Dispute Resolution System

* This brochure summarizes the Arbitration System in the US. It is based on Arbitration Procedures prepared by Securitiess Conference on Arbitration.

Dispute Resolution System*

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1. Definition of a Dispute Resolution System

The Dispute Resolution System is used in resolving monetary and business disputes as well as conflicts between investors and securities firms. Resolving conflict through traditional court litigation is time consuming and expensive; therefore, finding workable solutions through other techniques is increasingly necessary. This entails choosing the best technique to resolve a specific conflict and having a knowledgeable individual skilled in dispute resolution to help reach a satisfactory settlement.

2. Common investor claims against brokerage firm

Most claims by investors against their brokers, investment advisors and financial planners fall into certain well recognized categories. The most common claims includes:

- Unsuitable recommendations or investments.
- Misrepresentations and omissions.
- Excessive trading, called churning.
- Unauthorized investments.
- Failure to follow instructions.
- Misappropriation .

3. Forms of Dispute Resolution System:

Disputes can be resolved through formal court litigation or through informal alternatives dispute resolution techniques such as, mediation or arbitration. Mediation and arbitration are conducted through a self regulatory sponsoring organization i.e. stock exchanges, capital market authorities or securities associations.

a. Court Litigation:

The court litigation is the process of bringing and pursuing a lawsuit. Litigation is often a lengthy procedure, which begin by parties presenting their initial court papers to define their respective legal positions. After the initial activity, lawyers sit back for several months or years and use legal measures to wear each other out until they grow tired and begin settlement negotiations. If settlement is unsuccessful, the case goes to trial, and the trial may be followed by a lengthy appeal.

On the other hand, the court litigation has the following advantages :

- In court, the claimant have the right to conduct depositions and much more extensive documentary discovery than in most arbitrations.
- In court, the claimant have the right to have his/her case decided in accordance with law, and the claimant can appeal a judgment that could be contrary to law.

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b. Mediation:

Mediation is an informal, voluntary, and non-binding process where an experienced impartial third party (a mediator) helps disputing parties to find mutually satisfactory solutions to their differences. Mediation can resolve disputes quickly and satisfactorily, without the expense and delay of formal investigation and litigation.

c. Arbitration:

Arbitration is a dispute resolution mechanism to help determine if aggrieved parties are entitled to recover damages. In arbitration, an impartial person or panel hears all sides of the issues as presented by the parties, studies the evidence, and then decides how the matter should be resolved. Arbitration is final and binding, subject to review by a court, only in very limited cases.

4. Main issues in Mediation

a. The Mediator's role:

The mediator is **not** a judge. The mediator assists and guides the parties towards their own solutions by helping them to define the important issues and understand each other's interests. The mediator helps each side to focus on the crucial factors necessary for settlement and on the consequences of not settling. The mediator does not decide the outcome of the case and cannot compel the parties to settle.

The mediator can defuse hostile attitudes and remedy miscommunications. The mediator can help soften or eliminate extreme negotiating positions. Through the mediator, parties assess weaknesses in their own case and recognize potential strengths of the other side. The parties can more clearly view matters previously distorted by anger and emotion.

b. Who are Mediators?

Dispute Resolution Mediators are independent neutrals that are carefully screened and represent a cross-section of people, diverse in culture, profession and background.

c. The mediation process

1. Initiating mediation

Parties may mediate before filing a formal claim or pleading in arbitration. Mediation can also be initiated at any stage of the arbitration process.

When the matter involves an arbitration, the mediation process will run separately from the arbitration case. The arbitration case continues concurrently unless the parties agree otherwise.

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Mediating parties with a case in arbitration may choose **not** to have the processes run concurrently. If no arbitration hearing dates have been scheduled, parties can agree to make their arbitration inactive until the mediation is concluded. If arbitration hearing dates have been scheduled, parties can agree to adjourn the hearing dates.

2. Selecting the Mediator

The sponsoring organization is responsible for proposing a list of neutrals consistent with the parties' needs from its register of experienced mediators. The list should be accompanied by a complete profile of each mediator. The parties may select their mediator from that list or ask for additional lists. The parties may also choose a mediator not on the list or from outside the sponsoring organization register. Any mediator is subject to the approval of all parties to the dispute.

3. Submissions to the Mediator

Before the mediation sessions begin, the mediator generally asks the parties to submit any information they feel will help the mediator understand the dispute and their respective positions and interests. Before the parties gather, some mediators contact each side separately to ask clarifying questions or to review case logistics.

