

I am an attorney in San Antonio, Texas, who primarily represents Claimants in FINRA arbitrations.

This proposed rule is one of the most backward reaching rules I have seen proposed by FINRA in quite some time. First, what is a “written complaint” by a customer? We have gone from the days when writing a complaint letter by a customer would definitely get on the CRD of the registered representative, but where there was no “written complaint” in the form of a letter by the customer, but the registered representative who was not a named party in the Statement of Claim, but whose conduct was mentioned in the Statement of Claim, such did not appear on the CRD. This was rectified a few years ago, when FINRA and the SEC chose to treat the complaint letter and alleged misconduct by the registered representative in the filed Statement of Claim the same---common sense prevailed at last.

Now Regulatory Notice 12-18 proposes to take a giant step backwards. It is an attempt to create a trap for the unwary. Whether a customer complains in a complaint letter or a Statement of Claim makes no real difference. Both are complaints about the conduct of the registered representative. If this proposal is put in place, what is the next step? Will it be to allow registered representatives to have a written complaint letter expunged? This will expose the public investor to many risks, both known and unknown. It is totally anti-customer, a reputation that FINRA does not desire.

One result might be that more claimants will name registered representatives in FINRA arbitrations as parties. This will make the entire system more inefficient. One potential unintended result might be effect on the number of strikes and arbitrator rankings, which could place customers at a distinct disadvantage. Again, an anti-customer move that FINRA probably does not desire on its resume.

These registered representatives are all agents of their firms. The firm is financially liable for the agent’s misconduct. Why should it make any difference whatsoever that the misconduct of the registered representative was reported in a written letter or a statement of claim? The registered representative has no remedy if the customer sends a complaint letter to the firm, and then files a statement of claim against the firm only. Why make the unknowledgeable customer jump over such hurdles? A complaint by any other name is still a complaint.

If 12-18 is enacted, it will create a procedural nightmare for FINRA—one that is very customer unfriendly.

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