

Comment to proposed rule change NASD Rule 1010

I applaud FINRA's attempt to address the problem of rogue registered representatives, however it does not address the harm to innocent registered representatives and small firms. My argument is that very often innocent upstanding registered representatives and their firms can be ruined simply because of the arbitration system.

Lawyers are now recruiting clients to file arbitration cases. They tell potential clients that filing an arbitration will cost them nothing and they will do all the work. The lawyer knows that the firm that they file against will settle because the cost to take a case to arbitration is prohibitive. When an attorney files an arbitration case against the firm, the firm's cost is three to ten thousand dollars just for arbitration fees. Then add two to five thousand dollars for legal costs to file a FINRA response. By the time the case goes to arbitration the cost is now sixty to one hundred thousand dollars. The incentive is to settle the claim, which typically is north of fifteen thousand dollars. You could be totally innocent, still the reality is that the cost is prohibitive and your E&O carrier will force you to settle or they won't provide coverage.

Arbitration is out of control. It literally is the opinion of three people. Only one attorney is required, and if you are lucky you may have one person that is even in the industry. So essentially, they do not have to follow the rule of law. It is the rule of their opinion and if you had the case heard by three different arbitration panels you are likely to get three different opinions. It is in the best interest of the firm and registered representative to settle prior to arbitration regardless of innocence.

I hope you realize the problem this creates. That totally innocent people (reps and firms) are harmed because there is no longer risk in investing. You can invest anywhere you want, lose whatever, and get your money back. If you don't believe me just watch CNBC and you will see 10 commercials making this claim in the course of an eight-hour business day.

Lawyers are making a killing here as well, because they know that what I am saying is a fact. Six years ago, I had never received a complaint much less an arbitration. I have been a FINRA member firm since 2000 and a registered representative since 1991. I now have to budget \$100,000 per year for frivolous arbitrations where investors made a nice return as clients of our firm. They lose money on one investment, get contacted by one of these predatory attorneys and are told that they don't have to pay for anything and they will get their money back. Large firms have no issue with this because they have deep pockets and they know the end result is the total destruction of small independent firms.

If the goal of FINRA and the SEC is the elimination of all small firms then at least have the common courtesy to tell us and let us “fire sale” our firms to the Mega Large firms and be done with it. It breaks my heart to think I have worked my whole professional career to have it yanked away from me because of predatory attorneys and an over reaching bureaucracy.

The solution here is to eliminate the mandatory arbitration clause and make arbitration a mutual agreement between the client and the firm or allow us to go to court where the rule of law prevails. Another solution is to have arbitrators be lawyers and force them to follow the rule of law. We currently have clients sign more paperwork than I signed when I purchased my house. All of this paperwork is absolutely worthless in arbitration. The only use for it is to prove to regulators that we did our job as far as suitability.

It would also be useful for FINRA to have a local hearing (made up of local reps and firms) to determine if the rep or the firm was negligent. This would go a long way to getting rogue representative out of the business.

Sincerely,

Richard J. Carlesco Jr. CEO

Cc: John Katko Representative NY 24th District

President Donald J. Trump

Senator Chuck Schumer

Richard J. Carlesco Jr. LUTCF

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