Unless a party instructs otherwise, all material, information, and other communications with the mediator are kept confidential by the mediator. At the conclusion of the mediation process, the mediator will either destroy these materials or return them to the parties that provided them.

4. The Mediation Session

A mediation typically consists of a joint session involving all participants as well as separate private sessions between the mediator and each party.

The joint session may start with an opening statement by the mediator. The mediator explains the framework of the session, encourages active participation, and reminds all parties of the shared goal of resolving the conflict and of the confidentiality of the settlement negotiations. In the joint session, the mediator gives each party the opportunity to make a presentation and asks for a commitment by all participants to work hard toward resolution.

Party presentations generally address facts, liability, damages, as well as background information, key issues and needs. The tone is one of respectful communication. Each presentation is directed to the mediator **and to the other side**. Participants do not provide sworn testimony and are not subject to cross-examination. At the conclusion of the presentations, the mediator may ask clarifying questions.

The second stage of the mediation may then involve meetings held by the mediator privately and separately with each party. Meetings are confidential so that each party can be open and candid about the case. Only if a participant grants permission will the mediator reveal information disclosed in these private sessions. This gives the mediator the opportunity to help the parties examine strengths and weaknesses of the case, analyze risks objectively and develop options for resolution. The mediator

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explores each party's needs and underlying interests in resolving the dispute. Through a series of meetings, the mediator can compare settlement expectations, facilitate the exchange of settlement offers and help the parties reach common ground.

It is critical to the success of any mediation process that all individuals with authority to resolve the dispute attend the mediation session. The failure to bring parties or representatives with authority to settle will hamper the efficiency of mediation.

5. Negotiation of settlement

Throughout the mediation process, the mediator will help the parties negotiate effectively. Efforts to reach a settlement through mediation will continue until:

- The parties agree to a resolution and execute a written settlement.
- The parties conclude that further efforts to mediate the dispute would be futile and declare that the negotiations are at an impasse.
- Any party or the mediator withdraws from the mediation process for any reason.

6. Benefits of mediation

- **Control—**Mediation belongs to the parties. The disputing parties control the process, scheduling, costs and outcome of the dispute.
- **Less Adversarial—**The mediation process is informal. It is less confrontational than arbitration or litigation.
- **Preserves Options—**Parties can enter into mediation without jeopardizing their option to arbitrate or litigate.
- **Swift Settlement—**Most mediations are successfully concluded in a single day. Since mediation can be scheduled soon after a dispute arises, parties reach settlement much earlier than in arbitration or litigation. Many mediations conclude before a formal arbitration claim is filed.
- **Lower Cost —**Mediation usually entails lower legal and preparatory costs, there is minimal interruption of business or personal life, lost productivity is kept to a minimum and the fees and expenses of mediation are modest.
- **Preservation of Business Relationships—**By reaching an early resolution with minimal financial or other strain on either party, the chances for preserving business relationships are greatly enhanced.
- **Creative Solutions—**Mediators help the parties craft creative solutions.
- **Low Risk—**Settlement potential is high. The case proceeds quickly. The cost is modest and there are benefits, even if a settlement is not reached.

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7. Summary

Most parties express satisfaction with the mediation process even when they do not reach full settlement. Proper preparation for the mediation session readies the parties for the arbitration. During the mediation process the parties and their representatives gain a better understanding of their case. This, in turn, helps them focus on the necessary next steps. Further, the mediation process moves very quickly and does not delay the ultimate resolution. Finally, by the end of a single day of mediation, the improved lines of communication often place the parties in a better position to settle the case at a later stage.

5. Main issues in Arbitration.

These guidelines of how arbitrations are conducted are prepared in accordance with the "Uniform Code of Arbitration " as developed by the Securities Industry Conference on Arbitration in the USA and under the rules of the "National Association of Securities Dealers (NASD)".

a. What is Arbitration?

Arbitration is a method of having a dispute between two or more parties e.g. an investor and a broker or two brokers, resolved by impartial persons who are knowledgeable in the securities industry disputes. Those persons are called arbitrators.

Arbitration of disputes has long been used as an alternative to the courts because the process of arbitration is prompt and an inexpensive means of resolving complicated issues. There are certain laws governing the conduct of an arbitration proceeding that must be considered by those planning to use arbitration to resolve disputes. Most importantly, perhaps, is the fact that an arbitration award is final and binding, subject to review by a court, only in very limited cases. Thus, parties should recognize, that in choosing arbitration as a means of resolving a dispute, they generally give up their right to pursue the matter through the courts.

b. Do investors have a choice between Arbitration and Court Litigation?

