

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

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Case No: 2013-000651

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**RECEIVED**

OCT 13 2014

**S.C. Supreme Court**

DAVID W. KELLER,

Respondent,

v.

ING FINANCIAL PARTNERS, INC., WILLIAM C. JOHNSON,  
DIVERSIFIED BUSINESS CONCEPTS, INC. and  
JACKSON NATIONAL LIFE INSURANCE COMPANY,

Defendants,

Of Whom ING FINANCIAL PARTNERS, INC., WILLIAM C.  
JOHNSON, and DIVERSIFIED BUSINESS CONCEPTS, INC. are,

Petitioners.

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**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

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Pursuant to Rule 213, SCACR, and to assist this Court in resolving the issues presented in this case, Financial Industry Regulatory Authority, Inc. (“FINRA”) respectfully moves this Court for permission to participate as *amicus curiae*.<sup>1</sup> If leave to file an *amicus* brief is granted, the *amicus* brief would address the legal relationship

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<sup>1</sup> Counsel for all parties in this case were contacted to advise them of FINRA’s interest in filing an *amicus curiae* brief.

between FINRA and its predecessor the National Association of Securities Dealers, Inc. (“NASD”).

#### I. INTERESTS OF *AMICUS CURIAE*

FINRA is a not-for-profit corporation organized under Delaware law and is a self-regulatory organization (“SRO”) registered with the Securities and Exchange Commission (“SEC”) as a national securities association pursuant to the Maloney Act of 1938, (15 U.S.C. § 78o-3, *et seq.*), amending the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. § 78a, *et seq.*). *See also Desiderio v. NASD*, 2 F. Supp. 2d 516, 518 (S.D.N.Y. 1998), *aff’d*, 191 F.3d 198 (2d Cir. 1999). FINRA has existed since 1936 and is the nation’s only registered securities association as well as the nation’s largest SRO. As an SRO, FINRA is a part of the Exchange Act’s highly interrelated and comprehensive mechanism for regulating the securities markets. *Conover v. FINRA, Inc.*, No. 14-cv-03065-MEJ, 2014 U.S. Dist. LEXIS 121368 (N.D. Ca. August 28, 2014).

FINRA’s wholly-owned subsidiary, FINRA Dispute Resolution, Inc. (“FINRA DR”), operates the largest dispute resolution forum in the securities industry to assist in the resolution of monetary and business disputes. These arbitrations are conducted pursuant to FINRA’s Code of Arbitration Procedure. The SEC must approve all FINRA rules, policies, practices, and interpretations before they are implemented, including the Code of Arbitration Procedure. 15 U.S.C. § 78s(b); *Shearson/American Express v. McMahon*, 482 U.S. 220, 233-234 (1987).

FINRA was incorporated in 1936 under the name Investment Bankers Conference, and later that year changed its name to National Association of Securities Dealers, Inc. In 2007, FINRA acquired the regulatory and arbitration functions of the

New York Stock Exchange, and, as part of the transaction, changed its name to Financial Industry Regulatory Authority, Inc.

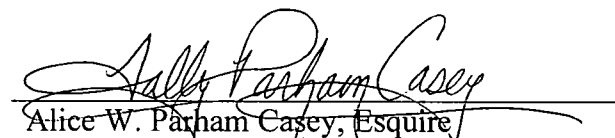
**II. IMPORTANCE OF AN *AMICUS CURIAE* BRIEF AND ITS RELEVANCE TO THE ISSUES BEFORE THE COURT**

The issue before this Court is the nature of the relationship between FINRA and NASD, a subject upon which FINRA is uniquely qualified to assist the Court. As the entity that underwent the name change from NASD to FINRA, FINRA has actual knowledge and documentation supporting that NASD and FINRA are the same entity, not separate entities, and that agreements requiring arbitration before NASD apply with equal force to FINRA.

**CONCLUSION**

For the reasons discussed above, the proposed *amicus curiae* believes that its participation would be useful to this Court in its consideration of the pending lawsuit, and in resolving the important issues of law presented here.

Respectfully submitted,

  
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PROOF OF SERVICE

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The undersigned counsel hereby certifies that on October 13, 2014, she served a copy of the foregoing Motion for Leave to File *Amicus Curiae* Brief on all counsel of record by depositing copies of the same in the United States mail, first-class postage prepaid, and addressed as follows:

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