

**RICHARD P. RYDER, Editor-Publisher**

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Ms. Jennifer Piorko-Mitchell  
FINRA, Office of the Corporate Secretary  
1735 K Street, NW  
Washington, DC 2006-1506

RE: Engagement Initiative

Dear Ms. Mitchell:

I comment on a specific issue -- the current composition of the National Mediation and Arbitration Committee. My review indicates it is entirely comprised of litigators and, on the industry side, entirely in-house litigators.

I read with interest the comments of a former NAMC Member, Jeffery Kaplan. Mr. Kaplan addressed the question in the Engagement Initiative, which asked:

*How effective is FINRA's advisory and ad hoc committee structure (e.g., the number and type of committees) in providing input to FINRA on industry developments, rule proposals, regulatory initiatives and programs?*

Mr. Kaplan's comments were highly favorable:

*My membership on the NAMC provided for significant and meaningful engagement between and among FINRA and the various parties exposed to FINRA Dispute Resolution. While the largest broker-dealers arguably have a greater financial stake at issue, FINRA has done a good job of including smaller broker-dealers and those from the independent broker-dealer network as well, which provides for different perspectives. FINRA also has done a commendable job of choosing non-industry NAMC members who largely provide useful and thoughtful insight into issues. Similar to the industry choices, FINRA has done a good job of finding diverse non-industry NAMC members, i.e., those from both small and large markets, those with high-volume caseloads and those with smaller caseloads who may not regularly handle the large-scale product-failure cases.*

However, when those cogent remarks are applied to the current composition of the NAMC, we find no diversity on the so-called public side.

**Chair & Public Members:** It is difficult to be critical about the make-up of the current Committee without sounding critical of the individuals. That is not the case. I know and respect these people, each and every one. With that said, so many of them are people who have served more than one term and often are returning NAMC members. The Chair is a returning NAMC member. There are many experienced, veteran litigators who are not members of PIABA, but all of the seven public representatives are PIABA litigators. Even where the individual has not served before, s/he is affiliated with a firm who has had a seat on the Committee for years.

It may well be that all of the litigators might belong to PIABA. It has a broad presence among the arbitration claimant's bar. Where I believe the staff have gone wrong relates to the lack of diversity of perspective among the Public Members. The Dispute Resolution Task Force was comprised, on the Public side, of very accomplished people from many perspectives. The Task Force had, among its composition, arbitrators, mediators, academics, consumer advocates, yes, litigators, but securities experts and even a state securities regulator. I mention the DRTF not only to show that diversity on the public side assured a "rainbow" of ideas and perspectives, but to add that the imaginative and bold proposals that issued from the DRTF are under consideration by a Committee of a far different and more stratified perspective.

The result to date has been unimpressive. The NAMC claims to have implemented or responded to 31 of the 51 recommendations, but a closer examination will reveal, I submit, very little action of substance beyond what the staff has chosen to adopt. For the most part, the NAMC is rejecting the boldest and most imaginative of the DRTF proposals, instead of according to that body the deference that special commissions and task forces should expect. I recently attended a seminar at which a DRTF member listed the seven recommendations his subcommittee had developed and the Task Force approved. Not one was fully embraced by NAMC and they were mostly neglected in spirit. Fairness demands a better attempt by FINRA at diversity of experience and perspective, but, as the current DRTF predicament illustrates, composition makes a difference. I recommend FINRA take a hard look at the NAMC and start considering what next year's NAMC will look like.

Respectfully submitted,

Richard P. Ryder, SAC

\* I am the publisher of a newsletter on securities arbitration and a former NASD District Counsel and Director of Arbitration. I have experience as a litigator, a litigation manager, an arbitrator, a mediator, and have represented parties in arbitration as both claimants and respondents.