



Insured Retirement Institute

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Electronically Submitted to NASAAComments@nasaa.org

November 4, 2021

TO: The Broker-Dealer Market and Regulatory Policy and Review Project Group

The Broker-Dealer Arbitration Project Group

Review Project Group

**Re: A PROPOSED MODEL RULE FOR UNPAID ARBITRATION AWARDS UNDER THE UNIFORM
SECURITIES ACTS OF 1956 AND 2002**

Dear Project Groups:

On behalf of our members, the Insured Retirement Institute (IRI)¹ writes in support of NASAA’s proposed model rule for unpaid arbitration awards. The model rule would form the basis for enforcement actions related to unpaid awards and allow NASAA member jurisdictions to prevent the registration of firms and individuals in any capacity if the firm or individual has an outstanding arbitration award.

While FINRA rules already address unpaid arbitration awards for member firms and associated persons, as the Request for Public Comment notes, firms that become suspended under those rules may still register with NASAA member jurisdictions in other capacities, such as an investment advisor or investment adviser representative. The model rule would appropriately and effectively address this issue, but only if the model rule is carefully constructed to work in conjunction (and not conflict) with the relevant FINRA rules.

As such, we respectfully request that the portions of the rule dealing with “attempts” to avoid payment be removed, as this creates a gray area, seems unnecessary, and is inconsistent with the FINRA rules. A firm or an individual either fails to pay or pays the award, and we believe the final model rule should reflect this.

Additionally, the model rule should apply only to actions taken by self-regulatory organizations with statutory authority. To avoid confusion about the applicability of this section, we recommend that Section (z) under Rule USA 2002 502(b) be modified as follows:

(z) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser

¹ The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

representative by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self regulatory organization with statutory authority.

Finally, we note that the proposed model rule would not create a recovery fund that would require contributions from other member firms to cover unpaid awards. Other interested parties have clearly articulated the industry's views on this issue in the past; rather than restating those views in this letter, we will simply state that we generally share those views. If NASAA does determine that establishment of recovery funds should be addressed in the model rule, we do, however, believe it would be advisable to revise the proposed model rule to provide for the establishment of recovery funds supported by existing revenue sources rather than increasing revenues from firms that pay their arbitration awards in a timely manner. Specifically, we'd recommend that the model rule explicitly state that excess registration revenues, where present, are used to support the unpaid arbitration fund. Ultimately, establishment of recovery funds may be better suited as the subject of its own rulemaking process, in order to ensure that this complicated topic can be appropriately vetted.

Again, we are pleased to support NASAA's proposed model rule for unpaid arbitration awards; however, we ask that you consider the modifications mentioned above to ensure that the model rule work in conjunction with the appropriate FINRA rules. Please don't hesitate to reach out if there is anything with which we can assist.

Sincerely,

Sarah E. Wood

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