



June 9, 2016

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

U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington DC 20549-1090  
Attn: Robert W. Errett, Deputy Secretary

**Re: Release No. 34-77844; File No. SR-FINRA-2016-015  
FINRA Proposed Rule Change to Permit Award Offsets in Arbitration**

Dear Mr. Errett:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on FINRA’s proposed rule change filed with the SEC to amend Rule 12904 of the Code of Arbitration Procedure for Customer Disputes and Rule 13904 of the Code of Arbitration Procedure for Industry Disputes to provide that “[a]bsent specification to the contrary in the award, when arbitrators order opposing parties to pay each other damages, the monetary awards shall offset, and the party that owes the larger amount shall pay the net difference” (the “Proposal”).

SIFMA writes in strong support of the Proposal, which would benefit all forum users in the following ways:

- A presumption that opposing awards will be offset increases the likelihood that the arbitrators’ purpose in issuing opposing awards is carried out.
- At the same time, arbitrators still retain ultimate discretion to decide whether or not to allow offsets.
- The Proposal would reduce instances where the party assessed the greater net amount is required to make payment even if the opposing party fails to pay its part.

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<sup>1</sup> SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. 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>.

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- The Proposal would reduce legal expenses to the party assessed the greater amount by eliminating the need to apply to reopen the case, go to court, or seek other redress.
- The Proposal would eliminate a source of ambiguity in arbitration awards and reduce the risk of post-award disputes.

For all the foregoing reasons, the Proposal is fair and appropriate and offers an important clarification under the rules.

Our one suggestion would be to use more precise language in the rule itself. As drafted, the rule change reads: “*Absent specification to the contrary in the award, when arbitrators order opposing parties to pay each other damages, the monetary awards shall offset, and the party that owes the larger amount shall pay the net difference*” (emphasis added). As you know, arbitration awards are not limited to “damages.” An award directs a party to pay a monetary amount, which may consist of, and be characterized as, damages, costs, fees, etc.

To our understanding, the Proposal was never intended to be strictly limited to “damages” offsets. Accordingly, the proposed rule language should be revised so that it is not susceptible to such a narrow reading, as follows:

“Absent specification to the contrary in the award, when an arbitration award directs opposing parties to ~~pay each other damages~~ make payments to one another, the monetary awards shall offset, and the party ~~that owes~~ assessed the larger amount shall pay the net difference.”

\* \* \*

Based on the foregoing, we respectfully urge the Commission to promptly approve the Proposal with the minor clarifying language changes suggested immediately above.

If you have any questions regarding this letter, please contact the undersigned at [REDACTED] or [REDACTED].

Sincerely,



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Kevin M. Carroll  
Managing Director and Associate General Counsel

cc: Richard G. Ketchum, Chairman and Chief Executive Officer, FINRA  
Robert L.D. Colby, Chief Legal Officer, FINRA  
Richard W. Berry, Executive Vice President and Director, FINRA-DR