

Center for Clinical Programs

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December 18, 2017

VIA EMAIL TO PUBCOM@FINRA.ORG

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

Re: FINRA Regulatory Notice 17-34
Comment Concerning Compensated Non-Attorneys Representing Parties in Arbitration

Dear Ms. Asquith:

Obtaining legal assistance for FINRA matters involving less than \$100,000 is very difficult for most investors. Unless an investor is lucky enough to live near a law school clinic or have a family member with a law degree willing to represent them on a *pro bono* basis, a regular American investor lacks access to economic justice if a dispute arises with his or her broker. As the director of a law school clinic, this is a problem I see nearly every day. If we are at our full capacity, we sometimes must turn away clients with valid claims. If an investor with a valid claim who resides in a jurisdiction with restrictive practice rules contacts us, we must likewise turn him or her away. In many of these circumstances, unless another clinic has capacity to assist the investor, these investors must either attempt to bring a claim on their own or work with a non-attorney representative (NAR).

While there may be significant risks to investors who proceed with a NAR, until law school clinics receive sustained funding to ensure that the existing clinics survive and more clinics can be added to high need areas, entirely eliminating NARs may cause more valid claims to go unfiled. Accordingly, FINRA should work with its law school clinical partners to identify funding sources to sustain and grow the high-quality, free law school clinics or place appropriate checks on NARs to ensure that investors are not harmed by them.

Currently, sixteen law school clinics provide legal representation to investors who are unable to obtain an attorney due to the size of their claim. Though each clinic has its own criteria for who they will represent, the clinics' eligibility guidelines allow us to provide free legal advice¹ to deserving clients. Our clients include retirees, hairdressers, mail carriers, welders, schoolteachers, and librarians.

Many securities arbitration clinics began with or at some point in time received financial support from the FINRA Investor Education Foundation or state regulators. Today, however, these sources do not fund new or existing clinics. Moreover, other lines of funding that supported the securities arbitration clinics due to our status as a consumer protection resource have also been discontinued. Unlike other types of law school clinics focused primarily on poverty law, securities arbitration clinics do not have access to outside funding sources despite the fact that our work often prevents aggrieved investors from becoming destitute.

Attorneys representing investors should be the norm due to the high level of protection they are required by law and ethical standards to provide to their clients. Attorneys owe a fiduciary duty to their clients. We must avoid conflicts of interest and protect confidential information from disclosure. We must provide competent and diligent representation. And we must do all of this for a reasonable fee, often continuing our representation even if our bills are not being paid.

Ensuring all investors who work with members and their associated persons are able to receive the services of a lawyer in the event a problem arises should be the norm. We recommend that FINRA investigate how to ensure all investors working with its members have access to economic justice.

Should it not be possible to secure attorneys for all aggrieved investors, we do not recommend entirely eliminating NARs. If clinics are not fully supported, more investors will need representation, and working with someone, albeit an unlicensed person lacking the protections lawyers provide, may be better than no representation. FINRA's focus on obtaining evidence and information concerning how investors interact with NARs is crucial. We are most concerned with the NARs whose practices we have anecdotally heard further victimize already harmed investors. Absent a fiduciary relationship like an attorney-client relationship, investors may be taken advantage of by a NAR. Investors are not protected from excessive NAR fees. NARs may not provide conflict-free, competent, or diligent advice. It is therefore critical to investor protection that after FINRA determines how NARs operate that steps then be taken to protect investors. Such steps might include a required disclosure about how a NAR differs from an attorney. NARs could be required to adhere to a fiduciary standard or carry insurance to protect against negligence or other malfeasance. NAR fees could be capped at a reasonable amount or they could be permitted to appear in the FINRA forum only if they did not charge for their services.

How NARs interact with investor clients is beyond our ken. We are familiar, however, with the protections that lawyers provide and urge FINRA to investigate sustaining and expanding the

¹ Under applicable law, while we do not charge our clients, we may seek reimbursement of the cost of our services from respondents under appropriate circumstances.

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law school clinic program. Every investor, no matter the size of his or her investment portfolio, should have access to high-quality representation. We appreciate FINRA's efforts to investigate this important investor protection topic, and we look forward to further conversation. Please do not hesitate to reach out to us if you have any questions.

Best regards,

/s/ Nicole G. Iannarone

Nicole Iannarone
Assistant Clinical Professor