PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION
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January 20, 2016

Via Email Only

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F. Street., NE
Washington DC 20549-1090

Re: File No. SR-FINRA-2015-056 – "Pay to Play" Rule

Dear Mr. Errett:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA"). While PIABA generally supports the proposal to establish a rule to address "pay-to-play" issues, we have three primary concerns: (i) the proposal does not apply to state-registered investment advisers; (ii) the cooling-off period is too short and should be extended to four years; and (iii) disgorgement should be the minimum penalty.

I. The Proposal Should Apply To State-Registered Investment Advisers

PIABA believes that the proposal should also apply to state-registered investment advisers because solicitation of a government entity by a FINRA-member firm on behalf of state-registered investment adviser should be prohibited in the same manner as it would be with an SEC-registered adviser if the soliciting FINRA-member firm made qualifying contributions to the government entity. While the Commission and FINRA have noted that relatively few state-registered investment advisers manage public pension plans, this alone does not justify permitting those FINRA-member firms that do manage public pension plans, but happen to work with smaller investment advisers, to engage in pay-to-play activities with no repercussions from FINRA. Moreover, successful solicitations of public pension funds by FINRA-member firms may actually result in more assets being under management of the state-registered investment advisers with which they are working, requiring those advisers to register with the SEC, which would render the proposed rule applicable to them anyway. PIABA does not believe that any good reason compels the exclusion of state-registered investment advisers from the reach of the rule.

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II. <u>The Cooling-Off Period Should Be At Least Four Years</u>

PIABA believes that the current two-year cooling-off period does not adequately reduce the incentive for FINRA member firms to make political contributions in order to obtain pay-to-play advantages. Even though a two-year cooling-off period does provide some benefit, many political terms last substantially longer than two years. For example, if the government official serves a six-year term, a two-year cooling-off period would not adequately protect against the corrupting influence of donations from FINRA member firms. It also bears noting that FINRA has already built into the proposal potential exceptions to the two-year cooling off period such that FINRA could probably limit any unfair or unnecessary application of a four-year cooling off period through its ability to approve exceptions in certain circumstances. PIABA believes FINRA should start with the most comprehensive rule and that FINRA's rationale for limiting the cooling off period is not persuasive given the extent that "pay-to-play" schemes can undermine the confidence of the investing public. Further, PIABA would welcome the deterrent effect of a four-year cooling off period.

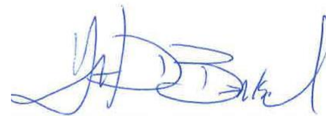
III. <u>Disgorgement Should Be the Minimum Penalty</u>

PIABA is concerned about FINRA's decision to weaken the possible penalty its member firms might suffer for violating the "pay-to-play" rule. The original regulatory notice made clear that FINRA-member firms violating the "pay-to-play" rule would be forced to disgorge any ill-gotten profits. The final proposal substantially weakens the "pay-to-play" rule by making it possible for FINRA member firms to violate the rule and then keep a substantial portion of the profits derived from the violation.

By making the possibility of disgorgement discretionary, FINRA has substantially reduced the deterrent power of the rule and the incentive of its member firms to take steps to comply with the rule. Consider, for example, the most likely defense to an enforcement action arising out of a breach of the rule. The FINRA member firm will likely contend that the breach occurred because of some flaw in the firm's internal oversight procedures. The significant profits to be realized, and potentially kept, promote a less-than-robust compliance and supervision system. When the inevitable violation occurs, the FINRA member firm will ask FINRA for a light penalty because the member-firm's failure was innocent, not intentional. There is no good reason to impose a penalty of anything less than full disgorgement of the ill-gotten gains.

PIABA thanks you for the opportunity to comment on this important topic.

Sincerely yours,



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