



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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July 23, 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. 34-72479, File Number SR-FINRA-2014-026

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. 34-72479, File No. SR-FINRA-2014-026 entitled Notice of Filing of a Proposed Rule Change to Amend the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes to Increase Arbitrator Honoraria and Increase Certain Arbitration Fees.² NASAA appreciates the opportunity to offer its comments on the above-referenced proposal, regarding the proposed increases to the Financial Industry Regulatory Authority’s (“FINRA”) arbitrator honoraria.

NASAA supports FINRA’s goal of increasing arbitrator honoraria, provided the costs do not greatly exceed the amount needed to maintain a robust pool of arbitrators and are not passed along to investors who are compelled to use the forum.

After a fifteen-year hiatus on applicable fees, NASAA does not question FINRA’s need to update arbitrator honoraria. FINRA’s ability to recruit high-quality arbitrators admittedly impacts all users of the FINRA dispute resolution forum. Unfortunately, the Release does not provide commenters with sufficient information to assess the reasonableness or anticipated effectiveness of the increases that FINRA proposes. For example, the Release makes passing reference to surveys and market rates that support FINRA’s claim that existing honoraria is a

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. 34-72479; File No. SR-FINRA-2014-026 (“Release”), June 26, 2014, *available at* <http://www.sec.gov/rules/sro/finra/2014/34-72479.pdf>.

barrier to recruiting³ without providing specifics or citations to the underlying data. Nowhere does the Release provide even basic information regarding the existing size or quality of FINRA's existing arbitrator pool, including relevant recruiting and retention rates.

The Release indicates FINRA ran statistical models for the four-year period from 2009 to 2012 in an effort to match anticipated revenue with expenses for purposes of setting increased rates;⁴ that information should be produced as part of the public comment file. Assuming the necessary data is provided and demonstrates that FINRA's proposal operates only to close the gap that has developed over the course of the past fifteen years, NASAA would not oppose the requested increase in honoraria.

NASAA is opposed, however, to FINRA's effort to pass along increased honoraria costs to investors that are forced into FINRA's dispute resolution forum as the result of industry mandatory pre-dispute arbitration agreements. While NASAA appreciates FINRA's efforts to mitigate the impact to smaller public users by narrowly applying the proposed increases to claims in excess of \$500,000 or an indefinite amount, investors with these "more complicated to resolve" and "time-consuming" claims⁵ might prefer pursuing their claims in court rather than paying more for FINRA arbitrators to handle the disputes. According to data compiled by the National Center for State Courts as of April 2012,⁶ state court filing fees in most jurisdictions top out at \$500, generally less than the filing fees contemplated in FINRA's proposal.

As the Commission can surely appreciate, investors with catastrophic losses as might be found in half- to multi-million dollar claims are often the least able to afford large fees. In many situations, these investors live on a fixed income after having lost their entire life savings. NASAA respectfully disagrees with FINRA that it is incumbent upon them to pay or contribute more to enhance FINRA's dispute resolution program.⁷

NASAA might have a different view if investors were given a choice of forum or if FINRA's dispute resolution process required arbitrators to award a prevailing investor their full measure of damages under the law or simply required them to follow state laws regarding the award of attorney's fees, costs and fees, and damage multipliers, but this is not the case. As the Commission is aware, FINRA arbitrators are neither trained in nor encouraged to apply the law

³ *Id.* at 3-4.

⁴ *Id.* at 11.

⁵ *Id.* at 27.

⁶ <https://www.ncsc.org/Information-and-Resources/Budget-Resource-Center/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Civil%20Filing%20Fees%20April%202012.ashx>

⁷ Release, *supra* Note 2 at 28.

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in FINRA arbitrations. This is a significant and longstanding detriment to investors utilizing the FINRA arbitration forum.

The Release does not disclose details or the manner in which FINRA solicits its arbitrator pool, but the Commission might also consider expanding FINRA's roster by revising arbitrator qualifications and by utilizing different recruiting methods of outreach. FINRA may also have greater flexibility in setting honoraria amounts by expanding its geographical presence. Extending its reach in this manner would reduce FINRA travel expense reimbursements for many participants.

NASAA appreciates the opportunity to comment on the proposed FINRA rule change. Please do not hesitate to reach out to me or NASAA's General Counsel, Joseph Brady, if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Andrea Seidt".

Andrea Seidt
NASAA President
Ohio Securities Commissioner