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**Comment on SR-FINRA-2023-013**  
**Order Approving a Proposed Rule Change to Amend the FINRA Codes of Arbitration Procedure and Code of Mediation Procedure to Revise and Restate the Qualifications for Representatives in Arbitrations and Mediations**

April 18, 2024

SECURITIES EXCHANGE ACT OF 1934  
Release No. 99915 / April 8, 2024

Dear Securities and Exchange Commission

Thank you for this opportunity to comment on the long-aborning and absolutely necessary FINRA arbitration rule on the prohibition of Non-Attorney Representatives (NARs) from harming investors and promoting the meritorious precepts of its nationwide arbitration program.

By way of context, since the 1980s I have represented investors, brokers and firms in disputes; have been an arbitrator and mediator; was a Director of Arbitration of the American Stock Exchange; regularly lecture at the Fordham Law School Securities Arbitration Clinic; and, have authored most of the law books on securities arbitration and mediation, including Matthew Bender's *Securities Arbitration Procedure Manual* and Thomson Reuters *McKinney's Consolidated Laws of New York, Practice Commentary on Securities Arbitration*. I am also a former Special Deputy Attorney General for the New York Department of Law's Securities Division.

I have written about and, more importantly, have experienced the blight of NARs on FINRA's arbitration procedures and therefore strongly endorse the new rule, especially the carve out for law school clinics, which fill the gap for smaller cases.

In 2018, the New York City Bar Association published an analysis of the Comments Received by FINRA on the then-proposed rule.<sup>1</sup> The Bar's analysis can best be summarized by this excerpt:

“Compensated NARs represent customers in one percent of customer cases and only a few compensated NARs regularly practice in the DRS forum today. Despite the infrequency of compensated NAR representation, FINRA's review identified multiple allegations of improper conduct by compensated NARs, whose clients are not protected by the professional qualification requirements, ethical rules, disciplinary processes and client protections that apply when parties retain licensed attorneys.”

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<sup>1</sup> <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/non-lawyers-representing-customers-in-finra-dispute-resolution-arbitrations>

In finally approving the proposed rules in January of this year, the Commission gave a number of salient reasons, including:<sup>2</sup>

“Excluding compensated NARs from the DRS forum is a reasonable approach to help ensure that persons representing claimants in the DRS forum for compensation adhere to professional standards and can be held to account when they do not (e.g., attorneys) or lack the pecuniary incentive to engage in improper conduct (e.g., uncompensated NARs).”

From my first-hand experience as an attorney representing parties in securities arbitrations and as an arbitrator, I have seen customers abused a second time, first by their financial advisers and then by their non-attorney representatives. The failings of NARs often lead to settlements for lower amounts than an experienced securities arbitration attorney could achieve (especially members of the Public Investors Advocate Bar Association) and to outright “malpractice” in the pleadings and hearing stages (e.g., poorly written Statements of Claim and not knowing how to effectively question witnesses on direct and cross-examinations).

Please approve this new rule; the time has come.

Very truly yours,

*David E. Robbins*

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<sup>2</sup> January 11, 2024 Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend the FINRA Codes of Arbitration Procedure and Code of Mediation Procedure to Revise and Restate the Qualifications for Representatives in Arbitrations and Mediations [34-99335.pdf \(sec.gov\)](#) (all quotes directly from SEC Release).