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September 7, 2016

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

Re: SR-FINRA-2016-030. Proposed Rule Change Relating to Motions To Dismiss in Arbitration

Dear Secretary Errett:

I write on behalf of the Public Investors Arbitration 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") relating to both investor protection and disclosure.

I thank the Commission for the opportunity to comment on the proposed amendments to FINRA Rules 12504 and 13504, amendments which address motions to dismiss in FINRA arbitration cases.

SR-FINRA-2016-030 proposes changes to FINRA Rule 12504 and 13504 by providing an additional ground for moving to dismiss a party's claim prior to the conclusion of the party's case in chief. Namely, SR-FINRA-2016-030 proposes that a motion to dismiss may be founded on the ground that **"the non-moving party previously brought a claim regarding the same dispute against the same party that was fully and finally adjudicated on the merits and memorialized in an order, judgment, award, or decision."** PIABA is wary of any expansion to the rules allowing dismissal prior to the completion of an investor's case in chief in light of previous abuse of this rule by respondents in FINRA arbitrations. Any change to these rules should be narrow and reiterate FINRA's discouragement toward the filing of such motions.

By way of background, the FINRA rules concerning pre-hearing dismissal were modified in 2009 with RN 09-07. The changes were to stop the flow of frivolous motions to dismiss that respondents in FINRA arbitrations were filing as a matter of course. FINRA found that such motions to dismiss were in an apparent effort by respondents to "delay scheduled hearings sessions on the merits, increase customers' costs, and intimidate less sophisticated customers." RN 09-07.

With the 2009 rule change, FINRA limited dismissal motions to circumstances where 1) the non-moving party previously released the claim(s) in dispute by a signed settlement agreement and/or written release, and 2) the moving party was not associated with the accounts, securities or conduct at issue. FINRA Rules 12504(a)(6) and 13504(a)(6). In addition to limiting dismissal motions to these narrow grounds, FINRA proclaimed that motions to

dismiss a claim prior to the conclusion of a party's case in chief are discouraged. FINRA Rules 12504(a)(1) and 13504(a)(1).

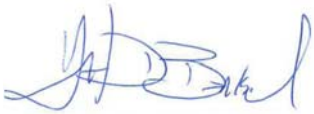
The proposal contained in SR-FINRA-2016-030 notes that FINRA's Dispute Resolution Task Force reviewed the topic of motions to dismiss in FINRA arbitration. It determined that the present rule appears to be working as intended to prevent frivolous motions to dismiss, but also reached a consensus that in instances where arbitrations involve claims previously adjudicated by a court or arbitrated by a panel, respondents should be able to seek early dismissal. The proposed change would add that one additional category, dismissal for claims previously adjudicated fully and finally on the merits, to Rules 12504(a)(6) and corresponding 13504(a)(6).

PIABA believes that a current ground for dismissal under the present rule, that "the non-moving party previously released the claim(s) in dispute by a signed settlement agreement and/or written release," and the proposed additional language are in line with the same reasoning: that a final, enforceable resolution has already been reached. However, in light of the previous abuse of dismissal rule, PIABA believes it is extremely important that FINRA continues to discourage motions to dismiss prior to the conclusion of a party's case in chief. PIABA also believes FINRA should articulate that any rule change is to be narrowly construed, and emphasize that it applies to adjudications on the merits where the non-moving parties have had a full and fair opportunity to argue their claims.

The term "same party" in the proposed new ground for dismissal also should be narrowly defined to mean just the specific party named in the previous arbitration. Without clarification, a claimant might be improperly precluded from pursuing claims against respondents not originally named in an adjudicated case. For example, presume a claimant wins an award against a brokerage firm. The firm fails to pay the award and withdraws from FINRA registration, or goes through an asset purchase agreement with another firm. Those claimants should not be precluded from pursuing claims in a separate arbitration against related but previously unnamed parties (e.g. control persons of the firm, the broker), who also have liability for the same dispute. Given the high number of unpaid arbitration awards, it is essential that claimants be able to pursue valid claims against additional respondents for a better chance at recovering their investment losses.

Finally, PIABA would like any change to the rule to stress the importance of continuing to permit the non-moving party to have a full opportunity to oppose such motion to dismiss, and to present evidence and testimony to the arbitrators on the merits of the motion prior to their decision.
Thank you for the opportunity to comment.

Sincerely,



Hugh Berkson, President
PIABA