Statement of the Incoming President,

Michael S. Edmiston

This year, PIABA is celebrating its 30th Anniversary. Over the past 30 years, PIABA and its members have seen a changing landscape in securities arbitration and litigation. Shortly before PIABA formed, the US Supreme Court began upholding enforcement of arbitration agreements governing investor-broker disputes. Exchanges and SROs ran arbitration forums to hear and decide the disputes. Today, FINRA is the sole remaining forum hearing disputes between investors and brokerage firms.

PIABA and its members worked diligently to train its members, share information and experiences, educate investors, and work to reform the arbitration processes. Many forums had baked-in procedural inequities that the brokerage industry and its attorneys exploited. PIABA's work included elimination of the mandatory industry arbitrator, prohibition of spurious dispositive motions, and improving the discovery process. PIABA's work continues. Today, PIABA is working to require disclosure of the existence of any potentially applicable insurance coverage and eliminate unpaid arbitration awards.

The retail financial advice industry continues to change. There are roughly 3,400 brokerage firms doing business in the United States, but their numbers are declining. There are now more than 14,000 state and/or federally Registered Investment Advisers ("RIAs") with $110 trillion in assets under management for 61 million clients. The RIA side of the industry is rapidly growing and shows no signs of slowing. The growth is due, at least in part, to a looser set of laws and regulations and fewer regulatory resources directed at governing these entities.

When a retail investor agrees to hire an RIA, the SEC studies show the investor has little to no appreciation of the distinction between a brokerage firm and an RIA. Further, investment advisory agreements often contain clauses that mandate arbitration with forums other than FINRA. These other commercial dispute resolution forums have their own sets of rules and high fees designed to be charged to Fortune 100 firms and the law firms that represent them. Unlike in FINRA arbitration, investors have to bear the other forum fees without subsidization by the industry.

RIAs utilize these forum selection terms as a shield to investor claims. Designating high-cost forums that require each side to advance large retainers prior to any evidentiary hearing makes arbitration an impossibility for an investor who has lost all of their savings. Investors who can afford the commercial forums are still at a disadvantage. They are given little or no choice about the applicable rules, award history of arbitrators, or the number of claims the forum has decided involving the particular RIA.

PIABA is rolling up its sleeves to address these challenges just as it did in its early work regarding broker disputes. Its members are faced with learning new forum rules and working to remove procedural and organizational biases and inequities. Arbitration is a key consideration of any agreement to retain an RIA's services. Knowing what will be required in the event of a dispute is a material item of any agreement. With a fiduciary relationship, where an investor's interest is required to be placed ahead of the adviser's, the idea that arbitration can be used as a shield to resolving a dispute is abhorrent.

Arbitration has its place in the dispute resolution continuum. But for investor-RIA disputes, arbitration needs to be at the election and option of the investor, not the RIA.

Improving Form CRS Helps Investors Obtain Sufficient Information to Make an Informed Decision About Whether to do Business with a Financial Professional

The Regulation Best Interest rulemaking package introduced Form CRS, the customer-relationship summary. Both brokerage firms and federally-registered RIAs are required to provide Form CRS to their clients. Form CRS is designed to, in a short document, provide material information to a prospective customer about a firm's lines of business, operations, and conflicts. This is so that an investor can make an informed decision about whether to do business with the firm.

What information is *material* to an investor when deciding to do business with a financial professional? Material information is the kind of information that will influence a prospective client's decision to do business with a given firm. To make material information valuable to a prospective investor, it needs to be 1) accessible, and 2) comparable across firms.

Giving a prospective customer sufficient information to make an informed decision about whether to start a relationship with a financial professional is more than just discussing the type of securities or services the professional will provide, or disclosure of conflicts the professional may have.

Informed decision making requires disclosing the financial responsibility and wherewithal for the firm. For an industry preaching financial responsibility, it is reasonable and fair to expect the firm to disclose whether it has the financial ability to pay any claim, award or judgment if a dispute arises with an investor customer.

