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Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

February 22, 2010

Re: PIABA petition to eliminate mandatory FINRA industry arbitrators

Dear Ms. Murphy:

I am writing you as an FINRA industry arbitrator. I have served as an arbitrator for NASD-DR, the NYSE and now FINRA for the last 13 years. I have been involved in approximately 30 panels including full hearings in about 20 cases. I am currently a Financial Advisor with Merrill Lynch in Dallas and have been employed in the securities industry for the past 15 years. My comments are not on behalf of Merrill Lynch.

I believe that the petitioner, media sources and so-called expert studies have unfairly characterized industry arbitrators as biased representatives of the industry who exert undue influence in arbitration proceedings to the detriment of the public. This is simply not the case.

Industry arbitrators like me are volunteers who give their time in the interest of fair play and honesty in our industry. We certainly do not do this for the minimal compensation paid. Further, we are not encouraged to become arbitrators by our firms. Quite the contrary, the firms with which I have been employed would not know I was an arbitrator unless I volunteered the information. Also, we are in the retail sector of the industry and not involved in research, underwriting, investment banking, product development, etc.

Although employed by Merrill Lynch, I consider that Merrill works for me by providing products and services so that I may serve those I truly work for—my clients. I believe this is a common attitude among financial advisors. We are not 'sympathetic' to the industry and our loyalty is first and foremost to our clients. If anything, I am more likely to be sympathetic to public claimants, thinking of them as if they were my clients. We are in many respects independent professionals and our compensation is based solely on the amount of business we do and is a result of successfully helping our clients.

Much of what I have read in the PIABA petition conflicts directly with my experience during the last 13 years. This includes the studies cited therein.

It is stated that damages awarded are often not related to actual damages and that damages are less than customers believed to which they were entitled. The latter may be true, as an example I have often observed, when claimants believe that a duty to mitigate damages is unreasonable and unfair. I cannot imagine any forum of dispute resolution where claimants would not think they deserved more. Further, I believe attorneys routinely seek maximum conceivable damages and therefore a measure of actual awards to claims is unreliable at best.

I suspect the SICA study is not reliable for very obvious reasons. First, the SICA study started with 30,000 individuals but received only 3100 responses. It is not difficult to believe that respondents that were unhappy with arbitration would vent their displeasure when given the opportunity. In fact the firm that conducted the survey, SRI, recommended in its report that a study should be undertaken to determine if there was non-responsive bias in the survey. The SICA did not, however, accept the recommendation. (A non-responsive study would determine if answers of those not responding are significantly different from survey participants.) Furthermore, the survey was entirely subjective and responses such as the one that

indicated that 31.5% of respondents found the industry arbitrator was biased in favor of the industry lacks credibility. The question is how a respondent would know of bias without being involved in the decision process. Apparently these responses were based on inferences rather than evidence. SRI also commented that its *empirical* findings shed light on *subjective* perceptions ... but do not address *objective* standards or procedural fairness. Further, SRI stated that...perceptions of securities arbitrations are nuanced, complex and resist summary categorization. This is precisely what petitioner has done with the study results.

Petitioner also asserts that industry arbitrators have disproportionate voice and undue influence in the arbitration process. While an industry arbitrator may assist the panel regarding industry practices, (often complex) products, confusing terminology and the mathematics involved, he is on equal footing with the public arbitrators (and out numbered) in the decision process (If industry members at times have more influence the fault might be with the public members.) An industry arbitrator does not act as an expert witness and approaches a case with impartiality. Retained experts represent their clients' interests and are not expected to be impartial and, appropriately, are subject to cross examination. Also the suggestion that an arbitrator would find inappropriate practices acceptable because "everyone does it" is with out foundation and a gratuitous insult.

In a press release issued on June 16, 2009, Brian Smiley, President of PIABA states that investors may believe that they have been wronged by the securities industry. The industry does not harm investors; people and firms in the industry sometimes do. An industry arbitrator therefore is disqualified if he has conflicts due to past or present association with an individual or firm that is party to a proceeding. Petitioner seeks to ban any arbitrator because of industry association and refers to recent abuses of some firms as justification. The most notable of these were the internet bubble and related research scandals, the failure of the auction rate market and the sub-prime mortgage disaster. However, retail advisors were not complicit in these shameful events and, if anything, were victims of them.

Finally the petitioner speculates that industry consolidation somehow influences industry arbitrators to become more biased. This is without any basis in fact and not worthy of a response. I cannot imagine any firm trying to pressure, influence or retaliate against an arbitrator.

I do not understand the motives of PIABA in seeking to bar industry arbitrators. My experience with attorneys representing public claimants is that they were appreciative and respectful of my role in the procedures. My only concern is that the quality and efficiency of arbitrations would suffer without industry arbitrator participation. While I value and enjoy the experience, whether or not I continue as an arbitrator is not a major issue.

Ms. Murphy, I do not know if you have received much comment from individual industry and public arbitrators, I suspect you have not. If this is so, I would suggest that additional comment be solicited.

Sincerely,

W. Donald Parr

cc: Linda Fienberg, President, FINRA-DR
George Friedman, Executive V.P., FINRA-DR