Whether investors have a choice between pursuing their claim in court or in binding arbitration depends primarily on whether they have signed an agreement to submit to arbitration. Most brokerage firms now require their customers to sign such an agreement when they open an account. This agreement is generally enforceable, so if investors have signed it, they probably do not have a choice and will be required to arbitrate their claims.

If investors have complaints against their stockbrokers and have not signed an agreement to submit to arbitrate and their stockbrokers are members of the National Association of Securities Dealers (NASD), investors have the choice either to arbitrate or go to the court.

If investors complaint against an investment advisor, who is not associated with a brokerage firm that is a member of NASD, and if investors did not sign a written

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contract that requires arbitration, their only choice is court, unless the defendants (investment advisor) agrees to arbitrate.

c. Who are the Arbitrators?

Arbitrators are impartial persons who are knowledgeable in securities industry disputes. Each sponsoring organization maintains a list of individuals whose professional qualifications and experiences, qualify them to serve as arbitrators. The arbitrators are not employees of the sponsoring organization but will decide the dispute. The arbitrators do, however, receive an honorarium from the SRO(Securities Association or Securities Exchange)..

d. How does Arbitration starts?

To begin arbitration, the prospective claimant (a person making a claim) must do the following:

1. Statement of claim:

The claimant must file with the Director of arbitration of the sponsoring organization a typewritten or printed document stating the claim. This document should set forth the details of the dispute, including all relevant dates and names, in a clear, concise, and chronological fashion and should conclude by indicating what relief (e.g., money damages in a specific amount, performance of a particular agreement, interest, etc.) is requested. The claimant should attach copies of documents and supporting materials as exhibits to the Statement of Claim. The claimant should provide sufficient copies for each party, the arbitrators and the SRO.

2. Small-claims procedures:

If the amount of the claim is $ 25,000 or less (some SROs may accept $ 10,000 or less), the claim will be processed under the simplified arbitration procedures. In customer disputes, unless the customer requests a hearing, the claim will be decided solely on the basis of the parties' written submissions. The arbitrator, may request a hearing or require a party to submit additional documentation. Thus, parties may be asked to submit additional documents to an arbitrator, who is deciding the case without a hearing.

3. Service of pleadings:

After the initial statement of claim is served by the Director of arbitration, it is each party's responsibility to provide the other party directly with any further pleadings, motions, or correspondence. In addition, it is each party's responsibility to simultaneously provide sufficient copies directly to the sponsoring organization for the arbitrators and its files.

4. Complex cases:

In appropriate cases, parties may request special services such as mediation, findings of facts and conclusions of law, expedited hearings, and the appointment of arbitrators

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with special qualifications. Parties seeking special or additional services should advise the sponsoring SRO at the earliest time possible. Additional fees may be charged for these services. In more complex cases, the parties may desire block scheduling of hearing dates. To the greatest extent possible, such cases will be scheduled in three-day blocks.

5. Submission Agreement:

The claimant must complete and return three signed copies of the Uniform Submission Agreement provided by the sponsoring organization. By signing the Uniform Submission Agreement, the claimant agrees to submit the dispute to arbitration and to abide by the decision (the "award") of the arbitrators. The claimant also agrees to be bound by the decision of the arbitrators with regard to any counterclaim (a claim against the claimant) permitted under these procedures that may be brought by an opposing party. Once a Uniform Submission Agreement has been signed, the procedures and timing set out in the Uniform Code become operative and binding. Generally, parties may not withdraw the Uniform Submission Agreement and Claim without the consent of either the other parties or the arbitrators.

6. Filing fees and deposits :

The claimant must include a check or money order payable to the sponsoring organization for the appropriate non-refundable filing fee and hearing session deposit. If multiple hearing sessions are conducted, the arbitrators are authorized to require additional hearing session deposits by one or more parties.

7. What happens after the claim is filed?

Once the statement of claim has been received, the Director of arbitration will send it to the opposing party (the "respondent"). Any member or brokerage firm of an SRO may be a party in an arbitration proceeding. Similarly, an employee and/or representative of any such member also may be named as a party.