Similarly, disclosure of the existence of any arbitration clause, including the mandated forum, the forum rules, and anticipated expenses, is equally important to a customer. No one wants to have a dispute. Helping a customer to understand the consequence and expense of bringing a claim to try to resolve a dispute is reasonable, and it is material information for a customer in deciding whether to do business with a firm.

In this next year, PIABA will be working with and providing feedback to the SEC in its review of Form CRS. PIABA will be calling for the SEC to revise the form to include insurance and dispute resolution disclosures so that investors can make an informed decision about whether to become customers of a given firm.

PIABA Members Continue to Successfully Represent Investors in the Crazy-Quilt of RIA Regulation

RIAs are regulated by the Investment Advisers Act of 1940. Although the word "fiduciary" does not appear in anywhere in the Act, RIAs are held to be fiduciaries to their customers.

However, the regulation of an RIA depends on the amount of money the RIA has under management. For RIAs with less than $100 million Assets Under Management ("AUM"), the RIA is regulated by its home state law and regulations. Every state has its own set of securities laws and regulations. In essence, there are 50 different sets of rules which wildly vary from strict to laissez-faire regulation. For advisers with more than $100 million AUM, the firm is regulated by the SEC.

Whether regulated by the states or the SEC, regulatory resources are disappointingly small for the mushrooming RIA industry. From an investor protection standpoint, the small number of RIA firms routinely audited and examined each year creates an environment where fraud and customer abuses are encouraged by the absence of cops on the beat.

For PIABA members, getting a handle on the various state laws, regulations, and causes of action is paramount to successfully representing investors harmed by RIAs. PIABA's member committees conducted and continue to conduct various studies and surveys of state laws, regulation, and cases, and to publish the results in the PIABA Bar Journal, in order to share the information. This brings more transparency to the RIA space, and helps our members successfully represent investors in every forum whether a brokerage dispute, RIA dispute, or hybrid brokerage/RIA dispute.

PIABA Will Continue to Work to Fix the Issue of Unpaid Arbitration Awards in the Financial Services Industry

The financial services industry preaches financial responsibility and self-sufficiency. It embraces and sells industry services on the American ideals of freedom and independence. But an unpaid arbitration award has the opposite effect on an investor's future.

Unpaid arbitration awards remain a scourge in the industry. The rate of unpaid awards remains at about 30% of all customer awards despite FINRA's efforts to address the problem. While PIABA supports FINRA's efforts to eliminate bad actors on the front-end, none of its efforts resolve the fundamental problem: when a customer, having lost their savings, goes to a mandated arbitration forum, proves their case and obtains an arbitration award, but the bad actor never pays the award. The investor is twice harmed. More must be done to protect these investors.

Why are unpaid awards such a concern? When an investor loses money through the wrongdoing of a financial professional, the impact is significant and broad. Often, the investor is left unable to provide for themselves in retirement, notwithstanding that they took responsible steps along the way to save and prepare (as encouraged by the industry). The investor's trust in the marketplace is also damaged. The investor may not be willing to re-enter the market, knowing that they will not be protected, and thus lose the potential benefits of an appropriate investment portfolio.

With the migration of financial professionals to the RIA space, the unpaid awards issue has become more complex. The scope of the problem is masked due to many commercial arbitration forums' lack of transparency and reportable information.

Over the past eight years, PIABA issued three reports discussing the problem, defining its scope within the brokerage industry, and recommending solutions. However, more information is needed about the RIA industry.

The SEC has the authority to address many of these concerns. Under Section 921 of Dodd-Frank, Congress instructed the SEC to study mandatory arbitration and provided it with the ability to make changes to the process. In its most recent report issued in September 2021, PIABA called on the SEC to exercise its powers to study and then address the industry's unpaid award problem. In the coming year, PIABA will continue to work with and call on the SEC to study the problem, exercise its congressional grant of authority, and take steps to fix the problem of unpaid awards plaguing the securities

industry. PIABA will also continue to work with FINRA, state regulators, consumer protection advocates, and other stakeholders to address the issues impacting investors.