to the Appendix.

FINRA relies solely on the Arbitrator Disclosure Report(s) to notify the parties of any actual or potential conflicts of interest and/or biases. The information contained in the Arbitrator Disclosure Reports is derived primarily from the portions of the application completed by the arbitrators before they are approved by FINRA to the arbitrator pool. FINRA represents to the parties that the information in the Arbitrator Disclosure Reports is current as of the time that FINRA provides the report to the parties.

## **2. Methodology**

In compiling the research, PIABA reviewed 5,375 Arbitrator Disclosure Reports. For the period 1991-2006, 1,908 NASD Arbitrator Disclosure Reports are included in PIABA's database. For the period 2007-2014, 3,467 FINRA Arbitrator Disclosure Reports are included in the database. For the period 2013-2014, 2118 Arbitrator Disclosure Reports are included in the database. PIABA collected the Arbitrator Disclosure Reports from PIABA members who were or are representing parties in FINRA arbitration cases.

Because the Arbitrator Disclosure Reports available to PIABA spanned over such a long time period, PIABA determined that its research should, to the extent possible, include a review of arbitrators who are currently on FINRA's roster. For the purposes of this report, PIABA assumed that an arbitrator listed on a 2013 and/or 2014 FINRA Arbitrator Ranking List with a current Arbitrator Disclosure Form is currently on FINRA's arbitrator roster. PIABA reviewed and compiled demographic information for all 5,375 Arbitrator Disclosure Reports in its database. To serve as a check on the research results derived from the 5,375 Arbitrator Disclosure Reports, PIABA also reviewed and compiled demographic information for the 2,118 Arbitrator Disclosure Reports that were provided to parties in 2013 and/or 2014.

As a point of comparison, according to FINRA's website, as of September 16, 2014, FINRA has 6,383 arbitrators in its roster. Of those 6,383 arbitrators, FINRA classifies 3,550 as public arbitrators (arbitrators who are supposed to have no ties to the securities industry) and 2,833 as non-public or

industry arbitrators (arbitrators with ties to the securities industry.)<sup>81</sup> The 2118 arbitrators that were listed on a 2013-2014 FINRA Arbitrator Ranking Lists constitutes approximately 33% of the 6,383 arbitrators that FINRA has stated are currently on its roster. FINRA represents that the lists of arbitrators provided to parties are randomly selected. Based on that representation, PIABA feels confident that the Arbitrator Disclosure Reports on which it relied for the purposes of this research is representative of FINRA's entire arbitrator roster.

The information derived from the 5,375 Arbitrator Disclosure Reports were reviewed at least two times for accuracy. If a newer version of an Arbitrator Disclosure Report was provided to PIABA, it was incorporated into the arbitrator's file and reviewed to ensure that the information in the database remained accurate. If the information on the new Arbitrator Disclosure Report changed, the database was updated to reflect the new information.

Each Arbitrator Disclosure Report was reviewed to extract the following information for this research:

- **Arbitrator Number**
- **CRD Number** (if provided)
- **Full Name** (if provided)
- **Sex** (Male, Female, Unknown)
- **Classification** (Public, Non-Public)
- **Mediator Status** (Yes, None)
- **Chair Status** (Qualified, None)
- **Education**
  - Year of High School Graduation or Year Undergraduate Study Began
  - Degree(s) (Undergraduate education without degree; Associate, Undergraduate, Juris Doctorate or LLB, Masters, PhD, including LLM, MD, DDS, etc.)
- **Estimated Year of Birth** – determined by taking the year stated for high school graduation or the stated year that undergraduate studies began less 18 years. Because ages vary upon completion or High School of beginning undergraduate work, the arbitrator age is an estimate.

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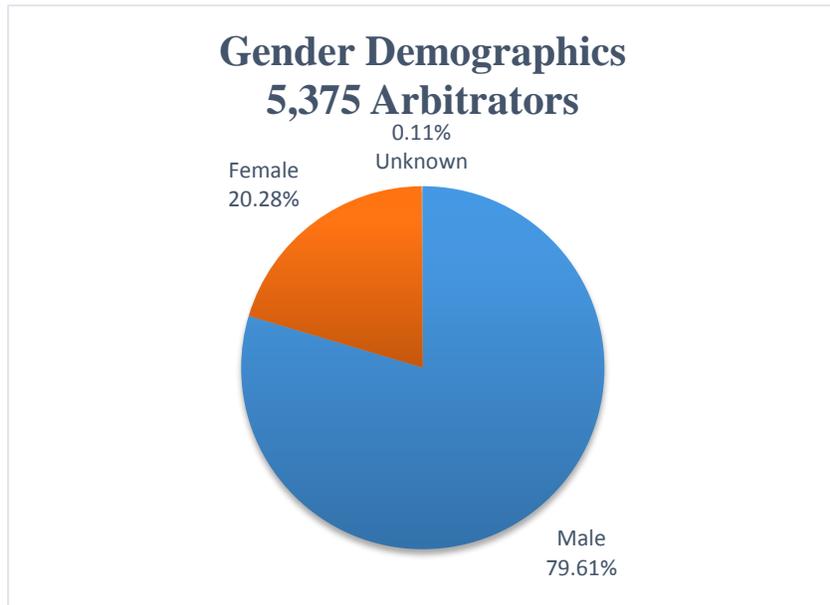
<sup>81</sup> <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/AdditionalResources/Statistics/>

### 3. Presentation of Results

As stated above, PIABA’s goal of undertaking this research was to better understand the demographics of FINRA’s arbitrator roster. Based on all of the above, PIABA presents the following results and commentary.

#### a. Gender Demographic Breakdown

PIABA’s research shows that FINRA’s arbitrator pools are comprised primarily of men. Females are underrepresented on arbitration panels. For example, based on a review of all 5,375 arbitrators in PIABA’s database, which includes arbitrators categorized by FINRA as public and non-public (“industry”), men comprise approximately 80% of the roster while women comprise 20%.



The gender breakdown is similar when analyzing only Arbitrator Disclosure Reports issued by FINRA in 2013-2014. That data reflects that men comprise approximately 78% of the arbitrator roster and women comprise approximately 22%.

#### b. Age Demographic Breakdown

PIABA’s research shows that FINRA’s arbitrator pools consist primarily of elderly men. Based on a review of all 5,375 arbitrators in PIABA’s database, the average age is 67 years old, with the public pool having an average age of

approximately 69 years old and the industry pool slightly younger at 65 years old. The charts below provide additional results related to age:

**Average Age – Gender**

	<b>Male</b>	<b>Female</b>	<b>Unkwn</b>
<b>Total Arbs</b>	4279	1090	6
<b>Av. Age All</b>	<b>68.58</b>	<b>61.24</b>	<b>75.92</b>
<b>2013-2014</b>	1645	472	1
<b>Av. Age 13-14</b>	<b>66.57</b>	<b>59.85</b>	<b>80.75</b>

**Public**

	<b>All</b>	<b>Male</b>	<b>Female</b>	<b>Unkwn</b>
<b>Total Arbs</b>	3327	2612	711	4
<b>Ave Age All</b>	<b>68.67</b>	<b>70.39</b>	<b>62.29</b>	<b>76.25</b>
<b>2013-2014</b>	1336	1021	314	1
<b>Ave Age 13-14</b>	<b>66.66</b>	<b>68.29</b>	<b>61.3</b>	<b>80.75</b>

**Industry**

	<b>All</b>	<b>Male</b>	<b>Female</b>	<b>Unkwn</b>
<b>Total Arbs</b>	2048	1667	379	2
<b>Ave Age All</b>	<b>64.57</b>	<b>65.76</b>	<b>59.26</b>	<b>75.25</b>
<b>2013-2014</b>	782	624	158	0
<b>Ave Age 13-14</b>	<b>62.38</b>	<b>63.74</b>	<b>56.98</b>	<b>0</b>

**Chair-Qualified**

	<b>Total</b>	<b>Male</b>	<b>Female</b>	<b>Unkwn</b>
<b>All</b>	1760	1435	325	0
<b>Ave Age All</b>	<b>69.84</b>	<b>71.12</b>	<b>64.2</b>	<b>0</b>
<b>2013-2014</b>	927	742	185	0
<b>Ave Age 13-14</b>	<b>68.62</b>	<b>69.85</b>	<b>63.67</b>	<b>0</b>

**Non-Chair Qualified**

	<b>Total</b>	<b>Male</b>	<b>Female</b>	<b>Unkwn</b>
<b>All</b>	3615	2844	765	6
<b>Ave Age All</b>	<b>65.77</b>	<b>67.3</b>	<b>59.98</b>	<b>75.92</b>
<b>2013-2014</b>	1191	903	287	1
<b>Ave Age 13-14</b>	<b>62.32</b>	<b>63.87</b>	<b>57.39</b>	<b>80.75</b>

In addition, based on a review of all 5,375 arbitrators in PIABA’s database, approximately 40% of the entire pool is 70 years or older and 17% is 80 years or older. The breakdown is similar when analyzing only Arbitrator Disclosure Reports issued by FINRA in 2013-2014. That data reflects that approximately 35% of the pool is 70 years or older and 12% is 80 years or older.

35% - 40% of entire pool is 70 years or older  
12% - 17% of entire pool is 80 or older.

PIABA is concerned about the advanced age of FINRA's arbitrator roster. PIABA is particularly concerned that the public arbitrator pool is significantly older than the industry pool. As shown above, the average age of the public pool is 68.67 years old, while the industry pool's average age is 64.57 years. Equally troubling, the average age of the males in the public pool is 70.39 years old and the average age of males serving as chair-qualified public arbitrators is 71.12 years.

The above data, standing alone, confirms that FINRA has a problem with a lack of diversity on its arbitrator roster that needs to be fixed immediately. The above data also strongly suggests FINRA's recruiting practices played a significant role in causing the average age of arbitrators on its roster to be what it currently is.

PIABA has received complaints from its members that some arbitrators serving on arbitration panels were having a difficult time effectively participating in arbitration hearings, in large part, because of their advanced age. PIABA is also aware that this problem is not news to FINRA and that it has received complaints from parties about this issue as well. In the past, FINRA's response to complaints about arbitrators not being able to effectively participate in arbitrations because of their advanced age has been to encourage parties and their attorneys to complete party evaluation forms.<sup>82</sup>

Party evaluation forms have proven ineffective and it is unknown what, if anything, FINRA is doing about the issue. In a February 24, 2014 Reuters article by Suzanne Barlyn, citing to a complaint filed by a former FINRA employee against FINRA, the plaintiff Jill Wile alleged that Manly Ray, a FINRA regional director "frequently joked about FINRA's older arbitrators, saying that he hoped that they would die before he had to go through the trouble of having to track them in a process for problem arbitrators."<sup>83</sup>

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<sup>82</sup> See email from Barbara Brady to Diane Nygaard dated July 23, 2014 with a subject line "male, pale and stale arbitrators."

<sup>83</sup> Barlyn, Suzanne, *New case alleges improprieties at Wall Street watchdog*, Reuters, February 24, 2014.

### **c. Socioeconomic Demographic Breakdown**

PIABA's research shows that FINRA's arbitrator pool consists primarily of elderly men who have a socioeconomic status that put them out of touch with the average investor.<sup>84</sup> Based on a review of all 5,375 arbitrators in PIABA's database, approximately 70% of the arbitrators have advanced degree defined as a university degree higher than a bachelors. When analyzing only the Arbitrator Disclosure Reports in PIABA's database that were issued by FINRA in 2013-2014, the data reflects that 73% the arbitrators have advanced degrees.

Importantly, there are very large differences as to which arbitrators have advanced degrees. Seventy-five percent (75%) of public arbitrators have advanced degrees whereas only 25% of industry arbitrators have advanced degrees. Also, of the arbitrators with advanced degrees, approximately 79% are men and 21% are women. The most common advanced degree among the arbitrator roster was the juris doctorate or law degree. Arbitrators with law degrees comprise 73% of all arbitrators with advanced degrees, with 81% of those individuals being classified as public arbitrators, compared to 19% in the industry pool.

These statistics support the conclusion that FINRA's targeted recruiting for public arbitrators significantly impacts the demographics of its arbitrator roster. The data suggests that FINRA targets public arbitrator recruiting efforts at attorneys, which has resulted in the public pool primarily consisting of individuals with advanced degrees, which is exactly what the SEC warned about in 1992. Because FINRA does not disclose its arbitrator recruitment practices about specific arbitrators, it is not known where FINRA found these attorneys or what the attorneys' motivations were for becoming FINRA arbitrators. All of this information is important for parties to know to evaluate conflicts of interest and biases.

## **II. THE REMAINDER OF FINRA'S ARBITRATOR DISCLOSURE PROCESS IS ILLUSORY AND FAILS TO ELICIT MEANINGFUL AND RELIABLE INFORMATION RELATED TO ARBITRATORS' POTENTIAL CONFLICTS OF INTEREST AND/OR BIASES.**

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<sup>84</sup> According to the American Psychological Association, socioeconomic status is commonly conceptualized as the social standing or class of an individual or group. It is often measured as a combination of education, income and occupation. Examinations of socioeconomic status often reveal inequities in access to resources, plus issues related to privilege, power and control.

**A. There Is No Question That Arbitrators' Disclosures Are Critical.**

No matter how diverse the pool of arbitrators, absent full and complete background disclosures from the arbitrator candidates, parties (claimant and respondent alike) are unable to ensure that they are ranking and striking candidates who are most likely to be fair and unbiased. The point is not subject to debate. FINRA's Arbitrator Guide states:

Arbitrator disclosure is the cornerstone of FINRA arbitration, and the arbitrator's duty to disclose is continuous and imperative. Disclosure includes any relationship, experience and background information that may affect—or even appear to affect—the arbitrator's ability to be impartial and the parties' belief that the arbitrator will be able to render a fair decision. When making disclosures, arbitrators should consider all aspects of their professional and personal lives and disclose all ties between the arbitrator, the parties and the matter in dispute, no matter how remote they may seem. This includes, but is not limited to, lawsuits (even non-investment related lawsuits); any publications (even if they appear only online); professional memberships; service on boards of directors; etc. If you need to think about whether a disclosure is appropriate, then it is: make the disclosure. Failure to disclose may result in vacated awards which undermine the efficiency and finality of our process. Failure to disclose may also result in removal from the roster.<sup>85</sup>

As explained below, FINRA's arbitrator disclosure process is illusory because while FINRA's Arbitrators Guide and disclosure rules say the right things about disclosure, FINRA's implementation of its arbitrator disclosure process fails to elicit meaningful and reliable information about arbitrators' conflicts of interest and biases.

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<sup>85</sup> FINRA Arbitrators Guide (2014), p. 17; see also Rule 12405, *Disclosures Required By Arbitrators*, FINRA Code of Arbitration.

## **B. Summary of FINRA’s Arbitrator Conflict and Bias Disclosure Process**

After recruitment, FINRA’s process for eliciting information about conflicts and biases from arbitrators begins with the FINRA Arbitrator Application.<sup>86</sup> FINRA acknowledges that its application is long and time consuming. The cover letter to the application states:

We recognize that our arbitrator application is lengthy and requires considerable time to complete. However, the questions we ask are necessary both to maintain the integrity of the roster and to ensure that new arbitrators are properly classified as either public or non-public upon approval. If you are accepted as an arbitrator, you will be under a continuing obligation to update your profile information.<sup>87</sup>

After an applicant completes the FINRA Arbitrator Application, the FINRA staff screens the applications. The background information from the application is entered into a FINRA database and portions of information from the application is used to create an Arbitrator Disclosure Report for each arbitrator.<sup>88</sup>

After Arbitrator Disclosure Reports are created for the applicants, FINRA forwards the Arbitrator Disclosure Form(s) to the Neutral Roster Sub-Committee of NAMC for review.<sup>89</sup> In participating with the approval of an arbitrator applicant, the members of the sub-committee are only provided with the Arbitrator Disclosure Report for each arbitrator applicant. They are not provided with copies of the applicants’ FINRA Arbitrator Applications. FINRA does not provide sub-committee members with any information about how applicants are recruited to become arbitrators.

If and when an arbitrator applicant is accepted to FINRA’s arbitrator roster, under FINRA rules, parties receive an Arbitrator Disclosure Report for each arbitrator within thirty days of an answer being filed.<sup>90</sup> The parties are expected to rely on the information contained in the reports as they rank and strike the

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<sup>86</sup> See FINRA’S Arbitrator Application, Ex. B to Appendix.

<sup>87</sup> *Id.* at 1.

<sup>88</sup> See FINRA Arbitrator Application, Ex. B at 4.

<sup>89</sup> *Id.*

<sup>90</sup> See Rule 12403, FINRA Code of Arbitration.

arbitrator candidates. FINRA relies solely on the Arbitrator Disclosure Report(s) to notify the parties of any actual or potential conflicts of interest and biases.

Arbitrators are encouraged to update their biographical information on a regular basis.<sup>91</sup> FINRA, however, relies in large part on the arbitrators to take the initiative to self-report conflicts and biases.

The next step of FINRA's arbitrator disclosure process relates to the parties' opportunity to ask questions to arbitrators. FINRA does not have a formal *voir dire* process before selecting arbitrators. FINRA's Code of Arbitration permits parties to request additional information from the arbitrators before the deadline to rank and strike the arbitrator lists.<sup>92</sup> However, the rule does not require arbitrators to answer the questions at all or under oath.<sup>93</sup>

After FINRA appoints arbitrators to a panel based on the parties' ranking forms, FINRA requires each arbitrator on the panel to complete the FINRA Oath of Arbitrator and accompanying questions that relate to conflicts/biases. A copy of FINRA's Oath of Arbitrator is attached as Exhibit D to Appendix.

Pursuant to Rule 12405, arbitrators have an on-going duty to disclose conflicts of interest and bias to the parties. In the event that the parties feel the need to seek removal of an arbitrator after appointment on the basis of a conflict of interest and bias, Rule 12406 of the FINRA Code of Arbitration states that any party may ask an arbitrator to recuse himself or herself from the panel for good cause. Requests for arbitrator recusal are decided by the arbitrator who is the subject of the request.<sup>94</sup> Rule 12407 addresses instances in which the Director of Arbitration can remove an arbitrator.<sup>95</sup>

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<sup>91</sup> See Arbitrators Guide.

<sup>92</sup> Rule 12403, FINRA Code of Arbitration.

<sup>93</sup> *Id.*

<sup>94</sup> Rule 12406, FINRA Code of Arbitration.

<sup>95</sup> FINRA Rule 12407 states:

**(a) Before First Hearing Session Begins**

Before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be definite and capable of reasonable demonstration, rather than remote or speculative.

## **B. PIABA Retained Expert Dr. Akshay R. Rao To Review and Evaluate FINRA’s Arbitrator Disclosure Process.**

PIABA’s research included the retention of Dr. Akshay R. Rao, a tenured professor with the University of Minnesota’s Carlson School of Management. Dr. Rao has conducted and published research on a range of marketing topics including Pricing, Brand Management, Channels of Distribution, Consumer Behavior and Information Processing. Dr. Rao’s original scholarly research has appeared in a variety of leading journals including the *Harvard Business Review*, the *Journal of Brand Management*, the *Journal of Business*, the *Journal of Consumer Research*, the *Journal of Marketing*, the *Journal of Marketing Research*, *Marketing Science*, *Organizational Behavior and Human Decision Processes*, *Sloan Management Review*, and other journals. In addition, Dr. Rao has experience in designing and conducting surveys.

Because of Dr. Rao’s experience, PIABA retained Dr. Rao to review FINRA’s arbitrator disclosure process and to evaluate whether the process is effective in eliciting disclosures from arbitrators that may affect or appear to affect an arbitrator’s ability to be impartial and the parties’ belief that the arbitrator will be able to render a fair decision, the disclosure standard stated in FINRA’s Arbitrator’s Guide.

## **C. Dr. Akshay Rao’s Expert Opinion.**

Based on his review of FINRA’s arbitrator disclosure process, Dr. Rao’s opinion is as follows:

[I]t is my opinion that the process is illusory and especially harms claimant public investors because the system is not designed to elicit meaningful or timely disclosures about actual or potential conflicts of

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Close questions regarding challenges to an arbitrator by a customer under this rule will be resolved in favor of the customer.

(2) The Director must first notify the parties before removing an arbitrator on the Director's own initiative. The Director may not remove the arbitrator if the parties agree in writing to retain the arbitrator within five days of receiving notice of the Director's intent to remove the arbitrator.

### **(b) After First Hearing Session Begins**

After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under [Rule 12405](#) that was not previously known by the parties. The Director may exercise this authority upon request of a party or on the Director's own initiative. Only the Director or the President of FINRA Dispute Resolution may exercise the Director's authority under this paragraph (b).

interest and/or biases. FINRA's flawed arbitrator disclosure process provides respondent broker-dealers with an unfair advantage over public investors in securities arbitration disputes in part, because broker-dealers are repeat participants in securities arbitration proceedings and therefore have more information about arbitrators in the pool, due to experience.

A complete copy of Dr. Rao's Declaration is attached as Exhibit E to Appendix.

**D. Dr. Akshay Rao's Rationale For His Expert Opinion.**

In formulating his opinions, Dr. Rao reviewed among other things, the FINRA Arbitrator Application. He concluded that FINRA's application is not designed to elicit meaningful and reliable answers because the questions require respondents to self-define important words in the application, which leads to subjective variance in the answers (unreliable answers). Dr. Rao explained the rationale for his opinions as follows:

**1. FINRA's Arbitrator Application Fails To Elicit Meaningful and Reliable Information Related to Actual or Potential Conflicts of Interest and/or Biases.**

FINRA's process for eliciting information about conflicts and biases from arbitrators begins with the FINRA Arbitrator Application.<sup>96</sup>

a. *Definitional Issues*

A key requirement in competent questionnaire design is to assure that respondents understand terminology embedded in the questionnaire, validly and reliably. That is, the respondents' understanding of the terms and language used in the questionnaire ought to be consistent with the intent of the questioner (to assure validity) and all respondents should interpret the terms in similar if not identical fashion (to assure reliability). In many instances, it is singularly unclear if these criteria are met in the FINRA application. Consider:

1. Q. 11: In a section entitled *Educational History*, FINRA asks respondents about accreditation. It may be unclear to the respondent

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<sup>96</sup> See FINRA'S Arbitrator Application, Ex. B. to Appendix.

whether or not the program or the School/University s/he attended is indeed accredited. It is further unclear who the accrediting agency ought to be. For instance, in the case of Business schools, the default accrediting agency is the AACSB. Is this the accrediting agency to which this question refers? How about Law schools? Or Medical schools? Further, accreditation is an ongoing process. Sometimes schools and programs lose their accreditation and subsequently recover it. What if the program or school did not have accreditation at the time the respondent attended, but received it subsequently? Since the question does not provide temporal specificity, the respondent might very well choose to answer as if the program or school had accreditation when s/he attended, even if it did not have accreditation at that point, but has been subsequently accredited. In short, the question is vague.

2. Q. 13 (d): Question 13 is a set of questions that are used by FINRA to classify arbitrators as public or non-public. In Question 13(d), FINRA employs the word “substantial” in the question, “Have you spent a substantial part of your career engaged in business activities listed in paragraph (a) above?”

Substantial is an imprecise term, subject to interpretation. Most important, it is subject to different interpretations – some might infer substantial to mean a “majority”, some a “plurality”, others might think in percentage terms and employ a 75% threshold or higher, and so on. As a consequence, responses to this question are unreliable due to “within subject variance” (a term of art in marketing research).

In this context, incorrect answers to Question 13 may cause FINRA to misclassify arbitrators by placing arbitrators who, for example, should be in the non-public pool into the public pool. The same concern applies to Q. 14. b).

3. Q. 13 (h): This is another question used by FINRA to classify arbitrators as public or non-public. The question in full reads: “Are you an attorney, accountant, professional whose firm derives 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (a) through (c).”

It would be virtually impossible for an employee of an organization who is not involved with extremely detailed accounting information, to hazard even an educated guess with respect to the sources of revenue that a firm receives. To be able to parse whether a percentage of revenue comes from a particular sector of the economy is not a reasonable expectation. The same concern applies to item i).

Once again, just like Question 13(d) discussed above, the subjective variances in the responses to Question 13(h) and (i) are unreliable and may cause FINRA to misclassify arbitrators and for example, wrongly place attorneys in the public pool when they should be classified as non-public.

