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Associate Chief Counsel

November 22, 2016

Mr. Brent J. Fields  
Secretary

U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2016-033 – Proposed Rule Change Relating to Broadening  
Chairperson Eligibility in Arbitration; Response to Comments

Dear Mr. Fields:

This letter responds to comments submitted to the Securities and Exchange Commission (“Commission”) regarding the above-referenced filing. In this filing, FINRA is proposing to amend FINRA Rule 12400 of the Code of Arbitration Procedure for Customer Disputes and FINRA Rule 13400 of the Code of Arbitration Procedure for Industry Disputes (together, the “Codes”), to provide that an attorney arbitrator would be eligible for the chairperson roster if he or she completes chairperson training and serves as an arbitrator through award on at least one arbitration, instead of two arbitrations, administered by a self-regulatory organization in which hearings were held.<sup>1</sup>

The Commission received five comment letters in response to the proposed rule change.<sup>2</sup> All commenters supported the proposed rule change, although some commenters supported it with suggestions or other qualifications. Caruso stated that “the proposed amendments . . . would be a fair, equitable and reasonable approach that would facilitate the increased appointment of local chairpersons to arbitration panels and, at the same time, would reduce the necessity for appointment of out-of-state chairpersons.” Bakhtiari stated that “the proposed rule would significantly increase the available number of arbitrators included on the Chair roster and represents an important step towards increasing the probability of drawing local chairpersons in suburban or remote hearing locations.” PIABA stated that “the proposed rule is certainly a positive step in regards to increasing the number of arbitrators in proposed chair

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<sup>1</sup> See Securities Exchange Act Release No. 78729 (August 30, 2016), 81 FR 61288 (September 6, 2016) (File No. SR-FINRA-2016-033).

<sup>2</sup> See Letter from Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated August 31, 2016 (“Caruso”); Letter from Ryan K. Bakhtiari, Esq., Aidikoff, Uhl & Bakhtiari, dated September 9, 2016 (“Bakhtiari”); Letter from Hugh D. Berkson, Esq., President, Public Investors Arbitration Bar Association, dated September 23, 2016 (“PIABA”); Letter from Nicole Iannarone, Assistant Clinical Professor, and Geoffrey R. Hafer, Student Intern, Georgia State University College of Law, dated September 26, 2016 (“GSU”); and Letter from David T. Bellaire, Esq., Financial Services Institute, dated September 27, 2016 (“FSI”).

pools.” GSU stated that it “applaud[s] FINRA’s decision to expand the public arbitrator chair pool.” FSI stated that the proposed rule change “will enhance the fairness of FINRA’s arbitration process, as well as contribute to its efficiency and cost effectiveness.” As referenced above, two of the commenters raised concerns about the proposed rule change. FINRA addresses these concerns below.

### **Enhancing Transparency of the Arbitrator Appointment Process**

PIABA states that there should be greater transparency relating to arbitrator background and qualifications, as well as the selection process. FINRA produces background reports, including complete employment and educational histories, plus a listing of all arbitration awards, for every potential arbitrator proposed during the appointment process. When arbitrators are appointed to a case or submit an update to their disclosure report using the DR Portal, they must certify as to the accuracy of the information on their disclosure reports. FINRA is working on system changes to add a date field to the disclosure report to alert parties of the last time the arbitrator certified the accuracy of the disclosure report. To help ensure that arbitrators update their disclosure reports promptly to report material new information, FINRA reminds arbitrators on a quarterly basis to review their disclosure reports and revise them as needed.

Since January 2016, FINRA has posted on its website, a chart of the number of available arbitrators, by type, in each FINRA hearing location. FINRA has also posted the number of open cases in each FINRA hearing location.

### **Use of Out-of-Town Arbitrators and Recruitment Initiatives**

PIABA raised concerns about FINRA’s use of out-of-town arbitrators, stating that “to the extent possible, the traveling arbitrator needs to be eliminated and the size of regional pools needs to be increased.” FINRA agrees that it should increase its public arbitrator pool and has been actively recruiting new arbitrators, paying particular attention to locations with the greatest need. FINRA uses arbitrators in neighboring hearing locations to ensure an effective ratio of available arbitrators to open cases in each location, as explained on the FINRA website.<sup>3</sup> For example, in order to provide parties with a roster of arbitrators from which to choose in the growing number of San Juan, Puerto Rico cases involving the sale of Puerto Rico bond funds, FINRA asked every arbitrator from hearing locations in the Southeast region<sup>4</sup> and two hearing locations in Texas (Dallas and Houston) to serve in Puerto Rico. Separately, and as an interim measure, FINRA took steps to bolster the pool of arbitrators in smaller hearing locations that were impacted by the amended public arbitrator definition by asking public chairs from larger hearing locations that are geographically proximate if they would be willing to serve, at FINRA’s expense, in these impacted locations.

