



## PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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November 3, 2023

**Via Email Only @ [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

Ms. Vanessa Countryman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

Re: SR- FINRA– 2023–013– Proposed Rule Change to Revise and Restate the Qualifications for Representatives in Arbitrations and Mediations

Dear Ms. Countryman:

I write on behalf of the Public Investors Advocate 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 FINRA's Code of Arbitration Procedure.

PIABA encourages the Commission to approve the proposed change to FINRA Rule 12208 which, if adopted, would revise and restate the qualifications for representatives in arbitrations and mediations administered by FINRA Dispute Resolution Services. It is PIABA's long-held belief that it is in the best interests of investors to disallow compensated non-attorney representatives ("NARs") from representing customer claimants in FINRA arbitration, with limited exceptions.

The proposed change to Rule 12208 would accomplish this meritorious goal by restricting the representation of customer claimants to attorneys in good standing, law students under the supervision of an attorney through a clinical program, or non-attorneys who are not being compensated (*e.g.*, a family member or close friend).

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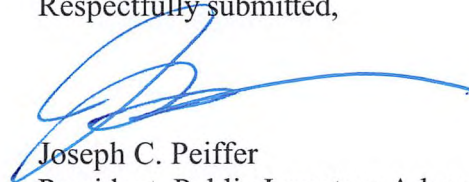
This new rule will protect customer investors from the risk of misconduct at the hands of NARs. Indeed, FINRA's Statement of Purpose highlights the dangers NARs pose, including that these NARs may be engaging in the unauthorized practice of law. SR-2023-13, pp. 6-8. FINRA notes that NARs are not bound by attorney ethical codes of conduct, which has, in part, resulted in NARs requiring customer claimants to pay large non-refundable retainers, communications with NARs not being afforded the protection of the attorney-client privilege, NARs settling cases without the customer claimant's authorization, and even NARs representing customer claimants without their consent. *Id.* Further amplifying the potential harm posed by NARs is the fact that customer claimants abused by NARs are often left with little to no recourse, as NARs customarily do not maintain malpractice insurance.

Demonstrating that these issues are neither hypothetical nor rare, FINRA notes several specific examples of recent abuses suffered by customer claimants at the hands of compensated NARs. These have resulted in both civil and criminal actions being taken against the NARs. *Id.* FINRA astutely notes that by contrast, similar issues and allegations concerning law students and non-compensated NARs have not been identified.

Moreover, research by PIABA membership indicates that claimants using NARs actually get worse results in FINRA arbitration cases than had they simply pursued the claim on their own as a pro se litigant, both losing the claims more often and getting smaller recoveries when they did succeed.<sup>1</sup> As a result, PIABA does not believe that NARs are providing value to customers, while simultaneously exposing already injured investors to numerous risks of additional harm.

In sum, PIABA agrees with FINRA that it is appropriate to disallow compensated NARs from representing parties in arbitrations and mediations in the DRS forum and encourages the Commission to approve the proposed change to FINRA Rule 12208. I want to thank you for the opportunity to comment on this important issue.

Respectfully submitted,



Joseph C. Peiffer  
President, Public Investors Advocate Bar  
Association

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<sup>1</sup> See Ryan Cook, *FINRA ARBITRATION CUSTOMER WIN-RATES: A SURVEY BY JURISDICTION*, PIABA B.J., Vol 24, No 1 (2017).