4. Q. 18: This set of questions is entitled *Conflicts/Disclosures*. This entire section is greatly problematic because the term “conflict” is never defined. The best information the respondent has with respect to the meaning of the term is the examples provided. Notice that the examples are largely if not exclusively related to real or potential financial conflicts of interest as a source of bias on the part of the arbitrator. It is essential that the questionnaire provide the respondent a definition of the term about which the respondent is being queried, lest there be a misinterpretation on the part of the respondent (a validity concern) or different interpretations on the part of different respondents (a reliability concern).

b. *Scope Issues*

In general, the issue of conflict is, to my understanding, related to actual and potential for bias. FINRA’s application wrongly restricts the type of questions primarily to those that relate to economic conflicts of interest even though the underlying drivers of bias are not restricted to economic conflicts of interest.

Conflicts due to economic interest in the outcome of litigation and/or arbitration is a real and genuine concern, and I do not wish to minimize its importance. I think it is desirable that such conflicts, whether real or potential, be revealed to and by all parties engaged in a dispute.

However, the questions related to economic conflicts of interest appear to only provide information about arbitrator applicants who may end up being classified as non-public arbitrators. There are very few, if any questions that probe into conflicts of interest and biases for public arbitrators. As a result, parties receive less information about conflicts of interest and bias from public arbitrators than they might receive about non-public arbitrators.

In addition, a potential arbitrator, however, may be biased against women, men, immigrants, ethnic minorities, people with a different sexual orientation, older people, younger people, poor people, rich people, and the like. There are innumerable sources of bias that are not accounted for and cannot be accounted for in any standard questionnaire.

*c. Eliciting bias*

There is a considerable literature in Psychology and Marketing that speaks to whether agents have veridical access to their own thoughts. It is quite clear, based on this and related literature that people are unaware of their biases, at least to the extent they can report on those biases in self-reports in response to questionnaires. In fact the literature in Psychology and neuroscience shows how obvious biases exist unbeknownst to the respondent (Nisbett and Wilson 1977), and when they are revealed to the respondent, are corrected for by the respondent (Schwarz and Clore 1983). As Professor V. S. Ramachandran, a distinguished neuroscientist observes in his recent book “A person’s verbal response is likely to be inauthentic. It may be contaminated by other areas of the brain” (p. 215).

*d. Length of Application and Timing Issues*

The length of the application and timing of the questions also increase the likelihood that arbitrators completing the application will not fully disclose conflicts and biases. FINRA acknowledges at the beginning of FINRA’s arbitrator application that completing the application process is grueling, which could constitute a barrier to entry for an individual interested in becoming an arbitrator. Furthermore, applicants do not know whether they will ultimately be accepted to FINRA’s arbitrator pool and are not informed at the time

of completion that the application is the primary way that FINRA obtains information related to actual or perceived conflicts of the arbitrators. All of these factors increase the likelihood that applicants will not fully disclose conflicts and biases.

**2. FINRA’s Arbitrator Disclosure Process Prior To Appointment To Arbitration Fails To Provide Parties With Meaningful and Reliable Information Related to Actual or Potential Conflicts of Interest and/or Biases.**

To assist the parties in selecting arbitration panels, FINRA provides parties with Arbitrator Disclosure Reports to rank and strike the lists of potential arbitrators. The information on the Arbitrator Disclosure Report is derived from the answers in the FINRA Arbitrator Application and is presented only in summary format.

Parties to FINRA arbitrations are not entitled to review the arbitrator applications when selecting arbitrators, which further limits disclosure of information to the parties participating in an arbitration. FINRA also excludes some information contained in the application from disclosure reports. For example and importantly, the answers to question 13 of the FINRA Arbitrator Application, which speaks to disclosure of economic conflicts of interests, are not provided to the parties.

FINRA requires arbitrators to disclose “any relationship, experience and background information that may affect—or even appear to affect—the arbitrator’s ability to be impartial and the parties’ belief that the arbitrator will be able to render a fair decision.”

However, by relying on self-reporting, the FINRA’s rules on conflict and bias disclosure are rendered virtually meaningless. As discussed above, research determined long ago that people cannot accurately assess the nature and the level of their own bias. As a result, FINRA’s practice of relying of self-reporting causes arbitrators to fail to disclose meaningful and reliable information about conflicts and bias.

Also, FINRA does not have a formal *voir dire* process before selecting the arbitration. FINRA’s Code of Arbitration permits parties

to request additional information from the arbitrators before the deadline to rank and strike the arbitrator lists. However, the rule does not require arbitrators to answer the questions at all or under oath. The lack of a meaningful *voir dire* process further contributes to the parties not having full and complete disclosures about conflicts of interest and biases.

**3. FINRA’s Arbitrator Disclosure Process That Occurs After Arbitrators Are Appointed To Arbitration Panels Fails To Provide Parties With Meaningful and Reliable Information Related to Actual or Potential Conflicts of Interest and/or Biases.**

After FINRA appoints arbitrators to a panel based on the parties’ ranking and striking forms, FINRA requires each arbitrator on the panel to complete the FINRA Oath of Arbitrator and accompanying questions that relate to conflicts/biases. In large part, the questions are very similar to those contained in the Arbitrator Application. The questions contained in the FINRA Oath of Arbitrator fail to elicit meaningful and reliable information for the same reasons described above related to the problems with FINRA’s Arbitrator Application.

Furthermore, the timing of these questions (i.e. post-appointment) make it very likely that the arbitrators will represent to the parties that any additional disclosure will not impact their ability to be impartial even if such disclosure does or will impact that ability.

In addition, parties seeking to remove of an arbitrator based on conflicts of interests and/or biases risk antagonizing an arbitrator that whom they are seeking to remove. This discourages parties from challenging arbitrators and as a result, it could provide an additional disincentive for arbitrators to disclose conflicts and biases.

**4. FINRA’s Arbitrator Disclosure Process Provides FINRA Member Firms With An Advantage Over Public Investors.**

As discussed above, FINRA’s arbitrator disclosure process fails to provide parties with meaningful and reliable information about actual or potential conflicts of interest and/or biases. FINRA’s flawed

arbitrator disclosure process provides respondent broker-dealers with an unfair advantage over public investors in securities arbitration disputes in part, because broker-dealers are repeat participants in securities arbitration proceedings and therefore have more information about arbitrators in the pool, due to experience.

### **III. EXAMPLES OF PROBLEMS RELATED FINRA’S ARBITRATOR DISCLOSURE PROCESS**

#### **A. Arbitrators With Substantial Ties To The Securities Industry In The Public Pool.**

In preparing this Report, PIABA asked its members to provide it with examples of problems that relate to FINRA’s arbitrator disclosure process. In response, PIABA received examples of important disclosures of potential conflicts of interest and bias that were made by arbitrators after panels had been selected that would have changed the way claimants’ counsel ranked the arbitrators. PIABA also received examples of arbitrators who were misclassified as public arbitrators even though the arbitrators had substantial ties to the securities industry.

In one case, PIABA member, Jeff Sonn, provided PIABA with an example of an arbitrator who was classified as a public arbitrator even though the arbitrator had spent 15 years of his career in the securities industry. In emails between Mr. Sonn and FINRA in May and June 2014, FINRA stated that the arbitrator was properly classified as public because he had not spent a “substantial” part of his career in the securities industry. FINRA stated in an email it for the purposes of classifying arbitrators, it defined internally the term “substantial” as 50%. See email exchange attached as Exhibit F to the Appendix.

Question 13(d) of FINRA’s Arbitrator Application entitled *Arbitrator Classification* asks applicants the following question:

Have you spent a substantial part of your career engaged in business activities listed in paragraph (a) above?

Presumably, a “yes” answer could lead to FINRA classifying him or her as a non-public arbitrator. A “no” answer could lead FINRA to classify the applicant as a public arbitrator. As noted by Dr. Rao, the term “substantial” is not defined in the application and as a result, the question fails to elicit meaningful and reliable

information. As a result, FINRA's system could easily misclassify arbitrators simply because applicants define "substantial" differently.

FINRA does not provide parties with copies of the arbitrator applications. FINRA only provides parties with Arbitrator Disclosure Reports and FINRA recently responded to PIABA that the disclosure reports do not include answers to question 13 from the application. According to FINRA, Arbitrator Disclosure Reports only identify arbitrators as "public" or "non-public", which for the reasons stated above could be wrong. In addition, FINRA does not provide parties with an effective way to verify whether an arbitrator is properly classified.

In addition, as discussed above, FINRA considers its self-appointed National Arbitration and Mediation Committee (NAMC), which includes public members, to serve as its procedural safeguard to ensure fairness in approving new arbitrators to its roster. PIABA is concerned about the effectiveness of the NAMC sub-committee because FINRA does not provide sub-committee members with copies of the arbitrator applications either. According to page 5 of FINRA's Arbitrator Application, subcommittee members approve arbitrators based on the information that they receive from FINRA in Arbitrator Disclosure Reports. FINRA's Arbitrator Application states in pertinent part:

If your application proceeds through Step One, your resulting Disclosure Report will be forwarded to a Subcommittee of the National Arbitration and Mediation Committee (NAMC) for its review and approval.

It is PIABA's understanding that NAMC members do not receive any other information about arbitrator applicants other than what is contained in the Disclosure Reports. Therefore, it does not appear that NAMC is privy to any more information than parties are provided in approving arbitrators to the roster. As a result, PIABA is concerned that there are no meaningful and reliable procedural safeguards in place to ensure that arbitrators are properly classified.

This is a classic example of why independent oversight of FINRA is crucial. At a minimum, PIABA recommends that the SEC investigate whether FINRA has adequate and verifiable procedural safeguards in place to ensure that arbitrators are being properly classified.

## **B. Deceased Arbitrators Being Placed On Arbitrator Ranking Lists**

Two members provided examples in separate cases where deceased arbitrators were included in the Arbitrator Ranking Form. One PIABA member, Diane Nygaard from Kansas City reported that she recently had a case where two deceased arbitrators were included on an Arbitrator Ranking List in one case. A summary of the situation is as follows:

On or around August 2013, FINRA sent counsel for the parties an Arbitrator Ranking Form and accompanying Arbitrator Disclosure Reports for each potential arbitrator in a case filed earlier that year.

Each Arbitrator Disclosure Report in the packet stated in the top center heading: “Report reflects information provided by the arbitrator through 08/16/2013.” Based on the information listed on the Arbitrator Disclosure Reports, Claimants’ counsel ranked one of the public arbitrators 2nd on the ranking sheet. It turns out that this arbitrator had died several months earlier in 2013. On the same list, another arbitrator was also deceased.

After discovering this fact, FINRA provided the parties with a new list of arbitrators which caused delay in getting a panel appointed. The fact that they were included suggests that FINRA does not contact the potential arbitrators prior to including them on the list.

### **C. FINRA Provides Parties With Arbitrator Disclosure Reports That Purport To Be Current When They Are Not.**

A systemic problem with all Arbitrator Disclosure Reports is that each document includes a phrase stating, “Report reflects information provided by the arbitrator through [Date].” This language leads parties to believe that the information on the Arbitrator Disclosure Report is current at the time that FINRA sends the information to the parties. As shown below, however, that is not necessarily the case.

In July 2014, the author of this Report, tested whether the information is current. In a case recently filed, each Arbitrator Disclosure Report in the packet that our firm received stated in the top center heading: “Report reflects information provided by the arbitrator through 07/03/2014.”

We asked all thirty potential arbitrators to answer the question: “When was the last time you updated your Arbitrator Disclosure Report?” The responses to this question are described below:

Of the thirty arbitrators, four (4) potential arbitrators did not respond at all. This could be the function of the FINRA Code of Arbitration not requiring arbitrators to answer questions from the parties prior to appointment.

Two (2) of the arbitrators responded they were not responding the request because they did not want to serve as arbitrators. Surprisingly, in the case of one of the arbitrators, the FINRA case administrator composed the arbitrator's response and stated:

“Please be advised that Arbitrator [name omitted] notified FINRA that he will not be replying to the request for additional information.”

After we called the case administrator and asked for the arbitrator's original response, the case administrator forwarded the original email response from the arbitrator and it stated as follows:

“Since I currently am not accepting any new arbitration cases, I will not reply to this inquiry. Thanks[.]”

These two arbitrators should not have been included as potential arbitrators on the Arbitrator Ranking Form at all. An arbitrator's unwillingness to participate as an arbitrator is a material disclosure that all parties need to know before ranking and striking arbitrators. The fact that they were included suggests that FINRA does not contact the potential arbitrators prior to including them on the list.

Furthermore, PIABA is concerned that there may be other instances in which case administrators filter responses from arbitrators. Had our firm not followed up with the case administrator, we would not have known that the arbitrator was not accepting any new arbitration cases. Based on the first email from the case administrator, the parties may have ranked the arbitrator because all the parties would have known is that the arbitrator “will not be replying to the request for additional information.”

The remaining responses are as follows:

- One (1) arbitrator stated that he “probably have not changed my disclosure report in 10 yrs.”

- One (1) arbitrator stated, “the last time I updated my Arbitrator's Disclosure Report was in May 2010.”
- Two (2) arbitrators stated that they had not updated their Arbitrator Disclosure Form in 18-24 months. Their actual responses are as follows:
  - “18 mos or so ago.”
  - “I don't remember the exact date of the last time I updated my Disclosure Report. I believe it is within the last 18-24 months.”
- Two (2) arbitrators did not remember the last time he updated his Arbitrator Disclosure Report. The arbitrators’ response are as follows:
  - “I update my Arbitrator Disclosure Report whenever something changes. I don't know the last date I did that.”
  - “I am not sure when my arbitration disclosure report was last updated, but I believe it to be accurate.”
- Three (3) arbitrators stated that they had not updated their Arbitrator Disclosure Form approximately a year ago. The arbitrators’ responses are as follows:
  - “My disclosure document was updated about a year ago and nothing has changed.”
  - “I last changed my arbitrator disclosure report one year ago and have reviewed again today and there are no changes that need to be incorporated.”
  - “My arbitrator information was updated in 2013.”
- Three (3) arbitrators stated that they had updated their Arbitrator Disclosure Forms between six months and one year ago. Their responses are as follows:
  - “I updated my resume and disclosures within the last six months.”
  - Further, I have updated my Arbitrator Disclosure Report within the past six months. I’m sure that FINRA records would reflect this requested information in more specific detail.”
  - “I updated my information within the last year.”
- Of the thirty arbitrators included on the Arbitrator Ranking List, only twelve arbitrators (40% of the entire list) stated that they had updated their

Arbitrator Disclosure Reports within the last six (6) months. Their responses are as follows:

- “April 30, 2014. In addition, I just reviewed my Arbitrator Disclosure Report and it is correct.”
- “April 2014”
- “Within the past 6 weeks.”
- **“I don’t recall when I last updated my disclosure. FINRA should have that information. I have reviewed the information [sic] within the last few months, and it is accurate.”**
- “...the answer to the second question is 30-60 days ago is my estimate when the last time my arbitrator disclosure was updated.”
- “My Disclosure Report should be up to date.”
- The answer to the second question is "July 2014."
- “M a r c h 2 0 1 4 ; Please update the Arbitrator Disclosure Report, to show that I am no longer an active member of the American Bar Association, and that I am inactive as a member of the National Bar Association.”
- “My arbitrator disclosure report was updated about a month ago.”
- “I updated my Arbitration Disclosure Report about 4 months ago. I have no additional disclosures to report at this time.”
- “I believe I last updated my arbitrator profile earlier this year.”
- “I do not maintain a log of my Arbitrator Disclosure Report updates, and my last update was done online, so my records do not indicate when my Report was last updated. My recollection is that I updated my Report in June 2014, or in any event fairly recently. As far as I know the Report posted on the FINRA DR-Portal for me is up-to-date and accurate.”

#### IV. CONCLUSION

As shown above, PIABA has illustrated that the cornerstone of the integrity FINRA’s arbitration forum, (i.e. its arbitrator disclosure process) is flawed at every stage. FINRA does not disclose how it recruits individual arbitrators. FINRA’s recruiting practices have resulted in a pool of arbitrators that is not diverse and is homogenous, which is the very problem that the SEC warned about in 1992. As opined by Dr. Rao, the rest of FINRA’s arbitrator disclosure process is illusory and fails to elicit meaningful and reliable information about conflicts of interests and/or biases. The FINRA application fails to elicit the very information that it is supposed to compile. FINRA magnifies the problem caused by the faulty application by withholding important answers in the application that speak to how

arbitrators are recruited and that disclose important information about potential conflicts and/or biases, i.e., Question 13 of application. FINRA also magnifies the disclosure deficiency problems by providing parties only with an Arbitrator Disclosure Report, which is just a summary of some information in the application. As illustrated above, Arbitrator Disclosure Reports incorrectly suggest that the reports are current. FINRA fails to adequately update the information on the Arbitrator Disclosure Reports. FINRA fails to provide the parties with a meaningful *voir dire* process and does not require its arbitrators to answer any questions for additional information. FINRA requires arbitrators to update their information only after they are selected to be on a panel. FINRA relies on the arbitrators to self-report conflicts of interest and biases, which research has long proven to be ineffective. Furthermore, by requiring arbitrators to update their disclosures after appointment increases the likelihood of late disclosures, which puts parties in a difficult position in deciding whether to ask for recusal or removal.

As opined by Dr. Rao, all of the problems described above related to FINRA's flawed arbitrator disclosure process provide respondent broker-dealers with an unfair advantage over public investors in securities arbitration disputes in part, because broker-dealers are repeat participants in securities arbitration proceedings and therefore have more information about arbitrators in the pool, due to experience.

Something must be done to protect investors. The fairness of FINRA's arbitration forum should be judged on whether FINRA's arbitrator disclosure process adequately protects investors by eliciting complete, meaningful, reliable and timely disclosures about FINRA's arbitrators. The securities industry has had almost thirty years to get the arbitrator disclosure process right and has not done so. As a result, given that FINRA's arbitrator disclosure process is flawed for the reasons identified in this Report, investors have no choice but to conclude that FINRA's arbitration forum is unfair.

PIABA supports investors having the unilateral right to choose between FINRA arbitration and court to resolve their disputes with the securities industry. PIABA encourages Congress to take action and pass *The Investor Choice Act of 2013* (H.R. 2998), which would prohibit the use of mandatory pre-dispute agreements by broker-dealers and investment advisers that force investors to arbitrate disputes or otherwise surrender their right to pursue recourse in a forum of their choosing. PIABA applauds the leadership of the bill's author and member of the House Financial Services Committee Rep. Keith Ellison (D-MN) for introducing the legislation.

The Investor Choice Act of 2013 will level the playing field for retail investors by amending Section 921 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to statutorily prohibit the use of mandatory pre-dispute agreements in broker-dealer and investment adviser customer contracts that restrict investors' ability to pursue claims in the lawful forum of their choosing. The Investor Choice Act of 2013 would not in any way prevent investors from voluntarily electing to resolve a dispute through arbitration or mediation after the facts and circumstances of the dispute have been discovered.

Investors need protections now. In addition to legislative action, PIABA requests that the SEC use its power under the 1934 Securities Exchange Act as well as the Dodd-Frank to improve FINRA's arbitration forum for the better.

# Appendix

# Exhibit A



Financial Industry Regulatory Authority

Dear Applicant:

FINRA Dispute Resolution (FINRA) operates the largest securities dispute resolution forum in the world. We handle more than 99 percent of all securities arbitration claims filed involving customers of brokerage firms, in addition to disputes between and among brokerage firms and their employees.

To accomplish this tremendous undertaking, FINRA relies on a diverse roster of arbitrators to maintain its fair, impartial and efficient system of dispute resolution. Our roster consists of arbitrators from various backgrounds, including educators, accountants, medical professionals and others, as well as lawyers and securities professionals. Unless waived by FINRA at its discretion, arbitrator applicants must have a minimum of five years of paid, business and/or professional experience and at least two years of college-level credits.

We recognize that our arbitrator application is lengthy and requires considerable time to complete. However, the questions we ask are necessary both to maintain the integrity of the roster and to ensure that new arbitrators are properly classified as either public or non-public upon approval. If you are accepted as an arbitrator, you will be under a continuing obligation to update your profile information.

In addition to the arbitrator application, FINRA conducts a limited background verification check using a contracted third-party vendor. Please complete, sign, date and submit the Consent to Background Search and Investigation form and the Social Security Number Verification form to authorize this background verification requirement.<sup>1</sup>

If you have any questions, please call me at (212) 858-4351. Thank you for your interest in FINRA's arbitration program.

Sincerely,

A handwritten signature in black ink, appearing to read "CaTina S. Daniels". The signature is fluid and cursive.

CaTina S. Daniels  
Neutral Management Supervisor

<sup>1</sup> FOR NEW YORK STATE RESIDENTS ONLY: New York's Fair Credit Reporting Act, Gen. Bus. Law § 380-c, requires that all entities that conduct background checks provide written notice to all consumers that are the subjects of such reports. The law requires that FINRA inform you that the report is being requested, provide the name and address of the third-party vendor (vendor) providing the report, and advise that a copy of the report may be requested by contacting that vendor. The vendor that provides the background verification services is: Pre-Employment, Inc., 8700 Crownhill, Suite 703, San Antonio, TX 78209.

# Arbitrator Application

February 2014

## How did you hear about us?

### Thank You

for applying to **FINRA Dispute Resolution's Roster of Arbitrators**. We like to acknowledge our constituents for assisting us in reaching professionals like you to serve in our forum. Please let us know what prompted you to apply to our roster.

- FINRA Conference**  
(location of conference) \_\_\_\_\_
- Business or Recruitment Conference**  
(name and location of conference) \_\_\_\_\_
- FINRA Arbitrator Referral**  
(name of arbitrator) \_\_\_\_\_
- Other Referral**  
(name and occupation of source) \_\_\_\_\_
- FINRA Recruitment Letter**
- FINRA Email**
- FINRA Print Advertisement**  
(specify publication) \_\_\_\_\_
- FINRA Internet Advertisement**  
(specify website) \_\_\_\_\_
- Other (details):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If we need to contact you further about this survey, please tell us how we can reach you:

Name: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**For FINRA Use Only**

Candidate's Name: \_\_\_\_\_

Date: \_\_\_\_\_

# Arbitrator Application Guide Instructions

## Step-by-step

### One | Complete and Return an Application

If, after thoroughly reviewing these materials, you are interested in becoming a FINRA Dispute Resolution arbitrator, you may proceed with **Step One** of the process. Please follow these steps carefully. Any deficiencies in the application will result in the return of the application to the sender and delay the review process.

1. Complete the FINRA Arbitrator Application.
2. Complete both pages of the Consent to Background Search and Investigation form.
3. Complete the Social Security Number Verification form.
4. When completing questions 10, 11 and 12 of the application, you must include the month and year in the "Start" and "End" fields. We will return any application with unexplained gaps in employment of more than one month.
5. On a separate sheet of paper, explain the basis for each expertise/experience field you checked in question 17 of the application. (You should rely on the expertise derived from your business, securities or employment experience, not only on your experience as an arbitrator in another forum.)
6. Return items one and two above, together with the \$80 non-refundable, verification fee. (Your check should be made out to FINRA Dispute Resolution.)

The return address is:

FINRA Dispute Resolution  
Department of Neutral Management  
One Liberty Plaza  
165 Broadway, 27th Floor  
New York, NY 10006

The application includes criteria for both temporary and permanent disqualification on page 35. If there is any possibility that you meet one or more of the disqualification standards outlined in the application, we encourage you to contact this office before proceeding further with your application.

**Step One** of the process requires approximately 45 days to complete upon our receipt of your application. Upon the successful completion of **Step One**, your application will proceed to **Step Two**.

## Step-by-step

### Two | NAMC Application Approval or Rejection

**Step Two** completes the application approval process and fulfills requirements set forth by the rules that govern FINRA Dispute Resolution. If your application proceeds through **Step One**, your resulting Disclosure Report will be forwarded to a Subcommittee of the National Arbitration and Mediation Committee (NAMC) for its review and approval. All applications are subject to approval to determine if your credentials match our needs.

The **Step Two** screening process generally takes another 45 days after your application is forwarded to the Subcommittee. Upon completion of this step, you will receive written notification that your application has been approved or denied. Your patience with this process is greatly appreciated.

### Three | Training

After completing Steps One and Two of the application process, you are ready to start the basic arbitrator training program, which includes the following:

1. Online basic arbitrator training course, which requires successful completion of an online test.
2. Online expungement training course, which requires successful completion of an online test.
3. Live video or onsite classroom training program, which requires successful evaluation by the trainer.

To register for our online courses, please access FINRA's Learning Management System on our website ([www.finra.org](http://www.finra.org)).

