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From the Desk of Samuel B. Edwards
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December 18, 2017

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

VIA Electronic Mail
pubcom@ginra.org

RE: Regulatory Notice 17-34 Comments

Dear Ms. Asquith,

My name is Sam Edwards. I have been an attorney representing customers in NASD/FINRA arbitrations for more than 15 years. In that time, my firm and I have represented thousands of investors and been counsel in hundreds of cases all across the country. I am also a member of FINRA's National Arbitration and Mediation Committee and on the Board of Directors for PIABA, an organization that devotes itself to protecting investors in securities arbitration. As a consistent practitioner in this area, I have a strong interest in the integrity of the forum and making sure it best protects investors who have been harmed. I strongly believe that Non-Attorney Representatives ("NARs") in FINRA arbitration hurt both the integrity of the forum as well as the investors FINRA arbitration is supposed to protect.

Over the years, a number of NARs groups have been created and attempted to represent investors in securities arbitration. Sadly, those NARs have almost always been run and staffed with former registered representatives with checkered pasts within the industry or elsewhere. Essentially, these individuals – for various reasons – can no longer make their living in the securities industry and are now trying to find another way to make their money from already aggrieved investors. This is often a second wrong to investors who do not typically understand the differences and disadvantages of being represented by a non-lawyer.

There are quite a few disadvantages that unsophisticated customers would not typically understand which will occur if they hire a NAR instead of a licensed attorney. For example, attorneys and their clients are afforded privileged communications which is vital to proper representation and effective communications between counsel and clients. As a matter of law, NARs receive no such privilege, meaning all of their conversations are discoverable. Additionally, NARS are not trained in the law, meaning they cannot give "legal advice", even when such advice is badly needed. As a result, the claims NARs present necessarily will lack proper legal foundation. While such legal inadequacies may not be an issue in some cases, as one arbitrator who commented on the notice stated, it is a large issue in other

cases and with other arbitrators. Some arbitrators, many of whom are attorneys, require strict adherence to the law in order to award in favor of a customer. Those same arbitrators make similar stringent rulings, in accordance with the law, on discovery issues that could be the difference between winning and losing a case. Furthermore, arbitrators are often asked to rule on legal issues, such as statutes of limitations, which would require legal analysis that a non-lawyer is not equipped to adequately handle. Last, non-lawyers may severely risk the sustainability of awards where they are involved. Since NARs necessarily cannot present adequate legal arguments, even the awards they win (which statistics show are far less than those where the customer has actual legal representation) may not result in money for the customer. That is, since the award may not be issued on the basis of a sound legal theory, as one would not be presented by a NAR, it is far more likely to be vacated if challenged. Moreover, if a respondent seeks to vacate an award, a NAR would be legally prohibited from representing the customer in that case as it would be the clear practice of law. As a result, the client will either have to incur more expenses to hire a new attorney, since the NAR cannot protect the award, or allow it to be vacated, making it worthless. Based on the above, and many other reasons, NARs are not adequate representatives for customers and thus do not best protect the interests of investors.

NARs also undermine the integrity of the FINRA arbitration system. As discussed earlier in this letter, and backed up extensively in PIABA's recently filed analysis of NARs, NARs have been historically created by and run by former registered representatives that can no longer survive in the securities industry. While FINRA changed the rules for NARs to exclude any suspended or removed member, there are many situations where a FINRA registered representative is not actually suspended, but because of their customer complaint or regulatory history (or even criminal history), they can no longer survive in the securities business. Unfortunately, those types of former registered representatives are often the ones behind NARs. Since these NARs are unregulated, they have no obligation to disclose these checkered histories to customers, who simply become another victim. Additionally, also because they are unregulated and unmonitored, NARs historically are very aggressive marketers for customers, reaching out directly to customers and enticing them to file cases, many of which are unwarranted (something NARs know attorneys are absolutely prohibited from doing). This hurts the FINRA arbitration system's integrity as frivolous cases are filed with NARs having no concern they could be sanctioned or otherwise in peril, since there is no one who has any control over NARs. My firm has received numerous calls over the years from customers who have been directly contacted by NARs (something unethical and disallowed in most states), who aggressively pushed the customer to send the NAR a check and to file a case, even if there was not a viable case.

The one argument that is repeatedly used to justify the existence of NARs is the need for them to help handle smaller cases. This is a false argument for at least two reasons. First, there are plenty of attorneys across the nation who handle smaller cases for investors. While my own firm regularly handles eight and nine figure cases on behalf of wealthy individual clients and institutional investors, we also handle small cases for deserving customers. We believe that is the right thing to do and we know many firms who do the same thing. In addition, there are a number of Law School Clinics that handle only small cases, typically for little or no fee. There is not a real need for NARs to handle small cases that attorneys do not want. Second, NARs do not limit themselves to only helping small investors. NARs are business enterprises who seek to make as much money as possible, often at the expense of already victimized customers. To that end, NARs routinely handle cases that are large enough for any reputable law firm because the NAR wants to make as much money as possible, not just to help investors. The problem with that situation is that such large cases often require extensive legal knowledge and preparation that

the NARs are not equipped or qualified to handle. The net result is that the wrong party is representing the customer, who is not going to get a fair deal in FINRA arbitration. That ultimately undermines customer confidence in the fairness of FINRA arbitration, undermining the integrity of the forum.

I certainly realize that these comments may be seen as self-serving, given that my firm and I are, in theory, in competition with NARs. However, I can assure FINRA that my firm and I are plenty busy and in no need to discourage competition, as long as it is valid competition that will help investors. My interest in writing this comment is not financial, but truly to do what is right for investors.

Over my more than 15 years of practicing in this forum, NARs have always been an issue. Over the last few years, more and more seem to have developed and have used the growth of the internet and other technologies to become even more prolific. While there surely are a handful of ethical NARs who are really trying to do the best thing for customers and sincerely believe they are the best alternative, those are, sadly, the exception. Moreover, even if these NARs have good intentions, that does not mean they provide the best option for customers. While attorneys are not always the answer to a question and are far from perfect, in this situation, they are a far better alternative for everyone involved. The imposition of rules of conduct, ethical standards and disclosure obligations require that attorneys meet certain requirements that NARs often flaunt. Attorneys are held accountable for their actions and will suffer stiff penalties if any of their obligations are not met. NARs operate without these rules or obligations, unquestionably to the detriment of investors.

FINRA publicly says its mission is “Investor Protection” and I firmly believe this is an investor protection issue. FINRA is operating an alternative to litigation and must make sure that it is a fair and valuable alternative. Requiring that those who represent parties in arbitration be licensed attorneys, just as FINRA requires brokers to be licensed, would be in the best interest of investors.

Respectfully,

A handwritten signature in cursive script that reads "Samuel B. Edwards". The signature is written in black ink and is positioned above the printed name.

Samuel B. Edwards