Financial Industry Regulatory Authority

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August 18, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2016-022 – Proposed Rule Change Relating to the Panel Selection Process in Arbitration; Response to Comments

Dear Mr. Fields:

This letter responds to comments submitted to the Securities and Exchange Commission ("Commission") regarding the above-referenced filing. In this filing, FINRA is proposing to amend Rule 12403 of the Code of Arbitration Procedure for Customer Disputes concerning customer cases with three arbitrators, to increase the number of public arbitrators on the list that FINRA sends parties during the arbitration panel selection process from 10 arbitrators to 15 arbitrators. FINRA would also increase the number of strikes that parties may make to the public list from four to six strikes to keep the proportion of strikes the same under the amended rule as it is under the current rule.[1]

The Commission received eight comment letters in response to the publication of the proposed rule change in the Federal Register.[2] Six commenters support the proposed rule change as filed,[3] with investor representatives Caruso and Bakhtiari stating, respectively, that it "is a fair, equitable and reasonable approach" and that the proposed rule change is "an important step towards protecting the investing public." Industry association FSI supports the proposed rule change and states that "[n]ot only does it enhance the arbitration process for both parties, but it also avoids putting any undue burden on the industry." PIRC indicates that the

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1 See Securities Exchange Act Release No. 78279 (July 11, 2016), 81 FR 46139 (July 15, 2016) (Notice of Filing of File No. SR-FINRA-2016-022).

2 See Letter from Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated July 14, 2016 ("Caruso"); Letter from Julius Z. Frager, Esq., dated July 24, 2016 ("Frager"); Letter from Ryan K. Bakhtiari, Esq., Aidikoff, Uhl & Bakhtiari, dated July 26, 2016 ("Bakhtiari"); Letter from Philip M. Aidikoff, Esq., Aidikoff, Uhl & Bakhtiari, dated July 27, 2016 ("Aidikoff"); Letter from Hugh D. Berkson, Esq., President, Public Investors Arbitration Bar Association, dated August 4, 2016 ("PIABA"); Letter from David T. Bellaire, Esq., Financial Services Institute ("FSI"), dated August 4, 2016; Letter from Tyler M. Fiorillo, Student Intern, and Elissa Germaine, Supervising Attorney, Pace Investor Rights Clinic, dated August 5, 2016 ("PIRC"), and Letter from Glenn S. Gitomer, Esq., McCausland Keen Buckman, dated August 5, 2016 ("Gitomer").

3 See Caruso, Bakhtiari, Aidikoff, FSI, PIRC and Gitomer.

proposed rule change will "improve parties' ability to select a panel that they feel is most fit to resolve their dispute, while increasing parties' perceptions that the arbitration process is fair, equitable, and party-oriented." PIABA supports the proposed rule change generally and makes other suggestions for the Commission to consider.[4]

Frager proposed an alternative approach for panel selection in customer cases. Frager suggests that FINRA maintain the three current 10-person lists of non-public, chair-public and public arbitrators. FINRA would permit each party to strike all of the names on the non-public list, and four names on each public list. Each party would then submit to FINRA one combined list of ranked chair-public and public arbitrators. FINRA would appoint the highest ranked chair-qualified arbitrator as chair. If the parties collectively struck all of the non-public arbitrators, FINRA would then appoint two public arbitrators from those remaining on the parties' combined list (regardless of whether they are chair-qualified). Frager believes this approach would benefit parties because, among other matters, they would not need to vet an additional five public arbitrators.

FINRA does not support the Frager approach for a number of reasons. First, under the Frager approach, FINRA would not be providing the parties with the additional choice of five more public arbitrators. Forum users have stated a clear preference for choice during the panel selection process and have indicated that the benefits of additional choice outweigh the cost of vetting additional arbitrators. Second, FINRA staff believes that the Frager approach would be complex and difficult for parties to navigate, especially parties or party representatives that do not use the forum on a regular basis. Third, the Frager approach would require substantial programming changes to FINRA's Mediation and Arbitration Tracking and Retrieval Interactive Case System that would not be required under the proposed rule change as filed by FINRA.

FINRA believes that the foregoing responds to the issues raised by the commenters to the rule filing and that the proposed rule change should be approved as filed. If you have any questions, please contact me at (212) 858-4481, email: margo.hassan@finra.org.

Sincerely,

/s/ Margo A. Hassan

Margo A. Hassan
Associate Chief Counsel

[4] FINRA believes that the additional suggestions made by PIABA are outside the scope of the proposed rule. Therefore, FINRA does not address them in this letter.