

## FOR IMMEDIATE RELEASE

### **“DOUBLE WHAMMY FOR INVESTORS” : PIABA REACTS TO NEW SEC REPORT COMMISSIONED BY CONGRESS ON INJUSTICE OF RIA-FORCED ARBITRATION**

*Report Confirms PIABA’s Concerns Addressed in 2022, Finds RIA Forced Arbitration System Greatly Favors Advisors Over Wronged Investors.*

**WASHINGTON, D.C. – JUNE 29, 2023** – The much-anticipated [SEC report](#) on the forced arbitration process for registered investment advisers (RIAs) who wronged investors was released and its findings strongly echo the concerns PIABA members addressed in recent years. The nonprofit group previously has said the system harms investors and allows RIAs, who boast that they serve as their clients’ fiduciaries, to use forced arbitration provisions as a shield to avoid liability for their misconduct.

[Commissioned by Congress](#) in 2022, the SEC report covers what PIABA describes as an “untenable” system for aggrieved investors who seek restitution for improper investment practices by their RIA, which can often dissuade wronged investors from seeking compensatory damages for the breach of fiduciary duty.

Hugh Berkson, president, PIABA, said: **“While we appreciate the SEC’s attempt to address the problem of investment advisors failing to pay investors after losing their money, we find it frustrating that the SEC ran into the same problem we did: there is no source of hard data on the subject. American Investors would have benefitted if the SEC, which regulates these advisors, had stated an intent start with a requirement that those advisors report the exact same information brokers must, followed by a mandate that financial professionals carry insurance.”**

Joseph Peiffer, incoming president, PIABA, said: **“This report highlights a double whammy for American investors. After losing their hard-earned money, advisors often slip fine print into contracts that prevent investors from seeking justice. The SEC must act to put an end to this.”**

In a [January 2022 op-ed](#) published in [Financial Planning Magazine](#), PIABA leadership (Michael S. Edmiston and Christine Lazaro) highlighted the extreme injustice of a incapacitated senior suffering from a traumatic brain injury whose RIA lost most of her money as the result of improper high-risk investment strategy. The piece states, **“due to a provision in the RIA’s contract, the conservator’s (acting on behalf of the incapacitated senior) claim could only be adjudicated in a private dispute resolution forum. To file the case, the conservator would have to advance more than \$30,000 to cover the investor’s share of the anticipated forum fees.”** The article continues, **“the conservator was hesitant to proceed, knowing he would have to deposit more than \$30,000. So much of (the incapacitated senior’s) money had already been lost, he was not sure he could risk losing any more of her money on fees.”**

Unlike brokerage firms, which must designate FINRA as the arbitration forum, RIAs most commonly require clients to file arbitration claims with privately run dispute resolution forums such as the American Arbitration Association or JAMS, where arbitrators set their own fees – unlike the FINRA forum, where FINRA sets the arbitrators’ rates. According to arbitration attorneys, it is not uncommon for an AAA or JAMS arbitrator to charge \$8,000 or more for a day’s work. Arbitration costs can easily exceed \$64,000 for five days of hearings and three days of pre-hearing and post-hearing work. The costs can triple if there are three arbitrators hearing the dispute.

Under many RIA-investor agreements, the privately run forums require the expected fees to be deposited prior to the case proceeding. This means that an investor may have to deposit tens of thousands of dollars just to have their claim move forward. RIAs, knowing the forum fees are cost-prohibitive for most clients, use these types of arbitration clauses to shield themselves from liability for their misconduct.

#### **ABOUT PIABA**

Public Investors Advocate Bar Association 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. For more information, go to [www.piaba.org](http://www.piaba.org).

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**EDITOR'S NOTE:** PIABA will be hosting a zoom-based news event in mid-July to further discuss the findings of the report and provide victim testimony highlighting the injustice of the RIA-forced arbitration process.