



NASAA

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July 24, 2014

Submitted electronically to rule-comments@sec.gov

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Release No. 34-72491; File Number SR-FINRA-2014-028

Dear Ms. Murphy:

On behalf of the North American Securities Administrators Association (“NASAA”),¹ I hereby submit the following comments in response to Release No. 34-72491; File Number SR-FINRA-2014-028, entitled Notice of Filing of a Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator (“Proposed Rule”).²

NASAA supports the Financial Industry Regulatory Authority’s (“FINRA”) efforts to attain greater arbitrator neutrality. Maintaining an impartial pool of arbitrators is important; any potential for bias should be mitigated wherever possible and must in all circumstances be accurately and clearly disclosed to the parties. While FINRA’s Proposed Rule addresses several of the concerns that NASAA raised in response to SR-FINRA-2013-003, it regrettably creates new challenges that stand to further prejudice the rights of investors already forced to litigate their claims in their adversary’s preferred forum.

Public Arbitrator Disqualification for Financial Industry Affiliation

NASAA will begin by highlighting its support for the positive aspects of the Proposed Rule. NASAA wholeheartedly supports FINRA’s effort to refine the definitions of “non-public” arbitrator and “public” arbitrator to provide that persons who worked in the financial industry for any duration during their careers would always be classified as non-public arbitrators. NASAA specifically suggested this change in its February 7, 2013 response to the Commission’s request

¹ NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

² SEC Release No. 34-72491; File Number SR-FINRA-2014-028, June 27, 2014, *available at* <http://www.sec.gov/rules/sro/finra/2014/34-72491.pdf>.

for comment in Release No. 34-68632.³ Therefore, NASAA concurs with the provisions of new Rule 12100(p)(1) and new Rule 12100(u)(1) and the position that there would be no exceptions to either provision.

NASAA similarly supports FINRA's proposal to remove from the public arbitrator pool individuals who represent the financial industry as a significant part of their business, as they should also be classified as non-public. NASAA also suggested this change in its February 7, 2013 response.⁴ NASAA would make the disqualification for industry affiliation permanent, however, as the same logic that applies to industry employment should apply to industry affiliation.

Public Arbitrator Disqualification for Public Investor Affiliation

NASAA will turn now to the problematic aspects of the Proposed Rule and would caution the Commission to view these provisions within the larger backdrop; namely, rules to improve a mandatory arbitration system that was created by and for the primary benefit of the securities industry. No matter how hard FINRA works to improve the system, it will always operate, or at least be perceived, as stacked against investors, given the compulsory nature of the program. Any effort to strike or dilute what few investor-friendly components exist to counterbalance the perceived inequity of the system should be highly scrutinized with a critical eye by the Commission.

With that framework in mind, NASAA urges the Commission to reject FINRA's proposal to eliminate from the public arbitrator pool professionals who represent individual investors. Attorneys, accountants, and other professionals who help retail investors recoup their losses and redress perceived wrongdoings of the industry should not be lumped in with industry representatives and classified as non-public. These individuals provide a distinctly public perspective to arbitration claims and should be allowed to serve on panels as public arbitrators, as has always been the case.

To remedy this disparity, NASAA suggests changing the language in new Rules 12100(p)(3), (u)(3), and (u)(7), as well as Rules 13100(p)(3), (u)(3), and (u)(7) to the following:

“... to representing or providing services to non-retail parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry...”

³ See letter to Elizabeth Murphy, Secretary, Securities and Exchange Commission, from A. Heath Abshire, NASAA President and Arkansas Securities Commissioner, dated February 7, 2013.

⁴ *Id.*

Permanent Disqualification

Referenced throughout the Proposed Rule is the notion that an arbitrator's status should be changed from public to non-public once the individual has obtained fifteen (15) calendar years or more of certain specified services over the course of their careers. NASAA agrees that an accumulation of affiliation and/or service to the industry would create the appearance of bias in a forum that should be free of any appearance of unfairness. NASAA would reiterate, however, its overarching view that any financial industry affiliation should disqualify an individual from being defined as a public arbitrator in the first place.

Temporary Disqualification/Cooling-Off Period

The Proposed Rule increases the time interval before which individuals who represent investors or the financial industry as a significant part of their business and are classified as non-public, could become public arbitrators. However, as noted above, NASAA does not support reclassifying persons who represent individual investors as non-public and therefore all references to cooling-off periods should not apply to such individuals.

NASAA supports the implementation of the Proposed Rule change for industry affiliates and representatives with the limitations noted herein, but realizes that the implementation may result in a decrease in the number of public arbitrators available to fulfill demand. In light of the recruiting challenges explained by FINRA in Release No. 31-72479; File No. SR-FINRA-2014-026, it appears FINRA may need to invest more effort and resources into a targeted outreach effort to attract new public arbitrators. While industry professionals have a familiarity with FINRA Dispute Resolution, the general public does not. Placing advertising in AARP magazines or AAA newsletters or presenting and/or exhibiting at the American Bar Association annual meeting may reach a much more diverse audience that could be interested in participating in the program.

Thank you for the opportunity to comment on this proposal. NASAA commends FINRA for taking steps over the years to improve the mandatory arbitration forum and process. NASAA encourages FINRA to continue in this effort to improve its arbitration forum so that investors who are required to arbitrate their disputes do so in the fairest forum possible.

Sincerely,



Andrea Seidt
NASAA President
Ohio Securities Commissioner