Generally, following the receipt of the claim, the respondent has 20 calendar days in the case of a small-claim arbitration and 20 business days in all other arbitrations to provide an answer, unless an extension of time has been granted by the Director. It is within the discretion of the Director to grant such extensions even over the objection of a party. However, the Director will consider the objection when determining the length of the extension. (The rules for the time to serve and file answers, and for the procedure in granting extensions of time to answer are different from one sponsoring organization to the other).

Under NASD rules, respondents in non-small claim customer cases have 45 calendar days from the receipt of a claim to serve and file answers. Although a claimant may agree to a respondent's request to extend the time to answer, the Director will only grant such extensions in extraordinary circumstances.

The respondent may assert a related counterclaim as part of its answer, or may file a claim against a third party; that is, a claim against another person who may bear responsibility for any of the supposed damages. In support to the respondent defense

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or counterclaim, the respondent should attach copies of documents and supporting materials to its answer.

The respondent also should send to each party an executed uniform submission agreement and a copy of the respondent's answer and any counterclaim. The respondent's executed uniform submission agreement and answer shall also be filed with the Director, with additional copies for the arbitrator(s) along with any deposit required under the schedule of fees. On receipt of an answer containing a counterclaim, the claimant has 10 calendar days in the case of a small-claim arbitration and 10 business days in all other arbitrations to file a reply to any counterclaim. The claimant also should send to each party a copy of the reply to a counterclaim. The reply also shall be filed with the Director with additional copies for the arbitrators.

Service on a party may be effected by mail or other means of delivery. Filing with the Director must be made on the same date and, should be by the same means as service on a party.

8. Appointment of the Arbitrators:

The parties participate actively in the selection of the arbitrators. However, it is important for each party to review the arbitrator selection rules of the sponsoring organization as the degree of party participation in arbitrator selection may vary. In some sponsoring organization, the Director may appoint an arbitrator or a panel of arbitrators subject to challenges by the parties. Furthermore, the Director will notify the parties of the names, current affiliations and business histories of the proposed arbitrators. In addition, parties will be informed of any information disclosed pursuant to the uniform code and the code of ethics for arbitrators by any arbitrator. The arbitrators will be informed of the names of the parties to the dispute, counsel, witnesses, and the nature of the issues raised. If any arbitrator determines that he or she cannot render a fair and impartial award, the Director will appoint a substitute arbitrator.

9. Can parties challenge an Arbitrator?

Under the uniform code of arbitration any party has an absolute right to challenge arbitrators (take an arbitrator off the list(s) without giving a reason). This is called a peremptory challenge. This right may be exercised by filing a written notice of a challenge with the Director within the time period set in the rules. In addition, each party is entitled to an unlimited number of challenges for cause.

10. What are the challenges in Arbitration?

An arbitrator is required to disclose any direct or indirect financial or personal interest in the outcome of the arbitration as well as any existing or past financial, business, professional, family, or social relationships that are likely to affect impartiality. Arbitrators should also disclose any such relationship involving members of their families or their current employers, partners, or business associates. Arbitrators are requested to make reasonable efforts to identify these relationships. In addition,

parties should advise the Director if they are aware of any similar relationships involving a party, counsel, or a potential witness.

A challenge for cause to a particular arbitrator will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or, the existence of some interest on the part of the arbitrator in the outcome of the arbitration. The interest or bias should be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

11. How are the hearings conducted?

The Director of arbitration schedules the date of the first hearing. The parties will be notified in writing of the date and location of the initial hearing at least 15 business days in advance. At the hearing, the parties must present their respective cases by testimony and documentary evidence to the arbitrators. Claimants should document carefully the issues involved and their proof of damages and explain to the arbitrators how much in money damages is being claimed and how they arrived at that figure. All hearings will be conducted by the arbitrators in the manner they determine will most expeditiously permit full presentation of the evidence and arguments of the parties.

Generally, the following procedures will be observed:

1. Arbitrators and the witnesses will be sworn.

2. Each party will be given an opportunity to make a brief opening statement, that is, a brief outline of the issues involved and what facts that party intends to prove. A party may waive the opening statement.

3. The claimant will present facts to the arbitrators including relevant documents and testimony to establish and prove his or her claim.

   The respondent (the person against whom a claim is made) will present his or her case in the same manner as the claimant. Witnesses and parties who testify will be sworn and are subject to cross-examination by the opposing side and questioning by the arbitrators. The opposing party may object to any evidence prior to its receipt by the arbitrators. Parties should bring sufficient copies of documents for each of the arbitrators, other parties, and the representative of the sponsoring organization. It is inappropriate to "testify" when questioning a witness and a party may object if another party does that.

