
December 1, 2017

**BY ELECTRONIC DELIVERY**
pubcom@finra.org

Marcia E. Asquith, Esq.
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: **FINRA Regulatory Notice 17-33**

Dear Ms. Asquith:

I appreciate the opportunity to provide the Financial Industry Regulatory Authority, Inc. ("FINRA") with comment on FINRA Regulatory Notice 17-33, issued by FINRA on October 18, 2017.

I am Senior Litigation Counsel for Advisor Group, Inc., corporate parent of retail broker-dealers Royal Alliance Associates, Inc., SagePoint Financial, Inc., Woodbury Financial Services, Inc., and FSC Securities Corporation, and the entirety of my 23-year professional career has primarily involved dispute resolution through the FINRA-DR forum. I certainly share the prevailing concerns over unpaid arbitration awards, and I support action that would increase potential for ultimate collection of arbitration awards *so long that action does not jeopardize or prejudice the rights of members who have never been part of the unpaid award problem.* I wish to focus on one particular aspect of Notice 17-33: the addition of Rule 12309(c)(2). Unfortunately, I believe that proposed Rule 12309(c)(2) presents substantial potential for jeopardy and prejudice of the rights of those members who have never been part of the unpaid award problem.

Proposed Rule 12309(c)(2) would allow a claimant to add a new party to an existing arbitration proceeding, no matter what stage the arbitration proceeding is in, so long as the original respondent becomes "inactive". Proposed Rule 12309(c)(2) could force a member firm into an arbitration proceeding without right to participate in the critical stage of arbitrator selection---this is where the harm and prejudice of rights arises.

A truly fair and balanced arbitration cannot be had by any party without participation in the arbitrator selection process. Arbitrator selection is the most critical process in a case. Much like jury selection in a civil trial where jurors with potential biases are vetted, this is the stage of arbitration where fairness is ensured and biases are eliminated. Proposed Rule 12309(c)(2) is problematic because it specifically requires a firm---and again, it can be one of the many long-standing firms like those I work with at Advisor Group, which have never been part of the unpaid award problem---to enter the arbitration process *after* the panel has been selected. Imagine in the civil trial context telling the

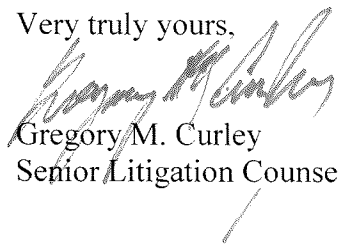
defendant that the jury will be picked without any defendant input: this is the potential impact of proposed Rule 12309(c)(2).

With proposed Rule 12309(c)(2), an opportunistic claimant could even potentially abuse the forum by intentionally initiating proceedings against a party who is unlikely to defend or participate in arbitrator selection, and then add the desired target at a later stage. There is no avenue in proposed Rule 12309(c)(2) to prevent such potentially abusive strategies.

I encourage FINRA to revise its proposal with specific respect to Rule 12309(c)(2), eliminating the potential that member firms who have never been a part of the unpaid award problem be prejudiced by forced participation in an arbitration where they have had no part in panel selection.

Thank you for your consideration of this comment. I emphasize my limited focus on the proposed addition of Rule 12309(c)(2), as this is the portion of Notice 17-33 where I see potential harm and unfair detriment to the members who are not part of the unpaid award problem. I welcome and encourage further focus on the issue of unpaid awards, and development of further solutions that will not unfairly punish those members who have nothing to do with the problem.

Very truly yours,



Gregory M. Curley
Senior Litigation Counsel