#### **Online Basic Arbitrator Training Course**

This skills course requires a thorough review of online self-study materials and successful completion of an online test. After studying the materials, you may begin the 25-question, multiple-choice test. You must correctly answer at least 20 questions (80 percent) to pass the course. The course and test take approximately eight hours to complete, and can be done over a period of 30 days from the registration date. Individuals who do not pass the online basic course will have only one additional opportunity to retake the course.

## Step-by-step

### **Online Expungement Training Course**

This mandatory course provides an overview of the expungement process. Specifically, the course explains the role of the Central Registration Depository; gives an in-depth review of FINRA Rule 2080 and Code of Arbitration Procedure Rules 12805 and 13805; and discusses the specific findings arbitrators must make for FINRA to waive its right to oppose the expungement request in court. After reviewing the course materials, you must complete the mandatory test and score at least 80 percent to pass the course. The course and test take approximately one hour to complete, and can be done over a period of 30 days from the registration date.

### **Live Video or Onsite Classroom Training Program**

After successfully completing the online Basic Arbitrator Training and online Expungement Training courses and tests, you are ready to attend a four-hour live video or onsite classroom training program. Live video trainings are conducted via online conferencing several times each month and are available to individuals in any hearing location. Onsite classroom trainings are conducted in each of our regional offices throughout the year: Boca Raton, Chicago, Los Angeles and New York City. You may attend either program to satisfy the classroom training requirement. Please visit the Basic Arbitrator Training page of our website for schedules and registration instructions.

### **General Notice**

Arbitrator candidates who have been approved to the roster, and who successfully pass FINRA Dispute Resolution's arbitrator training program, become eligible for case service.

Arbitrators are not employees of FINRA, and therefore are ineligible to receive any unemployment benefits or any FINRA benefits.

# Arbitrator Application Guide Forms

*NOTE: If the space provided is insufficient, please use the supplementary sheets attached to this application.*

# Forms

## 1. Personal Information

- a. Title of courtesy:  Mr.  Ms.  Mrs.  Miss  Judge  Prof. \_\_\_\_\_
- b. First name: \_\_\_\_\_
- c. Middle name: \_\_\_\_\_
- d. Last name: \_\_\_\_\_
- e. Suffix 1:  I  II  III  IV  Junior  Senior
- f. Suffix 2:  CFA  CFP  CPA  DDS  Ed.D  Esq.  JD  LLB  LLM  
 MA  MD  MS  MBA  PE  Ph.D  SVP  VP
- g. Social Security Number (Required for IRS Form 1099 purposes): \_\_\_\_\_
- h. CRD Number<sup>1</sup> (if applicable): \_\_\_\_\_
- i. Are you an attorney? (If no, proceed to line (m.) below)  yes  no
- j. If you are an attorney, indicate the law school or authorizing institution where you obtained your Law Degree (Juris Doctor or equivalent): \_\_\_\_\_
- k. If you are an attorney, indicate the date you obtained your Law Degree (Juris Doctor or equivalent): \_\_\_\_\_
- l. If you are an attorney, indicate all states or jurisdictions where you are licensed to practice law/a member of the Bar (active or inactive). List your Bar ID number if applicable:  
 active  inactive \_\_\_\_\_  
 active  inactive \_\_\_\_\_  
 active  inactive \_\_\_\_\_
- m. What is your preferred method of communication with FINRA?  phone  mail  fax  email
- n. Have you previously served as a FINRA arbitrator?  yes  no  
 (If "yes", add identification number, if known.) \_\_\_\_\_
- o. Are you now, or have you ever been, a FINRA mediator?  yes  no  
 (If "yes", add identification number, if known.) \_\_\_\_\_

1. The Central Registration Depository (CRD) is an automated, electronic web-based system, which FINRA uses to maintain the qualification, employment and disclosure histories of member firms' registered securities employees.

<b>FOR FINRA USE ONLY</b>			
<b>Arbitrator Classification:</b>		<b>CRD #</b> _____	<b>Application Received</b> _____
<input type="radio"/> Non-Public	<input type="radio"/> Disciplinary (See attached)	<b>Date</b> _____	<b>Staff Approval Date</b> _____
<input type="radio"/> Public	<input type="radio"/> No Disciplinary History	<b>Arbitrator #</b> _____	<b>NAMC Approval Date</b> _____
			<b>Welcome Packet Sent</b> _____

**2. Primary Address**

Firm or Company (if applicable): \_\_\_\_\_

Street: \_\_\_\_\_ Apt/Suite/Bldg: \_\_\_\_\_

City: \_\_\_\_\_

State/Territory/Province/Foreign Region: \_\_\_\_\_

Postal Code: \_\_\_\_\_ Country:  USA  other (specify): \_\_\_\_\_

Is this your preferred address for mail from FINRA?  yes  no

Is this your:  home address  business address  other (specify): \_\_\_\_\_

**3. Secondary Address**

Firm or Company (if applicable): \_\_\_\_\_

Street: \_\_\_\_\_ Apt/Suite/Bldg: \_\_\_\_\_

City: \_\_\_\_\_

State/Territory/Province/Foreign Region: \_\_\_\_\_

Postal Code: \_\_\_\_\_ Country:  USA  other (specify): \_\_\_\_\_

Is this your preferred address for mail from FINRA?  yes  no

Is this your:  home address  business address  other (specify): \_\_\_\_\_

**4. Additional Address (if any)**

Firm or Company (if applicable): \_\_\_\_\_

Street: \_\_\_\_\_ Apt/Suite/Bldg: \_\_\_\_\_

City: \_\_\_\_\_

State/Territory/Province/Foreign Region: \_\_\_\_\_

Postal Code: \_\_\_\_\_ Country:  USA  other (specify): \_\_\_\_\_

Is this your preferred address for mail from FINRA?  yes  no

Is this your:  home address  business address  other (specify): \_\_\_\_\_

**5. Telephone Numbers (area code first—if the phone number is outside of the USA, provide country code; include extension number, if applicable)**

a. Home: \_\_\_\_\_

b. Office: \_\_\_\_\_

c. Wireless: \_\_\_\_\_

d. Other (please specify): \_\_\_\_\_

Which is your preferred phone number for use by FINRA?  home  office  mobile  other

**6. Fax Numbers (area code first—if the phone number is outside of USA, provide country code)**

a. Home: \_\_\_\_\_

b. Office: \_\_\_\_\_

Which is your preferred fax number for use by FINRA?                       home     office

**7. Email Address**

The primary method of correspondence from FINRA will be by the email address you provide.

\_\_\_\_\_

**8. Arbitrator Honorarium**

Pursuant to the *Code of Arbitration Procedure*, if an arbitrator serves on a case, he/she will be paid an honorarium for each hearing session (including a prehearing conference). Arbitrators must not set their own rates. Arbitrators serving on FINRA’s roster are bound by FINRA’s honorarium rate.

a. Do you wish to waive your honorarium?                       yes     no

b. To whom do you wish your honorarium fees to be paid?                       yourself     your employer

c. If honorarium is to be sent to someone other than yourself, please provide that person’s/entity’s name:

\_\_\_\_\_

d. If honorarium is to be sent to someone other than yourself, please provide that person/entity’s Federal Tax ID number, below: *If you do not provide a tax ID number, your payments will default to your social security number.*

\_\_\_\_\_

e. Indicate which of the following addresses you prefer your honorarium to be sent:

- address indicated in response to question 2
- address indicated in response to question 3
- address indicated in response to question 4
- other (please provide a complete address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## 10. Employment History

In order to qualify as a FINRA arbitrator, applicants must have a minimum of five years of paid business and/or professional experience (unless waived by FINRA at its discretion). Make sure to list your ENTIRE employment history below.

- Enter your present or most recent position first and proceed to list the rest of your employment history in reverse chronological order.
- If your application has an unexplained employment gap in excess of 30 days, FINRA will return it to you for additional information. Time periods where you were pursuing a degree full time are not considered employment gaps and do not need to be accounted for here. (Information regarding your education should be entered in the Education section.) If you were unemployed in excess of 30 days, you should record that time as unemployed. Periods of unemployment will not disqualify you from the roster, but must be accurately documented in your profile. If you are currently unemployed, make sure to darken the "Retired/Unemployed" circle and enter the date you stopped working.
- If you are retired (defined as receiving, or expecting to receive continuing benefits such as pension, health care, etc. from the listed business activity), list your last employer, your date of retirement and indicate whether you are (or will be) receiving benefits from that employer.
- If you have ever worked in the securities industry, confirm that the information that you enter here matches the information in your CRD record.

If necessary, please use the supplementary sheet attached to this application.

Retired as of *mm/yyyy* \_\_\_\_\_

Unemployed as of *mm/yyyy* \_\_\_\_\_

Receiving Benefits  Yes  No

Start Date *mm/yyyy (required)* \_\_\_\_\_ End Date *mm/yyyy or "Present" (required)* \_\_\_\_\_

Firm Name \_\_\_\_\_ Firm CRD# *(if applicable)* \_\_\_\_\_

Description of Position or Title *(required)* \_\_\_\_\_

Type *(indicate full or part-time)* \_\_\_\_\_

License Number *(if applicable, e.g., CRD, CPA license, real estate license, etc.)* \_\_\_\_\_

License Type \_\_\_\_\_

Receiving Benefits  Yes  No

Start Date *mm/yyyy (required)* \_\_\_\_\_ End Date *mm/yyyy or "Present" (required)* \_\_\_\_\_

Firm Name \_\_\_\_\_ Firm CRD# *(if applicable)* \_\_\_\_\_

Description of Position or Title *(required)* \_\_\_\_\_

Type *(indicate full or part-time)* \_\_\_\_\_

License Number *(if applicable, e.g., CRD, CPA license, real estate license, etc.)* \_\_\_\_\_

License Type \_\_\_\_\_

Receiving Benefits  Yes  No

Start Date *mm/yyyy (required)* \_\_\_\_\_ End Date *mm/yyyy or "Present" (required)* \_\_\_\_\_

Firm Name \_\_\_\_\_ Firm CRD# *(if applicable)* \_\_\_\_\_

Description of Position or Title *(required)* \_\_\_\_\_

Type *(indicate full or part-time)* \_\_\_\_\_

License Number *(if applicable, e.g., CRD, CPA license, real estate license, etc.)* \_\_\_\_\_

License Type \_\_\_\_\_

Receiving Benefits  Yes  No

Start Date *mm/yyyy (required)* \_\_\_\_\_ End Date *mm/yyyy or "Present" (required)* \_\_\_\_\_

Firm Name \_\_\_\_\_ Firm CRD# *(if applicable)* \_\_\_\_\_

Description of Position or Title *(required)* \_\_\_\_\_

Type *(indicate full or part-time)* \_\_\_\_\_

License Number *(if applicable, e.g., CRD, CPA license, real estate license, etc.)* \_\_\_\_\_

License Type \_\_\_\_\_

Receiving Benefits  Yes  No

Start Date *mm/yyyy (required)* \_\_\_\_\_ End Date *mm/yyyy or "Present" (required)* \_\_\_\_\_

Firm Name \_\_\_\_\_ Firm CRD# *(if applicable)* \_\_\_\_\_

Description of Position or Title *(required)* \_\_\_\_\_

Type *(indicate full or part-time)* \_\_\_\_\_

License Number *(if applicable, e.g., CRD, CPA license, real estate license, etc.)* \_\_\_\_\_

License Type \_\_\_\_\_

Receiving Benefits  Yes  No

Start Date *mm/yyyy (required)* \_\_\_\_\_ End Date *mm/yyyy or "Present" (required)* \_\_\_\_\_

Firm Name \_\_\_\_\_ Firm CRD# *(if applicable)* \_\_\_\_\_

Description of Position or Title *(required)* \_\_\_\_\_

Type *(indicate full or part-time)* \_\_\_\_\_

License Number *(if applicable, e.g., CRD, CPA license, real estate license, etc.)* \_\_\_\_\_

License Type \_\_\_\_\_

Receiving Benefits  Yes  No

Start Date *mm/yyyy (required)* \_\_\_\_\_ End Date *mm/yyyy or "Present" (required)* \_\_\_\_\_

Firm Name \_\_\_\_\_ Firm CRD# *(if applicable)* \_\_\_\_\_

Description of Position or Title *(required)* \_\_\_\_\_

Type *(indicate full or part-time)* \_\_\_\_\_

License Number *(if applicable, e.g., CRD, CPA license, real estate license, etc.)* \_\_\_\_\_

License Type \_\_\_\_\_

Receiving Benefits  Yes  No

Start Date *mm/yyyy (required)* \_\_\_\_\_ End Date *mm/yyyy or "Present" (required)* \_\_\_\_\_

Firm Name \_\_\_\_\_ Firm CRD# *(if applicable)* \_\_\_\_\_

Description of Position or Title *(required)* \_\_\_\_\_

Type *(indicate full or part-time)* \_\_\_\_\_

License Number *(if applicable, e.g., CRD, CPA license, real estate license, etc.)* \_\_\_\_\_

License Type \_\_\_\_\_

**11. Educational History**

In order to qualify as a FINRA arbitrator, applicants must have completed a minimum of two years of college-level credits (e.g., 60 credits) from an accredited institution (unless waived by FINRA, at its discretion). If you meet the above requirement, please list your educational background in reverse chronological order with the most recently attended institution first.

Start Date *mm/yyyy (Required)* \_\_\_\_\_

End Date *mm/yyyy Enter Date or "Present" (Required)* \_\_\_\_\_

School Name \_\_\_\_\_

Degree/Certificate Awarded *(if applicable)* \_\_\_\_\_

Start Date *mm/yyyy (Required)* \_\_\_\_\_

End Date *mm/yyyy Enter Date or "Present" (Required)* \_\_\_\_\_

School Name \_\_\_\_\_

Degree/Certificate Awarded *(if applicable)* \_\_\_\_\_

Start Date *mm/yyyy (Required)* \_\_\_\_\_

End Date *mm/yyyy Enter Date or "Present" (Required)* \_\_\_\_\_

School Name \_\_\_\_\_

Degree/Certificate Awarded *(if applicable)* \_\_\_\_\_

## 12. Training

Please describe in the space below any arbitrator, mediator and related training you have received, including the sponsoring organization, location and date(s). **Note:** If your application is accepted, you will be required to successfully complete FINRA's mandatory arbitrator training, test and evaluations.

Completion Date mm/yyyy (Required) \_\_\_\_\_

Course Name \_\_\_\_\_

Firm/School \_\_\_\_\_

Details (if any) \_\_\_\_\_

Hours Completed \_\_\_\_\_

Location \_\_\_\_\_

Completion Date mm/yyyy (Required) \_\_\_\_\_

Course Name \_\_\_\_\_

Firm/School \_\_\_\_\_

Details (if any) \_\_\_\_\_

Hours Completed \_\_\_\_\_

Location \_\_\_\_\_

Completion Date mm/yyyy (Required) \_\_\_\_\_

Course Name \_\_\_\_\_

Firm/School \_\_\_\_\_

Details (if any) \_\_\_\_\_

Hours Completed \_\_\_\_\_

Location \_\_\_\_\_

Completion Date mm/yyyy (Required) \_\_\_\_\_

Course Name \_\_\_\_\_

Firm/School \_\_\_\_\_

Details (if any) \_\_\_\_\_

Hours Completed \_\_\_\_\_

Location \_\_\_\_\_

### 13. Arbitrator Classifications

- a. Are you, or have you been, within the past five years<sup>2</sup>:
- i. associated with, including registered through, a broker or a dealer (including a government securities broker or dealer, or a municipal securities dealer)?  yes  no
  - ii. registered under the Commodity Exchange Act?  yes  no
  - iii. a member of a commodities exchange or a registered futures association?  yes  no
  - iv. associated with a person or firm registered under the Commodity Exchange Act?  yes  no
- b. Are you an attorney, accountant or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in paragraph (a) above?  yes  no
- c. Are you an employee of a bank or other financial institution who effects transactions in securities, including government or municipal securities, and commodities futures or options, or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities?  yes  no
- d. Have you spent a substantial part of your career engaged in any business activities listed in paragraph (a) above?  yes  no
- e. Are you retired<sup>3</sup> from a career engaged in any business activities listed in paragraph (a) above?  yes  no
- f. Have you engaged in the conduct or activities described in paragraphs (a) through (c) above for a total of 20 years or more?  yes  no
- g. Are you the spouse or an immediate family member<sup>4</sup> of a person who is engaged in the conduct or activities described in paragraphs (a) through (c) above?  yes  no
- h. Are you an attorney, accountant or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (a) through (c) above?  yes  no
- i. Are you an attorney, accountant or other professional whose firm derived \$50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in paragraph (a) above, relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees and consulting fees?  yes  no
- j. Are you employed by, or the spouse or an immediate family member of a person who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation or other organization that is engaged in the securities business?  yes  no
- k. Are you a director or officer of, or the spouse or an immediate family member of a person who is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation or other organization that is engaged in the securities business?  yes  no

2. When calculating years, count only complete calendar years when responding to the arbitrator classification questions. For example, if you are answering in 2013, consider the five previous full calendar years, 2008–2012. If the question asks about the past two years, consider the two previous full calendar years, 2011–2012.

3. "Retired" is defined as receiving, or expecting to receive, continuing benefits (e.g., pension, health care, etc.) from the listed business activities.

4. The term "immediate family member" means: (i) a person's parent, stepparent, child or stepchild; (ii) a member of a person's household; (iii) an individual to whom a person provides financial support of more than 50 percent of the individual's annual income; or (iv) a person who is claimed as a dependent for federal income tax purposes.



## 15. Legal or Regulatory Questions:

(Please indicate a "yes" or "no" to all of the following questions.)

If an applicant answers in the affirmative to any question contained in this section, the applicant's explanation for the affirmative answer will be closely reviewed by the Director. The explanation for the answer may be disclosed to the parties. Please see the criteria for temporary and permanent disqualification from the roster on page 35.

### Criminal Disclosure

a. Have you ever:

(i) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any felony?  yes  no

---

(ii) been charged with any felony?  yes  no

---

b. Based upon activities that occurred while you exercised control over it, has an organization ever:

(i) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to any felony?  yes  no

---

(ii) been charged with any felony?  yes  no

---

c. Have you ever been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving:

(i) investments or an investment-related business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion or a conspiracy to commit any of these offenses?  yes  no

---

(ii) gambling?  yes  no

---

d. Have you ever been charged with a misdemeanor specified in 15c(i)?  yes  no

e. Based upon activities that occurred while you exercised control over it, has an organization ever:

(i) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to a misdemeanor specified in 15c(i)?  yes  no

---

(ii) been charged with a misdemeanor specified in 15c(i)?  yes  no

---

### Regulatory Action Disclosure

f. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

(i) found you to have made a false statement or omission?  yes  no

---

(ii) found you to have been involved in a violation of its regulations or statutes?  yes  no

---

(iii) found you to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?  yes  no

---

(iv) entered an order against you in connection with investment-related activity?  yes  no

---

(v) imposed a civil money penalty on you, or ordered you to cease and desist from any activity?  yes  no

---

(vi) found you to have willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board, or found you to have been unable to comply with any provision of such act, rule or regulation?  yes  no

---

- (vii) found you to have willfully aided, abetted, counseled, commanded, induced or procured the violation by any person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act or any rule or regulation under any of such acts, or any of the rules of the Municipal Securities Rulemaking Board?  yes  no
- 
- (viii) found you to have failed reasonably to supervise another person subject to your supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board?  yes  no
- 
- (ix) entered an order denying, suspending or revoking your registration, or disciplined you by restricting your activities?  yes  no
- 
- g. Has any other Federal regulatory agency or any state regulatory agency or foreign financial regulatory authority ever:
- (i) found you to have made a false statement or omission or been dishonest, unfair or unethical?  yes  no
- 
- (ii) found you to have been involved in a violation of investment-related regulation(s) or statute(s)?  yes  no
- 
- (iii) found you to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?  yes  no
- 
- (iv) entered an order against you in connection with an investment-related activity?  yes  no
- 
- (v) denied, suspended or revoked your registration or license or otherwise, by order, prevented you from associating with an investment-related business or restricted your activities?  yes  no
- 
- h. Have you been subject to any final order of a state securities commission (or any agency or office performing like functions), state authority that supervises or examines banks, savings associations or credit unions, state insurance commission (or any agency or office performing like functions), an appropriate federal banking agency or the National Credit Union Administration, that:
- (i) bars you from association with an entity regulated by such commission, authority, agency or officer, or from engaging in the business of securities, insurance, banking, savings association activities or credit union activities?  yes  no
- 
- (ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative or deceptive conduct?  yes  no
- 
- i. Has any self-regulatory organization or commodities exchange ever:
- (i) found you to have made a false statement or omission?  yes  no
- 
- (ii) found you to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the U.S. Securities and Exchange Commission)?  yes  no
- 
- (iii) found you to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?  yes  no
-

- (iv) disciplined you by expelling or suspending you from membership, barring or suspending your association with its members, or restricting your activities?  yes  no
- (v) found you to have willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act or any rule or regulation under any of such acts, or any of the rules of the Municipal Securities Rulemaking Board, or found you to have been unable to comply with any provision of such act, rule or regulation?  yes  no
- (vi) found you to have willfully aided, abetted, counseled, commanded, induced or procured the violation by any person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act or any rule or regulation under any of such acts, or any of the rules of the Municipal Securities Rulemaking Board?  yes  no
- (vii) found you to have failed reasonably to supervise another person subject to your supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act or any rule or regulation under any of such acts, or any of the rules of the Municipal Securities Rulemaking Board?  yes  no
- j. Has any other professional entity or body with licensing authority denied, suspended or revoked your registration or license (e.g., insurance, real estate, attorney, accountant, federal contractor)?  yes  no
- k. Have you been notified, in writing, that you are now the subject of any:
- (i) regulatory complaint or proceeding that could result in a "yes" answer to any part of 15(f), (g), (h) or (i)?  yes  no
- (ii) investigation that could result in a "yes" answer to any part of 15(a), (b), (c), (d), (e), (f), (g), (h) or (i)?  yes  no

#### Civil Judicial Disclosure

- l. Has any domestic or foreign court ever:
- (i) enjoined you in connection with any investment-related activity?  yes  no
- (ii) found that you were involved in a violation of any investment-related statute(s) or regulation(s)?  yes  no
- (iii) dismissed, pursuant to a settlement agreement, an investment-related civil action brought against you by a state or foreign financial regulatory authority?  yes  no
- m. Are you named in any pending investment-related civil action that could result in a "yes" answer to any part of 15(l)?  yes  no
- n. Has any foreign government, court, regulatory agency, or exchange ever entered an order against you related to investments or fraud?  yes  no

## Customer Complaint/Arbitration/Civil Litigation Disclosure

- o. Have you ever been named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which:
- (i) is still pending?  yes  no
  - (ii) resulted in an arbitration award or civil judgment against you, regardless of amount?  yes  no
  - (iii) alleged fraud or wrongful taking of property?  yes  no
  - (iv) was settled  yes  no
- p. Have you ever been the subject of an investment-related, consumer-initiated (written or oral) complaint, which alleged that you were involved in one or more sales practice violations, and which:
- (i) is still pending?  yes  no
  - (ii) resulted in an arbitration award or civil judgment against any named respondent(s)/defendant(s)?  yes  no
  - (iii) alleged fraud or wrongful taking of property?  yes  no
  - (iv) was settled?  yes  no
- q. Have you ever been the subject of an investment-related, consumer-initiated, written complaint, not otherwise reported under question 15(p) above, which:
- (i) alleged that you were involved in one or more sales practice violations?  yes  no
  - (ii) alleged that you were involved in forgery, theft, misappropriation or conversion of funds or securities?  yes  no
- r. Have you ever been the subject of an investment-related, consumer initiated arbitration claim or civil litigation not otherwise reported under question 15(o) above, which:
- (i) alleged that you were involved in one or more sales practice violations?  yes  no
  - (ii) alleged that you were involved in forgery, theft, misappropriation or conversion of funds or securities?  yes  no
- s. Has your conduct been an issue in an arbitration or litigation proceeding (other than a proceeding in which you served as an arbitrator)? For example, if your conduct as a registered representative or manager was an issue in a case, but only the broker-dealer was named as a party, your response should be "yes."  yes  no
- t. If you answered yes to 15(o), (p), (q), (r) or (s) was the claim expunged from CRD pursuant to FINRA Rule 2080? (Please note that you must disclose all relevant complaints, lawsuits or arbitration claims, even if they were later expunged from CRD.)  yes  no
- u. Have you ever been a claimant in an investment-related arbitration or civil litigation?  yes  no

### Harassment and Discrimination Disclosure

- v. Have you ever been the subject of any complaint or proceeding that alleged sexual harassment or any form of discrimination?  yes  no
- w. Are you the subject of, or a party to, a final, adverse regulatory decision or court decision or arbitration award involving any discrimination claims, including sexual harassment, in which you were found to have directly engaged in sexual harassment or discrimination?  yes  no

### Termination Disclosure

- x. Have you ever voluntarily resigned, been discharged or permitted to resign after allegations were made that accused you of:
- (i) violating investment-related statutes, regulations, rules or industry standards of conduct?  yes  no
- (ii) fraud or the wrongful taking of property?  yes  no
- (iii) failure to supervise in connection with investment-related statutes, regulations, rules or industry standards of conduct?  yes  no
- (iv) sexual harassment or any form of discrimination?  yes  no

### Financial Disclosure

- y. Have you ever made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?  yes  no
- z. Based upon events that occurred while you exercised control over it, has an organization ever made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?  yes  no
- aa. Based upon events that occurred while you exercised control over it, has a broker or dealer ever been the subject of an involuntary bankruptcy petition, or had a trustee appointed, or had a direct payment procedure initiated under the Securities Investor Protection Act?  yes  no
- bb. Has a bonding company ever denied, paid out on, or revoked a bond for you?  yes  no
- cc. Do you have any unsatisfied judgments or liens against you, or has any lender instituted foreclosure proceedings involving you or a property owned, in whole or in part, by you, directly or indirectly?  yes  no

### Other Disclosure

- dd. Are you now the subject of any complaint, investigation or proceeding that could result in a "yes" answer to any question in question 15, items (a) through (v)?  yes  no
- ee. Are you a member of any securities-related organization (*e.g., North American Securities Administrators Association, Securities Industry and Financial Markets Association, etc.*) or organization of claimant's attorneys who periodically represent investors in suits against brokerage firms (*e.g., Public Investors Arbitration Bar Association*)?  yes  no
- ff. Has your spouse or any of your immediate family members named a brokerage firm, or been named by a brokerage firm, in any civil lawsuit or arbitration? (See footnote in question 13 of this application for the definition of "immediate family member.")  yes  no
- gg. Have you ever been a named party in any type of civil litigation?  yes  no



## 17. Securities Disputes Expertise/Experience:

Check the types of securities-related disputes below in which you have expertise and/or experience. Arbitrator candidates need not possess specific expertise/experience in order to be approved to our roster.

