Steven B. Caruso

The purpose of this letter is to provide the Securities and Exchange Commission ("SEC") with comments on the above referenced proposed rule change which was filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") on October 5, 2023.

I am a retired attorney whose prior practice was exclusively devoted to the representation of individual and institutional investors in their disputes with the securities industry. Moreover, I am the immediate past Chairman of FINRA's National Arbitration and Mediation Committee ("NAMC") and a former public member of the NAMC – in fact, I served in both positions during two separate and distinct terms, 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, former member and current Director Emeritus of the Public Investors Advocate Bar Association ("PIABA").

It is my understanding that the proposed amendments would amend the Code of Arbitration Procedure for Customer Disputes, the Code of Arbitration Procedure for Industry Disputes and the Code of Mediation Procedure to: (a) revise and restate the qualifications for representatives in arbitrations and mediations in the forum administered by FINRA Dispute Resolution Services ("DRS"); (b) to disallow compensated representatives who are not attorneys from representing parties in the DRS forum; (c) to codify that a student enrolled in a law school participating in a law school clinical program or its equivalent and practicing under the supervision of an attorney may represent investors in the DRS forum; and(d) to clarify the circumstances in which any person, including attorneys, would be prohibited from representing parties in the DRS forum.

Let me begin my submission with the historical perspectives that are applicable to the predicates for this proposed rule change:

June 2014: FINRA formed a task force to consider possible enhancements to its arbitration and mediation forum, in order to ensure that the forum meets the evolving needs of participants;

December 2015: In its final report, entitled "Final Report and Recommendations of the FINRA Dispute Resolution Task Force," the task force recommended that a study be conducted to determine how many jurisdictions allow non-attorney representative firms ("NARs") to represent customers in the FINRA forum, whether NARs provide a service to investors with small claims who otherwise would not be able to obtain representation, and whether NARs are performing competently;

May 2017: FINRA's National Arbitration and Mediation Committee ("NAMC"), which is the advisory group that provides recommendations to FINRA's Board of Governors

regarding the rules, regulations and procedures that govern the conduct of arbitration, mediation and other dispute resolution matters before FINRA, expressed unanimous support for prohibiting compensated NARs from representing parties in all customer and intra-industry arbitration cases;

October 2017: FINRA issued Regulatory Notice 17-34, entitled "Non-Attorney Representatives in Arbitration," which requested comment on the "Efficacy of Allowing Compensated Non-Attorneys to Represent Parties in Arbitration" based on "allegations reported to FINRA [that] raise serious concerns" relating to the purported misconduct of NARs in the arbitration forum and to explore whether FINRA should consider "whether it would be prudent to further restrict representation of parties" by NARs. Among the concerns mentioned in this Regulatory Notice were the fact that "[t]here are no rules of professional conduct applicable to NAR firms' activities. Moreover, NAR firms are not subject to malpractice insurance requirements. Any recovery against a NAR firm for negligence is generally limited to the assets of the corporation. Therefore, investors have little recourse if a NAR firm negligently represents or defrauds them. In addition, NAR firms are not subject to licensing boards and there is no supervisory body with authority to police their activities." A copy of FINRA's Regulatory Notice 17-34 is attached to this comment letter and is incorporated herein in its entirety;

November 2017: In response to FINRA Regulatory Notice 17-34, FINRA received 59 comment letters – the overwhelming majority of which supported restriction of NAR firms from the representation of parties in all customer and intra-industry arbitration cases. One of the comment letters that was submitted to FINRA, in response to FINRA Regulatory Notice 17-34, was my own comment letter, dated November 17, 2017. My comment letter also included an article that I had authored as a member of the faculty on the "2017 Securities Arbitration & Mediation Hot Topics" program that had been presented by the Association of the Bar of the City of New York. Copies of both my comment letter and New York City Bar Association article are attached to this comment letter and both are incorporated herein in their entireties;

June 2018: After consideration of all of the comment letters that had been received by FINRA in response to FINRA Regulatory Notice 17-34, NAMC members again expressed unanimous support for prohibiting compensated NARs from representing parties in all customer and intra-industry arbitration cases; and

December 2018: The FINRA Board approved filing with the SEC proposed amendments to the Codes of Arbitration and Mediation Procedure relating to prohibiting compensated non-attorney representatives from practicing in the FINRA arbitration and mediation forum.

