

NINE GROUPS URGE FINRA TASK FORCE TO RELEASE DATA ON MANDATORY ARBITRATION FOR INVESTORS

WASHINGTON, D.C. – January 21, 2015 – Nine groups today urged the FINRA Dispute Resolution Task Force to improve the transparency of mandatory arbitration for investors by releasing a wide range of data not now publicly available. The joint letter is available online at <http://www.piaba.org>.

The groups included Americans for Financial Reform, the Alliance for Justice, the Center for Justice and Democracy, Consumers Union, National Consumers League, Public Citizen, the National Association of Consumer Advocates, US PIRG, and the Public Investors Arbitration Bar Association (PIABA).

The letter from the nine groups arrives one day before the FINRA Dispute Resolution Task Force is to meet in Washington, D.C.

In their joint letter, the groups wrote: “... we request that you support the release of information, including data in the form of studies and reports, that FINRA and/or the SEC have collected regarding investor awareness and understanding of predispute binding mandatory (or forced) arbitration; effectiveness of FINRA’s arbitrator selection process; prevalence of forced arbitration clauses in brokerage firm and investment advisory contracts; and other feedback that FINRA has collected from investors about any or all of these issues.”

The letter notes: “Mandatory arbitration deprives investors doing business with brokerage firms and investment advisers of the right to a judge and jury. Investors do not receive open hearings and often do not receive fair ones. In addition, the process is unlikely to result in adequate awards against brokers to deter misconduct and compensate injured investors. There is even evidence that brokers have been able to use the arbitration process to clean their records of investor complaints, as if they never occurred. Although it is intended as a substitute for public courts, FINRA’s arbitration system stunts development of critical legal policy. It also can deprive investors of the benefits of the law because arbitrators are not obligated to follow it, and written opinions are closed to the public or may not be issued at all. Meanwhile, important information about arbitrator selection and other elements of FINRA’s arbitration system remain unavailable to the public.”

The letter points out: “The Public Investor Arbitration Bar Association (PIABA), an organization of lawyers who primarily represent investors, has, during the last year, released a series of studies examining some of the structural and procedural traits of FINRA arbitration. The published data in PIABA’s reports indicates that FINRA arbitration proceedings foster secrecy of information that should be available to investors and that aspects of the system suggest partiality towards industry participants ... the studies found that most stockbrokers’ requests to remove investor complaints from their public record are granted, resulting in the omission of critical information from FINRA BrokerCheck system; that the BrokerCheck system also omits other critical information concerning prior conduct of stockbrokers and broker-dealer firms that investors need to make informed decisions; and that FINRA’s arbitrator selection process is not only secretive but it results in an arbitration roster that lacks diversity.”

Recently, PIABA went to court to compel the Securities and Exchange Commission (SEC) to release certain arbitration data under the Freedom of Information Act, but the request was denied.

In its conclusion, the joint letter outlines specific steps that FINRA can take to facilitate meaningful disclosure:

“We urge FINRA to encourage transparency and to facilitate the release of data and information as described below.

- We request that FINRA support the release of information, including data in the form of studies and reports, that FINRA and/or the SEC have collected regarding investor awareness and understanding of predispute binding mandatory (or forced) arbitration; data to support stated goals of FINRA’s arbitrator selection process; the prevalence of forced arbitration clauses in brokerage firm contracts; and other feedback that FINRA has collected from investors about any or all of these issues.
- We request the FINRA support release of any data from investigations regarding arbitration awards, in particular any data allowing comparison of cases where investors are awarded a fraction of their losses to those where investors are fully compensated for their losses.
- We request that FINRA support release of any data or analysis by the SEC or FINRA concerning arbitrators’ records, including any analysis of the percentage of cases in which individual arbitrators have found in favor of a brokerage firm over an investor or vice versa.
- We request that FINRA support release of any SEC or FINRA analysis of data on the likelihood of an investor prevailing on any particular type of claim or the likelihood of any particular arbitrator issuing an award in favor of an investor or a brokerage firm.
- We request that FINRA support release of any data or information addressing whether investor protection is less secure in the investment advisory context where the choice of arbitration providers is solely within the discretion of the investment advisers or in FINRA arbitration, the required forum for brokerage firms.”

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