### a. Account Related

- Breach of Contract
- Dividends
- Margin Calls
- Transfer

### b. Employment

- Age Discrimination
- Breach of Contract
- Commissions
- Compensation
- Disability Discrimination
- Employment Discrimination
- Gender Discrimination
- Libel or Slander
- Libel or Slander on Form U-5
- National Origin Discrimination
- Partnerships
- Promissory Notes
- Race Discrimination
- Recruitment Disputes
- Religious Discrimination
- Retaliation
- Sexual Harassment
- Sexual Orientation Discrimination
- Training Contracts
- Wrongful Termination

### c. Executions

- Execution Price
- Limit/Stop/Market Order

### d. Trading Disputes

- Amex Floor Trading
- Amex Specializing
- Buy-In
- Markups
- Other Floor Trading
- Sell Outs
- Stock Loan

### e. Other

- Annuities
- Variable Annuities
- Auction Rate Securities
- Certificate of Deposit
- Clearing Disputes
- Collateralized Debt Obligations (CDOs)
- Collateralized Mortgage Obligations (CMOs)
- Commodities
- Common Stock
- Corporate Bonds
- Exchange-Traded Funds
- "Fannie Maes"
- "Freddie Macs"
- Futures (other than commodities)
- "Ginnie Maes"
- Government Securities
- Hedge Funds
- Limited Partnerships
- Municipal Bonds
- Municipal Bond Funds
- Mutual Funds
- Options
- Preferred Stock
- Private Equities
- Real Estate Investment Trusts
- Repurchase Agreements
- Reverse Convertibles
- Stock Index Futures
- Structured Products
- Underwriting
- Warrants/Rights
- Other: \_\_\_\_\_

On a separate sheet of paper, explain the basis for each expertise/experience field you check in question 17. No areas of expertise/experience in securities will be listed on the arbitrator's record without such explanation. You should rely on the expertise derived from your business, securities or employment experience, not wholly from any prior experience as an arbitrator.

**18. Conflicts/Disclosures**

Please list all known conflicts/disclosures and the nature of the conflict/disclosure. If accepted as an arbitrator, you will be under a continuing obligation to update this information and must disclose new relationships as they arise. You must disclose any circumstance or event that might affect your ability to serve impartially or might create an appearance of bias. This includes, but is not limited to, lawsuits (even non-investment related lawsuits); any publications (even if they appear only online); professional memberships; service on boards of directors; etc. When in doubt disclose. Failure to disclose may result in vacated awards which undermine the efficiency and finality of our process. Failure to disclose may also result in removal from the roster.

Answer all questions that apply to you as completely as possible. If appropriate, include the member firm's CRD number in your answer. *If the space provided is insufficient to answer the question completely, please use the supplementary sheets attached at the end of the application.*

**a. Securities Related Disclosures**

- (i.) Have you, your spouse, or an immediate family member<sup>4</sup> ever held any brokerage accounts (past or present)? Provide details:  yes  no

Account Held By (e.g., self, spouse, etc.)	Firm Name	Firm CRD#	Type of Account	Account is
_____	_____	_____	_____	<input type="radio"/> open <input type="radio"/> closed
_____	_____	_____	_____	<input type="radio"/> open <input type="radio"/> closed
_____	_____	_____	_____	<input type="radio"/> open <input type="radio"/> closed

- (ii.) In the last five years, has your spouse or an immediate family member<sup>5</sup> had a business relationship with any brokerage firms? Provide details:  yes  no

Relation of Family Member to You	Firm Name	Their Relationship to Firm
_____	_____	_____
_____	_____	_____
_____	_____	_____

- (iii.) In the last five years, has your employer/firm had a business relationship with any brokerage firms (including a firm your firm clears through)? Provide details:  yes  no

Your Employer	Firm Name	Nature of Relationship
_____	_____	_____
_____	_____	_____
_____	_____	_____

- (iv.) Are you currently a Shareholder of any bank or securities companies? List the companies:  yes  no

Firm Name	Firm CRD#
_____	_____
_____	_____
_____	_____

5. See question 13 footnote 4 of this application for the definition of "immediate family member."

(v.) Were you previously a Shareholder of any bank or securities companies? List the companies:  yes  no

Firm Name	Firm CRD#

(vi.) Have you, your spouse or immediate family member<sup>6</sup> ever represented or served as counsel for a broker dealer in an arbitration, litigation, etc.? Provide details:  yes  no

Broker Dealer	Time Period	Action is
		<input type="radio"/> Ongoing <input type="radio"/> Concluded
		<input type="radio"/> Ongoing <input type="radio"/> Concluded
		<input type="radio"/> Ongoing <input type="radio"/> Concluded

(vii.) Have you, your spouse or immediate family member ever represented or served as counsel for a party adverse to a broker dealer in an arbitration, litigation, etc.? Provide details:  yes  no

Broker Dealer	Time Period	Action is
		<input type="radio"/> Ongoing <input type="radio"/> Concluded
		<input type="radio"/> Ongoing <input type="radio"/> Concluded
		<input type="radio"/> Ongoing <input type="radio"/> Concluded

(viii.) Have you, your spouse or immediate family member ever personally been a party adverse to a broker dealer in an arbitration, litigation, etc.? Provide details:  yes  no

Party (e.g., self, spouse, etc.)	Broker Dealer	Time Period	Action is
			<input type="radio"/> Ongoing <input type="radio"/> Concluded
			<input type="radio"/> Ongoing <input type="radio"/> Concluded
			<input type="radio"/> Ongoing <input type="radio"/> Concluded

(ix.) Have you, your firm or business partner(s) been retained as an expert or consultant by a broker-dealer or associate person in connect with any regulatory, arbitral, or judicial proceeding, whether or not the matter proceeded to hearing? Provide details:  yes  no

Expert (e.g., you, your firm, etc.)	Broker-Dealer	Time Period	Approximate No. of Cases	Service Is
				<input type="radio"/> Ongoing <input type="radio"/> Concluded
				<input type="radio"/> Ongoing <input type="radio"/> Concluded
				<input type="radio"/> Ongoing <input type="radio"/> Concluded

6. See question 13 footnote 4 of this application for the definition of "immediate family member."

- (x.) Have you, your firm or business partner(s) been retained as an expert or consultant in connection with a claim **against** a broker-dealer or associated person with respect to any regulator, arbitral or judicial proceeding, whether or not the matter proceeded to hearing? Provide details:  yes  no

Expert (e.g., you, your firm, etc.)	Broker-Dealer	Time Period	Approximate No. of Cases	Service Is
				<input type="radio"/> Ongoing <input type="radio"/> Concluded
				<input type="radio"/> Ongoing <input type="radio"/> Concluded
				<input type="radio"/> Ongoing <input type="radio"/> Concluded

- (xi.) Do you now or have you ever been employed by or associated with a brokerage firm that sold auction rate securities?  yes  no

Firm Name	Firm CRD#

**b. Investor Relations/Conduct Disclosures**

- (i.) Have you ever been named as a party by an investor in any civil lawsuit or arbitration proceeding (related to your duties as a registered representative)? Provide details:  yes  no

Time Period	Investor	Action Is	Indicate:
		<input type="radio"/> Ongoing <input type="radio"/> Concluded	<input type="radio"/> Arbitration <input type="radio"/> Civil Lawsuit
		<input type="radio"/> Ongoing <input type="radio"/> Concluded	<input type="radio"/> Arbitration <input type="radio"/> Civil Lawsuit
		<input type="radio"/> Ongoing <input type="radio"/> Concluded	<input type="radio"/> Arbitration <input type="radio"/> Civil Lawsuit

- (ii.) Have you ever been the subject of any Government or Self-Regulatory Organization disciplinary action? Provide details:  yes  no

Agency	Time Period	Disciplinary Action	Action Is
			<input type="radio"/> Ongoing <input type="radio"/> Concluded
			<input type="radio"/> Ongoing <input type="radio"/> Concluded
			<input type="radio"/> Ongoing <input type="radio"/> Concluded

- (iii.) Have you ever been the subject of any Investor Complaint, Arbitration or Suit? Provide details:  yes  no

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- (iv.) Have you ever been the subject of any non-investment related lawsuit/charge?  yes  no  
Provide details:

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**c. Client<sup>7</sup> Conflict Disclosures**

- (i.) Do you or your employer currently have any clients who would represent a conflict for you in a FINRA arbitration? Provide details:  yes  no

Client's Name

Is This Your Client or Your Employer's Client?

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- (ii.) Have you or your employer previously had any clients who would represent a conflict for you in a FINRA arbitration? Provide details:  yes  no

Client's Name

Is This Your Client or Your Employer's Client?

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- (iii.) Are you or your employer currently a client of any firm that would represent a conflict for you in a FINRA arbitration? Provide details:  yes  no

Client's Name

Is This Your Client or Your Employer's Client?

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- (iv.) Were you or your employer previously a client of any firm that would represent a conflict for you in a FINRA arbitration? Provide details:  yes  no

Client's Name

Is This Your Client or Your Employer's Client?

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7. *Types of clients to list: Persons or firms associated with, including registered through, a broker or a dealer (including a government securities broker or dealer, or a municipal securities dealer); persons or firms registered under the Commodity Exchange Act; persons or firms that are members of a commodities exchange or a registered futures association; banks or other financial institutions who effect transactions in securities, including government or municipal securities, and commodities futures or options, or supervise or monitor the compliance with the securities and commodities laws of employees who engage in such activities; investment advisers; attorneys, accountants, other securities-related professionals.*

**d. Professional Associations/Memberships/License Disclosures**

(i.) Are you currently an Arbitrator in any other forum (e.g., AAA, BBB, court system, etc.)?  yes  no

List forums and provide details as appropriate:

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(ii.) Were you previously an Arbitrator in any other forum (e.g., AAA, BBB, court system, etc.)?  yes  no

List forums and provide details as appropriate:

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(iii.) Are you currently a Mediator in any other forum (e.g., AAA, BBB, court system, etc.)?  yes  no

List forums and provide details as appropriate:

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---

---

(iv.) Were you previously a Mediator in any other forum (e.g., AAA, BBB, court system, etc.)?  yes  no

List forums and provide details as appropriate:

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---

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(v.) Are you currently an Early Neutral Evaluator in any forum (e.g., AAA, BBB, court system, etc.)?  yes  no

List forums and provide details as appropriate:

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---

(vi.) Were you previously an Early Neutral Evaluator in any forum (e.g., AAA, BBB, court system, etc.)?  yes  no

List forums and provide details as appropriate:

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(vii.) Do you currently hold any securities licenses (e.g., series 7, series 63, etc.)?  yes  no

Provide details:

License	Firm Name
_____	_____
_____	_____

(viii.) Have you previously held any securities licenses (e.g., series 7, series 63, etc.)?  yes  no

Provide details:

License	Firm Name
_____	_____
_____	_____

(ix.) Are you currently on the Board of Directors of any company or organization?  yes  no

Provide details:

Organization Name	Position (if applicable)
_____	_____
_____	_____

(x.) Were you previously on the Board of Directors of any company or organization?  yes  no

Provide details:

Organization Name	Position (if applicable)
_____	_____
_____	_____

(xi.) Are you currently a member of any professional organizations including bar associations? (Bar license information should be entered in the Personal Information section.)  yes  no

Provide details:

Organization Name	ID number (if applicable)
_____	_____
_____	_____

(xii.) Were you previously a member of any professional organizations including bar associations? (Bar license information should be entered in the Personal Information section.)  yes  no

Provide details:

Organization Name	ID number (if applicable)
_____	_____
_____	_____

**e. Other disclosures**

(i.) Are you now or have you been a judge?  yes  no

List courts:

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(ii.) Have you been published in any medium (including print, Internet, etc.)?  yes  no

List all books, articles, blogs, Twitter feeds, etc.:

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(iii.) Do you speak any languages other than English?  yes  no

Provide details:

Language	Proficiency Level
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

(iv.) Have you delivered any lectures (professors and teachers need not list all lectures)?  yes  no

Provide details:

Lectured for	Topic
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

(v.) Have you received any honors?  yes  no

Provide details:

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**20. If accepted to FINRA's Roster of Arbitrators, do you affirm your willingness to do the following, to the best of your ability:**

- a. Maintain control over all arbitration conferences and hearings from the outset; set "ground rules" of behavior and enforce them?  yes  no
- 
- b. Be familiar with, understand and be able to interpret the FINRA Code of Arbitration Procedure?  yes  no
- 
- c. Be fully prepared for all conferences and hearings by reading the pertinent documents in advance, including the ABA/AAA Code of Ethics for Arbitrators in Commercial Disputes?  yes  no
- 
- d. Be punctual in convening all conferences and hearings?  yes  no
- 
- e. Discourage abuses of the process, such as: unreasonable requests for discovery, last-minute withdrawal from the panel, redundant evidence or testimony, or procrastination in scheduling?  yes  no
- 
- f. Remember your authority if and when parties fail to comply with orders or directives?  yes  no
- 
- g. Not tolerate hostile, demeaning or humiliating words in written or oral communications among lawyers, fellow arbitrators, parties, witnesses or the administrative staff?  yes  no
- 
- h. Maintain focus and alertness throughout the testimony, which is generally conducted for eight hours per day over the course of several days.  yes  no
- 
- i. Make all reasonable efforts to decide promptly all matters presented for decision?  yes  no
-

THE APPLICANT MUST SIGN THE FOLLOWING AFFIRMATION

I swear or affirm that I have read and understand the preceding questions, and that my answers are true and complete to the best of my knowledge, information and belief. I assume the responsibility of promptly informing FINRA of any changes to the answers to the questions contained on this form, and I understand that failure to do so may result in my immediate removal from the roster of approved arbitrators. I also agree to serve as an arbitrator in accordance with established FINRA procedures, the FINRA *Code of Arbitration Procedure*, and the provisions of the ABA/AAA *Code of Ethics for Arbitrators in Commercial Disputes*. I understand that arbitrators are generally listed for service outside the vicinity of their primary business or residence only if FINRA Dispute Resolution determines that there is a need for additional arbitrators in those hearing locations, and provided the arbitrators are willing to pay their own expenses to travel to such locations. I understand that all information submitted is subject to independent verification.

I understand that my submission of this information does not create any obligation on the part of FINRA to accept my application or to appoint me to serve on any panel of arbitrators. I also understand that FINRA reserves the right to reconsider the eligibility or appointment of arbitrators at any time and to remove arbitrators as it, in its sole judgment, deems appropriate. I acknowledge that the amount of honorarium due to me as an arbitrator is that set forth in Rule 12214 of the FINRA *Code of Arbitration Procedure*.

I understand that FINRA has adopted a “zero tolerance” sexual harassment policy. Accordingly, I will avoid comments on dress and appearance, and will treat all colleagues and associates with the same degree of respect and professionalism in manner and speech that I expect to receive in business matters.

**I understand that I am an independent contractor, not an employee of FINRA. I am not eligible to receive any unemployment benefits or any FINRA employee benefits. Should I be appointed as an arbitrator, I understand that I must take precautions to safeguard the confidentiality of case-related materials.**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# Arbitrator Application Checklist

To efficiently process your application, please verify that it is complete by reviewing the following checklist.

## Have you ...

- completed and signed the application?
- completed and signed the Consent to Background Search and Investigation form?
- completed and signed the Social Security Number Verification form?
- included the \$80 non-refundable verification fee?
- provided *all* dates in the education, employment and training section, using your best recollection (must be in "mm/yyyy" format)? Any unexplained gaps in the employment or education fields of 30 days or more will result in the return of your application.
- typed or clearly printed your business background for question 9? Your business background must be written in paragraph format. Do not submit your resume in lieu of completing this or other sections of the application.
- (if you checked off fields in question 17) included a written explanation pertaining to your skills/expertise?
- (if applicable) confirmed that your employment and/or disclosure information on the application matches the information in CRD? If you have questions concerning your CRD record, contact CRD directly at (301) 590-6500.
- reviewed your entire application to make sure it is legible? We do not accept scanned copies.

# Sample Business Background Statements

The following contains three different sample background information statements. Your background information statement is part of the arbitrator disclosure report and will be provided to the parties. FINRA encourages you to provide a detailed background information statement.

You should use this sample only as a guide, and you should ensure your own statement is accurate, current, complete and comprehensive. A resume may not be substituted for the background information statement.

You should identify any industry members that you have represented or by whom you have been employed. If you are an attorney or an accountant, please provide details about the specific nature of your current practice.

Please remember you have a continuing obligation to provide FINRA with accurate, current and complete information. Please notify your regional office if there are any changes in your status or background.

## **Business and Professional**

Since 2001, I have been employed as the Executive Vice President of the Capital Markets Group of XYZ, Inc. in New York City. My responsibilities include directing all aspects of equity and bond issues for XYZ's clients. I also oversee all SEC reporting requirements. Additionally, my office generates progress reports which are used by the Chief Financial Officer in his daily financial reporting. As Executive Vice President, my special projects were aimed at developing new clients.

From 1984 to 1987, I worked for ABC Brokerage as an analyst working with pharmaceutical industry stocks. At DEIF Securities from 1987 to 1990, I made buy and sell recommendations and directed the publishing of the DEIF Securities newsletter. I was promoted at DEIF to Director of Research and Information Systems in 1990. Until 1997, I personally designed and maintained all of DEIF's quantitative computer programs used by analysts and traders. From 1997 to 2001, I was Senior Vice President at Brokerage Securities where I was the Director of the Corporate Finance Department.

I was a Captain in the U.S. Army Reserves from 1982 to 1985, and I served as a Company Commander. I received an honorable discharge in 1985.

I currently hold Series 7, 63, and 24 licenses. I am a member of the Clarksville Rotary Club and am active in the local PTA. I received a bachelor's degree in Business Administration from the University of Arkansas in 1982. I obtained an MBA in Accounting and Management Information Systems from the University of Texas in 1984.

## Educator

I have been a Professor of Economics at Rice University since 1992. In addition to my teaching responsibilities, I conduct research in financial market fluctuations and trends. I have published five articles in the *Journal of Economics* concerning the volatility of the market and predicting future market performance.

I was a Lecturer of Macroeconomics at California State University, Fresno, from 1982 to 1986 and a Teaching Assistant from 1980 to 1982 where I conducted classes ranging in sizes from four-student seminars to 200-student lectures. I received a research grant to study banking and finance from 1982 to 1986 during which time I compiled statistics on the financial cost of complying with the Securities Exchange Act of 1934. I served as Chief Economist at the Hastings Institute in Seattle, Washington, from 1986 to 1992 where I specialized in European Economics.

I am the author of *Macroeconomics Study Guide*, 1983; Associate Editor of *The Journal of Finance*; and the Editor of *Economics Monthly*. In 1992 I coordinated the National Organization For Women Financial Conference. I received the Faculty Excellence Award at Rice University in 1995 and in 1996, and I was presented with the Women in Business Award from the National Organization of Women.

I received a BA degree in Economics from the University of Pittsburgh in 1978 and a Ph.D. in Economics from California State University Fresno in 1982. My thesis was entitled: *Current Economic Policy: A Blueprint for Disaster*.

## Attorney/Professional

Since 1997, I have worked at the Smith Bank as Vice President and General Counsel. As General Counsel, I am responsible for the Litigation Department, and all cases involving allegations of securities fraud, internal labor controversies, and allegations concerning shareholder/management disputes. My responsibilities also include supervising 44 attorneys, screening cases to determine which ones can be settled and which ones must be litigated, and delegating litigation to outside law firms. In total, I am responsible to the Board of Directors for 93% of Smith Bank's litigation.

I worked for the U.S. Securities and Exchange Commission as a Senior Staff Attorney from 1980 to 1985. I litigated insider trading cases and accounting fraud cases. In 1985, I was promoted to Assistant Director of Enforcement, and I supervised 14 attorneys and 24 examiners.

From 1986 to 1987, I worked for Sherman Stein in Jersey City, New Jersey as an Associate in the Securities Department. My duties included transactional and litigation support for the equity and bond issues. My cases primarily involved representing foreign banks in administrative hearings before various U.S. banking regulatory bodies. In 1987 I was promoted to Litigation Associate. I had primary responsibility for devising takeover defenses for major investment banks and insurance companies. I remained at Sherman Stein until 1997.

My professional activities include: Panelist for the New York Bar Association's Workshop on "Mediation and Arbitration as an Alternative Forum," April 1983; Member, American Bar Association section on Litigation, Corporation, Banking and Law; Member, the Committee on Federal Regulation of Securities; and Chairperson of the Subcommittee on Broker-Dealer Misconduct. I have been a securities arbitrator for FINRA since 1990 and have sat on five panels where the issues involved employment contracts, and allegations of wrongful discharge.

I am a 1977 graduate of Yale University, and graduated from New York University School of Law in 1980.

# Arbitrator Disqualification Criteria

**Criteria for Temporary Disqualification** (Temporary Disqualification will result in temporary declination as to new applicants and a status of “inactive” as to already enrolled arbitrators.)

Pending Actions	Arbitrator is the subject of, or is a party to, a pending investment-related civil action or arbitration claim initiated by a customer; or, civil action or administrative complaint initiated by a regulatory body; or, a civil action or regulatory complaint alleging discrimination or sexual harassment. This provision excludes cases where the arbitrator’s conduct in his or her role as an arbitrator is at issue.
Subject of Claims or Complaints	Arbitrator is the subject of, or is a party to, three (3) or more claims or complaints (reportable on Form U-4) within the last ten (10) years regardless of outcome.
Filed a Statement of Claim or Complaint	Arbitrator is a party (excluding representatives and unnamed parties to class actions) that has filed two or more investment-related civil actions or arbitration claims within the last ten (10) years.
Final Decisions, Awards	Arbitrator is the subject of, or is a party to, a final, adverse investment-related court decision or arbitration award of \$25,000 or more within the past seven (7) years resulting from a customer-initiated complaint or claim.
Final Regulatory Action	Arbitrator is the subject of, or is a party to, any final adverse decision issued by any regulatory authority within the past seven (7) years, where the adverse decision does not involve a technical violation or does not give rise to a statutory disqualification.
Director of Arbitration’s Judgment	The Director of Arbitration may temporarily remove an arbitrator, if, in his or her sole judgment, it is determined that the arbitrator is not otherwise properly included in the list of eligible neutrals.

