**PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION**
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August 15, 2018

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

Re: File No. SR-FINRA-2018-026
(Arbitrator Honoraria)

Dear Mr. Errett:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"), an international, not-for profit, voluntary bar association that consists of attorneys who represent investors in securities and commodities arbitration proceedings. Since its formation in 1990, PIABA's mission has been to promote the interests of the public investor in arbitration by, amongst 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 sales practices of brokers.

FINRA seeks comment on a proposed rule change that would amend Rules 12214 and 13214, which govern the honoraria paid to arbitrators for deciding contested motions for issuance of non-party subpoenas and orders to produce records or for appearances of witnesses. Under the current scheme, FINRA arbitrators who decide motions for orders to produce without holding a hearing session receive an honorarium of $200 per motion, whether or not the request is opposed (*i.e.,* there is no cap and arbitrators receive an honorarium for each motion decided). Yet, under the current rule 12214(d), each arbitrator who decides one or more *contested* subpoenas without a hearing session receives a one-time honorarium of $250 during the life of the arbitration case - effectively capping FINRA's payment of honoraria in connection with such motions at $750 per case. Thus, there is a cap for fees paid related to contested motions for orders to produce, when arbitrators are asked to read and consider what can be voluminous pleadings, but there is no cap when arbitrators are asked to rule upon short, uncontested pleadings.

The rule proposal would amend Rule 12214(c) to provide for a $200 honorarium for **each** contested motion for issuance of subpoenas or for orders to appear/produce decided without a hearing. The proposed change effectively removes the per-case "cap" of $250 per arbitrator for deciding subpoena motions and provides the same honorarium for deciding both motions for orders to appear or produce and motions for issuance of subpoenas. The rule proposal would also eliminate honoraria for deciding uncontested motion for orders to produce and provide an honorarium for deciding contested motions for orders to appear.

PIABA supports the proposed rule change. PIABA believes that paying arbitrators fair honoraria commensurate with the time and effort required for deciding motions tends to encourage qualified arbitrators to serve on cases and as Chair. It stands to reason that an arbitrator who decides multiple contested motions should receive more compensation than an arbitrator who decides only a single motion, or a number of uncontested motions. Further, given that motions for subpoenas and those for orders to appear/produce tend to address similar issues and involve similar scope and complexity, it is logical to compensate arbitrators equally for decisions on both types of motion.

With respect to these types of motions, PIABA suggests that FINRA clarify its guidance to arbitrators to make clear they can and should consider assessing 100% of the FINRA motion fees to parties who unsuccessfully oppose motions for subpoenas or orders to appear/produce. Otherwise, arbitrators may be naturally inclined to split all fee assessments equally between the parties, regardless of whether one party's unwarranted opposition to a meritorious motion may have caused the FINRA fees to be incurred. Assessing fees to those who file spurious opposition briefs should discourage needless and wasteful motion practice.

PIABA believes that (as is currently the case) no particular assessment of FINRA fees should be mandated by FINRA rules. Current FINRA Rule 12902(c) does not provide guidance concerning division of assessments of FINRA fees between or among the parties *inter se*, providing only that "the panel must also determine… which party or parties will pay those costs and expenses." FINRA should leave the division of fees within the sole discretion of the arbitrators but should informally advise arbitrators to consider assessing all fees to the non-prevailing party on contested discovery motions, where in the arbitrators' view the non-prevailing party's position lacked merit.

That you for the opportunity to comment on this proposed rule change.

Respectfully submitted,

Andrew Stoltmann
PIABA President