

U.S. Securities and Exchange Commission  
Dodd-Frank Investor Advisory Committee  
Meeting of October 12, 2017

Prepared Remarks of Prof. David Michael White  
Director, Seton Hall University School of Law Investor Advocacy Project

Thank you. Chairman Clayton. Chairman Sheehan. Members of the Investor Advisory Committee. Prof. Iannarone. Good afternoon.

On behalf of my Seton Hall University School of Law Investor Advocacy Project student advocates and our sister securities arbitration clinics across the nation, I am delighted to share a perspective regarding the imperative to promote financial literacy.

Seton Hall, like Georgia State, is a grateful beneficiary of a one-time \$250,000 start-up grant from the FINRA Investor Education Foundation. Our school committed to expend best efforts to identify sources of continued funding upon the sunset of the three-year period.

Unlike doctrinal instruction, live-client supervision requires more than the memorization of the elements of adverse possession or the ability to explicate the byzantine Rule Against Perpetuity. To toil in trenches populated by real litigants who possess real problems with real consequences requires a real attorney who possesses seasoning born of practice.

We do not merely profess; we teach. And unlike our similarly credentialed peers who ply their craft at Wall Street firms, we passionately embrace the comparative noble poverty of the legal academy. Even so, clinical programs are the most expensive line item on a law school's budget. Our talents may be relatively inexpensive, but they are not free.

Succinctly stated, our twin mandate is to provide zealous advocacy for investors of modest means and to promote prophylactic best practices for informed investing. Prof. Iannarone has eloquently analyzed the advocacy piece. Permit me to overview our efforts to bring the message to the masses.

There is an inverse relationship between market performance and clinic inbound call volume. Investors make fewer inquiries regarding portfolio balance and are less concerned by documented risk tolerance when their monthly account balance is not surrounded by parentheses.

In the past 12 months, the three major indices have time and again established new high water marks. The S & P 500 broke the 2,500 barrier, while the NASDAQ Composite Index charted new territory on nearly 50 trading sessions. The Dow Jones Industrial Average has set record highs more than 40 times in 2017 and nearly 5 dozen times since the 2016 presidential election. The long-anticipated 22,000 mark is disappearing in the rear-view mirror. On September 19th, no less of a prognosticator than the "Oracle of Omaha" himself foresaw Dow 1,000,000 within the coming century.

So much for “irrational exuberance.”

But history shows that the good times do not always roll. Negative market volatility causes the casual investor to take stock of their positions. It is during such times that my office phone rings incessantly and my email inbox demands constant attention.

In an industry whose metrics of success are those which are monetized, we assess achievement against a more humane benchmark. Seton Hall has negotiated hundreds of thousands of dollars in settlement of retail investor disputes. But we take greater pride in knowing we have restored dignity to those who came to doubt market integrity.

As a matter of anecdotal observation, securities arbitration clinics issue declinations in response to 75% – 90% of requests for representation. This statistic stands in stark contrast to the articulated industry perception that clinics are less-than-discerning in our acceptance of clients.

As clinicians and student advocates, we are frequently called upon to engage in what the Harvard Program on Negotiation terms “difficult conversation.” It is our role to convey the truth with compassion. Most commonly, we explain the statute of limitations, the lack of FINRA jurisdiction over non-member entities and associated persons, and the reality that mere market volatility is not actionable. Sometimes, there simply is no there, there. Retail investors do not warmly embrace such after-acquired illumination.

In stark contrast to the public perception that law school securities arbitration clinics fill potential claimants with false hope, facilitate the filing of meritless claims, or perpetuate costly litigation, we play a gatekeeper role. But for our willingness to serve as an often unthanked agent of reality, the industry would contend with greater numbers of arbitrations and incur the inefficiencies of unnecessary legal fees and diminished reputation.

We take no small measure of pride in the knowledge that our programs confer a balanced benefit upon those we would represent and those we would oppose in the FINRA forum.

Since the founding of the Seton Hall School of Law Investor Advocacy Project in 2010, not one of my former student advocates has opted to join PIABA upon graduation. Nor have they hung out their shingle in representation of claimants.

While that may be regrettable, many have embarked on an alternative professional journey as corporate or litigation associates at some of Manhattan’s most prominent firms. In doing so, they arrive practice-ready, having acquired invaluable perspective from the other side of the “v.”

To the hiring partners and staffing coordinators of those mega firms I say: you’re welcome.

Seton Hall has acquired a reputation for being a leader in investor education. Each semester, our student advocates traverse New Jersey's 21 counties and engage with diverse audiences ranging from grammar school students to residents of assisted living communities. We customize presentations to meet the needs of a given group, thereby ensuring a high level of interactivity.

One of our most creative sessions involved the design of an investing exercise for a pre-teen audience. We provided each participant with 500 "dollars" and asked them to consider three investment options with which they likely would be familiar: Facebook, Starbucks, and Domino's Pizza. The junior "investors" could select one or more companies in which to acquire an interest. They could also opt to stay out of the market and keep their cash position.

We then projected a PowerPoint slide which showed the closing price for each stock 30 days prior to the date of our presentation. We represented that to be the day's opening prices. At the conclusion of the simulation, we projected the previous day's actual closing prices and tallied profits and losses.

A 12-year old boy who chose to invest all \$500 in Domino's realized the greatest gain. We asked him why he selected the fast-food chain over the beverage behemoth and the social media giant. He provided an elegant response.

"My family owns a pizza shop. I went with what I know."

If only those with greater life experience possessed this young man's business acumen.

We have presented to military personnel on the United States Marine Corps birthday and been the undercard to senior citizen BINGO games. We have accepted invitations from the Rotary, Kiwanis, Elks, and Lions clubs. Garden State public libraries and high school financial literacy classes are our regular stomping grounds.

Where two or more are gathered, there are you likely to find us in their midst.

These proactive initiatives promote greater appreciation of the risks and benefits associated with direct participation in our financial exchanges and awareness of more exotic products including real estate investment trusts.

We introduce our audiences to the alphabet soup of financial certifications which trail a broker's name, and identify potential problems which could arise in the investor-broker relationship.

Our orchestration of these roadshows has garnered positive media attention, which in turn has drawn even larger crowds.

I take this opportunity to recognize Investor Advocate Rick Fleming, Ombuds Tracey McNeil, Senior Counsel Ashlee Steinnerd, and Attorney Adviser Morgan Tangney. They have been staunch supporters of the existing law school securities arbitration clinics.

We offer special gratitude to the Office of the Investor Advocate for their willingness to join us at an upcoming roadshow. We believe their presence will mark the first time the S.E.C. has observed a law school securities arbitration clinic public education presentation.

In closing, I enjoin the Investor Advisory Committee to remain aware of our collective access-to-justice initiatives. We are a proven commodity whose upside potential offers worthwhile return on investment.

Thank you.