



New FINRA Task to Review Arbitration

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The Financial Industry Regulatory Authority has assembled a 13-person task force to recommend improvements to the arbitration process. The task force will be charged with enhancing “the transparency, impartiality and efficiency of FINRA’s securities arbitration forum for all participants,” the agency said in a statement Thursday.

“I think FINRA felt they would benefit from a thorough review of the arbitration system to make sure it is functioning as intended,” said Barbara Roper, director of investor protection at the Consumer Federation of America, a member of the new task force. “I was happy to be a part of that process, particularly since they did such a good job of ensuring that all viewpoints would be represented.”

The task force is made up of seven public members and six industry members. In addition to Roper, they include:

- Barbara Black, professor and director of the Corporate Law Center at the University of Cincinnati College of Law (chair)
- Philip Aidikoff, investor attorney, Aidikoff, Uhl & Bakhtiari
- Joseph Borg, director, Alabama Securities Commission
- Philip Cottone, FINRA non-public arbitrator and mediator
- John Cullem, FINRA public arbitrator
- Sandra Grannum, industry attorney, Davidson & Grannum
- Mark Maddox, investor attorney, Maddox Hargett & Caruso
- Kevin Miller, general counsel and chief compliance officer, Securities America

- Joseph Peiffer, investor attorney, Peiffer Rosca Abdullah Carr & Kane
- Lisa Roth, CEO, Keystone Capital Corporation
- Edward Turan, managing director, Citigroup Global Markets
- Harry Walters, managing director, Morgan Stanley Wealth Management

The FINRA arbitration has long been criticized by many in the advisor industry.

“It is encouraging that they’re doing this, and it’s encouraging that the composition of the panel is evenly weighted between claimants’ attorneys and industry representatives,” said Howard Prossnitz, an attorney with The Law Offices of Howard B. Prossnitz and a member of Public Investors Arbitration Bar Association. “It’s the first time they’ve done this, and it’s an opportunity to look at some of the big issues that haven’t been discussed before.”

One possible issue the task force could look at would be the downward trend in what claimants recover. Prossnitz said claimants now recover 44 percent of the time, down from as high as 55 percent, and when they do recover, they typically get one-third of what they’re seeking.

“The elephant in the room, which no one ever really wants to discuss, is mandatory arbitration,” Prossnitz added.

He believes people should have the option of going to court. There are also limited ways to get a case thrown out, said Richard Roth, founder and partner of The Roth Law Firm in New York. In court, you can file a motion to dismiss or a motion to summary judgment. “In arbitration, you’re pretty much stuck with the hearing.”

The arbitration process is also much longer than people would anticipate, Roth said. The average case takes about a year, he said, while some can go on for four or five years.

FINRA has recently taken action to tighten restrictions on industry insiders’ ability to serve as public arbitrators. In June, the [watchdog asked the SEC](#) to approve a new rule that would bar anyone with direct ties to the financial services industry from serving as a public arbitrator.

Roth believes the task force is a good step in the right direction to analyze the pros and cons of the arbitration process.

“My guess is they’re going to suggest tweaks here and there, but this is not going to be a major overhaul.”

At the end of its review, the task force will make recommendations to the National Arbitration and Mediation Committee (NAMC), FINRA's Standing Board Advisory Committee.

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