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Securities Arbitration Alert **Single Arbitrator Option: 2010 Update** SAA 2010-41 (11/3/10)

AWARD SURVEY, SINGLE ARB RESULTS: *It has been 19 months since FINRA implemented the rule changes that made a single arbitrator the default choice for claimed damages between \$25,000 and \$100,000. We have been curious if that would bring any changes in outcomes.* Before the new regime's implementation on March 30, 2009, a single arbitrator was the default choice for claimed damages between \$25,000 and \$50,000, but any party could ask for three arbitrators. Three arbitrators presided over all disputes above that range of damages. Claims initiated by customers, and filed on or after March 30, 2009, have produced 65 decided Awards to date, a small number, but enough to get an idea whether using a single arbitrator affects the outcome.

Customer "Win" Rate: Eight of those 65 Awards utilized three-person panels, presumably because the parties joined in a mutual request for a full-sized panel. Omitting those eight Awards left 57 Awards that were decided by a single (public) arbitrator; those 57 Awards resulted in 30 Awards where the Claimant won monetary damages. That 53% "win" rate for customers compares favorably to a 49% overall "win" rate for customers among 2010 FINRA Awards generally. Generally speaking, "win" rates rise in direct proportion to the claim amounts, so this 53% result for relatively small-dollar claims seems reasonably significant. To cross-check, we tested the "win" rate for customers, specifically in the \$25,000-\$100,000 damage range, for FINRA Awards that issued between 2005 and 2008. FINRA reports an overall "win" rate for customers of 41% during that period; however, the "win" rate for customers in the \$25,000 to \$100,000 range for the 2005-2008 period was just 30%! Testing whether the difference between the earlier period's 30% "win" rate and the current "win" rate of 53% could be attributed to the presence of the "Industry Arbitrator" (NPA) in the earlier Awards, we parsed the 2005-2008 Awards. Separating them into single-arbitrator (no NPA) and three-arbitrator cases (NPA present), we found that the "win" rates for the two groups were almost identical: 29% for the former and 30% for the latter. Thus, it seems that panel size did not affect outcome results in the past, but, in recent times, the "win" rate for customers appearing before single-arbitrator panels has soared. At this point, we can only caution that the 53% "win" rate for these recent single-arbitrator Awards derives from a small sample; at the same time, the initial results certainly suggest potential change that bears watching.

Average Turnaround Time: FINRA's expressed reason, at the time of the rulemaking,

in turning more cases over to the single Arbitrator was to create efficiencies -- time and money savings for the parties and for the forum. A collateral consequence of this change was the elimination of the Non-Public Arbitrator in all cases involving \$100,000 or less. Certainly, avoiding the costs of a larger panel has led to savings in these cases, but has the average turnaround time also been reduced, as FINRA projected? To find out, we returned to our 2005-2008 sample of Awards involving claims between \$25,000 and \$100,000 and calculated the time between the filing date and the decision date. Making the same calculation for the 57 recent, single-arbitrator Awards, we found an average turnaround time in the former group of 425 days and in the recent, 57-Award group of 308 days. Between those two periods of time, the average turnaround time for all decided Awards has come down, but the difference here of 117 days is significant and tends to demonstrate, at least preliminarily, that time savings have indeed resulted from the change. *(ed: With a 14- to 16-month turnaround for decided cases, the number of Awards available for our sample represented the first wave of a mass that will quickly start to grow. We plan to return to this review in another 6-12 months and test for change.)*