

Arbitration

## FINRA to Seek Expedited Small Claim Arbitration via Phone

### BNA Snapshot

- FINRA reports progress on arbitration task force recommendations
- Expedited, time-limited telephone hearing option to be implemented for small claims
- Forum still needs improvement, observers say



By Antoinette Gartrell

Parties involved in FINRA arbitration with claims of \$50,000 or less may soon get the option of an expedited, time-limited hearing via phone, according to a status report released Feb. 8.

The proposed Special Proceeding for Simplified Arbitration was based on a recommendation by the FINRA Dispute Resolution Task Force to develop an intermediate form of adjudication for small claims. Proceedings would be limited to two sessions, the Financial Industry Regulatory Authority said. FINRA's next step is to file the proposal with the Securities and Exchange

Commission.

The 13-member task force, created in July 2014, was asked to suggest strategies to enhance the transparency, impartiality and efficiency of FINRA's arbitration forum for all participants.

To date, the self-regulatory-organization has taken action on 35 of the 51 suggestions; 16 remain pending, the status report by FINRA's Office of Dispute Resolution said. "We've moved very quickly to address the task force's recommendations and to improve the program and we're pleased with the results to date," dispute resolution chief Richard Berry told Bloomberg BNA.

### SEC Approval

So far, the SEC has approved two proposals stemming from the task force's recommendations.

In September, the SEC approved FINRA's plan to add five additional names to the public arbitrator selection list and increased the number of strikes available. The change is intended to provide a greater choice of public arbitrators and avoid having to vet additional public arbitrators later in the process. The rule change became effective Jan. 3.

In November, the commission approved a rule change allowing arbitrators to act on a motion to dismiss before the case in chief is concluded. That change was implemented on Jan. 23.

### Diversity Debacle

The status report also said FINRA has made strides in its efforts to diversify and expand its arbitrator pool.

According to the report, FINRA added 945 new arbitrators to its roster in 2016. It also surpassed its 120 day target for processing arbitrator applications. Last year, 33 percent of new arbitrators were women, compared to only 26 percent in the prior year, and 14 percent were African-American—a 10 percent increase from 2015.

"FINRA's recruitment efforts over the past couple of years have been exemplary," National Arbitration and Mediation Committee chair Ryan Bakhtiari of Aidikoff, Uhl & Bakhtiari, Beverly Hills, Calif., told Bloomberg BNA. "They've done a terrific

job of promoting diversity in the arbitrator pool and statistics in the new status report bear that out.”

New York lawyer Jacob Zamansky, Zamansky LLC, disagreed. “Although FINRA has made incremental changes in this area, the arbitrator pool is still mostly older white males,” he told Bloomberg BNA. “People feel like they're getting a fair shake when the arbitrators look like them, so a more concerted effort needs to be made” Zamansky, who represents investors in the forum, said.

### **Still Unresolved**

FINRA also hasn't acted on a recommendation that there be a special panel to handle requests for expungement of brokers' disciplinary history from industry databases. FINRA has agreed to notify state securities regulators of all requests for expungement relief, the report said.

Another unresolved issue concerns unpaid arbitration awards. According to a Public Investors Arbitration Bar Association report, in 2013, investors failed to collect \$62.1 million worth of awards. The task force looked into the issue but couldn't decide on a solution. FINRA it's continuing to work on these issues and will provide progress updates in subsequent status reports.

Cleveland lawyer and former PIABA president Hugh Berkson, McCarthy Lebit Crystal & Liffman Co. LPA, said FINRA's efforts thus far are “incredibly frustrating.” FINRA has taken the “easiest option” by agreeing to notify state regulators of expungement requests, Berkson told Bloomberg BNA. FINRA should also publish statistics on unpaid awards, he said.

FINRA doesn't have complete control over the Central Registration Depository—the electronic database that displays brokers' disciplinary histories, Bakhtiari said. The committee has spent a substantial amount of time on expungement issues, but maintenance of the system is a joint effort between FINRA and the North American Securities Administrators Association, he said. The unpaid award issue is a “complex problem,” Bakhtiari said.

The task force also suggested increasing arbitrator pay from \$300 to \$500 per session. Berry said FINRA is continuing to discuss the recommendation with its National Arbitration and Mediation Committee.

Some task force recommendations aren't going to stick. Biennial increases in arbitrator compensation won't be implemented, FINRA said.

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