Bar Group Calls For Investor Safety Net When Brokers Don't Pay FINRA Arbitration Awards

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The Public Investors Arbitration Bar Association (PIABA) said Thursday a safety net should be created for investors when brokers don’t pay FINRA awards for wrongs from excessive trading to putting an investor in a Ponzi scheme.

The safety net PIABA is seeking would be a fund fueled by a special assessment to FINRA members or from FINRA fines.

With only $14 million in unpaid arbitration awards in 2016, PIABA President Christine Lazaro acknowledged the sum is a drop in the bucket to the total amount of money retail investors are entrusting to brokers.

But with the average $200,000, a single unpaid award could imperil the livelihood of a lone investor and family who have been wronged.

Lazaro said the number of investors harmed by the failure to pay could surge in an economic downturn.

Investors are filing few complaints against brokers now with FINRA because the market is up which can hide broker malfeasance, claimed the PIABA chief who also heads up St. John's University Law School’s Securities Arbitration Clinic.

“When there is a market crisis, people ask what things are going to on,” said Lazaro.

She told the Securities and Exchange Commission Investor Advisory Committee the problem could be lessened with Congressional legislation allowing brokers to be barred from jobs in any sector of the financial services industry if they failed to pay.

Consumer Federation of America Investor Protection Director Barbara Roper called a bar a no-brainer.

Another possible aid brought up during the session, mandatory insurance for brokers that would be tapped if they couldn’t pay awards wouldn’t work because no insurer is going to insure against fraud, Roper said.

Unsurprisingly, The Cato Institute, a conservative Washington think tank that loves plaintiff bar groups as much as vegetarians are enamored with meat packing plant, came out against the proposed fund

Cato Institute Center for Monetary and Financial Alternatives Managing Director Lydia Mashburn said she was concerned the fund would encourage investors to make frivolous claims.

FINRA Dispute Resolution Director Richard Berry said paying for the fund out of fines could deplete resources being used for another area of investor protection.

Berry said the fines currency are paying for FINRA technology improvements.

He added he’s worried a fund paid for out of fines might hurt FINRA’s reputation because it could create the perception it was increasing penalties to put more money into that pot.

Berry warned if special assessments for the fund would be costly, some brokers might leave FINRA oversight and become investment advisors

The Financial Services Institute, which represents independent broker-dealers and financial advisors, is worried the fund could encourage bad actors to be reckless because they wouldn’t have to pay the fines out of their own pockets, said FSI Policy Vice President Robin Traxler.

A solution suggested at the hearing would be to make the bad actors pay the awards or as much as they could with investors then able to tap the fund.