

**Center for Clinical Programs**

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September 26, 2016

**VIA ELECTRONIC SUBMISSION**

Ms. Margo Hassan  
Associate Chief Counsel  
FINRA Dispute Resolution  
1735 K Street NW, Washington, DC 20006-1506

Re: SR-FINRA-2016-033

Dear Ms. Hassan:

Thank you for the opportunity to comment on SR-FINRA-2016-033, a proposal to expand eligibility for the public chairperson roster. The Investor Advocacy Clinic at Georgia State University College of law represents investors who have suffered losses resulting from broker misconduct but who cannot obtain private legal representation due to the size of their claim. Because the entirety of the claims we file will be heard by a single arbitrator from the public chairperson roster, we are uniquely qualified to comment on how changing the public chairperson arbitrator qualifications may affect small investors.

We appreciate FINRA's intent to increase the number of eligible public chairpersons in all hearing locations.<sup>1</sup> Amending Rules 12400(c) and 13400(c) to provide that attorney arbitrators would be eligible for the chairperson roster after serving as an arbitrator through award on at least one arbitration, rather than two, would increase the pool of eligible public chairpersons and ensure that chairpersons be from the hearing location's geographic area, an important factor for our clients.

Although we support an increase in the number of eligible public chairpersons, we want to ensure that the intent of the prior rule, ensuring experienced and well-qualified arbitrators chair panels or decide simplified claims, continues. Thus, we first ask that FINRA revisit the amendments to the "public arbitrator" definition that became effective on June 26, 2015 due to

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<sup>1</sup> See SR-FINRA-2016-033 at 7, available at <http://www.finra.org/industry/rule-filings/sr-finra-2016-033>.

the amendment's significant impact on the size of the public chairperson roster.<sup>2</sup> We also recommend that FINRA require attorney arbitrators complete additional training before assuming the role of public chairperson.

### **1. FINRA Should Revisit the "Public Arbitrator" Definition.**

FINRA should revisit the amendments to the "Public Arbitrator" definition in light of the diminished public chairperson roster. As a result of the amended "Public Arbitrator" definition, FINRA found that the public arbitrator roster was significantly impacted: "approximately 13.8 percent (487 out of 3,512) of its public arbitrator roster [was reclassified] as non-public and approximately 2.6 percent (93 out of 3,512) of its public arbitrator roster were temporarily disqualified and made ineligible for service."<sup>3</sup> Many of the reclassified or disqualified arbitrators were chair qualified.

This reduction of the public chairperson roster had a disproportional impact on claimants with smaller claims. In our primary hearing location of Atlanta, Georgia, there are only forty chair-qualified public arbitrators.<sup>4</sup> When FINRA originally proposed changing the definition of "Public Arbitrator," the Investor Advocacy Clinic expressed concern over the impact such a change would have.<sup>5</sup> We reassert those concerns here. The instant proposed rule seeks to expand the now limited public chairperson roster by requiring less experience in arbitration proceedings. Rather than reduce the qualifications for service as a chair, we recommend that FINRA revisit the amendments to the "Public Arbitrator" definition to solve the issue of too few chair qualified public arbitrators.

### **2. Additional Training Should Accompany the Rule Change.**

While we applaud FINRA's decision to expand the public arbitrator chair pool, we recommend that FINRA require additional training as part of the proposal to ensure that public chair qualified arbitrators continue to be the most experienced and qualified arbitrators. The underlying rationale for having a chairperson roster is to ensure that, at minimum, one of the arbitrators on a panel has experience in procedural and substantive issues that arise in arbitration proceedings. This is especially true when, as in all of our clients' claims, the claim will be heard by a single arbitrator. By expanding eligibility, the rule reduces the exposure that arbitrators have to live proceedings prior to assuming the role of a chair. To address this change, we propose that FINRA include in the Office of Dispute Resolution Chairperson Training a module or section that specifically addresses the procedural and substantive issues that regularly arise in live arbitration proceedings. Another alternative could include a requirement that a live or mock proceeding be observed before becoming eligible to serve as a public chair.

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<sup>2</sup> See Securities Exchange Act Release No. 74383 (February 26, 2015), 80 FR 11695 (Order Approving Filing No. SR-FINRA-2014-028) (in part narrowing the public arbitrator definition).

<sup>3</sup> See SR-FINRA-2016-033 at 5, available at <http://www.finra.org/industry/rule-filings/sr-finra-2016-033>.


<sup>4</sup> See FINRA, *Arbitrators by Type and Location*, <http://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics/#arbitratorsbytype>.

<sup>5</sup> See Georgia State Investor Advocacy Clinic comment on SR-FINRA-2014-028, at 2-3 (Nov. 6, 2014)


## Conclusion

We, once again, appreciate FINRA's attempt to increase the number of eligible public chairpersons in all hearing locations. All claimants deserve a qualified and knowledgeable arbitrator, regardless of the size of their claim. Thank you for the opportunity to comment, and we look forward to any further discussion.

Best regards,



Geoffrey R. Hafer  
Student Intern



Nicole Iannarone  
Assistant Clinical Professor