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VIA EMAIL SUBMISSION TO PUBCOM@FINRA.ORG

November 20, 2017

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

Re: FINRA Regulatory Notice 17-33

Dear Ms. Asquith:

The purpose of this letter is to provide the Financial Industry Regulatory Authority, Inc. ("FINRA") with comments on the above referenced Regulatory Notice which was issued by FINRA on October 18, 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 of FINRA's National Arbitration and Mediation Committee ("NAMC") and a public member of the NAMC; the former Chairman of FINRA's Discovery Task Force Committee ("DTFC"); a former member of the Securities Investor Protection Corporation ("SIPC") Modernization Task Force; and a former President and current Director Emeritus of the Public Investors Arbitration Bar Association ("PIABA").

It is my understanding that the Regulatory Notice requests comment on proposed amendments to the FINRA Code of Arbitration Procedure ("FINRA Code") which are intended to help address the issue of unpaid customer arbitration awards by expanding the options available to customers when filing a claim in arbitration against an inactive firm or associated person, or if the firm or associated person becomes inactive during a pending arbitration.

The issue of unpaid customer arbitration awards continues to be an issue that is in desperate need of a viable economic solution. Unfortunately, while the proposed amendments to the FINRA Code that have been proposed and/or adopted to date are a good faith attempt to at least partially address some of the predicates for this

issue, the reality is that very few investors would be able to actually recover their losses through any of the proposed and/or adopted alternatives that are and/or will be available to them.

For example, while investors would have the option to discontinue an arbitration proceeding and proceed to court with claims against an inactive member and/or associated person, the reality is that very few customers, if any, would agree to incur the costs associated with a court proceeding to pursue a judgment that would most likely still be uncollectable at the end of the process. While this result would reduce FINRA's unpaid award statistics, it would have no effect on providing investors with any monetary relief for their claims.

Notwithstanding the preceding, there are several proposed amendments to the FINRA Code that are discussed in this Regulatory Notice that should be immediately implemented in order to improve the dispute resolution process even though they will have a minimal impact on the issue of unpaid arbitration awards:

1. FINRA's proposed amendment to FINRA Code Rule 12309 which would provide that "if FINRA notifies a customer that a firm or an associated person has become inactive during a pending arbitration, the customer may amend a pleading, including adding a new party, within 60 days of receiving such notice";

2. FINRA's proposed amendment to FINRA Code Rule 12900 which would provide that FINRA will "refund a customer's full filing fee if FINRA notifies a customer that a firm or an associated person has become inactive during a pending arbitration, and the customer withdraws the case against all parties within 60 days of the notification"; and

3. FINRA's proposed amendment to FINRA Code Rule 12601 which would provide that "if FINRA notifies a customer that a firm or an associated person has become inactive and the scheduled hearing date is within 60 days of the date the customer receives the notice from FINRA, then FINRA would not charge the customer a postponement fee or an additional fee of $600 per arbitrator if a customer chooses to postpone a scheduled hearing."

I would strongly encourage the FINRA Board, if it is serious about dealing with the issue of unpaid arbitration awards, to convene a special advisory group or committee, comprised of both investor and industry representatives, which would be given the mission statement of evaluating the accurate extent of the unpaid award problem and then developing potential solutions for the same.

It is my opinion that this advisory group or committee would have to recognize three (3) essential elements in the pursuit of this mission statement.

First would be the recognition of the fact that a potential solution would *not* be tantamount to an unlimited "deep pocket" for investor advocates that would encourage the filing of claims that had no merit or which would seek the recovery of non-core damages or damages that were not capable of being ascertained – and verified – by an independent "bi-partisan" process such as, for example, the claims evaluation process that is utilized by SIPC.

Second would be the recognition of the fact by industry advocates that this is an issue which threatens the entire arbitration forum and that it will eventually be resolved either through "self-regulation" or through the imposition of the will of other outside parties on potentially less desirable terms.

And third would be the recognition of the fact that, to initiate this process and to ultimately achieve success, the FINRA Board would have to demonstrate its firm commitment to place the issue of actual investor *recovery* above the issue of unpaid award *statistics*.

I firmly believe that the mission statement, set forth above, is capable of being achieved.

In the event that you should have any questions with respect to the preceding, please do not hesitate to contact me.

Very truly yours,

Maddox Hargett & Caruso, P.C.

s/ Steven B. Caruso

Steven B. Caruso