Public Investors Arbitration Bar Association

May 17, 2010

Via Email: rule-comment@sec.gov

Ms. Florence Harmon
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SR-FINRA-2010-014 Rule Proposal Regarding Inability-to-Pay Defense

Dear Ms. Harmon:

On behalf of the Public Investors Arbitration Bar Association ("PIABA"), I thank you for the opportunity to comment on the above-referenced Rule Proposal to amend FINRA Rule 9554 regarding the 'Inability-to-Pay Defense'. PIABA is a national, not-for-profit bar association comprised of more than 460 attorneys, including law school professors and former regulators, who devote a significant portion of their practice to the representation of public investors in securities arbitrations. Accordingly, our members and their clients have a strong interest in FINRA rules that protect public investors, particularly those that impact the fairness of the arbitration process.

PIABA supports the proposed rule change which would eliminate the defense of 'inability to pay' an arbitration award in the context of expedited suspension proceedings by FINRA against that non-compliant member firm/associated person. The rule change will implement a substantial and positive step toward ensuring that more investors are paid when they win at arbitration. A natural consequence will also be enhanced confidence in the arbitration process overall.

Summary of Proposal

Under the current rules, when an award is found in favor of a customer claimant, a member firm or associated person has 30 days to pay the award or face discipline. The current framework allows for FINRA to suspend the firm or associated person for a failure to pay the award, but it also allows for certain defenses to a suspension, including an inability-to-pay defense.

Unpaid arbitration awards have long been a problem within the securities industry. According to a GAO study done in 2003, about 55% of the $100.2 million (totaling $55 million) awarded by NASD arbitration panels to investors went unpaid.[1] A similar report done in 2000 found that 80% of the $161 million awarded to securities customer claimants in 1998 went unpaid as well. While the incidence of unpaid awards has declined somewhat in recent times, even one such incident is unnecessary and unjust. Accordingly, we applaud FINRA in its proposal to extinguish this defense.

The amended rule will benefit certain customers, most obviously those who obtain an arbitration award against firms/associated persons reluctant or unable to pay with ease. In these instances, it is more likely is that firms or associated persons will find the means to honor the award or to make suitable arrangements with the customer. As stated in the SEC's release, the elimination of this defense should prompt reasonable settlement discussions between the parties when prudent, as well as to the payment of awards as required by FINRA rules.

Bankruptcy Defense Should Be Re-Considered

While PIABA believes that this proposed rule is a step in the right direction, it still gives the firm or associated person ways to avoid paying an award. The proposed rule allows a firm or associated person to avoid paying an award under four circumstances, including when a member or associated person files a petition for bankruptcy.

FINRA notes that a bankruptcy court may have the best ability to adjudicate a financial condition defense, and PIABA does not dispute this per se. However, this loophole for a firm or associated person to avoid paying an award and yet remain in this highly regulated industry without interruption, deserves closer scrutiny. This exception provides an escape hatch for the firm or associated person and potentially leaves a wronged investor with an unpaid award. As such, the bankruptcy defense is contradictory to the spirit of the proposed rule and should also be eliminated or restricted in its wholesale use. While the purpose of the proposed rule change includes protection of investors and the public interest, the bankruptcy defense works against that purpose. Simply put, if the firm fails to pay an award because of an inability to pay (whether through bankruptcy or not), that firm should not be allowed to remain active in an industry which is so heavily dependent upon investor trust, until the bankrupt compensates the victorious investor or enters into a reasonable settlement regarding restitution.

[1]. *Follow-up Report on Matters Related to the Securities Arbitration*, U.S. General Accounting Office, GAO 03-162R, pg. 9 (Apr. 11, 2003).

In sum, PIABA supports the proposed rule change and urges the Commission to approve the same. We also submit that FINRA should eliminate or restrict the bankruptcy defense still available in expedited proceedings. Please do not hesitate to contact the undersigned if you have any questions regarding the comments herein.

Respectfully,

PUBLIC INVESTORS ARBITRATION
BAR ASSOCIATION

/s/

Scott R. Shewan, President

Mr. Shewan's Contact Information

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