My initial comment to this proposed rule filing is that it is astonishing that now, almost *five (5) years* after the FINRA Board first approved the instant filing based on its purported serious concerns for investor protection, FINRA has finally effectuated the same with the SEC.

I would submit that the absence of any interim explanation for this inexcusable five (5) year delay that has been associated with this proposed rule filing mandates that the SEC require FINRA to explain, in detail, both the reasons for this delay as well as how the interests of public investors have been served or, more likely, harmed by this delay.

This is especially important in view of FINRA's acknowledgement in its proposed rule filing of numerous "serious" instances of *recent* "improper conduct" of NARs which has caused "potential harm" to public investors including, but not limited to, "compensated NARs [who] cold call investors with aggressive sales tactics; pursue frivolous claims; misrepresent or willfully fail to disclose important facts relating to their background; achieve worse outcomes or awards for their clients or settle cases for lower amounts than attorneys; and work in coordination with persons who are suspended or barred from the securities industry."

Notwithstanding the preceding, it is my opinion that the portion of the proposed rule filing which would disallow compensated NARs from representing parties in the DRS forum will certainly reduce the risk that parties, including investors, may be significantly harmed by the activities of compensated NARs and should be approved by the SEC on an expedited basis.

It is my further opinion that the portion of the proposed rule filing which would codify the current practice whereby a party may be represented by a student enrolled in a law school participating in a law school clinical program or its equivalent and practicing under the supervision of an attorney should also be approved by the SEC on an expedited basis.

It is my further opinion that the portion of the proposed rule filing which clarifies that both attorneys and non-attorneys may not represent a party in the DRS forum if state law prohibits such representation, the person is currently suspended or barred from the securities industry in any capacity, the person is currently suspended from the practice of law or disbarred or the person is currently suspended from or denied the privilege of appearing or practicing before the SEC may not represent a party in the DRS forum should also be approved by the SEC on an expedited basis.

Finally, it is my further opinion that the portion of the proposed rule filing which clarifies that any challenge to the qualifications of a representative made outside of the arbitration proceeding shall not stay or otherwise delay the proceeding in the absence of a court order should also be approved by the SEC on an expedited basis.

Thank you for providing me with the opportunity to submit my comments on this matter.

Regulatory Notice 17-34

Non-Attorney Representatives in Arbitration

FINRA Requests Comment on the Efficacy of Allowing Compensated Non-Attorneys to Represent Parties in Arbitration

Comment Period Expires: December 18, 2017

October 18, 2017

Notice Type
- Request for Comment

Suggested Routing
- Compliance
- Legal
- Registered Representatives
- Senior Management

Key Topics
- Arbitration
- Associated Person
- Code of Arbitration Procedure
- Code of Mediation Procedure
- Dispute Resolution
- Mediation

Referenced Rules & Notices
- FINRA Rule 12208
- FINRA Rule 13208
- FINRA Rule 14106

Summary

The FINRA Codes of Arbitration and Mediation Procedure permit compensated non-attorneys to represent clients in securities arbitration and mediation subject to certain exceptions. FINRA is conducting a review of the efficacy of continuing to allow such representation. The *Notice* outlines FINRA's review of compensated non-attorney representatives' (NAR firms) activities at the forum and seeks responses to questions related to forum users' experiences with NAR firms.

Questions concerning this *Notice* should be directed to:

- Kenneth L. Andrichik, Senior Vice President and Chief Counsel, Office of Dispute Resolution, at (212) 858-3915; or
- Kristine Vo, Assistant Chief Counsel, Office of Dispute Resolution, at (212) 858-4106.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by December 18, 2017.

Member firms and other interested parties can submit their comments using the following methods:

- Emailing comments to *pubcom@finra.org*; or

- Mailing comments in hard copy to:

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

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. Generally, FINRA will post comments as they are received.[1]

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).[2]

Background & Discussion

The FINRA Codes of Arbitration and Mediation Procedure (Codes) permit non-attorneys to represent clients in securities arbitration and mediation subject to certain exceptions.[3] Some parties are represented by relatives or friends who assist with case preparation or presentation. Typically, NAR firms provide public investors an alternative to representation by attorneys in disputes between investors and broker-dealers.

