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December 18, 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,

Our firm duly submits this letter as a comment to Regulatory Notice 17-34. We are a law firm located in New York, and have experience working alongside non-attorney representatives ("NAR firms"). We believe that FINRA should allow for open representation and not restrict the use of NAR firms.

The regulatory notice correctly identifies that there is a representation gap where law firms choose not to represent investors with small claims; and where student clinics choose not represent clients above a certain income threshold or involved in a non-customer-broker dispute. NAR firms provide alternative representation to those who fall in the gap. Our experience with an NAR firm is that they provide excellent representation and deliver great results for their clients.

Transparency surrounding FINRA's dispute resolution forum is important here. The Status Report on FINRA Dispute Resolution Task Force recommended that "FINRA should adopt a policy of promoting, to the maximum extent possible, transparency about its dispute resolution forum." *See* https://www.finra.org/sites/default/files/DR_task_report_status_0 20817.pdf. FINRA arbitration should be open and impartial towards self-representation, non-compensated representation, NAR firm representation, attorney representation, and student clinic representation. Attorney representation should not be favored by FINRA so that people who engage other alternative representation, by choice or by force, obtain an unfavorable outcome in arbitration. The bias surrounding NAR firm representation affects the neutrality of the FINRA forum.

Now, to address some concerns raised in the Regulatory Notice. First, the Regulatory Notice states that no rules of professional conduct apply to NAR firms' activities. However, there are no rules of professional conduct applicable to arbitrators. Yet, FINRA has managed

to allow anyone to be an arbitrator. In fact, to be an arbitrator, "no previous arbitration, securities or legal experience is required to apply—just five years of paid work experience and two years of college-level credits." See https://www.finra.org/arbitration-and-mediation/become-finra-arbitrator. This very low bar keeps FINRA arbitration neutral to repeat players and industry insiders. Similarly, NAR firms keep arbitration open and accessible to non-industry insiders.

As the Regulatory Notice points out, "economically rational investors will likely retain the representation that provides the most benefits relative to its costs, including no representation if that is the most beneficial option." Thus, NARs who do not have insurance is simply another cost to be factored into this alternative form of representation. It it should be the investor's decision, and not FINRA's, as to whether they would benefit from the NAR firm's representation or avoid certain firms that do not have client protections for malpractice. The decision as to whether to incur additional costs should be the investors, as FINRA is a neutral and open forum.

Second, FINRA correctly points out that investors who do not have the option to use an NAR firm will incur additional costs. First, investors with small claims will be less likely to find beneficial representation. Second, the "loss of representation could result in worse arbitration outcomes." Third, the number of investors who are unaware they could seek recourse in arbitration could decline due to restrictions on the marketing by NAR firms. Repeat attorneys have clients who already know their right to recourse in arbitration. The process is more automatic for these attorneys' clients. Whereas, an investor with a small claim might just be made aware by NAR marketing of the availability of the arbitration forum for their dispute against their broker-dealers. Fourth, the quality and completeness of the information presented in arbitration could be affected.

Our firm has worked with an NAR firm on matters before FINRA. On one arbitration matter, the NAR firm represented an individual customer in is effort to recover against his broker-dealer. The NAR firm was able to assist the customer in recovering compensatory damages and hearing session fees against the respondent. The NAR firm requested the presence of counsel from our law firm because attorneys for the respondent broker-dealer were shaming the NAR firm. They were portraying to the arbitration panel that the NARs were incompetent and saying rubbish. Not only is this behavior detrimental to a valid customer complaint presented before the arbitration panel, but it also biases the panel against a customer represented by an NAR firm. Not every NAR firm can seek out a law firm to add credence to the arbitration room. This inherent bias against NAR firms distracts from and is detrimental to valid customer complaints who lose their opportunity to be heard before an unbiased, neutral arbitration panel.

On another arbitration matter, a law firm had initially rejected taking on this individual customer's case because the amount of damages initially sought were not worth its time or effort. The customer then sought representation from an NAR firm. The NAR firm was able to negotiate a settlement amount from the broker-dealer firm for a large sum. Thereby, customer was now an attractive client for the law firm, and the firm swooped in to try and represent the customer. However, the attorneys obtained the same result as the NAR firm. The law firm still billed the customer for its representation, even though they had not

achieved a different or better result. The NAR firm and the customer requested our law firm's assistance after attorneys swooped in when the monetary amount was advantageous.

FINRA should not entirely prohibit NAR firms from representing clients at the forum. If there should be restrictions at all, then the appropriate restrictions should be ones which prevent the unauthorized practice of law and to prevent fraud.

Instead, FINRA could consider providing an informative section on NAR, similar to its section on legal representation. The arbitration overview page that discusses legal representation does not provide a full account of the alternatives. *See* https://www.finra.org/arbitration-and-mediation/arbitration-overview. FINRA might consider having a full section on NAR.

Respectfully Submitted,

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