PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION
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April 15, 2020

Via email to rule-comments@sec.gov
Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **File No. SR-FINRA-2020-07**
(FINRA proposed rule change to suitability and non-cash compensation rules to clarify and conform rules to Reg BI)

Dear Mr. Fields:

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 by, among other things, seeking to protect such investors from abuses in the arbitration process, seeking to make the arbitration process as just and fair as possible, and advocating for public education related to investment fraud and industry misconduct. Our members and their clients have a fundamental interest in the rules promulgated by the Financial Industry Regulatory Authority ("FINRA") that govern the practices of brokers and broker-dealer firms.

PIABA is generally supportive of FINRA's proposed amendments to FINRA Rules 2111 (Suitability), 2310 (Direct Participation Program), 2320 (Variable Contracts of an Insurance Company), 2341 (Investment Company Securities), and 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements) and Capital Acquisition Broker ("CAB") Rule 211 (Suitability) that would: (1) make clear that these rules do not apply to recommendations that will be subject to Regulation Best Interest ("Reg BI"), (2) remove the element of control from the quantitative suitability obligation, and (3) conform these rules governing non-cash compensation to Reg BI's limitations on sales contests, sales quotas, bonuses and non-cash compensation.

PIABA supports this specific rule change because of the incremental benefit it provides to investors. On page 5, FINRA states that "compliance with Reg BI would result in compliance with Rule 2111 because a broker-dealer that meets the best interest standard would necessarily meet the suitability standard." PIABA appreciates that, despite all of Reg BI's shortcomings, FINRA is at least making clear that Reg BI is a more rigorous standard than Rule 2111. This is a small improvement.

As outlined in PIABA comment letter dated August 7, 2018, PIABA was initially encouraged by the SEC's initial Notice of Proposed Rulemaking noting that it was "in complete agreement with the premise and intent of this proposed rulemaking to heighten the standard of conduct required of brokers when they recommend securities and securities strategies to retail customers."[1] However, as rulemaking process continued throughout 2018 and into 2019, PIABA became more and more concerned before ultimately determining that Reg BI fell "far short of what investors need and deserve."[2] As outlined in PIABA's joint press release with the Consumer Federation of America, that was because:

- The standard will not actually require brokers to act in their customers' best interest.
- The standard will not prevent broker from placing their own interests ahead of customers' interests.
- The standard will apply on a transaction by transaction basis regardless of the nature of the relationship between the broker and customer.
- While theoretically an enhancement to FINRA rules, the required "point of sale" cost and conflict of interest disclosures will not provide investors with timely, usable information.
- Investment Advisers will be able to satisfy the standard through disclosure alone, allowing them to place their interests ahead of their clients' interests.
- The disclosures will be confusing and will not help investors make informed decisions.[3]

Reg BI should have gone further. Calling it "Regulation Best Interest" but not actually providing a standard that requires advisors to act in their clients' best interest is a problem because it lulls investors into a false sense of security that there is a fiduciary duty. It is ironic that PIABA is commenting on this proposed rule change at the same time that the SEC is seeking comment on a rule that would require more transparency to the names of mutual funds.

PIABA continues to be amazed that the financial services industry is still fighting a uniform fiduciary duty. Unfortunately, the industry's lobbying efforts were successful yet again and Reg BI is not the sweeping change that it was marketed to be.

Additionally, PIABA supports FINRA's efforts to "modify the quantitative suitability obligation under FINRA Rule 2111.05 (c) to remove the element of control that currently must be proved to demonstrate a violation." Control should not be required (nor should it ever have been) to show that a series of transactions were unsuitable, even if suitable while viewed in isolation. Common sense mandates that one small risky, illiquid transaction may be suitable, where a series of those same transactions is decidedly not.

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[1] *See* PIABA comment letter dated August 7, 2018 attached hereto as exhibit 1.
[2] *See* Joint Press Release of PIABA and Consumer Federal of America dated attached hereto as exhibit 2.
[3] *Id.*

Finally, PIABA supports the removal of internal sales contests of securities. Retail investors' life savings are too important to be subjected to sales goals and contests similar to the way a used car dealership might incentivize its car dealers.

To summarize, PIABA supports the clarifications regarding Reg BI's application of existing FINRA Rules but continues to highlight all of the disappointing problems and imperfections of Reg BI.

Respectfully submitted,

Samuel B. Edwards
PIABA President