The Dispute Resolution Task Force in its Final Report and Recommendations[4] recommended that FINRA conduct a study to determine, among other matters, whether NAR firms are performing competently. FINRA's review revealed that there are a small number of NAR firms regularly practicing in the forum. Forum users have reported that the following NAR firm activities have taken place at the forum:

- using the forum as a vehicle to employ inappropriate business practices;
- requiring retainer agreements that reflect a non-refundable fee of $25,000;
- representing parties in hearing locations where state law prohibits such representation or, in the alternative, handling only small claims (decided on written submissions) to avoid hearing locations in which the unauthorized practice of law would become an issue;

- signing required arbitration submission agreements with the name of the NAR firm to avoid naming an individual representative who could be engaging in the unauthorized practice of law;
- pursuing frivolous or stale claims to attempt to elicit settlements; or
- breaching confidentiality provisions in settlement agreements by posting a picture of the settlement check to market the NAR firm's services.

FINRA permits parties to represent themselves in the forum. Investors with small claims (claims of $100,000 or less) who want to be represented in the forum have limited access to attorneys because some attorneys may not be willing to offer services given the small dollar value of a dispute. In recent filings, approximately one-fifth of customer claims with specified damages have relief amounts of less than $100,000.[5] Some of these investors are served by law school arbitration clinics,[6] and others are served by NAR firms.

While NAR firms provide service to public investors with small claims, among others, the allegations reported to FINRA raise serious concerns. There are no rules of professional conduct applicable to NAR firms' activities. Moreover, NAR firms are not subject to malpractice insurance requirements. Any recovery against a NAR firm for negligence is generally limited to the assets of the corporation. Therefore, investors have little recourse if a NAR firm negligently represents or defrauds them. In addition, NAR firms are not subject to licensing boards and there is no supervisory body with authority to police their activities. Therefore, FINRA is considering whether it would be prudent to further restrict representation of parties by NAR firms.

Preliminary Economic Impact Assessment

In considering whether to further restrict representation of parties by NAR firms, FINRA will evaluate the economic effects of further restrictions with respect to the current rules under the Codes that permit non-attorneys to represent clients in securities arbitration and mediation.[7] Further restrictions on NAR firms are likely to affect investors, broker-dealers, NAR firms and other entities that offer services to investors in arbitration including attorneys.

As described previously, investors typically retain representation by attorneys, NAR firms, relatives and friends, and law school arbitration clinics. Investors can benefit from their representative's experience and expertise to prepare and present a case, and to decide when to settle or arbitrate a claim. The benefits of representation are likely to increase with the competency and experience of the representation and the difficulty for investors to make informed decisions, such as when the legal issues are more complex. Investors can also incur costs from retaining representation in arbitration. For example, investors incur fees to retain attorneys and NAR firms. Other types of representation, including law school arbitration clinics, typically charge no fee.

Economically rational investors will likely retain the representation that provides the most benefits relative to its costs, including retaining no representation if that is the most beneficial option. However, not all options may be available to all investors. Attorneys with the relevant competency are often not willing to offer services to smaller claims, and law school arbitration clinics may not be locally available. Law school arbitration clinics may also impose other restrictions, such as not handling claims above a set amount or offering services to high income investors.

Although NAR firms are an alternative to representation by attorneys, NAR firms are not subject to the same professional rules or guidelines, nor are they subject to malpractice insurance requirements. As a result, relative to representation by attorneys, investors who retain representation by NAR firms may be more likely to experience harm at the hand of their representative and have less legal recourse to receive compensation for that harm. Investors may also not be aware of the absence of these protections, and therefore may not properly evaluate the benefits and costs of representation by NAR firms.

Further restricting the representation of parties by NAR firms could benefit investors by reducing their exposure to firms that provide fewer client protections or redress options for malpractice. The absence of similar rules and requirements could result in a higher incidence of harmful practices, and thereby impose additional costs on investors when retaining representation. To the extent that harmful activities hinder the dispute resolution process, then broker-dealers would also incur additional legal expense and time to resolve disputes. Further restrictions on NAR firms would thereby also benefit broker-dealers through the reduction of these potential costs.

