

July 24, 2014

Kevin M. O'Neill  
Deputy Secretary  
Securities and Exchange Commission  
100 F Street NE.,  
Washington, DC 20549

**RE: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator (Docket No. SR-FINRA-2014-028)**

Dear Mr. O'Neill:

The American Association for Justice (AAJ), formerly the Association of Trial Lawyers of America (ATLA), hereby submits the organization's response to the Securities and Exchange Commission's (SEC) proposed rule changes to redefine and reorganize the definitions of "non-public arbitrator" and "public arbitrator."<sup>1</sup>

AAJ, with members in the United States, Canada and abroad, is the world's largest trial bar. It was established in 1946 to safeguard victims' rights, strengthen the civil justice system, and protect access to the courts. AAJ supports the SEC's efforts to improve investors' rights within the forced arbitration process. By clarifying that individuals who worked in the financial industry are ineligible to serve as public arbitrators and by increasing the "look back" period from two to five years for attorneys, accountants, and other professionals who devote 20 percent or more of their professional work to serving industry entities, the proposed rules attempt to address some of the most obvious ingredients that can create arbitrator bias.<sup>2</sup> Significantly, if adopted, this proposed rule would, for the first time, help ensure investors can empanel arbitrators without obvious bias or past industry ties.

The proposed rule represents a meaningful step towards ensuring investors are protected from harmful forced arbitration practices. By deeming "industry insiders" ineligible from the pool of "public" arbitrators, investors are empowered to select arbitration panels comprised of individuals whose interests are removed from those of the financial securities industry. And, while AAJ strongly believes that investors should never be forced into arbitration in any context, we support any initiative that has the potential to lessen the harmful impact forced arbitration has

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<sup>1</sup> 79 Fed. Reg. 38080.

<sup>2</sup> *Id.* at 38081-2.

on investors' rights, including the current proposed rule change to mitigate inherent bias on arbitration panels. Unfortunately, however, because there is no requirement that forced arbitration decisions be made public, investors still have little hope of uncovering an arbitrator's potential bias despite the current proposed rule's clear intent.

Currently, investors are required to unknowingly sign away their legal rights in favor of forced arbitration before a dispute has arisen. Investors not only have no choice but to arbitrate their disputes, but often have limited or no ability to ever appeal an arbitrator's decision in a court of law. Additionally, forced arbitration is costly. In most cases, investors must pay filing fees and the arbitrators' costs upfront. For many, these upfront costs and ongoing fees are prohibitive and the provider is often allowed to choose the location of the forced arbitration, making it even more costly for the investor. Although the current SEC rulemaking aims to address concerns over arbitrator bias and the influence of the securities industry over forced FINRA arbitration, it cannot alone overcome the numerous other pitfalls forced arbitration presents to individual investors who bring claims before the SEC.

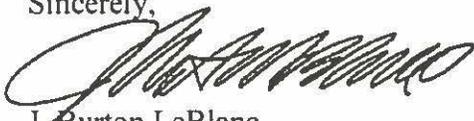
### **Conclusion**

AAJ applauds the SEC's recognition that the current forced FINRA arbitration process is in need of improvement and the proposed rules which provide greater protections for investors in the arbitrator selection process is a meaningful enhancement. However, expanding the definition of non-public arbitrator and broadening the scope of disqualifications of persons associated with the financial securities industry can alleviate some, but does not resolve all, the major obstacles facing investors who enter forced FINRA arbitration.

AAJ is also encouraged by FINRA's recent announcement of the formation of an Arbitration Task Force to consider enhancements to its forced arbitration process. By devoting time and resources to an examination of the role forced arbitration plays in resolving investor disputes, FINRA acknowledges the fact that the system of forced investor arbitration presents additional opportunities for reform to better protect investors' rights.

AAJ appreciates this opportunity to submit comments in response to the SEC's proposed rule changes to redefine and reorganize the definitions of "non-public arbitrator" and "public arbitrator. If you have any questions or comments, please contact Ivanna Yang, AAJ's Assistant Regulatory Counsel at [REDACTED].

Sincerely,



J. Burton LeBlanc  
President  
American Association for Justice