



PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

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June 2, 2016

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SR-FINRA-2016-014; Proposed Rule Change Relating to National Adjudicatory Council Composition, Member Terms and Election Procedures

Dear Mr. Errett:

I write on behalf of the Public Investors Arbitration Bar Association (“PIABA”), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority (“FINRA”) to govern the conduct of securities firms and their representatives. In particular, our members and their clients have a strong interest in FINRA rules relating to the information provided to investors and those that affect the fairness of FINRA’s dispute resolution forum.

By the rule proposals enunciated in SR-FINRA-2016-014, FINRA seeks to amend the By-Laws of FINRA’s regulatory subsidiary, FINRA Regulation Inc., to, *inter alia*, expand the size of the National Adjudicatory Council (NAC) to 15 members from its current 14, with the number of Non-Industry Members exceeding Industry Members. The number of Public Members would remain the same at three. The NAC presides over disciplinary matters, and therefore has a direct effect on protecting public investors and the markets.

In the rule proposal, FINRA recounts the definition of “Non-Industry Member” from the FINRA By-Laws as:

[A]ny Public Member, an officer or employee of an issuer of securities listed on a market for which FINRA provides regulation, an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market, or any individual who would not otherwise fall within the definition of an Industry Member.

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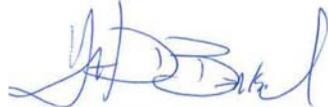
SR-FINRA-2016-014, note 12. In contrast, Public Members are defined as “having no material business relationship with a broker or dealer or a self-regulatory organization.” *Id.* Industry Members include individuals who, among other things serve as an officer, director, employee or controlling person of a broker-dealer. *Id.*

At best, whether issuers are truly separate from Industry Members is a grey area. In fact, the Securities and Exchange Commission makes clear that under certain circumstances, issuers may need to register as a broker-dealer, including “issuers that purchase their securities from investors, as well as issuers that effectively operate markers in their own securities or in securities whose features and terms can change or be altered.” *See* S.E.C. Guide to Broker-Dealer Registration (<https://www.sec.gov/divisions/marketreg/bdguide.htm>) last visited May 25, 2016. Employees of issuers may also be required to register as a broker-dealer under certain circumstances. *Id.*

PIABA is generally supportive of FINRA’s efforts to modernize the composition of the NAC, including making the majority of the NAC comprised of individuals who are not Industry Members. However, because issuers and employees of issuers may be more closely aligned with Industry Members under certain circumstances, PIABA recommends that the rule proposal require that the minimum number of Public Members increase from three to four individuals, rather than requiring an increase in Non-Industry Members.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hugh Berkson". The signature is stylized and cursive.

Hugh Berkson