Alternatively, further restricting the representation of parties by NAR firms could also impose additional costs. A primary cost could be a decrease in the ability of some investors, including investors with smaller claims, to find other beneficial sources of representation. The available alternatives to NAR firms may not be as beneficial as representation by NAR firms, even if there is a higher risk of negligent representation or fraud, and therefore impose costs on investors. The loss of representation could result in worse arbitration outcomes. Also, to the extent that NAR firms market their services to investors, and in particular investors with smaller claims, then further restrictions could also reduce the number of investors who are aware of the potential need to seek recourse in arbitration.

Further restricting representation of parties by NAR firms would also have other economic effects. An inability by some investors to find other beneficial sources of representation in arbitration could impact the outcome of an arbitration hearing by affecting the quality and completeness of the information presented. Attorneys could also experience an increase in business from investors who would otherwise retain representation by NAR firms, which would then experience a loss of business. Holding the likely outcome of the arbitration constant, these impacts represent an economic transfer and not a new cost or benefit imposed.

The magnitude of the benefits and costs depends on the restriction on NAR firms that may be imposed. The magnitude of the benefits and costs would also depend on the exposure of these investors to harmful activities and their ability to retain other representation. For example, investors with higher exposure to harmful activities by NAR firms or better access to beneficial sources of alternative representation would likely experience greater benefits, while those with lower exposure or less access to other beneficial sources of alternative representation could experience higher costs. The magnitude of the benefits and costs to investors and other affected parties would depend on the nature and severity of the potential changes to the Codes. The magnitude of the benefits and costs does not depend on the investors that would not otherwise retain representation by NAR firms.

Request for Comment

FINRA seeks answers to the following questions with respect to the efficacy of allowing NAR firms to continue to represent clients in the forum.

1. What experiences have you had with a NAR firm in the forum? Do you believe the party received competent representation by the NAR firm? What was the economic impact to you or your firm of the experience?
2. What other types of representation or assistance do investors retain in arbitration? What experiences have you had with other types of representation or assistance in the forum? Do you believe the party received competent representation or assistance? What was the economic impact to you or your firm of the experience?
3. How does the expense to retain representation or assistance differ between NAR firms, law firms and other entities that offer services?
4. Have you been unsuccessful at obtaining attorney representation in arbitration, and if so, what factors drove this? If a small claim size was a factor, how much was the claim that you were seeking? What factors limit investors' access to attorney representation in arbitration other than the size of the claim?
5. Do you believe that FINRA should amend the Codes to restrict NAR firm activities in some way, or to prohibit entirely NAR firms from representing clients at the forum? If so, what are the appropriate restrictions?
6. If you believe that FINRA should continue to allow NAR firms to represent clients at the forum, do you believe it would be helpful to forum users if FINRA published a checklist of questions on the FINRA website that investors could review before hiring a NAR firm? What questions would you suggest that FINRA include? What other alternatives should FINRA consider to reduce the incidence of harmful activities by NAR firms but ensure investors are able to retain representation?
7. Are there other relevant benefits and costs associated with the further restriction on NAR firms that were not discussed in the economic impact analysis? What are the effects of these benefits and costs, and what are the magnitudes of the effects?

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (Online Availability of Comments) (November 2003) for more information.

2. *See* Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the Federal Register. Certain limited types of proposed rule changes take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.

3. Under Rule 12208 of the Code of Arbitration Procedure for Customer Disputes, Rule 13208 of the Code of Arbitration Procedure for Industry Disputes, and Rule 14106 of the Code of Mediation Procedure, parties may be represented in an arbitration or mediation by a person who is not an attorney, unless: (1) state law prohibits such representation; (2) the person is currently suspended or barred from the securities industry in any capacity; or (3) the person is currently suspended from the practice of law or disbarred.

4. In October 2014, FINRA formed the Dispute Resolution Task Force (Task Force) to consider possible enhancements to its arbitration and mediation forum. On December 16, 2015, the Task Force issued its Final Report, available at *http://www.finra.org/sites/default/files/Final-DR-task-force-report.pdf*.

5. FINRA staff is able to identify over 6,300 customer claims filed from 2014 to 2016 with specified compensatory, punitive or other damages.

