

## VIA ELECTRONIC MAIL

September 7, 2016

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

Re: SR-2016-030: Proposed Rule Change to Amend FINRA Rule 12504 of the Code of Arbitration Procedure for Customer Disputes and FINRA Rule 13504 of the Code of Arbitration Procedure for Industry Disputes

Dear Mr. Errett:

On August 3, 2016, the Financial Industry Regulatory Authority, Inc. (FINRA) filed with the Securities and Exchange Commission (SEC) a proposed rule change to amend FINRA Rule 12504 of the Code of Arbitration Procedure for Customer Disputes and FINRA Rule 13504 of the Code of Arbitration Procedure for Industry Disputes (the Proposal or Proposed Rule).<sup>1</sup> The Proposal would permit arbitrators to dismiss a party or claim prior to the conclusion of a party's case in chief if the arbitrators determine that the non-moving party previously brought a claim through the FINRA Dispute Resolution process regarding the same dispute against the same party, and the dispute was fully and finally adjudicated on the merits.

The Financial Services Institute<sup>2</sup> (FSI) appreciates the opportunity to comment on this important proposal. FSI commends and supports FINRA's efforts to improve and enhance the dispute resolution forum and believes the Proposed Rule would appropriately enhance the arbitration process by eliminating claims that have already been heard and decided on the merits in another forum.

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

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<sup>1</sup> [http://www.finra.org/sites/default/files/rule\\_filing\\_file/SR-FINRA-2016-030.pdf](http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-030.pdf)

<sup>2</sup> 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.

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**

FSI appreciates the opportunity to comment on the Proposed Rule. FSI strongly supports the proposed amendment to FINRA Rule 12504 of the Code of Arbitration Procedure for Customer Disputes and FINRA Rule 13504 of the Code of Arbitration Procedure for Industry Disputes as it will enhance the efficiency and effectiveness of the dispute resolution process by precluding claims or issues that have already been decided in another forum. We elaborate on our support below.

For the past several years, FSI has maintained a FSI Arbitration Task Force (Task Force) made up of various FSI member representatives. The mission of FSI's Arbitration Task Force was to identify and address areas of suggested improvement regarding FINRA's Dispute Resolution program. The Task Force was designed to foster a dialogue with FINRA and other stakeholders to provide industry insight on challenges with FINRA's Dispute Resolution program and suggestions to improve the fairness and efficiency of the program for all participants. One area the Task Force identified as a point of frustration was the procedural rules surrounding motions to dismiss in arbitration proceedings. The FSI Task Force suggested changes be made to the process to shield parties from multiple and duplicative claims. FSI members believe this change is essential to ensure the FINRA Dispute Resolution maintains its efficiency and fairness.

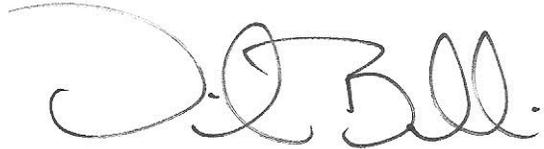
FINRA has taken an important step forward by offering this Proposal permitting arbitrators to dismiss claims that have already been fully litigated in arbitration. For example, consider a case where a claimant initiated a claim against a firm for \$150,000 for suitability based on a broker's investment in XYZ stock. The arbitrators dismiss the claim after a full hearing. The Proposed Rule change would allow the arbitrators to hear a motion to dismiss if the claimant subsequently files an arbitration claim against the same firm relating to the investment in XYZ but in the new case the claimant alleges fraud in inducing the claimant to make the purchase. By eliminating multiple and duplicative filings, arbitrators will be able to focus their energy and resources on newly filed and existing claims while maintaining the certainty and efficiency that are the major benefits of alternative dispute resolution. FINRA's Dispute Resolution program is founded on the principle of preserving integrity and fairness in arbitration proceedings to ensure stability and certainty in the dispute resolution framework of the broker-dealer industry. The principles of FINRA's Dispute Resolution program would be furthered through the adoption of this proposal because it would promote both the integrity and fairness of arbitration proceedings.

### **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 (202) 803-6061.

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