**Criteria for Permanent Disqualification** (Permanent Disqualification means the application of any new applicant will be rejected, and enrolled neutrals will be removed from the roster without possibility of reconsideration.)

Preamble	If an arbitrator answers in the affirmative to any questions contained in question 15 of the Arbitrator Application Form, the arbitrator’s explanation for the affirmative answer will be closely reviewed by the Director. If the affirmative answer does not constitute a statutory disqualification, the explanation for the answer will be disclosed to the parties unless the information is non-regulatory or does not reflect negatively on the individual’s character and is not significant to an individual’s performance as a neutral.
Misstatement/Omission	Misstatement or failure to disclose material information.
Disciplinary Actions	Final, adverse disciplinary action by any domestic or foreign regulatory or governing professional body on a finding of, including but not limited to, false statement or omissions, material violation of investment-related regulation, or the violation of a non-technical rule of such organizations or statute.
Misdemeanors	Misdemeanor conviction involving investments, investment-related activities.
Felonies	Felony conviction, or plea of guilty or nolo contendere (“no contest”), to a felony charge.
Fraud	Final adverse court decisions where there has been a finding of fraud.
Statutory Disqualifications	Statutory disqualifications not included above.
Decisions, Awards, Involving Discrimination/ Sexual Harassment	Arbitrator is the subject of, or is a party to, a final, adverse regulatory decision or court decision or arbitration award involving any discrimination claims, including sexual harassment, in which the arbitrator was found to have engaged directly in sexual harassment or discrimination.
Director of Arbitration’s Judgment	The Director of Arbitration, upon the approval of the National Arbitration & Mediation Committee, may remove an arbitrator if in his or her judgment the arbitrator is not otherwise properly included in the list of eligible neutrals.





## Arbitration Program Offices

### Northeast Regional Office

One Liberty Plaza  
165 Broadway, 27th Floor  
New York, NY 10006  
Phone: (212) 858-4200  
Fax: (301) 527-4873

### Midwest Regional Office

55 West Monroe Street  
Suite 2600  
Chicago, IL 60603  
Phone: (312) 899-4440  
Fax: (312) 236-9239

### Southeast Regional Office

Boca Center Tower 1  
5200 Town Center Circle  
Suite 200  
Boca Raton, FL 33486  
Phone: (561) 416-0277  
Fax: (301) 527-4868

### Western Regional Office

300 S. Grand Avenue  
Suite 900  
Los Angeles, CA 90071  
Phone: (213) 613-2680  
Fax: (213) 613-2577

Investor protection. Market integrity.

FINRA  
One Liberty Plaza  
165 Broadway  
New York, NY 10006

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14-08534-02/14

# Background Verification Forms

In order to insure the integrity of the roster of neutrals, we require all applicants to submit to a verification of their background information.

Make sure to complete both pages of the Consent to Background Search and Investigation form and the Social Security Number Verification form. Applications that do not contain these completed verification forms and the \$80 non-refundable verification fee will be returned to the applicant for completion. This will delay processing of the application.

Article 23-A of the New York Correction Law only applies to applicants residing in New York state.



Investor protection. Market integrity.

One Liberty Plaza  
165 Broadway  
New York, NY 10006  
[www.finra.org](http://www.finra.org)

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**FINRA DISPUTE RESOLUTION ARBITRATOR APPLICANT  
CONSENT TO BACKGROUND SEARCH AND INVESTIGATION PART I**

CONSUMER NOTIFICATION: This is to inform you that a consumer report is being obtained from a consumer reporting agency for the purpose of evaluating you for inclusion on the FINRA Neutral Roster ("Roster"). The report may include, among other items, criminal background information, confirmation of your educational and employment history, and confirmation of any references provided. Pre-Employment, Inc., 8700 Crownhill, Suite 703, San Antonio, TX 78209, 800-735-9555, is the consumer reporting agency that will prepare the report. A copy of Article 23-A of the New York Correction Law accompanies this notification.

The undersigned hereby authorizes FINRA DISPUTE RESOLUTION, INC. ("DR") and/or its agents to make an investigation of my background, references, employment, education, and criminal history record information which may be in any state or local files, including those maintained by both public and private organizations, and all public records, for the purpose of confirming the information contained in my application and/or obtaining other information which may be material to my qualifications for inclusion on the Neutral Roster. A telephone facsimile (fax) or xerographic copy of this consent shall be considered as valid as the original consent.

In the event of my inclusion on the Roster, this authorization shall remain in effect for as long as I remain on the Roster. If I am not selected for inclusion or am removed from the Roster as a result of any investigative report resulting from this authorization, DR will provide me a copy of that report along with a summary of my rights under the *Fair Credit Reporting Act*.

I acknowledge receipt of a copy of Article 23-A of the New York Correction Law.

I release DR and/or its agents and any person or entity which provides information pursuant to this authorization from any and all liabilities, claims, or lawsuits in regard to the information obtained from any and all of the above-referenced sources.

*Please type or print legibly, black ink only.*

True and Complete

Legal Name: First \_\_\_\_\_ Middle \_\_\_\_\_ Last \_\_\_\_\_

Maiden or Other

Names Used: \_\_\_\_\_ Dates Used: \_\_\_\_\_

Present Street Address: \_\_\_\_\_ Dates of residence (e.g. 1998 to 2000): \_\_\_\_\_ to \_\_\_\_\_

City: \_\_\_\_\_ County \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Other cities and states lived in during the past seven years:

City: \_\_\_\_\_ State: \_\_\_\_\_ Dates of residence: \_\_\_\_\_ to \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Dates of residence: \_\_\_\_\_ to \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Dates of residence: \_\_\_\_\_ to \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Dates of residence: \_\_\_\_\_ to \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FINRA DISPUTE RESOLUTION REQUEST FOR PROCESSING  
FINRA USE ONLY**

- Employment verification**  
Number of employers to verify \_\_\_\_\_
- Civil records, Federal District**
- Criminal history, county jurisdictions**
- Criminal history, state (NY addresses, only)**
- Criminal history, Federal District**
- Criminal & sex offender database, national**
- Globalcheck**
- Education verification**
- Professional license verification**
- SSN trace, search additional jurisdictions**

Requestor: CaTina Daniels  
FINRA Neutral Management  
212-858-4351 (tel)  
301-527-4803 (fax)

ClientID: fin.dis

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**FINRA DISPUTE RESOLUTION ARBITRATOR APPLICANT  
CONSENT TO BACKGROUND SEARCH AND INVESTIGATION PART II**

**EMPLOYMENT & EDUCATION HISTORY**

**Employment History for Past 10 Years** – Begin with present; Indicate periods of unemployment or date of retirement, if applicable

1. Employer: \_\_\_\_\_ From: \_\_\_\_\_ To: \_\_\_\_\_  
Employer Address: \_\_\_\_\_ Contact person: \_\_\_\_\_  
Employer Telephone Number: \_\_\_\_\_
2. Employer: \_\_\_\_\_ From: \_\_\_\_\_ To: \_\_\_\_\_  
Employer Address: \_\_\_\_\_ Contact person: \_\_\_\_\_  
Employer Telephone Number: \_\_\_\_\_
3. Employer: \_\_\_\_\_ From: \_\_\_\_\_ To: \_\_\_\_\_  
Employer Address: \_\_\_\_\_ Contact person: \_\_\_\_\_  
Employer Telephone Number: \_\_\_\_\_
4. Employer: \_\_\_\_\_ From: \_\_\_\_\_ To: \_\_\_\_\_  
Employer Address: \_\_\_\_\_ Contact person: \_\_\_\_\_  
Employer Telephone Number: \_\_\_\_\_
5. Employer: \_\_\_\_\_ From: \_\_\_\_\_ To: \_\_\_\_\_  
Employer Address: \_\_\_\_\_ Contact person: \_\_\_\_\_  
Employer Telephone Number: \_\_\_\_\_

**Education** – Specify the Highest Levels of Academic Achievement

1. Institution Name: \_\_\_\_\_  
Address (city and state): \_\_\_\_\_  
Degree: \_\_\_\_\_ Major: \_\_\_\_\_ Date Granted: \_\_\_\_\_
2. Institution Name: \_\_\_\_\_  
Address (city and state): \_\_\_\_\_  
Degree: \_\_\_\_\_ Major: \_\_\_\_\_ Date Granted: \_\_\_\_\_

**Professional License or Certification**

1. Type/Title: \_\_\_\_\_ License Number: \_\_\_\_\_  
Agency & state of issue: \_\_\_\_\_ Date Issued: \_\_\_\_\_
2. Type/Title: \_\_\_\_\_ License Number: \_\_\_\_\_  
Agency & state of issue: \_\_\_\_\_ Date Issued: \_\_\_\_\_

**Social Security Administration  
Authorization for the Social Security Administration  
(SSA) To Release  
Social Security Number (SSN) Verification**

Printed Name \_\_\_\_\_ Date of Birth \_\_\_\_\_ SSN \_\_\_\_\_

I am conducting the following business transaction

Seeking appointment to FINRA Neutral Roster  
[Identify a specific purpose. Example - Seeking a mortgage from the Company - "Identity verification" or "Identity proof or confirmation" is not acceptable.]

With the following company ("the Company"):

Company Name	Address
<u>Pre-Employment, Inc. 8700 Crownhill Blvd #703 San Antonio, TX 78209 ( Do not change or modify this line)</u>	

I authorize the Social Security Administration to verify my name and SSN to the Company and/or the Company's Agent, if applicable, for the purpose I identified.

The name and address of the Company's Agent is:

Computer Information Development LLC 713 W. Duarte Rd. #105 Arcadia CA 91007 ( Do not change or modify this line.)

I am the individual to whom the Social Security number was issued or that person's legal guardian. I declare and affirm under the penalty of perjury that the information contained herein is true and correct. I acknowledge that if I make any representation that I know is false to obtain information from Social Security records, I could be found guilty of a misdemeanor and fined up to \$5,000.

**This consent is valid only for 90 days from the date signed, unless indicated otherwise by the individual named above. If you wish to change this timeframe, fill in the following:**

**This consent is valid for \_\_\_\_\_ days from the date signed. \_\_\_\_\_ (Please initial)**

Signature \_\_\_\_\_ Date Signed \_\_\_\_\_

Contact information of individual signing authorization:

Address \_\_\_\_\_

City/State/ZIP \_\_\_\_\_

Phone Number \_\_\_\_\_

Form SSA-89 (8/15/2008)

**NOTICE TO NUMBER HOLDER**

The Company and/or its Agent have entered into an agreement with SSA that, among other things, includes restrictions on the further use and disclosure of SSA's verification of your SSN. To view copy of the entire model agreement, visit <http://www.ssa.gov/cbsv/docs/modelAgreement11309.pdf>.

For  
Upload  
Only

NEW YORK CORRECTION LAW  
ARTICLE 23-A

LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY  
CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

Section 750. Definitions.

751. Applicability.

752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited.

753. Factors to be considered concerning a previous criminal conviction; presumption.

754. Written statement upon denial of license or employment.

755. Enforcement.

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§750. Definitions. For the purposes of this article, the following terms shall have the following meanings:

(1) "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.

(2) "Private employer" means any person, company, corporation, labor organization or association which employs ten or more persons.

(3) "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license, opportunity, or job in question.

(4) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(5) "Employment" means any occupation, vocation or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.

**§751. Applicability.** The provisions of this article shall apply to any application by any person for a license or employment at any public or private employer, who has previously been convicted of one or more criminal offenses in this state or in any other jurisdiction, and to any license or employment held by any person whose conviction of one or more criminal offenses in this state or in any other jurisdiction preceded such employment or granting of a license, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct. Nothing in this article shall be construed to affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee.

**§752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited.** No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:

(1) There is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or

(2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

**§753. Factors to be considered concerning a previous criminal conviction; presumption.** 1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

**§754. Written statement upon denial of license or employment.** At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

**§755. Enforcement.** 1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York city commission on human rights.



## Additional Resources

For the most up-to-date version of FINRA's arbitration and mediation rules, visit [www.finra.org](http://www.finra.org). Our website contains an interactive HTML *Code of Arbitration Procedure*. There is also a printer-friendly version of the Code for you to conveniently download.

Please review the following items also available online:

- ▶ **The Arbitrator's Guide**
- ▶ **The Code of Ethics for Arbitrators in Commercial Disputes**
- ▶ **Arbitrator Honorarium FAQ**

### Questions?

#### Contact FINRA Dispute Resolution:

Northeast Region	(212) 858-4200
West Region	(213) 613-2680
Southeast Region	(561) 416-0277
Midwest Region	(312) 899-4440



# Thank You

FINRA Dispute Resolution appreciates your interest in joining its roster of arbitrators. We will immediately begin processing your application upon receipt.

Can you think of any colleagues, friends or family members who may also be interested in joining the roster?

If so, we would be happy to extend an invitation to them. Simply complete the candidate's information below and return this card with your application.

Yes, I would like to recommend

\_\_\_\_\_ to FINRA Dispute Resolution's roster of arbitrators.

**Please contact the candidate at:**

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ (optional)

Fax \_\_\_\_\_ (optional)

Email \_\_\_\_\_ (optional)

## Exhibit B

## Arbitrator Disclosure Report

Report reflects information provided by the arbitrator through 08/08/2013

### ARBITRATOR

**Name:** Mr. James H. Frank  
**Arbitrator ID:** A11148  
**CRD #:**  
**City/State/Country:** Santa Barbara / CA / United States

**Skills in Controversy:**

Account Related - Dividends, Account Related - Margin Calls, Account Related - Transfer, Executions - Execution Price, Executions - Limit/Stop/Market Order, Employment - Breach of Contract, Employment - Commissions, Employment - Compensation, Employment - Discrim. Age, Employment - Discrim. Disability, Employment - Discrim. Gender, Employment - Discrim. National Origin, Employment - Discrim. Race, Employment - Discrim. Religion, Employment - Employment Discrimination, Employment - Discrim. Sexual Orientation, Employment - Libel or Slander, Employment - Partnerships, Employment - Promissory Notes, Employment - Retaliation, Employment - Sexual Harassment, Employment - Wrongful Termination, Other - Clearing Disputes, Other - Underwriting

**Classification:** Public  
**FINRA Mediator:** No  
**Chair Status:** Qualified

**Skills in Securities:**

Annuities, Common Stock, Corporate Bonds, Government Securities, Limited Partnerships, Mutual Funds, Municipal Bonds, Municipal Bond Funds, Preferred Stock, Real Estate Investment Trust, Stock Index Futures, Warrants/Rights

**Injunctive Qualified -** This arbitrator is an attorney and has reported experience litigating cases involving injunctive relief.

### EMPLOYMENT

<u>Start Date</u>	<u>End Date</u>	<u>Firm</u>	<u>Position</u>
07/2009	Present	JH Frank & Associates	Princ./Arb/Med/Private Judge
01/1985	06/2009	PRORESOLV Counsel, LLP	Reinsurance Cos./Atty/Med/Arb
01/1980	12/1984	Intercontinental Reinsurance	Senior Vice President/Director

### EDUCATION

<u>Start Date</u>	<u>End Date</u>	<u>School</u>	<u>Degree</u>
01/1972	06/1975	Southwestern University	JD
01/1967	06/1969	US Airforce Institute of Technology	MBA
01/1964	06/1965	USAF Pilot Training Programs	Major
01/1959	06/1963	University of California	BA

### TRAINING

<u>Completed</u>	<u>Description</u>	<u>Details</u>	<u>Firm/School</u>	<u>Hours</u>	<u>Location</u>
03/2009	Motion to Dismiss Training		FINRA		
12/2008	Expungement - 2008 Refresher		FINRA	1	

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		FINRA Dispute Resolution	Arbitrator ID:	A11148
03/2007	Revised Code of Arbitration	NASD	2	online
08/2004	Expungement online mini-course	NASD	1.5	online
06/1999	New Chairperson Training [NASD]	NASD	11	Tampa, FL
02/1997	New Panel Member Training [NASD]	NASD	11	Los Angeles, CA
10/1991	Intro Securities Arbitrator Training	"Agents of Fairness" NASD	4	
12/1986	Mediation Training	Med. Academy-NYU, FI. DRC	100	
01/1984	Non-Securities Related Training	(various trainings) AAA & SPIDR	200	

### DISCLOSURE/CONFLICT INFORMATION

Type	Firm Name	Details
Has an account with	TD Ameritrade Investor Services, Inc.	
Has an account with	USAA Financial Advisors, Inc.	USAA Brokerage
Arbitrator for	Florida	
Had an account with	TD Waterhouse Investor Services, Inc.	Waterhouse Securities, Inc.
Licensed to Practice Law in		California
Licensed to Practice Law in		Florida (inactive)
Licensed to Practice Law in		New York (inactive)
Licensed to Practice		Reinsurance Underwriter New York

### PUBLICLY AVAILABLE AWARDS

Publicly Available Awards Section, Current as of 08/12/2013

Case ID	Case Name	Close Date
08-01651	Tule River Tribe of the Tule River Reservation, et al. vs. Lehman Brothers, Inc.	11/02/2011
09-07185	Paul Oshideri vs. Fidelity Brokerage Services LLC, National Financial Services LLC, Frank Sanchez, Lawrence Goodkind, et al.	07/07/2011
09-05826	Amnon P. Feffer, co-executor and co-tee for the Solomon and Bessie Feffer Trusts, et al. v. Buckman, Buckman & Reid, Inc, et al.	03/30/2011
10-02446	Church Resource Ministries vs. Charles Schwab & Co., Inc. (CRD #5393) and John Conley Thatcher (CRD #2209222)	02/23/2011
09-05195	Edward Billig vs. Michael Howard Rosenmayer, Gregory Baines Iglow, RBC Capital Markets Corporation, and Oppenheimer & Co. Inc	05/13/2010
08-03355	Move, Inc. v. Citigroup Global Markets Inc.	12/08/2009
06-05086	Elizabeth Luster, individually and as Trustee of The Elizabeth S. Luster Trust v. Morgan Stanley DW, Inc., et al.	12/29/2008
06-04535	Randy R. Bick and Bick Family Trust vs. Citigroup Global Markets, Inc.	07/23/2008
07-02737	Melanie Bruno v. AXA Advisors, LLC	03/18/2008
06-03867	Alfonso C. Pena, et al v. GBS Financial Corp., GBS Advisors, Donald G. Gloisten, and Gerard P. Gloisten	09/07/2007
05-01850	Sidney H. Goodman, et al. v. Leslie C. Stipek and Stipek Securities, LLC	03/30/2006
03-00956	Carl H. Will, in his ind. capacity & as cust., and Lisa Will in her ind. capacity v. Merrill Lynch, Pierce, Fenner/Smith	01/24/2006
04-04027	Fred D. Bisplinghoff IRA vs. Citigroup Global Markets, Inc. and Jack B. Grubman	08/08/2005

04-04600	Todd E. Schneider v. Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., and Jack B. Grubman	08/01/2005
03-04852	Joyce A. Stade and C. Richard Stade v. Citigroup Global Markets, Inc., and Jack B. Grubman	06/27/2005
03-03324	William Maselli and Jeanne Maselli, ind. and as trustees of the Maselli Trust dtd 2/19/01 v Salomon Smith Barney, Inc. et al	05/23/2005
04-07242	Pat Desmond, Jr. and Ann Desmond v. Citigroup Global Markets, Inc. f/k/a Smith Barney, and Paul Pollard	04/25/2005
03-04644	Michael Myers, M.D., TTEE of Michael Myers, M.D., P.A. PST, et al vs. Merrill Lynch, Pierce, Fenner & Smith, Inc., et al	04/25/2005
04-02156	Arnold Fagg and Karen Fagg v. Morgan Stanley DW, Inc., John Posey and John McKeenan	03/24/2005
01-01447	Emmett A. Herring, Jr. Revocable Trust Dated 12/27/91 vs. Merrill Lynch, Pierce Fenner & Smith, Inc., et al.	02/08/2005
03-00280	Betty Ingram vs. Jack B. Grubman and Salomon Smith Barney, Inc.	09/15/2004
03-07305	Marjorie A. Fuller vs. Merrill Lynch, Pierce, Fenner & Smith Inc., Terry K. Glenn, and Merle P. Levy	07/23/2004
02-06244	Nancy Rogers, Trustee U/A DTD 10/3/96 vs. EWW Group a/k/a Emerson Waller Group, Richard "Dick" Emerson & Merrill Lynch	04/19/2004
02-04365	Joanne Karetz and Joanne Keretz Living Trust v. A.G. Edwards & Sons, Inc. and Frank Vellen	02/11/2004
02-04531	Elizabeth M. Copeland, individually, et al v. Merrill Lynch Pierce, Fenner & Smith, Inc., a Delaware Corporation, et al	01/15/2004
02-06497	Angelo Barrera, et al v. E*Trade Securities, Inc., a/k/a E*Trade Group, Inc. a/k/a E*Trade Financial, etc.	08/15/2003
02-06252	Norman H. Jasper TTEE "The Jasper Trust" V. Merrill Lynch Pierce Fenner Smith Incorporated.	05/01/2003
02-03357	Robertson Stephens, Inc. v. Cory Chandler	03/21/2003
02-00220	William L. Reynolds, Claudette Cote Reynolds, and Maman Group, Inc. v. Prudential Securities, Incorporated, et al.	01/24/2003
99-05380	Nance L. Outlaw v. Lawrence Jay, Long Securities Corp., et al	04/10/2001
99-04339	Maria J. Celaya, Nerjo Celaya and Lillia C. Celaya v. NYLife Securities Inc. and Lee B. Nole	04/04/2001
98-04162	Terrence N. Latham vs. S.D. Cohn & Co. Inc., Roger Kapsalis and Schroder Wertheim & Co. Inc.	08/23/2000
98-03685	David W. Johnston vs. Investors Associates, Inc., Herman Epstein, Lawrence J. Penna, Daniel A. Seyid, Jr., et al.	06/30/2000
99-02320	Sheldon Wolf v. Discover Brokerage Direct	03/07/2000
96-04899	Jean Ward, TTEE/Jean Ward Living Trust v. Pacific Coast Financial Securities, Eric Morandini and Don Morandini	12/31/1999
99-00695	Mihaly Gaal and Ilona Gaal vs. A.G. Edwards & Sons, Inc. and Thomas Wilkinson	12/01/1999
98-04513	Stephen R. Birch vs. James Scott Marxer and Richard Preisig and Investors Associates, Inc.	10/18/1999
97-05283	Daniel B. Turner and Beatrice B. Turner, Trustees vs. PaineWebber, Inc., and Donna Payne	08/28/1998

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**CASES CURRENTLY ASSIGNED INVOLVING PUBLIC CUSTOMERS**

<u>Case ID</u>	<u>Securities Firms and Associated Persons</u>	<u>Date Assigned</u>	<u>Role</u>
13-01301	E*Trade Securities LLC	08/08/2013	Chair
12-00772	Ameriprise Financial Services, Inc.; John Charles Koudei	09/05/2012	Chair
11-00691	Morgan Stanley	06/07/2011	Panelist
10-02578	Wedbush Securities Inc.; Dennis Rodney Dieb	09/21/2010	Panelist

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**CASES CURRENTLY ASSIGNED NOT INVOLVING PUBLIC CUSTOMERS**

<u>Case ID</u>	<u>Securities Firms and Associated Persons</u>	<u>Date Assigned</u>	<u>Role</u>
13-01022	Merrill Lynch Pierce Fenner & Smith Inc.; Derek John Greeff	07/11/2013	Chair
11-03249	Wedbush Securities Inc.; John Joseph Crespy, III	02/27/2012	Chair
10-01795	Wells Fargo Advisors, LLC; Shannon London Smith; Lin Hsieh	05/09/2012	Panelist

**ARBITRATOR BACKGROUND INFORMATION**

Since 1985, I have worked as a facilitator, management consultant, and counsel, primarily to the reinsurance industry and risk retention groups including self-insurers. I have been a partner, managing director, and principal of both J.H. Frank and Associates and proResolv Counsel, performing these functions and additional requisite administrative tasks. Previously I was Senior Vice President and General Counsel of an international reinsurer, after working and underwriting in the insurance/reinsurance field from 1971, after separating from USAF as a pilot and Operations Officer (domestic and overseas).