6. *See* How to Find an Attorney on FINRA's website.

7. We request comment below for information that would improve FINRA's ability to evaluate the benefits and costs of further restricting the representation of parties by NAR firms. The benefits and costs of representation are dependent on the competency of the representation, the fees, as well as the incidence and degree of harmful activities. Whether these factors systematically differ across representatives would impact the economic effects of further restricting representation by NAR firms.

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VIA EMAIL SUBMISSION TO PUBCOM@FINRA.ORG

November 17, 2017

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

Re: FINRA Regulatory Notice 17-34

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 the efficacy of allowing compensated non-attorney representative ("NAR") firms to continue to represent clients in the FINRA Dispute Resolution forum.

In May of 2017, in connection with my participation as a member of the faculty on the 2017 Securities Arbitration & Mediation Hot Topics program that was presented by the Association of the Bar of the City of New York, I authored the attached article entitled "Non-Attorney Representatives (NARs) – Do They Present a Clear & Present Danger to the Integrity of FINRA Arbitration?"

Based on the information presented in my article, it is my opinion that NARs, who receive compensation for representing investors in arbitration proceedings, threaten FINRA's fair, efficient and effective venue of dispute resolution, constitute a clear and present danger to the investing public and must be immediately banned.

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

Non-Attorney Representatives ("NARs") – Do They Present a Clear & Present Danger to the Integrity of FINRA Arbitration?

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Introduction:

Under the FINRA Code of Arbitration Procedure for Customer Disputes ("FINRA Code"), the representation of a party in a Financial Industry Regulatory Authority ("FINRA") arbitration proceeding is governed by Rule 12208 ("Representation of Parties") which states as follows:

> (a) Representation by a Party
>
> Parties may represent themselves in an arbitration held in a United States hearing location. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association.
>
> (b) Representation by an Attorney
>
> At any stage of an arbitration proceeding held in a United States hearing location, all parties shall have the right to be represented by an attorney at law in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation.
>
> (c) Representation by Others
>
> Parties may be represented in an arbitration by a person who is not an attorney,

unless: state law prohibits such representation, or the person is currently suspended or barred from the securities industry in any capacity, or the person is currently suspended from the practice of law or disbarred.

(d) Qualifications of Representative

Issues regarding the qualifications of a person to represent a party in arbitration are governed by applicable law and may be determined by an appropriate court or other regulatory agency. In the absence of a court order, the arbitration proceeding shall not be stayed or otherwise delayed pending resolution of such issues.

A number of recent arbitration decisions have called into question the appropriateness and/or interpretation of subsection (c) of FINRA Code Rule 12208 ("Representation by Others") in the context of non-attorney representatives (NARs") who have represented investor Claimants in FINRA arbitration proceedings.

Discussion:

Based on a recent review of FINRA arbitration awards and various internet searches, there appear to be four (4) primary NAR firms that purport to be currently appearing in FINRA arbitration cases on behalf of investor Claimants: Cold Spring Advisory Group LLC, Vindication Recovery Services Inc., National Advisory Network, Inc. and Stock Market Recovery Consultants, Inc.

Cold Spring Advisory Group LLC ("CSAG")

CSAG is a "consulting firm" that was incorporated in Nevada in 2013 and is currently based in New York City.

On its website (www.coldspringadvisory.com), CSAG states that "we are not a law firm and do not provide legal advice. Cold Spring Advisory Group has a national network of lawyers specializing in securities arbitration and investment loss recovery. Our advisory group will recommend your case to a lawyer within our network who is best suited to fit

your special needs. Any lawyer we recommend for your case works on contingency so there are no hidden fees or additional expenses" and that "[o]nce preliminarily qualified, the client will enter into a retainer agreement with Cold Spring Advisory Group and remit the agreed upon consulting fee."

CSAG's website further states that "[o]ur panel of investment experts is comprised of former brokers with over 25 years of trading experience and branch management at prestigious brokerage firms throughout the country who have maintained books of business with clients worldwide. This direct experience gives us the ability to successfully identify broker misdeeds that may otherwise go unnoticed."