   A party may offer an affidavit (sworn statement) instead of the live testimony of a witness. This may or may not be allowed by the arbitrators. Parties should be prepared to explain why a witness cannot come to the hearing and to explain whether the other party had an opportunity to examine the witness. A party should be prepared to bring the witness if the affidavit is not allowed.

4. Any counterclaim or other matter may be presented in the same way.

5. Parties may present disproof evidence if appropriate.

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6. Closing statements may be presented and consist generally of final arguments by the parties and brief summations of the testimony and other evidence introduced at the hearing. A party should refer only to evidence already in the record and not use the closing statement as an opportunity to present new evidence. A party may waive a closing statement.

7. The parties are to leave together at the end of the hearing.

8. The arbitrators may proceed with a case, even if a party does not appear and/or answer.

12. How are the parties notified of the arbitrators' decision?

When the arbitrators have reached their decision and have signed an award, copies will be sent to the parties by the SRO. The award shall be in writing and signed by a majority of the arbitrators. The award may be entered by the prevailing party as a judgment in any court of competent jurisdiction.

Arbitrators shall endeavor to render an award within 30 business days from the date the record is closed. The Director shall endeavor to serve a copy of the award: (i) by facsimile or other electronic means; or (ii) by registered or certified mail upon all parties, or their counsel; or (iii) by personally serving the award upon the parties; or (iv) by filing or delivering the award as authorized by law.

The award will contain the names of the parties, the names of counsel, if any, the dates the claim was filed and the award was rendered, the number and dates of the hearing sessions, the location of the hearings, a summary of the issues including the type(s) of any security or product in controversy, the damages and other relief requested, the damages and other relief awarded, a statement of any other issues resolved, the names of the arbitrators and the signatures of the arbitrators concurring in the award.

13. Advantages of Arbitration:

- Simplified procedures such as the lack of formal pleading rules, the absence of most pretrial motions and simplified discovery.
- It is easier to present cases involving industry practices or complex damages models to an arbitration panel than to a judge or jury.
- It is often easier to collect an arbitration award than a court judgment.
- Costly appeals are usually unnecessary.

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6. Comparison between Mediation and Arbitration :

Mediation	Arbitration
• Expedited negotiation	• Adjudication
• Parties control the outcome.	• Arbitrators control the outcome.
• Mediator has no power to decide. Settlement only with party approval.	• Arbitrator is given power to decide. Final and binding decision.
• Exchange of information is voluntary and is often limited. Parties exchange information that will assist in reaching a resolution.	• Often extensive discovery is required.
• Mediator helps the parties define and understand the issues and each side's interests.	• Arbitrator listens to facts and evidence and renders an award.
• Parties describe feelings, tell story, engage in creative problem-solving.	• Parties present case, testify under oath.
• Process is informal. Parties are active participants.	• Process is formal. Attorneys control party participation.
• Joint and private meetings between individual parties and their counsel.	• Evidentiary hearings. No private communication with the arbitrator.
• Outcome based on needs of parties.	• Decision based on facts, evidence, and law.
• Result is often mutually satisfactory resolution—A relationship may be maintained or created.	• Result is win/lose award—Relationships are often lost.
• Low cost.	• More expensive than mediation, but less expensive than traditional litigation.
• Private and confidential.	• Private (but decisions are publicly available).

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7. Glossary of Terms

Adjudication- Arbitration

Arbitrator - A person chosen to decide disputes between parties.

Award - The written determination of the arbitrator(s).

Claim - A demand for money or other relief.

Claimant - A person making a claim.

Counterclaim - A claim against the claimant.

Cross-Claim - A claim by a respondent against a co-respondent previously named by the claimant.

Filing - Delivery to the Director of Arbitration of the Statement of Claim or other pleadings, to be kept on file as a matter of record and reference.

Panel - The arbitrators who decide on a dispute.

Party - A person or broker/dealer making or responding to a claim in an arbitration proceeding.

Pleadings - The claim, answer, counterclaim, and/or third-party claim and/or cross-claim filed in an arbitration.

Respondent - The person against whom a claim is made.

Service - Delivery of the Statement of Claim or other pleadings to those parties named in the arbitration.

SRO - A self-regulatory organization. For the purposes of this pamphlet, an SRO is a securities association or securities exchange.

Third-Party Claim - A claim by the respondent against a party not already named in the proceeding.

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