I have mediated over 300 corporate disputes in my career and arbitrated in excess of 150 insurance and reinsurance cases to conclusion domestically and internationally. In addition to the above, I have drafted numerous treaties and certificates used for contractual purposes within the insurance and reinsurance industries. My firm currently serves its clientele from offices in New York and California.

## Exhibit C

# ARBITRATOR RANKING FORM

**DR PORTAL USERS:** You must enter your rankings into the FINRA DR Portal by the specified deadline. (Only submit this physical Ranking Form in situations where ranking cannot be completed through the DR Portal.)

**NON-DR PORTAL USERS:** Please complete this form and ensure it is RECEIVED in the appropriate FINRA office by the specified deadline.

Case ID: [REDACTED] Case Name: [REDACTED]

List ID: 91139

**Public Chairpersons**

(maximum of 4 strikes permitted)

Arbitrator ID	Arbitrator Name	Party Ranking/Struck
A09726	W. Harness	
A09959	Linda Granata	
A17305	Deborah Jackson	
A32545	John O'Neill	
A35332	Bruce Bennett	
A15096	John Yeoman	
A32047	Harry Mason	
A31060	Mollie Neal	
A32578	Robert Dean	
A04042	Joel Arogeti	

**Public Arbitrators**

(maximum of 4 strikes permitted)

Arbitrator ID	Arbitrator Name	Party Ranking/Struck
A17441	Ronelle Genser	
A31949	James Hoover	
A57842	Brandt Ross	
A34305	Joel Greenberg	
A12899	Lita Menkin	
A02743	Gene Carasick	
A57607	Fred Pinckney	
A15884	Gary Leshaw	
A33359	William Moxley	
A30578	John Mattingly	

**Non-Public Arbitrators**

(maximum of 10 strikes permitted)

Arbitrator ID	Arbitrator Name	Party Ranking/Struck
A56288	Julieta Smith	
A57421	Joel Beck	
A12314	Daniel Kolber	
A32161	Franklin McIntyre	
A17053	Milton West	
A34931	Bonnie Revoner	
A34701	Scott Marcus	
A13767	Michael Stern	
A57630	David Sinyard	
A57545	Robert Koven	

Limited strikes are permitted for each group of Arbitrators. Please refer to the Code of Arbitration Procedure or the cover letter that accompanied the Arbitrator Ranking Sheet for specific instructions.

Claimant/Respondent: \_\_\_\_\_ Submitted By: \_\_\_\_\_

on behalf of: \_\_\_\_\_ Signed \_\_\_\_\_

## Exhibit D



### Oath of Arbitrator

The Oath of Arbitrator is executed by every arbitrator and returned to FINRA Dispute Resolution before the arbitrator makes any decision or attends a hearing. As part of the Oath, you are required to review three documents: the Temporary and Permanent Arbitrator Disqualification Criteria; the Arbitrator Disclosure Checklist; and your Arbitrator Disclosure Report.

### FINRA Dispute Resolution

In the Matter of the Arbitration Between

Case Number:

vs. Claimant(s)

Respondent(s)

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Having been selected as an arbitrator to consider the matter in controversy between the above-captioned parties:

I affirm my duty under the AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes to keep confidential all matters relating to the above-referenced arbitration proceeding and decision, including but not limited to any information, documents, evidence, or testimony presented. My duty is continuous and does not cease at the conclusion of the arbitration or upon my withdrawal as an arbitrator.

I affirm that I am not an employer of, employed by, or related by blood or marriage to any of the parties or witnesses whose names have been disclosed to me; that I have no direct or indirect interest in this matter; I know of no existing or past financial, business, professional, family or social relationship which would impair me from performing my duties; and that I will decide the controversy in a fair manner and render a just award.

I have carefully read, reviewed, and considered FINRA Dispute Resolution's Temporary and Permanent Arbitrator Disqualification Criteria. I affirm that, based on the criteria, I am not temporarily or permanently disqualified from being a FINRA arbitrator.

I have reviewed and completed the *Arbitrator Disclosure Checklist* enclosed, and certify that (check one):

I have nothing to disclose.

I made disclosures on the *Arbitrator Disclosure Checklist*.

I have carefully read, reviewed, and considered my *Arbitrator Disclosure Report* and certify that (check one):

I have nothing additional to disclose. My *Arbitrator Disclosure Report* is accurate, current, and up to date.

I have noted changes or corrections on the Report.

I understand that I am an independent contractor, not an employee of FINRA. I am not eligible to receive any unemployment benefits or any FINRA employee benefits.

---

Arbitrator's Signature

Sign personally by entering your name and initials, preceded and followed by the forward slash symbol (/) (e.g., /Jane Q. Public jqp/)

---

Date

08/20/2014

Case Number:

Arbitrator Name:

#### ARBITRATOR DISCLOSURE CHECKLIST

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The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination is a continuing duty. The duty requires an arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise or are recalled or discovered.

The Arbitrator Disclosure Checklist is sent to the arbitrators as part of the Oath of Arbitrator. It not only provides a reminder to the arbitrators to consider all possible disclosures, but also requires a complete explanation of any possible conflict to the parties.

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The questions on the Checklist are intended to help you comply with the disclosure requirements as stated in FINRA Rule 12405 of the Customer Code and Rule 13405 of the Industry Code (collectively referred to as Codes). These rules require arbitrators to disclose:

1. any direct or indirect financial or personal interest in the outcome of the arbitration;
2. any existing or past financial, business, professional, family, social, or other relationships or circumstances with any party, any party's representative, or anyone who the arbitrator is told may be a witness in the proceeding, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias;
3. any such relationship or circumstances involving members of the arbitrator's family or the arbitrator's current employers, partners, or business associates; and
4. any existing or past service as a mediator for any of the parties in the case for which the arbitrator was selected.

Please indicate your response to each of the questions listed below by checking the appropriate box. *Please check "yes" or "no" to each question.* Provide a **full explanation** to any question(s) to which you provided a "yes" response. All affirmative responses and explanations will be sent with the entire Checklist to the parties.

When completing the Checklist, it is essential to make a reasonable and good faith effort to determine whether you have any relationships with the parties and/or attorneys in the dispute and to make any necessary disclosures. In addition to relationships, it is advisable to disclose any life experience that may raise any doubt about your ability to be impartial. ***Any doubts should be resolved in favor of making the disclosure.***

**I. Personal Disclosures**

In this series of questions, we are seeking information about your personal and/or professional relationships with any of the parties, counsel, or arbitrators in this arbitration, no matter how remote the relationship might seem.

1. Have you had any professional, social, or other relationships or interactions with counsel for any of the parties in this arbitration or their law firms?  
Yes                      No                      Already on Disclosure Report
  
2. Have you had any professional, social, or other relationships or interactions with any of the parties or their employers in the arbitration?  
Yes                      No                      Already on Disclosure Report
  
3. Have you had any professional, social, or other relationships or interactions with any relative of any of the parties or counsel in the arbitration?  
Yes                      No                      Already on Disclosure Report
  
4. Have you had any professional, social, or other relationships or interactions with any of the other arbitrators assigned to the arbitration?  
Yes                      No                      Already on Disclosure Report
  
5. Are you presently serving as an arbitrator in another proceeding involving any of the parties or counsel in this arbitration or their employers?  
Yes                      No                      Already on Disclosure Report

**II. Financial Disclosures**

In this series of questions, we are seeking information about any financial relationships you may have/had with any of the parties in this arbitration or their related entities. We are also seeking any facts related to your financial circumstances that may affect a party's perception of impartiality.

1. Have you, your spouse, or an immediate family member<sup>1</sup> maintained a securities account (including accounts such as a 529 education savings plan), whether individually,

<sup>1</sup>As defined in Rules 12100(u)(8) and 13100(u)(8) of the Codes, an immediate family member is:

- A. a person's parent, stepparent, child, or stepchild;
- B. a member of a person's household;
- C. an individual to whom a person provides financial support of more than 50 percent of the individual's annual income; or
- D. a person who is claimed as a dependent for federal income tax purposes.

jointly or beneficially, with any broker-dealer<sup>2</sup> named in the arbitration? Or with any broker-dealer affiliated with the firm or firms named in the arbitration?

Yes                       No                       Already on Disclosure Report

2. Do you, your spouse, or an immediate family member currently have a non-securities related account (e.g., checking or savings accounts or loans) with a party to this arbitration or with an entity that is affiliated with that party? For example, in recent years some banks have acquired broker-dealers and may be the parent of the broker-dealer firm that is a party in this case.

Yes                       No                       Already on Disclosure Report

3. Have you ever declared personal bankruptcy?

Yes                       No                       Already on Disclosure Report

4. Have you ever been a principal of a company that has declared bankruptcy?

Yes                       No                       Already on Disclosure Report

5. Do you have any unsatisfied judgments, liens against you, or has any lender instituted foreclosure proceedings involving you or a property owned in whole or in part by you directly or indirectly?

Yes                       No                       Already on Disclosure Report

### III. Subject Matter Disclosures

In this series of questions, we are seeking information about any experience (specific or general) you may have/had with the subject matter of the arbitration.

1. Have you formed an opinion, positive or negative, about any of the parties, their counsel or the subject matter of the arbitration?

Yes                       No                       Already on Disclosure Report

---

To the extent you have knowledge, please also consider the employment, financial, and other interests of your in-laws (mother, father, son, and daughter) when answering questions on this form referring to family members. You are not required to seek out the information about your in-laws in responding to this form.

<sup>2</sup> A broker-dealer is a person or company that is in the business of buying and selling securities—stocks, bonds, mutual funds, and certain other investment products—on behalf of its customers (as broker), for its own account (as dealer), or both. Individuals who work for broker-dealers—the sales personnel whom most people call brokers—are technically known as registered representatives.

2. Have you, your spouse, or an immediate family member invested in or held any of the securities that are the subject of the arbitration?
- Yes                       No                                       Already on Disclosure Report
3. To the extent you have knowledge, has a close social acquaintance or business associate invested in or held any of the securities that are the subject of the arbitration?
- Yes                       No                                       Already on Disclosure Report
- 4.
- A. Have you, your spouse, or an immediate family member been involved in a dispute involving the same or similar subject matter as the arbitration?
- Yes                       No                                       Already on Disclosure Report
- B. Did the dispute assert any of the same allegations or causes of action as the assigned arbitration, even if the dispute was not securities-related?
- Yes                       No                                       Already on Disclosure Report
- 5.
- A. To the extent you have knowledge, has a close social acquaintance or business associate been involved in a dispute involving the same or similar subject matter as the arbitration?
- Yes                       No                                       Already on Disclosure Report
- B. Did the dispute assert any of the same allegations or causes of action as the assigned arbitration, even if the dispute was not securities-related?
- Yes                       No                                       Already on Disclosure Report

**IV. Arbitrator Classification Disclosures**

In this series of questions, we are seeking any facts or circumstances that may affect your proper classification as either a public or non-public arbitrator.

1. Are you, or were you in the past two calendar years, an investment adviser?
- Yes                       No                                       Already on Disclosure Report
2. Are you, or were you in the past two calendar years, associated with, including registered through, a mutual fund or hedge fund?
- Yes                       No                                       Already on Disclosure Report
3. Are you, or were you in the past two calendar years, employed by, or the spouse or an immediate family member of a person who is employed by, an entity that directly or

indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business?

Yes                       No                       Already on Disclosure Report

4. Are you, or were you in the past two calendar years, a director or officer of, or the spouse or an immediate family member of a person who is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business?

Yes                       No                       Already on Disclosure Report

5. Has your spouse or an immediate family member been employed by a broker-dealer? If you answered "yes," please provide the dates of employment in your explanation.

Yes                       No                       Already on Disclosure Report

**Questions 6 – 7 are for Non-Public Arbitrators only:**

6. If you are classified as a non-public arbitrator and are no longer engaged in the securities business, have you been out of the securities business for five years or more?

Yes                       No                       Already on Disclosure Report

7. If you answered "yes" to question 6, are you receiving continuing benefits (e.g., pension, health care, office space, administrative services, etc.) from any of your former industry employers?

Yes                       No                       Already on Disclosure Report

**Questions 8 – 10 are for Public Arbitrators only:**

8. Are you a retired professional who derives non-monetary benefits (e.g., office space, administrative services, etc.) from a former employer/firm that meets the criteria set forth in Questions 6 and 7 above?

Yes                       No                       Already on Disclosure Report

9.

A. Are you an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in either year of the past two years from any persons or entities listed in Rule 12100(p)(1)-(4) or 13100(p)(1)-(4)?<sup>3</sup>

Yes                       No                                       Already on Disclosure Report

B. If you are no longer associated with a firm that derived 10 percent or more of its annual revenue in either year of the past two calendar years from clients listed in Rule 12100(p)(1)-(4) or 13100(p)(1)-(4), in what year did you leave your firm?

Yes                       No                                       Already on Disclosure Report  
If applicable, please provide the year: \_\_\_\_\_

10.

A. Are you an attorney, accountant, or other professional whose firm derived \$50,000 or more in annual revenue in either year of the past two years from professional services rendered to any persons or entities listed in Rule 12100(p)(1) or 13100(p)(1)<sup>4</sup> of the Codes relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees?

Yes                       No                                       Already on Disclosure Report

B. If you are no longer associated with a firm that derived \$50,000 or more in annual revenue in either year of the past two calendar years from clients listed in Rule 12100(p)(1) or 13100(p)(1), in what year did you leave your firm?

Yes                       No                                       Already on Disclosure Report  
If applicable, please provide the year: \_\_\_\_\_

<sup>3</sup> Rules 12100(p)(1)-(4) and 13100(p)(1)-(4) define "non-public arbitrator" as a person who is otherwise qualified to serve as an arbitrator and:

- (1) is, or within the past five years, was:
  - A. associated with, including registered through, a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);
  - B. registered under the Commodity Exchange Act;
  - C. a member of a commodities exchange or a registered futures association;
  - D. or associated with a person or firm registered under the Commodity Exchange Act.
- (2) is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph (p)(1);
- (3) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in paragraph (p)(1); or
- (4) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

<sup>4</sup> See definition in footnote 3.

**V. Legal Disclosures Related to the Parties in the Arbitration**

In this series of questions, we are seeking information about any legal involvement you may have/had with any of the parties or counsel in this arbitration.

1. Do you presently represent any person or entity in a matter involving any of the parties or counsel to the arbitration?  
 Yes                       No                       Already on Disclosure Report
  
2. Have you represented any person or entity in a matter involving any of the parties or counsel to the arbitration?  
 Yes                       No                       Already on Disclosure Report
  
3. Have you ever been retained, as an expert or otherwise, to assist any party or counsel in another proceeding involving any of the parties or counsel to the arbitration?  
 Yes                       No                       Already on Disclosure Report
  
4. Have you been involved in a proceeding in which any of the named parties gave testimony?  
 Yes                       No                       Already on Disclosure Report

**VI. Legal and Regulatory Disclosures Related to the Securities Industry**

In this series of questions, you must disclose all relevant complaints, lawsuits, or arbitration claims, even if they were later expunged from the Central Registration Depository (CRD)<sup>5</sup> system.

1. Do you, your spouse, or an immediate family member presently represent a broker-dealer or a registered representative?  
 Yes                       No                       Already on Disclosure Report
  
2. Do you, your spouse, or an immediate family member presently represent an investor in any securities-related dispute?  
 Yes                       No                       Already on Disclosure Report

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<sup>5</sup> CRD is an automated, electronic web-based system, which FINRA uses to maintain the qualification, employment and disclosure histories of member firms' registered securities employees.

3. Have you, your spouse, or an immediate family member ever represented a broker-dealer or registered representative?
- Yes                       No                       Already on Disclosure Report
4. Have you, your spouse, or an immediate family member ever represented an investor in a securities-related dispute?
- Yes                       No                       Already on Disclosure Report
5. Have you, your spouse, or an immediate family member ever named a broker-dealer or registered representative, or been named by a broker-dealer or registered representative in any securities-related dispute?
- Yes                       No                       Already on Disclosure Report
6. To the extent you have knowledge, have any of your relatives, other than your spouse or an immediate family member, named a broker-dealer or registered representative, or been named by a broker-dealer or registered representative, in any securities-related dispute?
- Yes                       No                       Already on Disclosure Report
7. Have you ever been named as a party by an investor in any securities-related dispute?
- Yes                       No                       Already on Disclosure Report
8. Has your alleged misconduct been an issue in any litigation, arbitration, criminal action, administrative proceedings, etc. (other than a proceeding in which you served as an arbitrator), even if you were not a named party to the proceeding? For example, if your conduct as a registered representative or manager was an issue in a case, but only the broker-dealer was named as a party, your response should be "yes."
- Yes                       No                       Already on Disclosure Report
9. Do you have any disclosures on your record with the CRD system that are not reflected on your Disclosure Report?
- Yes                       No                       Already on Disclosure Report
10. If you answered "yes" to questions 5, 6, 7, or 8, was the information expunged from the CRD system pursuant to FINRA Rule 2080?
- Yes                       No                       Already on Disclosure Report

**VII. Professional Organizations and License Disclosures**

In this series of questions, we are seeking information about any professional memberships and/or licenses you may have/had, whether or not they are securities-related.

1. Are you a member of any securities-related organization (e.g., Securities Industry and Financial Markets Association) or organization of attorneys who represent investors against broker-dealers (e.g., Public Investors Arbitration Bar Association)?

Yes                       No                                       Already on Disclosure Report

2. Are you a member of any professional organization that is not listed on your Disclosure Report?

Yes                       No                                       Already on Disclosure Report

3. Do you hold any professional licenses (e.g., in law, accounting, securities, etc.) that are not disclosed on your Disclosure Report?

Yes                       No                                       Already on Disclosure Report

4. Have any of your professional licenses lapsed (i.e., are not current)?

Yes                       No                                       Already on Disclosure Report

5. Has any professional entity or body with licensing authority cited you for malpractice; denied, suspended, barred, or revoked your registration or license (e.g., insurance, real estate, securities, legal, medical, etc.); or restricted your activities in any way?

Yes                       No                                       Already on Disclosure Report

**VIII. Other Disclosures**

1. Have you been published in any medium (e.g., magazine articles, journals, blogs, Twitter feeds, etc.)?

Yes                       No                                       Already on Disclosure Report







**ARBITRATOR DISQUALIFICATION CRITERIA  
TEMPORARY**

Criteria	National Arbitration & Mediation Committee Position
Pending Actions	Arbitrator is the subject of or is a party to a pending investment-related civil action or arbitration claim initiated by a customer; or, civil action or administrative complaint initiated by a regulatory body; or, a civil action or regulatory complaint alleging discrimination or sexual harassment. This provision excludes cases where the arbitrator's conduct in his or her role as an arbitrator is at issue.
Subject of Claims or complaints	Arbitrator is the subject of or is a party to three (3) or more claims or complaints (reportable on Form U-4) within the last ten (10) years regardless of outcome.
Filed a statement of claim or complaint	Arbitrator is a party (excluding representatives and unnamed parties to class actions) that has filed two or more investment related civil actions or arbitration claims within the last ten (10) years.
Final decisions, awards,	Arbitrator is the subject of or is a party to a final, adverse investment-related court decision or arbitration award of \$25,000 or more within the past seven (7) years resulting from a customer-initiated complaint or claim.
Final regulatory action	Arbitrator is the subject of or is a party to any final adverse decision issued by any regulatory authority within the past seven (7) years, where the adverse decision does not involve a technical violation or does not give rise to a statutory disqualification.
Director of Arbitration's judgment	The Director of Arbitration may temporarily remove an arbitrator, if, in his or her sole judgment, it is determined that the arbitrator is not otherwise properly included in the list of eligible neutrals.
Footnote	Temporary Disqualification will result in temporary declination as to new applicants and a status of "inactive" as to already-enrolled arbitrators.

**ARBITRATOR DISQUALIFICATION CRITERIA  
PERMANENT**

<b>Criteria</b>	<b>National Arbitration &amp; Mediation Committee Position</b>
Preamble	If an arbitrator answers in the affirmative to any questions contained in Question 15 of the Arbitrator Application form, the arbitrator's explanation for the affirmative answer will be closely reviewed by the Director. If the affirmative answer does not constitute a statutory disqualification, the explanation for the answer will be disclosed to the parties unless the information is non regulatory or does not reflect negatively on the individual's character and is not significant to an individual's performance as a neutral.
Misstatement/omission	Misstatement or failure to disclose material information in the Arbitrator profile.
Disciplinary actions	Final, adverse disciplinary action by any domestic or foreign regulatory or governing professional body on a finding of, including but not limited to, false statement or omissions, material violation of investment-related regulation or the violation of a non-technical rule of such organizations or statute.
Misdemeanors	Misdemeanor conviction involving investments, investment-related activities.
Felonies	Felony conviction or plea of guilty or nolo contendere ("no contest") to a felony charge.
Fraud	Final adverse court decisions where there has been a finding of fraud.
Statutory disqualifications	Statutory disqualifications not included above.
Decisions, awards, involving discrimination/sexual Harassment	Arbitrator is the subject of, or is a party to, a final, adverse regulatory decision or court decision or arbitration award involving any discrimination claims, including sexual harassment, in which the arbitrator was found to have engaged directly in sexual harassment or discrimination.
Director of Arbitration's judgment	The Director of Arbitration, upon the approval of the National Arbitration & Mediation Committee may remove an arbitrator if in his or her judgment the arbitrator is not otherwise properly included in the list of eligible neutrals.
Footnote	Permanent disqualification means the application of any new applicant will be rejected and enrolled neutrals will be removed from the pool without possibility of reconsideration.

# Exhibit E

## DECLARATION OF AKSHAY R. RAO

1. I have been retained by the Public Investors Arbitration Bar Association (PIABA) as a consultant to review the Financial Industry Regulatory Authority's (FINRA) arbitrator disclosure process and to evaluate whether process is effective at eliciting disclosures that may affect or appear to affect the arbitrator's ability to be impartial and the parties' belief that the arbitrator will be able to render a fair decision, the disclosure standard stated in FINRA's Arbitrator's Guide.

2. Based on my review of FINRA's arbitrator disclosure process, it is my opinion that the process is illusory and especially harms claimant public investors because the system is not designed to elicit meaningful or timely disclosures about actual or potential conflicts of interest and/or biases. FINRA's flawed arbitrator disclosure process provides respondent broker-dealers with an unfair advantage over public investors in securities arbitration disputes in part, because broker-dealers are repeat participants in securities arbitration proceedings and therefore have more information about arbitrators in the pool, due to experience.

3. Prior to providing the reasoning for the conclusion presented in 2) above, I first summarize my qualifications for offering this opinion.

a. I hold the General Mills Chair in Marketing at the University of Minnesota's Carlson School of Management, where I hold tenure. I have also served as Chair of the Department of Marketing and Logistics Management, the founding Director of the Institute for Research in Marketing, as well as Coordinator of the Department's Ph. D. program, at the Carlson School. In addition to my position at Minnesota, I have held appointments at M. I. T.'s Sloan School of Management, and at the Hong Kong University of Science & Technology.

b. I have an undergraduate (Honors) degree in Economics from Madras University (India), a graduate degree in Business Management from Xavier Institute (India), and a Doctoral Degree in Marketing from Virginia Tech.

c. I teach or have taught doctoral level seminars on Marketing Theory, and on Judgment & Decision Making, graduate level MBA electives in Pricing Strategy, Product Policy, Sales Management, and Buyer Behavior, as well as Executive Education programs on Pricing Strategy, Brand Management and Marketing Strategy.

d. I have conducted and published research on a range of marketing topics including Pricing, Brand Management, Channels of Distribution, Consumer Behavior and Information Processing. My original scholarly research has appeared in a variety of leading journals including the *Harvard Business Review*, the *Journal of Brand Management*, the *Journal of Business*, the *Journal of Consumer Research*, the *Journal of Marketing*, the *Journal of Marketing Research*, *Marketing Science*, *Organizational Behavior and Human Decision Processes*, *Sloan Management Review*, and other journals. My research on slotting allowances has been presented at the U. S. Department of Agriculture as well as to the Federal Trade Commission. In addition, I have experience in designing and conducting surveys.

e. I have served as the President of the policy board for the *Journal of Consumer Research*, serve as an Associate Editor for the *Journal of Marketing Research*, on the editorial review boards of the *Journal of Consumer Psychology* and the *Journal of Consumer Research*, and have served on the editorial review board of the *Journal of Marketing*. I was Co-Chair of the American Marketing Association's Doctoral Consortium (2003) and the Association for Consumer Research Conference (2004).

f. I have been the recipient of several awards for outstanding research and teaching. My views are frequently solicited by local and national media in print, radio and television, including *The Wall Street Journal*, the MacNeil/Lehrer News Hour on PBS, and CNN. A copy of my curriculum vita is attached as an Exhibit.

g. I also have served as a consultant to numerous organizations on matters pertaining to pricing, branding, sales management, and buyer behavior. My clients include Abbott Laboratories, US West (now known as Qwest), the Carlson Companies, Discover Card, McQuay International, and the Nutra Sweet Company, among others. In addition, I have provided expert testimony in legal matters.

