

MADDOX HARGETT & CARUSO, P.C.

Representing Investors

Mark E. Maddox¹
Thomas A. Hargett²
Steven B. Caruso⁴
Thomas K. Caldwell³

80 Broad Street
Fifth Floor
New York, NY 10004
212.837.7908
212.837.7998 fax

www.investorprotection.com

Indianapolis
10150 Lantern Road
Suite 175
Fishers, IN 46037
317.598.2040
317.598.2050 fax

Via Electronic Mail (pubcom@finra.org)

June 16, 2017

Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary
Office of Corporate Secretary
FINRA
1735 K Street NW
Washington, DC 20006-1506

Re: Special Notice – Engagement Initiative

Dear Ms. Mitchell:

The purpose of this letter is to provide the Financial Industry Regulatory Authority (FINRA) with comments on the Special Notice on “Engagement Initiative” that was issued on March 21, 2017.

I am an attorney whose practice is exclusively devoted to the representation of individual and institutional investors in their disputes with the securities industry.

Moreover, I am the current Chairman and a public member of FINRA’s National Arbitration and Mediation Committee (NAMC); a former President and current Director Emeritus of the Public Investors Arbitration Bar Association (PIABA); the former Chairman of FINRA’s Discovery Task Force Committee (DTFC); and a former member of the Securities Investor Protection Corporation (SIPC) Modernization Task Force.

It is my understanding that the Special Notice was issued in furtherance of FINRA’s recent announcement which stated that it would be undertaking “a new initiative to evaluate various aspects of its operations and programs to identify opportunities to more effectively further its mission” and that “[a]s one of the first steps of this initiative, [the Special Notice] solicit[ed] comment from all interested parties on FINRA’s current engagement programs.”

Based on my own personal experience, my comments are specifically targeted towards FINRA's National Arbitration and Mediation Committee (NAMC) which is a committee that is composed of six (6) member firm representatives and seven (7) non-industry individuals. As stated in the Special Notice, the NAMC "makes recommendations to FINRA regarding recruitment, qualification, training and evaluation of arbitrators and mediators, as well as recommendations on rules, regulations and procedures that govern the conduct of arbitration, mediation and other dispute resolution matters before FINRA."

Request for Comment on Engagement in the NAMC

Question Presented: How effective is FINRA's committee structure in providing input to FINRA on industry developments, rule proposals, regulatory initiatives and programs?

I would submit that the NAMC provides a critical and essential purpose in providing input to FINRA on the industry developments, rule proposals, regulatory initiatives and programs that directly impact FINRA's Dispute Resolution program. For both the investor representatives and industry representatives who are selected to serve on the NAMC, the ability to comment and develop rule proposals, regulatory initiatives and programs – all of which are enhanced by practitioners who are deeply experienced in this arena and committed to the arbitration process – assists in the pursuit of an arbitration forum that is fair, efficient and widely recognized as the "gold standard" in dispute resolution.

Question Presented: Should FINRA consider including elected members on the NAMC and what would be the advantages and disadvantages of a more formalized selection process for membership on the NAMC?

I would submit that consideration of including elected members on the NAMC and/or the adoption of a more formalized selection process for membership on the NAMC would be a *major mistake* as it would drastically dilute the required talent and experience of its members – both of which are essential to FINRA's stated goal of assisting FINRA in the "recruitment, qualification, training and evaluation of arbitrators and mediators, as well as recommendations on rules, regulations and procedures that govern the conduct of arbitration, mediation and other dispute resolution matters before FINRA." I would further submit that the current NAMC membership selection process, in which FINRA staff primarily selects potential

NAMC members based on their readily identifiable experience and knowledge, is essential to the effective role that the NAMC provides in its dispute resolution forum and, at the same time, insures that members of the NAMC are also deeply committed to the improvement and/or enhancement of the arbitration process so that a fair, efficient and effective venue to handle securities-related disputes is always the primary and critical objective.

Question Presented: Is it preferable to hold NAMC meetings in-person or via teleconference or a combination of both and is appropriate information provided to the NAMC to facilitate meaningful discussion and input into FINRA's operations and programs?

I would submit that it is preferable to have in-person NAMC meetings as the primary means for the required consideration of the issues that are presented and considered so that all of the participants are afforded the opportunity to fully discuss the same. While, on limited occasions, it has been necessary to conduct the affairs of the NAMC through conference calls, this has been – and should continue to be – the exception rather than the norm. I would further submit that FINRA staff has been outstanding in terms of the written information that has been provided to the NAMC in advance of our meetings and, of equal importance, I believe that the staff has clearly benefitted from the dialogue and comments of the members of the NAMC on the issues that have come before the committee.

Question Presented: How helpful are the tools and resources currently available on FINRA's dispute resolution web page?

I would submit that the tools and resources that are currently available on FINRA's dispute resolution web page are extremely helpful to not only the parties involved in an arbitration proceeding, but to arbitrators and mediators as well. In fact, in my own personal experience, there is not a single question or issue that cannot be answered by the currently available resources whether the question or issue is of a procedural or substantive basis. Moreover, the recent expansion of the Dispute Resolution Portal is a major enhancement of the dispute resolution experience and has helped to facilitate the administration of arbitration proceedings.

Question Presented: If you have accessed the Awards Online database, how user-friendly did you find the database? Should FINRA consider making any changes to the accessibility of the database, or the information available through the database?

Jennifer Piorko Mitchell
June 16, 2017
Page -4-

The Awards Online database is one of the greatest improvements that have been implemented by FINRA Dispute Resolution over the past decade. I would submit that it is not only user-friendly, but that it has become a critical tool for counsel in their representation of both investors and industry parties. As future enhancements of the database are contemplated, I believe that providing access to interim arbitrator orders on issues such as discovery rulings and the denial of motions to dismiss (whether based on eligibility or other grounds) would be extremely beneficial for forum users in understanding and assessing potential arbitrators.

Conclusion

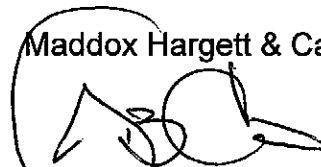
While, as noted in the introductory portion of this comment letter, I am the current Chairman of the NAMC, it is also important to note that I had previously served as a public member of the NAMC between February 2009 and June 2013 and had previously served as the Chairman of the NAMC between February 2011 and June 2013.

The extent of this experience has afforded me with the unique opportunity to not only engage with the many dedicated public and industry representatives who have served with me on the NAMC and many of its subcommittees, but it has also allowed me to personally observe the invaluable contributions that the Dispute Resolution staff has provided to the NAMC, on a daily basis, which has assisted our team in its pursuit of an arbitration forum that is fair, efficient and, as stated above, is widely recognized as the "gold standard" in dispute resolution.

Thank you for providing me with the opportunity to comment on this initiative.

Very truly yours,

Maddox Hargett & Caruso, P.C.



Steven B. Caruso