While information as to CSAG's purported "national network of lawyers specializing in securities arbitration and investment loss recovery" or its "panel of investment experts" who conduct potential case evaluations is noticeably absent from its website, a recent review of FINRA arbitration awards indicates that CSAG has been identified as the representative for investor Claimants in twenty two (22) reported awards[1] since April of 2016 – the majority of which were "simplified" arbitration proceedings that were decided based on the submission of written pleadings.[2]

Of these twenty two (22) arbitration awards, fourteen (14) awards resulted in all of the claims having been dismissed[3]; four (4) arbitration awards indicate that some or all of

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[1]/ These arbitration awards are identified by their applicable FINRA case numbers and the dates that the indicated awards were issued: 16-01643 (March 8, 2017); 16-00519 (March 1, 2017); 16-01655 (February 27, 2017); 16-00350 (February 24, 2017); 16-00441 (February 10, 2017); 15-01228 (January 20, 2017); 15-01225 (January 6, 2017); 16-01121 (December 28, 2016); 16-00673 (December 22, 2016); 15-03326 (October 24, 2016); 15-02865 (October 13, 2016); 16-00201 (September 30, 2016); 16-00786 (September 16, 2016); 15-03282 (August 18, 2016); 15-02851 (July 29, 2016); 16-00351 (July 19, 2016); 15-00673 (June 22, 2016); 15-03158 (June 3, 2016); 15-01416 (May 17, 2016); 15-03002 (May 16, 2016); 15-01160 (May 5, 2016); and 15-01911 (April 8, 2016).

[2]/ In simplified arbitrations, no hearing is held unless the claimant requests one. If no hearings are held, the arbitrator will render an award based on the pleadings and other materials submitted by the parties. See, e.g., *Simplified Arbitrations*, FINRA Office of Dispute Resolution, available at http://www.finra.org/arbitration-and-mediation/simplified-arbitrations (last visited April 1, 2017).

[3]/ These arbitration awards are identified by their applicable FINRA case numbers and the dates that the indicated awards were issued: 16-01643 (March 8, 2017); 16-00519 (March 1, 2017); 16-01655 (February 27, 2017); 15-01228 (January 20, 2017); 15-01225 (January 6, 2017); 16-01121 (December 28, 2016); 15-03326 (October 24, 2016); 16-00201 (September 30, 2016); 16-00786 (September 16, 2016); 15-03282 (August 18, 2016); 15-00673 (June 22, 2016); 15-03158 (June 3, 2016); 15-01416 (May 17, 2016); and 15-01160 (May 5, 2016).

the named Respondents did not participate in the arbitration proceedings and/or did not appear at the evidentiary hearing (which raises a substantial question as to the collectability of the monetary damages that had been awarded)[4]; and, in one (1) arbitration proceeding, in particular, not only were the investor claims dismissed in their entirety, but the investor Claimants were then assessed damages for a counterclaim that had been asserted by the Respondents as well as responsibility for the imposition of monetary sanctions that had been levied against the investor Claimants.[5]

It is also important to note that, in two (2) of the more recent awards involving CSAG, the arbitrators in those proceedings issued reasoned awards that included "findings" that were not only highly critical of the involvement of CSAG and its employee Jennifer Tarr, but both of which also determined that their involvement in these arbitration proceedings violated state law and constituted the unauthorized practice of law.[6]

Finally, notwithstanding CSAG's representation that it "has a national network of lawyers specializing in securities arbitration and investment loss recovery" and that its "advisory group will recommend your case to a lawyer within our network who is best suited to fit your special needs," in all twenty two (22) of the arbitration awards mentioned above, the CSAG employee who is identified as having represented the investor Claimants is the same Jennifer Tarr, mentioned above, who has "admitted" that she is not an attorney who is licensed to practice law.[7]

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[4]/ These arbitration awards are identified by their applicable FINRA case numbers and the dates that the indicated awards were issued: 16-00350 (February 24, 2017); 16-00441 (February 10, 2017); 16-00673 (December 22, 2016); and 16-00351 (July 19, 2016).

[5]/ This arbitration award is identified by its applicable FINRA case number and the date that the indicated award was issued: 15-01225 (January 6, 2017).

