sifma

Invested in America

August 1, 2013

Via E-Mail to rule-comments@sec.gov

Elizabeth M. Murphy
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-FINRA-2013-018; Release No. 34-69178
SIFMA *Supplemental Comment* on
proposed rule change re: FINRA Rule 8313 (the "Proposal")

Dear Ms. Murphy:

On April 15, 2013, the Securities Industry and Financial Markets Association ("SIFMA")[1] filed a comment letter with the SEC on the Proposal (the "SIFMA Letter").[2] On June 21, 2013, the SEC approved the FINRA rule change upon which SIFMA commented.[3] In its order approving the change, the SEC noted that "FINRA did not address the concerns raised by the SIFMA Letter that were outside the scope of the proposed rule."[4]

In fact, however, FINRA did not address *any* of the concerns raised in SIFMA's comment letter. Only five persons, including SIFMA, commented on the Proposal.[5] In its June 17, 2013 letter to the SEC,[6] FINRA substantively addresses all of the comments, except for SIFMA's. In response to SIFMA's comments, FINRA stated:

> One commentator stated its objection to a provision in Rule 9554 that precludes a respondent from raising the inability-to-pay defense against a customer claimant, but not against an industry claimant. The comment is outside the scope of the proposed rule change and will not be addressed herein.[7]

With respect to the "scope" of the Proposal, it seeks to amend FINRA Rule 8313, which governs disclosure of disciplinary and other information by FINRA to the public. The Proposal explicitly

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[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.
[2] Available at: http://www.sec.gov/comments/sr-finra-2013-018/finra2013018-1.pdf.
[3] Available at: http://www.sec.gov/rules/sro/finra/2013/34-69825.pdf.
[4] *Id.* at p. 12, fn 26.
[5] See http://www.sec.gov/comments/sr-finra-2013-018/finra2013018.shtml.
[6] Available at http://www.sec.gov/comments/sr-finra-2013-018/finra2013018-6.pdf.
[7] *Id.* at p. 5, fn 14.

includes disclosures about Expedited Proceeding under Rule 9554. SIFMA's comment is explicitly limited to disclosures about Expedited Proceeding and specifically, cases where a respondent successfully raises an "inability to pay" defense under FINRA Rule 9554 (failure to comply with an arbitration award). SIFMA's comment thus falls squarely within the scope of the Proposal.

Moreover, SIFMA's comment recommends *not only* eliminating the defense, *but also*, alternatively, *disclosing* to investors when the defense is raised. As our comment explains, the fact that an individual financial advisor: 1) has an arbitration award that he has not paid, and 2) claims that he has an inability to pay that arbitration award in an Expedited Proceeding under Rule 9554, would certainly be highly relevant information to an investor who currently does business, or who contemplates doing business, with that financial advisor.

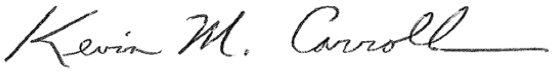
This situation raises significant disclosure, transparency, and investor protection concerns – which lie at the very heart of the Proposal. In a nutshell, the concern is that a financial adviser who owes a valid arbitration award, and who successfully raises the inability-to-pay defense, is able to avoid the suspension that would otherwise be imposed under Rule 9554 and thus, would also be able to avoid the *disclosure* of such suspension under proposed Rule 8313(a)(3). Investor protection and transparency, however, compel disclosure of this information.

Because FINRA did not address any of the concerns raised in the SIFMA Letter, the SEC did not review and consider these concerns in approving the rule change. Consequently, the public comment and rule approval process, and the substantive record, on this matter are incomplete, and fail to address a key investor protection issue.

As the SIFMA Letter explains, the inability-to-pay defense should be eliminated altogether in Expedited Proceedings. Short of that, FINRA should require disclosure under Rule 8313 when a financial advisor successfully raises the defense in an intra-industry case. ***Accordingly, we respectfully request that the SEC address in writing, and cause FINRA to address in writing, the disclosure, transparency, and investor protection concerns raised in the SIFMA Letter.***

If you have any questions, or would like to further discuss this issue, please contact the undersigned at 202.962.7382 or kcarroll@sifma.org.

Sincerely,



Kevin M. Carroll
Managing Director and
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cc: ***via e-mail to*:**
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