



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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Submitted electronically to rule-comments@sec.gov

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Release No. 34-73277, File Number SR-FINRA-2014-028

Dear Mr. Fields:

On behalf of the North American Securities Administrators Association (“NASAA”),¹ I hereby submit the following comments in response to Release No. 34-73277, File Number SR-FINRA-2014-028, entitled *Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator* filed on October 1, 2014 (“Proposed Rule”). NASAA previously submitted a comment letter regarding the Proposed Rule on July 24, 2014.² At this point, NASAA would like to reemphasize concerns in light of the inadequate response filed by the Financial Industry Regulatory Authority (“FINRA”) on September 30, 2014.

As previously stated, NASAA supports FINRA’s efforts to attain greater arbitrator neutrality. However, in its current form, the Proposed Rule causes confusion and potentially harms the investing public. At a most basic level, FINRA’s Proposed Rule seemingly misconstrues and ignores any commonsense understanding of the terms “public” and “non-public.” The SEC should not approve FINRA’s Proposed Rule in the form currently proposed.

The distinction between “public” and “non-public” arbitrators is to recognize that certain potential arbitrators possess information about the industry that is not known or meant to be known by the public, and that this information could lead to potential biases. The professionals that possess this information obtained it through their close association to industry participants—

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 Letter to Elizabeth Murphy, Secretary, Securities and Exchange Commission, from Andrea Seidt, NASAA President and Ohio Securities Commissioner, dated July 24, 2014.

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typically, through employment within the industry. By their very nature, the professionals that represent and assist investors in representing their claims against industry participants do not possess this information. In this context of potential arbitrators, the term “non-public” cannot be used to describe such professionals. The classification of a “non-public” arbitrator must necessarily be reserved only for those individuals who have knowledge of the inner workings of industry obtained from their employment in or close association to industry participants. Indeed, current application of the term “non-public” captures this understanding.

NASAA disagrees with FINRA re-classifying individuals who represent investors as “non-public.” NASAA believes that this approach is inconsistent with the very concept of a “public” arbitrator. NASAA believes any industry knowledge professionals obtain in the course of representing investors pales in comparison to the knowledge of industry professionals. Applying the term “non-public” to individuals who represent investors is an arbitrary and incorrect application that the SEC should reject.

If industry firms truly believe the classification of attorneys, who represent the investing public, as “public” arbitrators causes the forum to be unfair, NASAA calls upon firms to remove pre-dispute arbitration agreements from their account opening forms. As stated in our earlier comment, “[a]ny 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.”³ Further, NASAA reiterates “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[, because][t]hese 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.”⁴

Thank you for the opportunity to comment on this proposal. NASAA commends FINRA for taking several steps over the years to improve the arbitration forum and process, and encourages FINRA to take further action to ensure that investors who are forced into arbitration receive the fairest forum possible. This proposal, however, needs further study and revision before it would be ready for adoption.

Sincerely,



William Beatty
NASAA President
Washington Securities Administrator

³ *Id.* at 2.

⁴ *Id.*