[6]/ See, *Simon v. Aegis Capital Corp. et al.*, FINRA Dispute Resolution Arbitration No. 15-02865 (October 12, 2016) and *Halling v. Cape Securities Inc. et al.*, FINRA Dispute Resolution Arbitration No. 16-00519 (March 1, 2017), copies of which are attached to this submission under the respective designations of Attachments 1 and 2.

[7]/ See, *Simon v. Aegis Capital Corp. et al*, FINRA Dispute Resolution Arbitration No. 15-02865 (October 12, 2016).

Vindication Recovery Services Inc. ("VRS")

VRS is a company that was incorporated in New York in 2010 and is currently based on Long Island in Mount Sinai, N.Y.

On its website (www.marketvindication.com), VRS states that it "is an asset recovery team, we are not lawyers and do not render legal advice" and that it "can help protect your rights as an investor" because "[i]f wrongdoing did take place we will be able to identify it due to our unique and vast experience as industry insiders" with a "comprehensive asset recovery team experienced in every aspect of the brokerage industry."

VRS' website further states that it "utilizes in excess of 15 years of experience in detecting a stock broker's wrongdoing through portfolio analysis and market research" and that it "provide[s] a support system in assisting investors in recovery of stock market losses due to broker and other brokerage industry wrongdoing" and [the] "potential recovery of lost market assets through arbitration."

While information as to VRS' purported "team" of "industry insiders" who claim to have "unique and vast experience" is noticeably absent from its website, a recent review of FINRA arbitration awards did not provide any indication that VRS has been identified as the representative for investor Claimants in any reported awards.

It is noteworthy and material, however, that, in VRS' original 2010 incorporation filing with the New York State Department of Corporations, the Chief Executive Officer of the company is listed as Paul Shechter who, according to various internet postings, is alleged to be the same individual/former broker who was the subject of a FINRA disciplinary complaint filed in September 2013 (which had alleged abusive sales practices with at least 10 customers, unauthorized trading, unsuitable recommendations and the falsification of books and records) that was then settled in April 2014 with sanctions that included a two (2) year suspension and a fine of $25,000[8] and that he

[8]/ See, *Dept. of Enforcement v. Paul Shechter*, Disciplinary Proceeding No. 2009016159107 (Complaint dated September 26, 2013) and *Dept. of Enforcement v. Paul Shechter*, Disciplinary Proceeding No. 2009016159107

may be the same individual/former broker who, according to his BrokerCheck report, was also the subject of a regulatory enforcement complaint that had been initiated by the Illinois Securities Department in 2007, had been associated with a large number of brokerage firms that have been expelled from the securities industry, and has a history of at least five (5) reportable customer complaints.[9]

National Advisory Network, Inc. ("NAN")

NAN is a company that was incorporated in California in 2016 and is currently based in Long Beach, California.

On its website (www.nationaladvisorynetwork.com), NAN states that it "is a registered Legal Document Preparation Company and Certified Mediation firm. Experts in consumer protection laws and laws governing the sales of securities, joint ventures and limited partnerships, National Advisory Network specializes in assisting clients with resolving disputes with investment companies that violate industry laws and regulations."

NAN's website further states that it "[i]f you have an investment that hasn't been performing the way you were told it would, it's probably worth looking into. We have a specific department devoted solely to research and investigation in order to determine if there are any red flags about your current investments. If there's something that looks a little funny, we're more than happy to guide you through the steps that you can take to address the situation properly."

(Settlement dated April 28, 2014), which are respectively available at http://disciplinaryactions.finra.org/Search/ViewDocument/34487 and http://disciplinaryactions.finra.org/Search/ViewDocument/35769 (last visited April 1, 2017).

[9]/ FINRA collects, compiles, organizes, indexes, digitally converts and maintains regulatory data from registered persons, member firms, government agencies and other sources and maintains the data in its proprietary Central Registration Depository ("CRD®") database and system. FINRA releases portions of such data through FINRA BrokerCheck, which provides data from the CRD system to the investing public. [See, *BrokerCheck Report for Paul Stuart Shechter*, CRD # 2589423, available at https://brokercheck.finra.org/individual/summary/2589423 (last visited March 31, 2017).

