

VIA ELECTRONIC MAIL

June 13, 2016

Robert W. Errett
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Regulatory Notice 16-15: Proposed rule 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**

Dear Mr. Errett:

On May 3, 2016, the Financial Industry Regulatory Authority (FINRA) published its request for public comment on proposed amendments to Rule 12904 of the Code of Arbitration Procedure for Customer Disputes and Rule 13904 of the Code of Arbitration Procedure for Industry Disputes (Proposed Amendments).¹ The Proposed Amendments provide that, absent specification, when an arbitrator orders opposing parties to pay each other damages, the monetary awards will automatically offset each other, and the party that owes the larger amount will pay the net difference. Additionally the proposal recommends that both rules use numbers instead of bullets in their subsections.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI applauds FINRA for seeing an ambiguity created by their current regulatory framework and seeking to correct it with a proposal that provides greater clarity and allows for more efficiency in the Dispute Resolution award process.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all

¹ Regulatory Notice 16-15, Change to provide that absent specification to the contrary in an award, when arbitrators order opposing parties to pay each other damages, the monetary awards shall offset (May 3, 2016).

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

producing registered representatives. These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

Currently arbitration awards must be in writing, signed by a majority of the arbitrators, and include a statement of the damages awarded. All monetary awards must be paid within thirty days of receipt. Failure by a firm or individual to pay an award can result in FINRA disciplinary action, including cancellation of membership for the firm or suspension of the firm or financial advisor. Unfortunately not all arbitrators specify, in cases where opposing parties must each pay, whether the party that owes the higher amount may pay the net difference of the two amounts to satisfy the award. This lack of clarity in the Dispute Resolution process has resulted in parties asking arbitrators to revise an award after a case has closed or in post-award litigation to gain further clarity. Additionally, not all arbitrators are receptive to these requests. If the arbitration award does not specify that awards should be offset, the firm is required to pay the counterclaim even if the associated person refuses or is unable to pay the larger amount.

FSI's members have at times been required to pay the total amount of damages but then never received the opposing party's payment. Other firms have even received sanctions or been reprimanded for failure to pay, due to this lack of clarity. For example, our members have experienced situations in which a firm and advisor involved in an arbitration matter were each awarded an amount based on their claims, but the advisor owed the firm more. The advisor then left the industry and refused to pay his award on the basis of hardship. FINRA still brought suspension proceedings against the firm for not paying the advisor his award. As a result the firm ended up settling with the advisor in order to prevent the firm's suspension. These Proposed Amendments would greatly alleviate the problem exemplified and would minimize the risk that firms will pay the entire bill without being given the advantage of the offset. FSI commends FINRA for identifying this issue in the award process and making this practical regulatory change. FSI believes that this is a positive step forward in enhancing and improving the FINRA Dispute Resolution process.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at [REDACTED].

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel