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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT PROVIDES CLARIFICATION ON DEFINITION OF CUSTOMER UNDER FINRA RULES

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Client Advisory

Rogers & Hardin partner Ben Rogers was a panelist at the 2014 SIFMA Compliance and Legal Society Annual Seminar and presented on the topic of how courts define a “customer” for purposes of arbitration of customer disputes under applicable FINRA rules. As discussed by that panel, FINRA members generally are required to arbitrate disputes with their customers but FINRA rules only vaguely define a customer as being “not a broker or a dealer.” That broad definition of customer has led a number of courts to struggle to define who is a customer under FINRA Rules. The various “customer” definitions applied by courts have led to a confusing and inconsistent body of case law. The issue, though, is not merely academic because if an investor is not a “customer” for purposes of the FINRA rules, then the FINRA member may not be required to arbitrate any disputes with the investor and may be able to seek relief in court instead.

On August 1, 2014, the United States Court of Appeals for the Second Circuit issued its decision in *Citigroup Global Markets v. Abbar*, Case No. 13–2172, providing additional clarity on the appropriate definition of customer for purposes of FINRA Rule 12200. In *Citigroup Global*, the Second Circuit was asked to consider whether an investor who had purchased securities through a UK affiliate of Citigroup but who had never done business with the New York based Citigroup Global entity was a customer for purposes of the FINRA rules. After the investor filed a FINRA arbitration, Citigroup Global sought an injunction to bar proceedings in the arbitration on the grounds that the investor was not a customer for purposes of the FINRA rules. The district court agreed that Abbar was not a customer and enjoined the FINRA arbitration. On appeal, the Second Circuit affirmed the district court concluding that the word customer “must be construed in a manner consistent with the reasonable expectations of FINRA members.” Thus, the court held that “a “customer” under FINRA Rule 12200 is one who, while not a broker or dealer, either (1) purchases a good or service from a FINRA member, or (2) has an account with a FINRA member.” The court reasoned that this simple and predictable definition of customer was necessary to avoid “sprawling litigation that can (and did) defeat[] the express goals of arbitration to yield economical and swift outcomes.”



The holding in Citigroup Global provides a sensible limitation on access to FINRA arbitration and will serve to limit FINRA arbitrations to the class of people with whom a broker-dealer most expects to arbitrate its disputes: investors who open accounts with the broker-dealer or who purchase securities from the broker-dealer.

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