



December 12, 2019

Via E-Mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Attn: Vanessa Countryman, Secretary

Re: File Number SR-FINRA-2019-027  
FINRA Proposed Rule Change to Amend FINRA Rule 12000 Series  
to Expand Options Available to Customers if a Firm or Associated  
Person Is or Becomes Inactive (the "Proposal")

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")<sup>1</sup> appreciates the opportunity to comment on the Proposal.<sup>2</sup> SIFMA initially commented on the Proposal in December 2017 in connection with FINRA's publication of Regulatory Notice 17-33.<sup>3</sup>

The Proposal would expand a customer's options if a firm or associated person becomes inactive before an arbitration claim is filed or during a pending arbitration. The Proposal would allow the customer to withdraw a claim, amend pleadings, postpone hearings, invoke expedited default proceedings, and receive a refund of filing fees. SIFMA generally supports the Proposal as an appropriate expansion of claimant protections when dealing with firms and associated persons who are no longer in business either at the time the claim is filed or at the time of the award.

---

<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> 84 Federal Register 64581 (November 22, 2019), available at <https://www.finra.org/sites/default/files/2019-11/SR-FINRA-2019-027-federal-register-notice.pdf>.

<sup>3</sup> SIFMA comment to FINRA re: Regulatory Notice 17-33 (December 15, 2017), available at <https://www.sifma.org/resources/submissions/sifma-comments-on-finra-rn-17-33/>.

SIFMA’s support is predicated on FINRA’s stated purpose of the Proposal – namely, to facilitate “dealing with those member firms or associated persons who are responsible for most unpaid awards – firms and associated persons who are no longer in business either at the time the claim is filed or at the time of the award.”<sup>4</sup> We agree that the Proposal would probably help address the issue of unpaid arbitration awards.

To that end, to better achieve the purpose of the Proposal (i.e., help address unpaid arbitration awards), we recommended that the Proposal be expanded to apply not only to customer cases but also to intra-industry cases. FINRA rejected our recommendation, stating:

FINRA has decided to apply the proposed amendments to customer cases only because providing customers with more control over the arbitration process when faced with a respondent that likely will not be able to pay an award furthers FINRA’s goal of investor protection.<sup>5</sup>

To the contrary, however, expanding the Proposal to intra-industry cases would more completely address the issue of unpaid arbitration awards *and* more completely advance FINRA’s goal of investor protection. After all, unpaid arbitration awards occur in *both* customer cases and intra-industry cases. So, if the Proposal helps in the customer context, then it will help equally in the intra-industry context.

Extending the Proposal to intra-industry cases should not be put-off for another day. Notably, that is precisely what FINRA did in July 2010 when it amended Rule 9554 to preclude a respondent from raising the “inability to pay” defense in expedited suspension proceedings against a *customer* claimant. At that time, however, FINRA failed to also eliminate the “inability to pay” defense against an *industry* claimant. And, FINRA has never gone back to remedy that oversight, although we have explicitly requested that they do so.<sup>6</sup>

Thus, today in intra-industry disputes, broker-dealers and associated persons remain free to raise the “inability to pay” defense to avoid paying their arbitration awards, thereby contributing to the problem of unpaid arbitration awards. There is no public record, either in BrokerCheck or in the arbitration case record, that these firms and associated persons are raising this (often spurious) defense, but it is surely something that their clients and retail investors generally would want to know. Perhaps regulators would be interested in this information as well.

We need not make a substantially identical oversight in this case. The Proposal should extend to intra-industry cases. If FINRA does not include intra-industry cases now, it will not go back later to remedy it.

All of the same arguments that FINRA makes in favor of expanding the options available to a customer claimant when dealing with inactive firms and associated persons apply *equally* to industry

---

<sup>4</sup> FINRA Regulatory Notice 17-33, at 2, 6.

<sup>5</sup> 84 FR at 64588.

<sup>6</sup> SIFMA comment letter to FINRA (June 2, 2017) at 3 (FINRA should eliminate the inability to pay defense in intra-industry disputes), available at <https://www.sifma.org/resources/submissions/sifma-submits-comments-on-the-transparency-of-finras-dispute-resolution-program/>.

claimants when dealing with those same firms and associated persons. In fairness to intra-industry respondents and to more completely address the issue of unpaid arbitration awards, the Proposal should be extended to intra-industry cases.

Thank you for the opportunity to further comment. If you have any questions or would like to further discuss these issues, please contact the undersigned.

Sincerely,

A handwritten signature in cursive script that reads "Kevin M. Carroll". The signature is written in dark ink and is positioned above a horizontal line.

---

Kevin M. Carroll  
Managing Director and  
Associate General Counsel

cc: ***via e-mail to:***

Robert L.D. Colby, Chief Legal Officer, FINRA

Richard W. Berry, Executive Vice President and Director FINRA-DR