While information as to NAN's purported "department" of "experts in consumer protection laws and laws governing the sales of securities" is noticeably absent from its website, a recent review of FINRA arbitration awards did not provide any indication that NAN has been identified as the representative for investor Claimants in any reported awards.

Stock Market Recovery Consultants, Inc. ("SMRC")

SMRC is a company that was formed in 2003 and is currently based on Long Island in Uniondale, N.Y.

On its website (http://1800stockloss.com), SMRC states that its "objective is to provide professional, affordable representation for burnt investors through negotiation and arbitration" and that it "offers a valuable service by representing investors suffering from investment losses with the expertise and experience of many years in the securities industry to successfully recover your money."

SMRC's website further states that "[w]e exclusively represent the burnt investor, and have extensive experience in the process of securities related claims before FINRA. We help investors recover money that was lost as a result of fraud, negligence and other misconduct."

The co-founders of SMRC are stated to be Benjamin Lapin, a non-attorney, who purports to be "[r]ecognized as an expert in securities arbitration" with "an extensive trading background of over 20 years [who] has been involved in over 1000 securities disputes" and Mitchell Markowitz, another non-attorney, who purports to be "a recognized expert in matters relating to investment fraud in the financial services industry and is highly experienced in dealing with regulatory agencies."

While information as to the purported recognition of the expertise of Messrs. Lapin and Markowitz and/or their experience with arbitration proceedings and/or trading is noticeably absent from SMRC's website, according to a May 2010 article that appeared in The New York Times, it was alleged that Mr. Markowitz appears to have been the

same individual who had pled guilty in Essex County Superior Court, in New Jersey, to criminal charges that involved an attempt to collect nearly one million dollars as part of an insurance fraud scam designed to cash-in on a million dollar insurance policy.[10]

A recent review of FINRA arbitration awards indicates that SMRC has been identified as the representative for investor Claimants in eighty eight (88) reported awards since August of 2004 – and while a detailed analysis of the results of those awards are beyond the scope of this article, it is noteworthy that The New York Times, in its May 2010 article, concluded that "[w]hen the cases make it to a panel of arbitrators, however, the crusaders of Coney Island Avenue [i.e., SMRC] usually go home empty-handed; in a couple of cases, their clients were even told to pay the brokerage house."[11]

Conclusion:

"FINRA operates the largest securities dispute resolution forum in the United States, and has extensive experience in providing a fair, efficient and effective venue to handle a securities-related dispute."[12]

When victims of misconduct by their investment professionals are potential prey for NARs who avoid complete transparency of their qualifications, it suggests a scenario which threatens FINRA's "fair, efficient and effective venue" of dispute resolution and constitutes a clear and present danger to the investing public.

When victims of misconduct by their investment professionals are potential prey for NARs who avoid complete transparency of the material aspects of their business and/or employment histories, it suggests a scenario which threatens FINRA's "fair, efficient and

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[10]/ See, *Swatting at Wall Street From a Bunker in Brooklyn*, The New York Times (May 21, 2010), available at http://www.nytimes.com/2010/05/23/nyregion/23critic.html (last visited April 1, 2017) ("Mr. Markowitz pleaded guilty in 2004 to insurance fraud in a million-dollar scam involving jewelry"). See, also, *N.Y. Insurance Adjuster, Four Others Plead Guilty to Million Dollar Scam*, Insurance Journal (April 28, 2004), available at www.insurance journal.com/news/east/2004/04/28/41627.htm (last visited April 1, 2017).

[11]/ See, *Swatting at Wall Street From a Bunker in Brooklyn*, The New York Times (May 21, 2010), available at http://www.nytimes.com/2010/05/23/nyregion/23critic.html (last visited April 1, 2017).

[12]/ See, *Arbitration and Mediation*, FINRA Office of Dispute Resolution, available at http://www.finra.org/ arbitration-and-mediation (last visited April 1, 2017).

effective venue" of dispute resolution and constitutes a clear and present danger to the investing public.

And when victims of misconduct by their investment professionals are potential prey for NARs who are permitted to represent investor Claimants without any oversight by the regulatory community and within an atmosphere that does not require any ethical accountability by NARs, it suggests a scenario which threatens FINRA's "fair, efficient and effective venue" of dispute resolution and constitutes a clear and present danger to the investing public.

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