FINRA is also in the process of an aggressive arbitrator recruitment campaign that should add more public arbitrators to smaller locations in the future, although this effort will take

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<sup>3</sup> See <http://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics>. The website explains that FINRA will expand arbitrator pools in select hearing locations as case demand requires.

<sup>4</sup> The Southeast region includes: Atlanta, Baltimore, Birmingham, Boca Raton, Charlotte, Columbia, Jackson, Jacksonville, Little Rock, Miami, Memphis, Nashville, New Orleans, Norfolk, Orlando, Raleigh, Richmond, Tampa, Washington D.C., and Wilmington.

time. There were an estimated 2,932 public arbitrators after the amended public arbitrator definition became effective on June 26, 2015. Recruitment efforts since July 2015 added approximately 200 arbitrators to the public roster, thereby reaching approximately 3,132 public arbitrators to date. From the beginning of this year through November 18, FINRA has received 853 arbitrator applications, which puts FINRA on track to receive 900 applications by the end of the year.

Ongoing recruitment initiatives thus far have included more than 100 women and minority organizations nationwide to source and recruit all types of people through on-site events, targeted recruiting advertisement and direct marketing campaigns. To help maximize resources and opportunities further, FINRA hired an additional full-time national recruiter and leveraged staff in the regional offices to assist with recruitment efforts, particularly in reaching women-focused groups, LGBTQ communities and other untapped diverse organizations. In addition to targeting recruitment activities in impacted hearing locations, FINRA staff travelled to 17 recruitment events with diversity-based organizations in 2016. Recently, FINRA began using social media to recruit arbitrators and developed a short video clip to communicate its recruitment message. FINRA also revised the recruitment materials on its website to ensure a message of inclusiveness. The materials now target a broader range of industries from which FINRA welcomes arbitrator applicants. FINRA has also been focused on reducing time frames for application processing and arbitrator training.

### **Additional Chairperson Training and Mentorship**

GSU stated that additional chairperson training should accompany the proposed rule change while PIABA stated that the formation of a chairperson mentor program would help address shortages of chair-qualified arbitrators. Earlier this year, FINRA implemented a chairperson mentorship program to facilitate interaction between new chairpersons and experienced chairpersons. In November 2016, FINRA made available on its website a neutral workshop for arbitrators to view on demand, focusing on issues that chairpersons regularly encounter.<sup>5</sup> In addition, FINRA regularly reaches out to public arbitrators who would qualify to serve as a chairperson by completing chairperson training. Since August 2015, FINRA has invited 464 such arbitrators to complete chairperson training. Of these arbitrators, 126 (27 percent) completed the training and became active on the chairperson roster.

### **Simplifying the Arbitrator Application Process**

PIABA states that FINRA should simplify the arbitrator application process. FINRA is in the process of removing the Securities Disputes Experience (also known as the Skills in Controversy and Skills in Security sections) from the arbitrator application. These sections contain more than 60 potential areas of expertise that are time-consuming for the applicant to complete as well as FINRA staff to process. FINRA will instead include a section in the application that would allow applicants to explain their securities disputes expertise and skills in narrative form, thereby simplifying the arbitrator application process. FINRA plans to implement this change in 2017.

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<sup>5</sup> The video is available for viewing through the following link:  
[http://www.finra.org/arbitration-and-mediation/neutral-workshop-audio-and-video-files?utm\\_source=MM&utm\\_medium=email&utm\\_campaign=Neutral%5FVideo%5F050616%5FFINAL](http://www.finra.org/arbitration-and-mediation/neutral-workshop-audio-and-video-files?utm_source=MM&utm_medium=email&utm_campaign=Neutral%5FVideo%5F050616%5FFINAL)

## Revisiting the “Public Arbitrator” Definition

GSU states that FINRA should revisit the amendments to the public arbitrator definition in light of the diminished public chairperson roster. FINRA revisited the amendments to the arbitrator definitions and determined not to change the public arbitrator definition. It is important to forum users’ perceptions of fairness that public arbitrators have no significant affiliation to the financial industry. However, FINRA believes it should close the gap that exists between the public and non-public arbitrator definitions which is currently excluding certain otherwise qualified individuals from service as arbitrators at the forum. These individuals are disqualified from the public arbitrator roster, often because of affiliations of family members or co-workers, but they do not qualify to be classified as non-public arbitrators. In September 2016, the FINRA Board of Governors authorized FINRA to file with the SEC proposed amendments to Rules 12100 and 13100 of the Codes to revise the non-public arbitrator definition. Specifically, the amendments would provide that a non-public arbitrator is a person who is otherwise qualified to serve as an arbitrator, and is disqualified from classification as a public arbitrator. By closing this gap, FINRA would be able to expand its roster of available arbitrators.

## Conclusion

FINRA believes that the foregoing responds to the issues raised by the commenters to the rule filing and that the proposed rule change should be approved as filed. If you have any questions, please contact me at [REDACTED], email: [REDACTED].

Sincerely,

/s/ Margo A. Hassan

Margo A. Hassan  
Associate Chief Counsel