4. My reasoning for the conclusions offered in 2) above are provided below:

A. FINRA's Arbitrator Application Fails To Elicit Meaningful and Reliable Information Related to Actual or Potential Conflicts of Interest and/or Biases.

FINRA's process for eliciting information about conflicts and biases from arbitrators begins with the FINRA Arbitrator Application.<sup>1</sup>

a. *Definitional Issues*

A key requirement in competent questionnaire design is to assure that respondents understand terminology embedded in the questionnaire, validly and reliably. That is, the respondents' understanding of the terms and language used in the questionnaire ought to be consistent with the intent of the questioner (to assure validity) and all respondents should interpret the terms in similar if not identical fashion (to assure reliability). In many instances, it is singularly unclear if these criteria are met in the FINRA application. Consider:

- a. Q. 11: In a section entitled *Educational History*, FINRA asks respondents about accreditation. It may be unclear to the respondent whether or not the program or the School/University s/he attended is indeed accredited. It is further unclear who the accrediting agency ought to be. For instance, in the case of Business schools, the default accrediting agency is the AACSB. Is this the accrediting agency to which this question refers? How about Law schools? Or Medical schools? Further, accreditation is an ongoing process. Sometimes schools and programs lose their accreditation and subsequently recover it. What if the program or school did not have accreditation at the time the respondent attended, but received it

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<sup>1</sup> See FINRA'S Arbitrator Application, Ex. B. to Appendix.

subsequently? Since the question does not provide temporal specificity, the respondent might very well choose to answer as if the program or school had accreditation when s/he attended, even if it did not have accreditation at that point, but has been subsequently accredited. In short, the question is vague.

- b. Q. 13 (d): Question 13 is a set of questions that are used by FINRA to classify arbitrators as public or non-public. In Question 13(d), FINRA employs the word “substantial” in the question, “Have you spent a substantial part of your career engaged in business activities listed in paragraph (a) above?”

Substantial is an imprecise term, subject to interpretation. Most important, it is subject to different interpretations – some might infer substantial to mean a “majority”, some a “plurality”, others might think in percentage terms and employ a 75% threshold or higher, and so on. As a consequence, responses to this question are unreliable due to “within subject variance” (a term of art in marketing research).

In this context, incorrect answers to Question 13 may cause FINRA to misclassify arbitrators by placing arbitrators who, for example, should be in the non-public pool into the public pool. The same concern applies to Q. 14. b).

- c. Q. 13 (h): This is another question used by FINRA to classify arbitrators as public or non-public. The question in full reads: “Are you an attorney, accountant, professional whose firm derives 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (a) through (c).”

It would be virtually impossible for an employee of an organization who is not involved with extremely detailed accounting information, to hazard even an educated guess with respect to the sources of revenue that a firm receives. To be able to parse whether a percentage of revenue comes from a particular sector of the economy is not a reasonable expectation. The same concern applies to item i).

Once again, just like Question 13(d) discussed above, the subjective variances in the responses to Question 13(h) and (i) are unreliable and may cause FINRA to misclassify arbitrators and for example, wrongly place attorneys in the public pool when they should be classified as non-public.

- d. Q. 18: This set of questions is entitled *Conflicts/Disclosures*. This entire section is greatly problematic because the term “conflict” is never defined. The best information the respondent has with respect to the meaning of the term is the examples provided. Notice that the examples are largely if not exclusively related to real or potential financial conflicts of interest as a source of bias on the part of the arbitrator. It is essential that the questionnaire provide the respondent a

definition of the term about which the respondent is being queried, lest there be a misinterpretation on the part of the respondent (a validity concern) or different interpretations on the part of different respondents (a reliability concern).

b. *Scope Issues*

In general, the issue of conflict is, to my understanding, related to actual and potential for bias. FINRA's application wrongly restricts the type of questions primarily to those that relate to economic conflicts of interest even though the underlying drivers of bias are not restricted to economic conflicts of interest.

Conflicts due to economic interest in the outcome of litigation and/or arbitration is a real and genuine concern, and I do not wish to minimize its importance. I think it is desirable that such conflicts, whether real or potential, be revealed to and by all parties engaged in a dispute.

However, the questions related to economic conflicts of interest appear to only provide information about arbitrator applicants who may end up being classified as non-public arbitrators. There are very few, if any questions that probe into conflicts of interest and biases for public arbitrators. As a result, parties receive less information about conflicts of interest and bias from public arbitrators than they might receive about non-public arbitrators.

In addition, a potential arbitrator, however, may be biased against women, men, immigrants, ethnic minorities, people with a different sexual orientation, older people, younger people, poor people, rich people, and the like. There are innumerable sources of bias that are not accounted for and cannot be accounted for in any standard questionnaire.

c. *Eliciting bias*

There is a considerable literature in Psychology and Marketing that speaks to whether agents have veridical access to their own thoughts. It is quite clear, based on this and related literature that people are unaware of their biases, at least to the extent they can report on those biases in self-reports in response to questionnaires. In fact the literature in Psychology and neuroscience shows how obvious biases exist unbeknownst to the respondent (Nisbett and Wilson 1977), and when they are revealed to the respondent, are corrected for by the respondent (Schwarz and Clore 1983). As Professor V. S. Ramachandran, a distinguished neuroscientist observes in his recent book "A person's verbal response is likely to be inauthentic. It may be contaminated by other areas of the brain" (p. 215).

d. *Length of Application and Timing Issues*

The length of the application and timing of the questions also increase the likelihood that arbitrators completing the application will not fully disclose

conflicts and biases. FINRA acknowledges at the beginning of FINRA's arbitrator application that completing the application process is grueling, which could constitute a barrier to entry for an individual interested in becoming an arbitrator. Furthermore, applicants do not know whether they will ultimately be accepted to FINRA's arbitrator pool and are not informed at the time of completion that the application is the primary way that FINRA obtains information related to actual or perceived conflicts of the arbitrators. All of these factors increase the likelihood that applicants will not fully disclose conflicts and biases.

**2. FINRA's Arbitrator Disclosure Process Prior To Appointment To Arbitration Fails To Provide Parties With Meaningful and Reliable Information Related to Actual or Potential Conflicts of Interest and/or Biases.**

To assist the parties in selecting arbitration panels, FINRA provides parties with Arbitrator Disclosure Reports to rank and strike the lists of potential arbitrators. The information on the Arbitrator Disclosure Report is derived from the answers in the FINRA Arbitrator Application and is presented only in summary format.

Parties to FINRA arbitrations are not entitled to review the arbitrator applications when selecting arbitrators, which further limits disclosure of information to the parties participating in an arbitration. FINRA also excludes some information contained in the application from disclosure reports. For example and importantly, the answers to question 13 of the FINRA Arbitrator Application, which speaks to disclosure of economic conflicts of interests, are not provided to the parties.

FINRA requires arbitrators to disclose "any relationship, experience and background information that may affect—or even appear to affect—the arbitrator's ability to be impartial and the parties' belief that the arbitrator will be able to render a fair decision."

However, by relying on self-reporting, the FINRA's rules on conflict and bias disclosure are rendered virtually meaningless. As discussed above, research determined long ago that people cannot accurately assess the nature and the level of their own bias. As a result, FINRA's practice of relying of self-reporting causes arbitrators to fail to disclose meaningful and reliable information about conflicts and bias.

Also, FINRA does not have a formal *voir dire* process before selecting the arbitration. FINRA's Code of Arbitration permits parties to request additional information from the arbitrators before the deadline to rank and strike the arbitrator lists. However, the rule does not require arbitrators to answer the questions at all or under oath. The lack of a meaningful *voir dire* process further

contributes to the parties not having full and complete disclosures about conflicts of interest and biases.

**3. FINRA’s Arbitrator Disclosure Process That Occurs After Arbitrators Are Appointed To Arbitration Panels Fails To Provide Parties With Meaningful and Reliable Information Related to Actual or Potential Conflicts of Interest and/or Biases.**

After FINRA appoints arbitrators to a panel based on the parties’ ranking and striking forms, FINRA requires each arbitrator on the panel to complete the FINRA Oath of Arbitrator and accompanying questions that relate to conflicts/biases. In large part, the questions are very similar to those contained in the Arbitrator Application. The questions contained in the FINRA Oath of Arbitrator fail to elicit meaningful and reliable information for the same reasons described above related to the problems with FINRA’s Arbitrator Application.

Furthermore, the timing of these questions (i.e. post-appointment) make it very likely that the arbitrators will represent to the parties that any additional disclosure will not impact their ability to be impartial even if such disclosure does or will impact that ability.

In addition, parties seeking to remove of an arbitrator based on conflicts of interests and/or biases risk antagonizing an arbitrator that whom they are seeking to remove. This discourages parties from challenging arbitrators and as a result, it could provide an additional disincentive for arbitrators to disclose conflicts and biases.

**4. FINRA’s Arbitrator Disclosure Process Provides FINRA Member Firms With An Advantage Over Public Investors.**

As discussed above, FINRA’s arbitrator disclosure process fails to provide parties with meaningful and reliable information about actual or potential conflicts of interest and/or biases. FINRA’s flawed arbitrator disclosure process provides respondent broker-dealers with an unfair advantage over public investors in securities arbitration disputes in part, because broker-dealers are repeat participants in securities arbitration proceedings and therefore have more information about arbitrators in the pool, due to experience.

5. References

Nisbett, Richard E. and Timothy DeCamp Wilson (1977), “Telling More Than We Can Know: Verbal Reports on Mental Processes,” *Psychological Review*, 84 (3), 231- 259.

Swarcz, Norbert and Gerald Clore (1983), "Mood, Misattribution, and judgments of well-being: Informative and directive functions of affective states," *Journal of Personality and Social Psychology*, 45, 512-523.

Ramachandran, V. S. (2011), *The Tell-Tale Brain: A Neuroscientist's Quest for What Makes Us Human*: W. W. Norton & Co., New York, London.

6. Exhibit (CV)

**AKSHAY R. RAO**  
(July 2014)

**PERSONAL DATA**

Address: 8132 Telegraph Road, Bloomington MN 55438

Phone: (952) 941-5447 (H)  
(612) 624-8049 (W)  
(612) 624-8804 (Fax)  
(952) 484 9653 (Cell)

E-mail Address: arao@umn.edu

**EDUCATION**

Doctor of Virginia Tech, 1986

Philosophy:

Major Field: Marketing

Minor Field: Statistics

Dissertation: "The Impact of Product Familiarity on the Price-Perceived Quality Relationship." Kent B. Monroe, Advisor.

Master of Xavier Labour Relations Institute,

Business Jamshedpur, India, 1980

Administration:

Major Field: Marketing

Minor Field: Finance

Bachelor of Arts: Loyola College, University of Madras, India, 1978  
Major Field: Economics (Honors), University-wide 2<sup>nd</sup> rank  
Minor Fields: Mathematics, Statistics

## **HONORS**

Haring Sheth Distinguished Scholar, Indiana University, Kelley School of Business, 2013.

Distinguished Alumnus, 2011, XLRI School of Business & Human Resources.

Curtis Cup winner for Outstanding Teaching in the Carlson Executive MBA Program, Carlson School of Management 2012.

Faculty, ACR Doctoral Consortium, 2008, 2009, 2012, 2013.

Annual Faculty Research Award, 2008, Carlson School of Management

Faculty Presenter, AMA Doctoral Consortium, 1993, 2002, 2004, 2014.

Co-chair, Association for Consumer Research Conference, Portland OR, 2004.

Faculty Co-chair, AMA Doctoral Consortium, 2003.

Finalist, MBA teacher of the year, 2001.

Co-winner of the Harold H. Maynard Award for the paper published in the *Journal of Marketing* that contributed most significantly to Marketing Theory and Thought, 2000.

Undergraduate Teaching Honor Roll, Carlson School of Management, 1992.

Co-winner of the Tenth Annual Robert Ferber Award for Consumer Research for the best interdisciplinary article on consumer behavior based on a recent doctoral dissertation, co-sponsored by the Association for Consumer Research and the *Journal of Consumer Research*, 1987.

Honorable mention in the Annual Dissertation Proposal Award competition held by the Marketing Science Institute, Cambridge, MA, 1985.

Outstanding Teaching Award, Carlson School of Management, 1993.

Outstanding Faculty, *Business Week Guide to the Best Business Schools*, 4th ed., 5th ed.

## **WORK EXPERIENCE**

## **Academic**

General Mills Chair in Marketing, 2008 – present.

Visiting Professor, Hong Kong University of Science & Technology, 2007-2008.

Chairman, Department of Marketing & Logistics Management, Carlson School of Management, University of Minnesota, 2003-2006.

Director, Institute for Research in Marketing, Carlson School of Management, University of Minnesota 2005-2010.

General Mills Professor of Marketing, Carlson School of Management, University of Minnesota, 2002-2008.

Visiting Associate Professor, Hong Kong University of Science & Technology, 2000-2001.

Associate Professor, Carlson School of Management, University of Minnesota, 1994.

Ph.D. Program Coordinator, Marketing, Carlson School of Management, University of Minnesota, 1997-2000.

Director, Center for Research in Marketing, Carlson School of Management, University of Minnesota, 1993 - 1996.

Visiting Associate Professor, Sloan School of Management, Massachusetts Institute of Technology, September 1993 - May 1994.

Assistant Professor, Carlson School of Management, University of Minnesota, 1986.

Instructor, Virginia Tech, 1984.

Research Assistant, Virginia Tech, 1983.

## **Industry**

Regional Manager (West), Indian Communications Network, a subsidiary of HCL India, 1982-1983.

Product Manager, Indian Communications Network, a subsidiary of HCL India, 1981-1982.

Area Sales Manager, Indian Communications Network, a subsidiary of HCL India, 1980-1981.

## **COURSES TAUGHT**

Introductory Marketing Management (graduate and undergraduate)

Product and Price Policy (undergraduate and graduate)

Sales Management (undergraduate and graduate)

Marketing Operations Management (undergraduate)  
ProSeminar - Pricing (Ph.D.)  
Marketing Theory (Ph.D.)  
Behavioral Decision Theory (Ph. D.)  
Marketing Communications (graduate)  
Consumer Behavior (graduate and undergraduate)  
Pricing Strategy (graduate and Executive Programs)  
Branding (Executive Programs)  
Marketing Strategy (graduate and Executive Programs)

## **RESEARCH**

### **Principal Interests**

Marketing Management: Behavioral and information economics perspectives on Pricing strategy, Brand management, Channels, and Product strategy.

Consumer Behavior: Information processing, behavioral decision theory, political persuasion, cognitive neuroscience.

### **Publications**

#### **Volumes**

Menon, Geeta and Akshay R. Rao (eds.) (2005), Advances in Consumer Research, Volume 32, Association for Consumer Research, Duluth MN.

#### **Journal Publications**

Ng, Sharon, Hakkyun Kim and Akshay R. Rao (2015), "Sins of Omission and Sins of Commission: The Impact of Implicit Theories of Agency on Brand Switching Intention Across Cultures," forthcoming, *Journal of Consumer Psychology*, January.

Rao, Akshay R., Amna Kirmani, and Haipeng (Allan) Chen, (2013), "All Signals are not created Equal: Managers' Choice of Signal under Information Asymmetry in competitive markets," *Review of Marketing Research*, 10, 115-151.

- Hedgcock, William M., Kathleen D. Vohs and Akshay R. Rao (2013), "Reducing self-control depletion through enhanced sensitivity to implementation: Evidence from fMRI and behavioral studies," *Journal of Consumer Psychology*, 22, 486-495.
- Haipeng (Allan) Chen, Howard Marmorstein, Michael Tsiros and Akshay R. Rao (2012), "When More is Less: Base Value Neglect and Consumer Preferences for Changes in Price and Quantity," *Journal of Marketing*, 76 (July), 64-77.
- Brett Gordon, Mitchell Lovett, Ron Shachar, Kevin Arceneaux, Sridhar Moorthy, Michael Peress, Akshay R. Rao, Subrata Sen, David Soberman and Oleg Urminsky (2012), "Marketing and Politics: Models, Behavior, and Policy Implications," *Marketing Letters*, 23, 391-403.
- Kim, Jungkeun, Raghunath Singh Rao, Kyeongheui Kim and Akshay R. Rao (2011), "More or Less: A Model and Empirical Evidence on Preferences for Under and Over-Payment in Trade-in Transactions," *Journal of Marketing Research*, 48 (February), 157-171.
- Hedgcock, William, Akshay R. Rao and Haipeng (Allan) Chen (2009), "Could Ralph Nader's entrance and exit have helped Al Gore? The impact of decoy dynamics on consumer choice," *Journal of Marketing Research*, 46 (June), 330-343.
- Kim, Hakkyun, Akshay R. Rao and Angela Y. Lee (2009), "It's Time to Vote: The effect of Matching Message Orientation and Temporal Frame on Political Persuasion," *Journal of Consumer Research*, 35 (April), 877-888. **Lead article.**
- Hedgcock, William and Akshay R. Rao (2009a), "Trade-off Aversion as an Explanation for the Attraction Effect: A functional Magnetic Resonance Imaging Study," *Journal of Marketing Research*, 46 (February), 1-13. **Lead article.**
- Hedgcock, William and Akshay R. Rao (2009b) "Aristotle's Anxiety: Choosing Among Methods to Study Choice," *Journal of Marketing Research*, 46 (February), 20-24.
- Chen, Haipeng (Allan) and Akshay R. Rao (2007), "When Two and Two is Not Equal to Four: Errors in Processing Multiple Percentage Changes," *Journal of Consumer Research*, 34 (October), 327-340.
- Monga, Ashwani and Akshay R. Rao (2006), "Domain Based Asymmetry in Expectations of the Future," *Organizational Behavior and Human Decision Processes*, 100 (May), 35-46.
- Rao, Akshay R. (2005), "The Quality of Price as a Quality Cue," *Journal of Marketing Research*, 42 (November) 401-405.
- Chen, Haipeng, Sharon Ng and Akshay R. Rao (2005), "Cultural differences in consumer impatience," *Journal of Marketing Research*, 42 (August) 291-301.

Rao, Akshay R. and Humaira Mahi (2003), "The Price of Launching a New Product: Empirical Evidence on Factors Affecting the Relative Magnitude of Slotting Allowances," *Marketing Science*, (Volume 22, No. 2, Spring), 246-268.

Chen, Haipeng and Akshay R. Rao (2002), "Close Encounters of Two kinds: False alarms and Dashed hopes," *Marketing Science*, (Volume 21, No. 2, Spring), 160-177.

Kirmani, Amna and Akshay R. Rao (2000), "No Pain, No Gain: A Critical Review of the Literature on Signaling Unobservable Product Quality," *Journal of Marketing* (April), 66-79.

**Maynard Award winning paper**, featured in Bolton, McAlister and Rizley (2006), *Essential Readings in Marketing*, Marketing Science Institute, Cambridge, MA.

Rao, Akshay R., Mark E. Bergen and Scott Davis (2000), "How to Fight a Price War," *Harvard Business Review*, (March/April), 107-120.  
Reprinted in *Harvard Business Review on Marketing* (2002), 41-68.

Rao, Akshay R., Lu Qu and Robert W. Ruekert (1999), "Signaling Unobservable Quality through a Brand Ally," *Journal of Marketing Research* 36 (2), 258-268.

Rao, Akshay R. and Kent B. Monroe (1996), "Causes and Consequences of Price Premiums," *Journal of Business*, (October) 511-536.

Dutta, Shantanu, Mark E. Bergen, George John, and Akshay Rao (1995), "Variations in the Contractual Terms of Cooperative Advertising Contracts: An Empirical Investigation," *Marketing Letters*, 6 (1), 15-22.

Rao, Akshay R. and Robert W. Ruekert (1994), "Brand Alliances as Signals of Product Quality," *Sloan Management Review*, (Fall), 87 - 97.

Rao, Akshay R. and Mark E. Bergen (1992), "Price Premium Variations As A Consequence of Buyers' Lack of Information," *Journal of Consumer Research*, 19 (December), 412-423.

Childers, Terry L. and Akshay R. Rao (1992), "The Influence of Familial and Peer-Based Reference Groups on Consumer Decisions," *Journal of Consumer Research*, 19 (September), 198-211.

**Reprinted in *Consumer Behavior: Presentation of Selected Articles*, Economica, Joel Bree, ed., 2000.**

**Reprinted in *Consumer Behaviour*, SAGE, Margaret Hogg, ed., 2005**

Rao, Akshay R. and Wanda A. Sieben (1992), "The Effect of Prior Knowledge on Price Acceptability and the Type of Information Examined," *Journal of Consumer Research*, 19 (September), 256-270.

- Rao, Akshay R. and Kent B. Monroe (1989), "The Effect of Price, Brand Name, and Store Name on Buyers Perceptions of Product Quality: An Integrative Review," *Journal of Marketing Research*, 26 (August), 351-357.
- Rao, Akshay R. and Kent B. Monroe (1988), "The Moderating Effect of Prior Knowledge on Cue Utilization in Product Evaluations," *Journal of Consumer Research*, 15 (September), 253-264.
- Ferber Award winning paper**, featured in Bolton, McAlister and Rizley (2006), *Essential Readings in Marketing*, Marketing Science Institute, Cambridge, MA

### **Proceedings, Book Chapters, Conference Presentations, Other Publications**

- Rao, Akshay R. (2011), "Culture, Self-Regulation and Impulsive Consumption". Invited chapter for the *Handbook of Culture and Consumer Behavior*, Oxford University Press, eds. Sharon Ng and Angela Lee, forthcoming.
- Rao, Akshay R. (2010), "The Monroe Doctrine," in *Legends in Marketing*, Volume 3, SAGE, eds. Dhruv Grewal and Anne Roggeveen.
- Rao, Akshay R. (2010), "Brand Alliances," in *Brands and Brand management: Contemporary Research Perspectives*, Barbara Loken, Rohini Ahluwalia and Michael Houston, eds., Routledge, New York, 43-61.
- Rao, Akshay R. (2008), "There is a Time and Place and Person to Vote For: Issues in Political Persuasion," *Advances in Consumer Research*, (35) Angela Lee and Dilip Soman, eds., Duluth, MN: Association for Consumer Research, pp. 173-175.
- Rao, Akshay R. (2007), "Purple Reign," *Democratic Strategist*, (January). Available at <http://www.thedemocraticstrategist.org/0701/rao.php> on 1/8/07
- Hedgcock, William and Akshay R. Rao (2005), "What's on Your Mind? Neuroscientific Approaches to Studying Consumer Choice," *Advances in Consumer Research*, (33) Cornelia Pechman and Linda Price, ed., Duluth, MN: Association for Consumer Research, pp. 355.
- Rao, Akshay R. (1997), "Strategic Brand Alliances," *Journal of Brand Management*, 5 (2), 111-119.
- Rao, Akshay R. (1993), "The Price of Quality," *Pricing Strategy & Practice: An International Journal*, 1 (2), 4-15, Bradford, West Yorkshire: MCB University Press.
- Robert W. Ruckert, Akshay R. Rao, and Christophe Benavent (1994), "Alliances de Marques," *Decisions Marketing*, 1, Janvier - Avril, Association Francais du Marketing.

- Gwen R. Bachman, Deborah Roedder John and Akshay R. Rao (1993), "Children's Susceptibility to Peer Group Purchase Influence: An Exploratory Investigation," in *Advances in Consumer Research*, 20, Michael L. Rothschild and Leigh McAlister, (eds.), 463-468.
- Rao, Akshay R. and Eric M. Olson (1990), "Information Examination Patterns as a Function of Information Type and Dimension of Consumer Expertise: Some Exploratory Findings," in *Advances in Consumer Research*, 17, Gerald J. Gorn, Richard W. Pollay and Marvin E. Goldberg, (eds.), 361-366.
- Rao, Akshay R. (1989), "The Relationship Between Price and Purchase Intention: Some Preliminary Findings," *Proceedings, AMA Winter Conference*, eds. Terry L. Childers et. al., Chicago, IL 176-179.
- Monroe, Kent B., Akshay R. Rao, and Joseph D. Chapman (1987), "Toward a theory of New Product Pricing," in *Contemporary Views on Marketing Practice*, Gary L. Frazier and Jagdish N. Sheth, (eds.), Lexington, MA: D. C. Heath, 201-213.
- Bahn, Kenneth D. and Akshay R. Rao (1986), "Characterizing Market Segments for a General Aviation Airport," in *Developments in Marketing Science*, Vol. IX, May, 308-312.
- Bahn, Kenneth D., Akshay R. Rao, and Richard Werbel (1986), "Adoption of New Services - Consumer Versus Organizational Buyer Attitudes and Intentions: An Exploratory Study," in *Developments in Marketing Science*, Vol. IX, May, 313-315.

