

**ARBITRATION
AND
MEDIATION
OF
CUSTOMER
DISPUTES**

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OUTLINE

I. Arbitration

II. Mediation

ARBITRATION PROCEDURE

III. Duty to Arbitrate

IV. Initiating and Responding to Claims.

V. Appointment, Disqualification and Authority of Arbitrators

VI. Prehearing Procedures and Discovery

V. Hearings; Evidence; Closing the Record

VI. Arbitration Turnaround Time – 2007

MEDIATION

Mediation Under the Code

Effect on Arbitration Proceedings

Representation of Parties

Mediator Selection

Mediation Ground Rules

Mediation is Private and Confidential

Mediation Fees

Mediator's Fees and Expenses

Mediation Statistics

EXPUNGEMENT PROCEDURES

CRITICISM OF CURRENT LAW

ARBITRATION FAIRNESS ACT

02/07/2008

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- I. This morning's Program lists my topic as The Securities Mediation and Arbitration Process. That's very broad and gives me a lot of running room. So, I will narrow it down a little. More specifically, I will address "Arbitration and Mediation of Customer Disputes in the Securities Industry."
- II. It may be helpful to you in weighing my remarks to know something of my background. Briefly, my principal areas of practice as an attorney are labor, employment and business law, including related litigation in state and federal trial and appellate courts. I am also an arbitrator and a mediator. I am an arbitrator for NASD and NYSE (now FINRA) and am chair qualified and qualified for employment and injunction cases. As a mediator, I have mediated a wide variety of cases but, to date, have not mediated a customer dispute in a securities case.
- III. I believe that my topic is very timely, in view of the current state of the economy. Looking back, the number of arbitration cases filed with NASD as a result of the "dot com" bust peaked at 8,945 in 2003. They fell each year thereafter, to a low of 3,238 in 2007, the lowest number of cases in any year since 1991, a decline of over 60%. In view of the current state of the economy and market conditions, I anticipate a substantial increase in the number of customer claims later this year and in 2009 and following.
- IV. In July 2007, the SEC approved the consolidation of the NASD and the enforcement, member regulatory, and arbitration divisions of the NYSE into a single self-regulating organization, the Financial Industry Regulation Authority (FINRA). It is responsible for regulating all securities firms that do business with the public, including with respect to arbitration and mediation. Thus, arbitrations and mediations of customer disputes with members of NASD are now administered by FINRA Dispute Resolution, pursuant to two separate codes:

