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Regulators at SIFMA Regional Conference Highlight Regulatory, Litigation and Arbitration Risks

by Jerry Phillips, Partner and Eugene Licker, Partner

At a recent regional SIFMA conference, the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA) and state regulators discussed the risks inherent in the ongoing low-yield environment. The regulators expressed concern over individuals' investing in products typically exclusive to institutional investors and over yield chasing, both of which result in increased risk and contribute to an environment of ever-expanding regulatory scrutiny. Regulators identified a number of issues as causing increased trading, regulatory and litigation exposure, and regulator attention, including:

- Inadequate monitoring of customer accounts to detect abuses
- Anti-money laundering efforts
- Discipline trading
- Best-execution violations
- Market access
- Transparency
- Lack of proper algorithms that are adequately designed, tested, implemented and utilized
- High-frequency trading
- Rogue brokers being "sheltered" by broker-dealers

- Inadequate supervision of branch offices
- Cybersecurity
- Technology and data utilization
- Consolidated customer account statements
- Suitability of variable annuities
- L shares
- Breakpoint issues
- Conflicts of issues

At the conference, FINRA also discussed statistics surrounding arbitration. According to FINRA, the number of customer cases and customer's winning percentages as well as the amount of damages customers are recovering are down. FINRA also noted that an increased number of claimants are seeking to persuade arbitration panels to disregard the law and to decide cases solely on equitability and fairness grounds. In light of this disturbing trend, respondents should be prepared to

- develop and present equitability and fairness facts and arguments favorable to them;

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- remind the panel at the hearing that refusing to consider applicable law and deciding the case solely on equitable and fairness grounds constitute a massive disregard of the law, one of the few bases for appeal from an unfavorable award; and
- offer expert testimony on the law and the complex set of rules and regulations under which the securities industry must act.

If you have questions or would like more information about any of these issues, please contact [Jerry Phillips](#) and [Eugene Licker](#) or any member of the Loeb & Loeb Securities Litigation practice.

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