#### **Miscellaneous**

- Chen, Haipeng, Sharon Ng, and Akshay R. Rao (2004), "Cultural differences in consumer impatience," Marketing Science Institute, Cambridge, MA, working paper.
- Rao, Akshay R. and Humaira Mahi (2000), "Slotting Allowances: Empirical Evidence on Their Role in New Product Launches," The Retail Food Industry Center, Working paper 00-05, University of Minnesota, Minneapolis MN.
- Rao, Akshay R., Lu Qu and Robert W. Ruckert (1997), "Brand Alliances As Information About Product Quality", Marketing Science Institute, Cambridge, MA, working paper # 97-100, March.
- Rao, Akshay R. and Kent B. Monroe (1989), "The Effect of Price, Brand Name, and Store Name on Buyers' Perceptions of Product Quality: An Integrative Review," Marketing Science Institute, Cambridge, MA, working paper.

#### **Manuscripts under Review/Revision**

"Conditions under which 'Pay What You Want' is a profitable pricing strategy: Theory and experimental economics evidence" with Vincent Mak and Rami Zwick. Under second review at *Organizational Behavior and Human Decision Processes*.

#### **Working Papers**

"Looks good to me: how eye movements influence evaluation," with Hao Shen.

“Preference Persistence: The Impact of Decision Structure on Choice Stability,” with Jungkeun Kim.

“Abstraction Makes the Mind Grow Fonder: Ambient Mood Effects on Product Evaluations,” with Hakkyun Kim.

“Opportunity Cost Neglect in Signaling” with Amna Kirmani and Haipeng Chen.

### **Work-in-Progress**

“Cross-cultural differences in the endowment effect” with Haipeng Chen and Sharon Ng.

“Valuing Temporally Contiguous versus Distant Time” with Ashwani Monga.

“How and When Negative Advertising Works in Political Markets” with Jayoung Koo.

“Self-Construal and the preference for Nostalgia Imbued Political Ads” with Jannine Lasaleta.

### **Presentations**

“The Price of Quality and Other Stories,” Carlson School Research Lecture Series, Carlson School of Management, University of Minnesota, April, 2014.

“Continuous Provision of ‘Pay What you Want’ as a Profitable Pricing Strategy,” University of Illinois, April, 2014.

“Sins of Omission and Sins of Commission: Cross-Cultural Differences in Brand-Switching Due to Dissatisfaction Induced by Individual versus Group Action and Inaction,” University of Texas at Austin, March, 2014.

Haring Distinguished Scholar presentation, March 2013, Indiana University, Kelley School of Business.

“Finding a Job and Keeping a Job,” Society for Consumer Psychology Doctoral Consortium, Las Vegas NV, February 2012.

“Sins of Omission and Sins of Commission: Differences in Brand Switching Intentions Due to Due to Culturally Different Theories of Agency,” Association for Consumer Research Conference, St. Louis MO, October 2011.

“A Long and Winding Road: Temporal and Source Effects on the Choice to Spend versus Save,” with Paola Mallucci and Ranjan Banerji, Choice Symposium, Key Largo, FL, May 2010.

“Sins of Omission and Sins of Commission: Differences in Brand Switching Intentions Due to Prior Norm Violations,” Stellner Distinguished Speaker Series, College of Business, University of Illinois, at Urbana-Champaign, April 2010.

“More or Less: A Model and Empirical Evidence on Preferences for Under and Over-Payment in Trade-in Transactions,” at the Anderson School of Management, University of California, Riverside, May, 2009.

“More or Less: A Model and Empirical Evidence on Preferences for Under and Over-Payment in Trade-in Transactions,” at the Kellogg Graduate School of Management, Northwestern University, Evanston, April 2009.

“The Ralph Nader Effect: Decoy Disappearance and the Attraction Effect,” with William Hedgcock, poster presented at the Society for Judgment and Decision Making Conference, 2004.

“Could Ralph Nader’s exit have helped Al Gore? The impact of decoy entry and exit on consumer choice” at the University of Maryland, College Park, June 2007.

“Could Ralph Nader’s exit have helped Al Gore? The impact of decoy entry and exit on consumer choice” at the Yale Center for Consumer Insights, Yale University, New Haven CT, May 2007.

“Behavioral Aspects of Trade-Ins,” with Jungkeun Kim, Kyeong-Heui Kim and Raghunath Rao, Marketing Science Conference, Pittsburg PA, June 2006. Jungkeun Kim, presenter.

“When Two and Two is Not Equal to Four: Errors in Encoding Sequential Percentage Changes,” Distinguished Speaker Series, Leeds School of Business, University of Colorado, Boulder, April 2006.

“Why Consumers Rely on Affect in the Distant Future: Effects of Temporal Construal in Affective Situations,” Association for Consumer Research Conference, San Antonio TX, 2005. Hakkyun Kim, presenter.

“What’s on your mind? Neuroscientific Approaches to Studying Consumer Choice”, special session, Association for Consumer Research Conference, San Antonio TX, 2005.

“Examining Phantom Decoys: Paper and Pencil and fMRI studies”, with William Hedgcock, Association for Consumer Research Conference, San Antonio TX, 2005.

“Six of One, Half a Dozen of the Other: Managers’ Choice of Expenditure to Signal Unobservable Quality,” University of Illinois Pricing Camp, May 28, 2005.

“Mental Accounting of Percentages – A Reexamination,” (Allan Chen, presenter), University of Illinois Pricing Camp, May 27, 2005.

“Domain Based Asymmetry in Expectations of the Future,” University of Miami, 2005.

“Cultural differences in consumer impatience,” Marketing Department workshop, Carlson School of Management, 2004.

“Cultural differences in consumer impatience,” (Allan Chen, presenter), Society for Consumer Psychology, 2004.

“What Will The Future Bring? Subjective Assessments of Future Probabilities Based on Prior Outcomes in Different Domains” (Ashwani Monga, presenter), Society for Consumer Psychology, 2004.

“Cultural differences in consumer impatience,” Graduate School of Industrial Administration, Carnegie Mellon University, Spring 2003.

“The Price of Launching a New Product: Empirical Evidence on Factors Affecting the Relative Magnitude of Slotting Allowances,” University of Houston Seminar Series, Fall, 2002.

“Limiting the Consequences of Consumer Moral Hazard under Generous Warranty Plans” with Humaira Mahi, Marketing Science Conference, Edmonton, Alberta, 2002.

“The Future of Branding and Merchandising in the Retail Food Industry,” presented at the Future of the Food Industry Forum, University of Minnesota, June 2, 2002.

“Factors Affecting the Payment and Charging of Slotting Allowances”, Research Workshop and Conference on Marketing Competitive Conduct and Antitrust Policy  
May 2-4, 2002, University of Notre Dame.

“Empirically examining the consumer behavior underpinnings of signaling: the case of low introductory prices,” Pennsylvania State University Seminar Series, April 19, 2002.

“Recent Theoretical Developments in Pricing and Branding Research,” presented at Custom Research Inc., April 12, 2002.

“Empirically examining the consumer behavior underpinnings of signaling: the case of low introductory prices,” University of Houston Seminar Series, February 15, 2002.

“So Many Signals, So Little Time: Managers’ Choice of Signals Under Product Quality Information Asymmetry In Competitive Markets” Marketing Science Institute Conference on Competitive Responsiveness, Cambridge, MA, May 2001.

“The Price of Launching a New Product: Empirical Evidence on the Use of Slotting Allowances” with Humaira Mahi, presented at the Economic Research Service, U. S. Department of Agriculture Conference, Arlington VA, May 4-5, 2000.

“Examining Memory for Reference Price Information” presented at the University of Illinois Pricing Camp, September 26, 1997.

“Brand Alliances As Information About Product Quality” presented at the Society for Consumer Psychology Annual Conference, St. Petersburg FL, Winter 1997, and at the Association for Consumer Research Annual Conference at Denver, CO (1997).

“Information Asymmetry, Moral Hazard and Price Premiums: Implications for Pricing Strategy,” presented at the Marketing Science Institute Conference on Pricing Decision Models, April 23, 1994.

“The Price of Quality,” presented at the University of Chicago Seminar Series, December 7, 1992.

“The Role of Price Premiums in Assuring Product Quality: Public Policy Implications,” presented at a special session (“Societal and Public Policy Issues in Retail Pricing,”) at the ACR Conference at Vancouver, B. C., Canada, 1992.

“Price Premiums as a Quality Enforcement Mechanism: Empirical Evidence,” presented at the Marketing Science Conference, London, U. K., 1992.

“The Influence of Objective Price-Quality Variations on Price Acceptability, Price Predictions and Price-Quality Judgments,” presented at the AMA Winter Conference, Orlando, FL, 1991.

“The Use of the Personal Computer in Consumer Behavior Research,” presented at the ACR Conference at Honolulu, HI, 1988.

“Current Perspectives in Pricing Research,” invited presentations at the Indian Institute of Management, Bangalore, and Xavier Labour Relations Institute, Jamshedpur, India, 1988.

“Testing the Causal Relationship Between Price and Perceived Value,” presented at the ACR Conference at Boston, MA, 1987.

“The Effect of Price, Brand Name, and Store Name on Buyers’ Subjective Product Assessments: An Integrative Review.” Invited presentation at the Consumer/Buyer Behavior mini-conference sponsored by the Marketing Science Institute, Boston, MA 1987.

### Awards/Grants

#### National Science Foundation

“Essays on the Neural Basis of Consumer Choice”, doctoral dissertation grant for William Hedgcock (2006), for \$25,450, #SES-0647647

#### Marketing Science Institute, Cambridge, MA

Doctoral Dissertation Proposal Award (1985) for \$300.

“Brand Alliances As Information About Product Quality: Theory and Empirical Test” for \$8,400.

“So Many Signals, So Little Time: Managers’ Choice of Signals Under Product Quality Information Asymmetry in Competitive Markets” for \$10,100.

#### Graduate School, University of Minnesota:

Faculty Summer Research Fellowship (1987) for \$3835.

Grants-in-Aid of Research, Artistry and Scholarship (1986-87) for \$7800.

Single-quarter leave, Fall, 1989.

Single-quarter leave, 1997.

Retail Food Industry Center, (1996), \$40,305

Retail Food Industry Center (2000), \$39,578

The Food Industry Center (2002), \$13,000

Carlson School of Management:

Business and Economics Research Grant (1986-1987) for \$500.

Business and Economics Research Grant (1987-1988) for \$500.

Business and Economics Research Grant (1988-1989) for \$500.

Business and Economics Research Grant (1990-1991) for \$500.

Business and Economics Research Grant (1991-1992) for \$500.

McKnight Fellowship (1990) for \$12,106.

McKnight Fellowship (1991) for \$11,778.

McKnight Fellowship (1992) for \$13,778.

International Program Development Grant (1992) for \$1,100.

Marketing Department Grant (1993) for \$4,452.

Marketing Department Grant (1995) for \$6,888.50

McKnight Fellowship (1996) for \$8,924.

Center for Research in Marketing (1997) for \$2400.

McKnight Fellowship (1998) for \$14,092.

McKnight Fellowship (1999) for \$21,422.

McKnight Fellowship (2000) for \$11,174.

IBM Curriculum Development Grant.

Project MINNEMAC Software Development Grant.

### **Doctoral Dissertation Committees**

Linda Rochford (Marketing) -- Committee Member.  
Eric M. Olson (Marketing) -- Committee Member.  
Chae Un Lim (Marketing) -- Committee Member.  
Jikyeong Kang-Park (Home Economics) -- Committee Member.  
Kevin McDonald (Education-- in progress) -- Committee Member.  
Giana Eckhardt (Marketing) -- Committee Member.  
Humaira Mahi (Marketing) -- Chair. Placed at Michigan State University.  
Sourav Ray (Marketing) -- Committee Member.  
Haipeng Chen (Marketing) -- Chair. Initial placement: University of Miami, FL.  
Sara Ashman (Applied Economics) -- Committee Member.  
Tao Sun (Journalism) -- Committee Member.  
Ashwani Monga (Marketing) -- Committee Member.  
Sharon Ng (Marketing) -- Committee Member.  
Hakkyun Kim (Marketing) -- Chair. Initial placement: Concordia University, Montreal.  
William Hedgcock (Marketing) -- Chair. Initial placement: University of Iowa.  
Jungkeun Kim (Marketing) -- Chair.  
Hao Shen (Marketing, Hong Kong University of Science & Technology) -- Committee Member.  
Wah Sung Vincent Mak (Marketing, Hong Kong University of Science & Technology) -- Committee Member.  
Chiraag Mittal (Marketing) -- Committee Member.

### **Master's Thesis Committees**

Phyllis Makrides (Industrial Relations) -- Committee Member.  
Eun Kwak (Home Economics) -- Committee Member.

### **SERVICE**

#### **Discipline**

President, *Journal of Consumer Research* Policy Board.

Associate Editor, *Journal of Marketing Research*.

Association for Consumer Research representative to *Journal of Consumer Research* Policy Board.

Member, Editorial Review Board, *Journal of Consumer Psychology*.

Member, Editorial Review Board, *Journal of Consumer Research*.

Member, Editorial Review Board, *Journal of Marketing Research*.

Member, Editorial Review Board, *Journal of Marketing* 1997-2013.

Member, Advisory Board, *Journal of Product & Brand Management*.

Ad hoc Reviewer, *Journal of Advertising Research*.  
Ad hoc Reviewer, *Journal of Consumer Research*.  
Ad hoc Reviewer, Sloan Management Review.  
Ad hoc Reviewer, *Journal of Business and Psychology*.  
Ad hoc Reviewer, *Journal of Economics and Management Strategy*.  
Ad hoc Reviewer, *Journal of Economic Psychology*.  
Ad hoc Reviewer, *Journal of the Academy of Marketing Science*.  
Ad hoc Reviewer, *Journal of Brand Management*.  
Ad hoc Reviewer, *Journal of Business Research*.  
Ad hoc Reviewer, *Journal of Neuroscience, Psychology, and Economics*.  
Ad hoc Reviewer, *Journal of Operations Management*.  
Ad hoc Reviewer, *Marketing Letters*.  
Ad hoc Reviewer, *Marketing Science*.  
Ad hoc Reviewer, *Review of Industrial Organization*.  
Reviewer, AMA Summer Educators' Conference, 1988, 1990, 1993, 1994, 1996.  
Reviewer, ACR Conference, 1987, 1989, 1993, 1994.  
Reviewer, AMA Winter Theory Conference, 1991, 1993.  
Reviewer, AMA Doctoral Dissertation Competition, 1991, 2006.  
Reviewer, MSI Doctoral Dissertation Proposal Competition, 1996, 2005  
Arrangements Co-chair, ACR Conference 1995.  
Member, Program Committee, ACR Conference 1996, 2008.  
Member, Best Paper Selection Committee, ACR Conference, 2008.

**University of Minnesota**

Chair, *Carlson on Sustainability*, a conference sponsored by the Institute for Research in Marketing, October 20-22.

Member, School-wide Endowed Chairs Selection Committee, 2010

MBA Faculty Advisory Committee, 2008.

Elected to Faculty Consultative Committee, Carlson School, 2001-03, 2009-.

Chair, Faculty Consultative Committee, Carlson School, 2011-2012.

Subcommittee on IT Finances and Planning (Senate Committee on Information Technologies) 1998.

MBA Program Committee, 1999-2000.

Doctoral Program Coordinator, 1997-2000.

Doctoral Student Workload Committee, 1997-2000.

Recruiting Committee, Marketing Department, University of Minnesota, 1988, 1992, 1995 (Chair), 2001 (Co-Chair).

Faculty Advisor, Undergraduate Marketing Association, University of Minnesota, 1988-1993.

Ph.D. Committee, Marketing Department, University of Minnesota, 1986-1989.

Faculty Mentor, President's Distinguished Faculty Mentor Program, University of Minnesota, 1991-1993.

Faculty representative, Albert Haring Symposium, Indiana University, Bloomington IN, 1990.

Marketing Research Center Evaluation Committee, 1992.

Member, Pillsbury Student Recognition Award Selection Committee, 1992, 1993.

Member, 3M Student Recognition Award Selection Committee, 1992, 1993, 1994.

Member, Lieberman Teaching Award Selection Committee, 1993.

Presentation on Personal Selling Techniques, Delta Sigma Pi, University of Minnesota, 1992.

Presenter, LEAD Program, University of Minnesota, 1994.

Member, Committee on the Use of Student Subjects, 1994-1995.

Member, CSOM Evening MBA Program Oversight Committee, 1994-1995.

Member, Department Chair Selection Committee, Marketing and Logistics Management, CSOM, 1996.

MBA Advisor, Carlson School, 1996 - 97.

**International**

Hong Kong University of Science & Technology: Member, Departmental Promotion and Tenure Review Committee.

SKKU Business School, Sungkyunkwan University: Member, Global Research Advisory Committee.

## **Community**

Member, Citizen's Observer Program, *Star Tribune*, Minneapolis, 1992.  
Keynote Speaker, Minnesota World Trade Association Seminar on Transfer Pricing, 1994.  
Lead panelist, Business panel, KTCA TV (Public TV) Minneapolis/St. Paul, 1997.  
Finance Committees, Rybak for Mayor (2005), Kelley for Governor (2006).  
Economic Policy Advisory Committee, John Edwards for President (2007).  
Minnesota Finance Committees, Kerry for President, 2004, Obama for President (2008).  
Panelist, "Indo-US Relations," India Association of Minnesota, 2010  
Advisory Member, Growth & Justice, Minneapolis.  
Board Member, PACER Center (Parent Advocacy for Educational Rights)

## **MISCELLANEOUS**

Panelist, Public Workshop on Slotting Allowances and Other Grocery Marketing Practices, Federal Trade Commission, Washington D. C., May 31-June 1, 2000.

Participant, ACR Round Table on Brand Equity, Columbus OH 1999.

Discussant, AMA Summer Educators' Conference, "Cultural and Reference Group Insights into Consumer Behavior," Boston, MA 1993.

Discussant, AMA Summer Educators' Conference, "Perceptions of Price and Promotions," San Diego, CA, 1991.

Discussant, AMA Summer Educators' Conference, "The Effect of Promotions on Consumer Behavior," Washington, D. C., 1990.

Discussant, AMA Winter Conference, "Special Topics On Consumer Behavior," St. Petersburg, FL, 1989.

Discussant, ACR Conference, "Topics in Pricing," Boston, MA, 1987.

Presenter, PRICEX, "Assessing and Managing Customer Value", Atlanta GA, 1998

Opeds and Letters to the Editor: *Wall Street Journal*, *New Yorker*, *Star Tribune*

## **PROFESSIONAL ASSOCIATIONS**

American Marketing Association (AMA)  
Association for Consumer Research (ACR)  
Association for Psychological Science  
Institute for Operations Research and the Management Sciences (INFORMS)  
Society for Judgment & Decision Making

## **SELECTED CONSULTING CLIENTS**

3M

Abbott Laboratories (Germany)

Ambrosetti (Italy)

Anderson, Kill, Olick and Oshinsky

Briggs and Morgan

Boston Scientific (formerly SCIMED)

Carlson Companies

Constantine Cannon

Chestnut & Cambronne

Dorsey & Whitney

Farm Credit System

Jostens

Leonard, Street and Deinard

McQuay International

Medtronic

Osservatorio Asia (Italy)

Robins, Kaplan, Miller & Ciresi

Shughart Thomson & Kilroy

Tata Consultancy Services

The NutraSweet Company

Qwest (formerly US WEST)

Williams & Connolly

Winthrop & Weinstine

Zelle, Hofmann, Voelbel, Mason & Gette

## SELECTED MEDIA QUOTES & APPEARANCES

### Print

*Business Week*  
*The Economist*  
*Economic Times (India)*  
*Houston Chronicle*  
*International Herald Tribune*  
*Milano Finanza (Italy)*  
*Quotidiano Nazionale (Italy)*  
*Sacramento Bee*  
*Star Tribune*  
*St. Paul Pioneer Press*  
*New York Times*  
*Wall Street Journal*

and several others

### Radio

Minnesota Public Radio  
National Public Radio  
WCCO Radio

and several others

### Television

CNN  
KARE 11 TV  
KSTP TV  
KMSP TV  
The News Hour on PBS  
WCCO TV

and several others

### Web

Time.com  
CNN.com

## Exhibit F

## Jason Doss

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**From:** Jeff Sonn <[jsonn@sonnerez.com](mailto:jsonn@sonnerez.com)>  
**Sent:** Wednesday, June 4, 2014 9:38 AM  
**To:** Berry, Richard  
**Subject:** Re: rule 12100(p)(2) non public arbitrator

I was forced to waste a strike. That's wrong. Substantial does not mean majority. I ask that Johnson be reclassified now not later.

Sincerely

Jeff

Sent from my iPhone

On Jun 4, 2014, at 9:05 AM, "Berry, Richard" <[Richard.Berry@finra.org](mailto:Richard.Berry@finra.org)> wrote:

Hi Jeff,

Thank you for the return message. FINRA DR has consistently followed the 50% threshold for "substantial part of a career" language in the rule. As you know, rule 12408 states that the "Director may exercise discretionary authority and make any decision that is consistent with the purposes of the Code to facilitate the appointment of arbitrators and the resolution of arbitrations." As noted below, we are in the process of seeking a rule change to the arbitrator definitions that would, among other things, determine that an arbitrator who has spent any time in the securities industry could not be classified as a public arbitrator. Until the proposed rule is approved and made effective, we will maintain FINRA's longstanding 50% threshold.

I believe the case you discussed below is Case 14-00396 and the arbitrator is Alice Johnson (A16564). Our MATRICS records reflect that the deadline for list submission in that case was May 28 and that you struck Ms. Johnson from the list.

Thank you for sharing your concerns with us. I will keep you posted as the proposed arbitrator definitions rule moves forward.

Warm regards,

Rick

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**From:** Jeff Sonn [<mailto:jsonn@sonnerez.com>]  
**Sent:** Tuesday, June 03, 2014 1:34 PM  
**To:** Berry, Richard  
**Subject:** Re: rule 12100(p)(2) non public arbitrator

The rule says substantial, not majority. Finra cannot rewrite rules like that, forcing me to use a strike is wrong. Do I really have to fight with Finra like this? I don't care that the rule is being rewritten. My client's rights have been violated.

Rick I won't let this one go. Give me a new arb ranking form to rank. That's the only fair thing to do.

Sincerely

Jeff

Sent from my iPhone

On May 28, 2014, at 12:56 PM, "Berry, Richard" <[Richard.Berry@finra.org](mailto:Richard.Berry@finra.org)> wrote:

Hi Jeff,

Our Neutral Management Department uses a 50% threshold to determine whether an arbitrator has met the "substantial part of a career" standard. As you know, we are in the process of seeking a rule change to the arbitrator definitions that would, among other things, determine that an arbitrator who has spent any time in the securities industry could not be classified as a public arbitrator.

In the meantime, you will need to use a strike if you want to ensure that the arbitrator you mentioned will not serve on your case.

Let me know if you have any questions.

Best,

Rick

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**From:** Jeff Sonn [<mailto:jsonn@sonnerez.com>]

**Sent:** Wednesday, May 28, 2014 12:13 PM

**To:** Berry, Richard

**Subject:** rule 12100(p)(2) non public arbitrator

(p) Non-Public Arbitrator

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(1) is, or within the past five years, was:

(A) associated with, including registered through, a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(B) registered under the Commodity Exchange Act;

(C) a member of a commodities exchange or a registered futures association; or

(D) associated with a person or firm registered under the Commodity Exchange Act;

(2) is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph (p)(1);

If someone spent 15 years in the industry out of a total of a 39 year career, is that person

"(2) is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph (p)(1);"

I would think so. I came across a person who was classified as a public arbitrator and I think 15 years in the industry is a substantial Part of a career. What do you think? My arb ranking list is due today.

Sincerely,

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