COMMONWEALTH *financial network*®

VIA ELECTRONIC MAIL

December 15, 2017

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 17-34, Non Attorney Representatives in Arbitration

Dear Ms. Asquith:

In its Regulatory Notice 17-34, the Financial Industry Regulatory Authority, Inc. ("FINRA") solicited comments regarding the continued permission of Non-Attorney Representatives ("NAR"s) to represent clients (presumably claimants) in FINRA arbitration proceedings.

Commonwealth Financial Network® ("Commonwealth") is an independent broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 2,000 registered representatives ("RRs") who are independent contractors conducting business in all 50 states.

For the reasons set forth below, Commonwealth joins the many other individuals and firms that have already expressed concerns with FINRA continuing to allow NARs to represent clients in securities arbitration and mediation proceedings. FINRA should amend the Codes of Arbitration and Mediation Procedure to prohibit NARs and NAR firms from representing clients in securities arbitration and mediation proceedings.

Maintaining the Integrity of the System

Commonwealth shares the belief of many other commenters that certain base-line standards must be upheld in order to maintain the integrity of the arbitration forum. Requiring parties to be represented by qualified, even if not experienced, counsel, is a minimum requirement that should be enforced.

FINRA arbitration, although intended to be less formal and more streamlined than civil litigation, is nonetheless a nuanced and unique system of dispute resolution. Many of the attorneys (both claimants' and respondents') are familiar with the intricacies of the system.

Most experienced attorneys have frustrating anecdotes about the folly of dealing with pro-se opposing parties. Although a party should always maintain the right to proceed pro-se, he or she

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should not be entitled to have an unqualified third party represent him/her to the detriment of the professional decorum that should accompany every proceeding. Arbitration, after all, is a legal proceeding and should be treated as such.

Additionally, for better or for worse, many registered representatives believe the FINRA arbitration forum is already skewed in the customers' favor. Allowing NAR's to represent customers further erodes confidence in the fundamental fairness and integrity of the forum.

Accommodating the Inexperienced Party Will be Costly and Inefficient

Allowing an inexperienced and unqualified individual to represent a customer often leads to the individual "learning the ropes" at firms' expense. A panel hearing, or even a prehearing teleconference should not be treated as a legal internship for an NAR. The added time involved in arbitration due to the individual's longer learning curve causes arbitrations to veer from proceedings where everyone knows the ground rules to an inefficient exercise of fits and starts, where otherwise-unnecessary detours to explain elementary rules (either substantive, evidentiary or procedural) become the order of the day. NARs adversely affect the quality of an arbitration at the expense of the firms who are required to pay for additional sessions that would otherwise not be needed.

The unnecessary time involved in dealing with spurious arguments or generally educating an NAR leads to increased expenses for member firms. Keep in mind that the firms generally bear the brunt of the arbitration costs and legal fees as their attorneys do not work on a contingent fee basis the way claimant's representatives tend to.

The Customer's Right to Adequate Counsel

It is to everyone's benefit when the proceeding itself is run with high standards by skilled, experienced advocates. A customer without qualified counsel is clearly disadvantaged by inferior representation. Moreover, the absence of professional conduct standards, malpractice insurance and supervisory or licensing oversight causes NAR clients to proceed with an NAR at great risk.

Panels Seek to Accommodate the NAR

Arbitrations should be fair and impartial proceedings. They work best when all sides are represented by equally skilled and qualified counsel. It is not uncommon that a panel, in an effort to accommodate the inexperienced NAR, acquiesces to the unorthodox and even impermissible requests or proffers of evidence made by the NAR. This deference to inexperience has likely caused the pendulum to swing too far against member firms by making the arbitration a forum where "anything goes" rather one based on rules and precedent.

Allowing NARs to Represent Customers Lowers the Already Low Bar for Filing a Claim

Although customers should have the ability to have legitimate grievances heard in a timely and efficient manner, there should be minimum thresholds in place to ensure that the process involves only those customers pursuing genuine claims and is not abused by those who seek only to be perpetuate a perceived grievance that has no validity. The threshold to submit a claim is already a fairly easy hurdle to overcome. One of the few deterrents to frivolous claims is a customer's requirement to obtain a qualified, licensed attorney to represent him/her. Furthermore, professional attorneys have an ethical obligation to not bring frivolous claims. Permitting NARs to represent clients in these proceedings opens the door to more frivolous actions, burdening the system for not only member firms but FINRA staff as well.

The simplified arbitration procedure for smaller cases essentially already permits NARs, as neither the respondent firm nor the arbitrator knows the true identity of the drafter of the claimant's submission. Full-panel or single arbitrator hearings need not eliminate this minor barrier to entrance.

Sincerely,

Joe Tully
Assistant General Counsel