PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION
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December 13, 2019

Ms. Jill M. Peterson
Assistant Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-FINRA-2019-02, Customer Claims vs. Inactive Members/Associated Persons

Dear Ms. Peterson:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international, not-for profit, voluntary bar association that consists of attorneys who represent investors in disputes with the securities industry. Since its formation in 1990, PIABA's mission has been to promote the interests of the public investor in arbitration by, among other things, seeking to protect such investors from abuses in the arbitration process and seeking to make the arbitration process as just and fair as possible. Our members and their clients have a fundamental interest in the rules promulgated by the Financial Industry Regulatory Authority ("FINRA") that govern the sales practices of brokers as well as FINRA's rules that govern the FINRA arbitration forum.

PIABA supports the amendments contemplated in SR-FINRA-2019-027 (hereinafter "the Notice") that expand options for customers in pursuing and attempting to collect money awarded to them against industry respondents in arbitration proceedings.

However, as set forth below, PIABA believes that the proposed rule changes set forth in the Notice are insufficient to remedy the longstanding problem of unpaid arbitration awards, which disproportionately involve customer claims against inactive FINRA members and associated persons.

A. Expanding Customers' Ability to Withdraw Claims Without Prejudice and Amend Claims

The proposed amendments to the Code of Arbitration Procedure for Customer Disputes ("Code") address customer claimants' rights when a member or associated person becomes inactive during a pending

arbitration- a scenario not currently addressed under the Code. The proposed amendments to the Code would require FINRA to provide notice to a claimant when a member or associated person becomes inactive. FINRA would then allow a claimant 60 days to review the claimant's litigation strategy in light of the changed circumstances and, at the customer's option, withdraw the claims with or without prejudice within 60 days of receiving notice. The amendments would also provide that a customer's claims against an inactive associated person would be ineligible for arbitration, unless the customer agrees in writing to arbitrate after the claim arises.

Effectively, these proposed changes permit claimants to elect to file claims against inactive members and associated persons in court, bypassing FINRA arbitration and potentially streamlining the process of obtaining a judgment. PIABA supports the proposed rule change, because in certain circumstances it may be more expeditious and cost effective for a customer to pursue default proceedings in state or federal courts when the named respondents are no longer FINRA members, rather than attempting to obtain an arbitration award first and then convert the award into a judgment.

The proposed rule changes also would permit a customer claimant to adjust the claimant's litigation strategy in a pending arbitration proceeding by amending Rule 12309 to permit an amendment of the Statement of Claim, including to add party respondent(s), within the 60-day period referenced above, without leave of the arbitration panel. Under the current rule, a claimant must obtain leave of the arbitration panel to file an amended a statement of claim after the arbitration panel has been appointed. Given the low net capital and lack of insurance that often characterize smaller broker-dealers, this amendment is important because it permits a customer claimant to pursue claims against potentially collectible respondents when a respondent inactive member may not have any assets from which to collect a judgment. Upon learning of a member's becoming inactive, claimants' counsel may wish to consider asserting claims against associated persons, supervisory personnel, owners or control persons.

In sum, the proposed changes to the Code setting forth customer claimant's options when members and associated persons become inactive during a pending arbitration proceeding represent a modest improvement to the *status quo* under the current Code, and PIABA supports this change.

B. Expanding Customers' Ability to Adjourn Hearings and Obtain Refunds of Filing Fees

The proposed amendments in the Notice would allow a claimant to unilaterally postpone a hearing, with no postponement fee charged by FINRA, if the claimant receives such notice within 60 days of the scheduled FINRA hearing and the customer elects to postpone. The proposed change also provides that the arbitrators would be paid their late postponement honoraria by FINRA (not the claimant), and the customer would be refunded his or her filing fee, if such a postponement is within 10 days of a scheduled hearing.

PIABA supports this proposal to have FINRA compensate the arbitrators' honoraria and refund the claimant's filing fee under these circumstances.

C. Streamlined Default Proceedings

The proposed amendments would change the default proceeding rules under Rule 12801 to clarify that a customer may request default proceedings against an associated person regardless of how long the person has been terminated. PIABA approves of this clarification. This clarification is important because, under the other rule amendments discussed herein, an associated person must be terminated for a minimum of 365 days to be considered "inactive."

PIABA notes that FINRA staff found that out of 1,328 customer cases reviewed for the period of 2014-2016, 84 cases contained instances of the associated person leaving the industry fewer than 365 days prior to the close of the arbitration and as such, the customer would not have been able to utilize the expanded options contemplated by the Notice.[1] The number of such cases decreased to 42 cases when a 180-day window was used for "inactive" status, and again to 20 cases when a 90-day window was used. PIABA believes that the change in default proceeding rules represents a modest improvement because it will permit some additional customer claimants to pursue default proceedings against inactive associated persons in circumstances in which this remedy is currently unavailable.

D. The Rule Change Does Not Solve the Problem of Unpaid Arbitration Awards

Many FINRA members operate as thinly capitalized, uninsured broker-dealer entities that distribute the bulk of their net income to shareholders or other owners and have minimal assets and little or no value other than as a going concern. If they close their doors, any judgment against these FINRA members is likely to be uncollectible. While the Notice seemingly recognizes the minor problems that arise during the pendency of a FINRA arbitration against an inactive member, it fails to address the major problem faced by victims of thinly capitalized broker-dealer firms: that judgments against them are often rendered valueless.

Thus, members that, for example, reap enormous commissions from selling unregistered products such as private placements under Regulation D, and distribute the profits to shareholders, stand ready to close their doors and thumb their noses at aggrieved customer claimants when a financial product that they have been selling turns out to be part of a fraudulent scheme.

PIABA's 2016 study of unpaid arbitration awards found that, of the FINRA arbitration awards issued to customers in year 2013 alone, one in three awards and roughly 25% of the money awarded (or nearly $1 of every $4 awarded to investors after an arbitration hearing), totaling approximately $62.1 million dollars, went unpaid.[2]

Many PIABA members' clients have expressed shock when informed that FINRA member firms are not require to, and in many cases do not, maintain insurance coverage for customer claims. It is easy to see how this failure of the industry's self-regulatory system – with its underfunded, uninsured members –

[1] FINRA Regulatory Notice 17-33, Footnote 17.
[2] "Unpaid Arbitration Awards, A Problem the Industry Created - A Problem the Industry Must Fix," by Hugh D. Berkson, Public Investors Arbitration Bar Association Report, February 2016. Access the report: https://piaba.org/sites/default/files/newsroom/2016-02/Unpaid%20Arbitration%20Awards%20-%20A%20Problem%20The%20Industry%20Created%20-%20A%20Problem%20The%20Industry%20Must%20Fix%20%28February%2025%2C%202016%29.pdf

erodes public confidence in the securities industry and the retirement savings of Main Street investors. PIABA researched and considered nearly two decades of analysis, including information from the U.S. Government Accounting Office, in an effort to find potential solutions to the problem. PIABA's conclusion was that a national investor recovery pool maintained and administered by FINRA would be the best, most equitable, and most logical solution.

PIABA urges FINRA to establish a national investor recovery pool. While PIABA supports every measure taken to address the serious unpaid award problem, we reiterate our concern that FINRA's current proposal will not address in a meaningful way the millions of dollars of in unpaid awards that make a mockery of FINRA arbitration as a means of recovering investor losses. It is critical that FINRA stop delaying and institute a real cure to the problem: a national investor recovery pool.

Respectfully submitted,

Samuel B. Edwards, President
Public Investors Advocate Bar Association