The Neutral Corner

Volume 1 – 2008

Mission Statement

We publish *The Neutral Corner* to provide arbitrators and mediators with current updates on important rules and procedures within securities dispute resolution. FINRA's dedicated neutrals serve parties and other participants in the FINRA forum by taking advantage of this valuable learning tool.

WHAT'S INSIDE

Looking Back: Year-End Message for 2007

2007 marked a time of change for FINRA. Among our accomplishments, we completed the NASD-NYSE arbitration program consolidation; deployed the Code of Arbitration Procedure simplification project; rolled out several major releases on the MATRICS technology project; completed deployment of a new business model; moved ahead on major rule initiatives on motions to dismiss, party representation, discovery guide list revision and expungement; deployed our own Arbitration Awards Online system (replacing an outside vendor), and then enhanced it after the consolidation to include NYSE and other awards from absorbed SRO arbitration systems.

Throughout these changes, our mission in Dispute Resolution has remained constant: We strive to be the preeminent provider of securities-related dispute resolution services. We can achieve this goal only when talented and dedicated arbitrators and mediators aid in the process. Each of you is an integral part of the dispute resolution process at FINRA, and we want to thank you for your tremendous service this year. We would not be the forum of choice without your efforts, and we value the commitment and skill you bring to the process.

Arbitrability of Sarbanes-Oxley Whistleblower Claims

**By Laurence S. Moy, Pearl Zuchlewski, Linda A. Neilan and Katherine Blostein*

Introduction

Since the passage of the Sarbanes-Oxley Act of 2002 (SOX), arbitrators handling employment claims may be faced with a thorny question concerning SOX whistleblower claims: Should a SOX claim be litigated in court or arbitrated? Ultimately, the question comes down to whether SOX whistleblower claims constitute "employment discrimination" claims, and are thus exempt from

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Message from the Editor

In addition to comments, feedback and questions regarding the material in this publication, we invite you to submit suggestions for articles and topics you would like addressed. We reserve the right to determine which articles to publish.

Please send your comments to:

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arbitration under Rule 13201 of the Code of Arbitration Procedure for Industry Disputes (Code). This article explores the arguments presented by member firms and registered employees and outlines what arbitration panels have decided.

Arbitrability under the Code

Rule 13200 states that a dispute between a member and an associated person, arising out of the business activities of a member or an associated person, must be arbitrated, unless it is a statutory employment discrimination claim as described in Rule 13201. Rule 13201 states, in relevant part:

> A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated under the Code. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose.

This rule, which was effective prior to the SOX statute, does not address whether SOX whistleblower claims constitute employment discrimination claims.[1]

Who decides when a claim is subject to arbitration—the courts or the arbitrators? The only court to address this issue is the Second Circuit Court of Appeals, which encompasses the federal courts of New York, Connecticut and Vermont. In *Alliance Bernstein v. Schaffran*,[2] the Second Circuit in 2006 held that disputes over the arbitrability of a SOX claim should be decided by FINRA[3] arbitrators.

Is a SOX Claim a Discrimination Claim?

An interesting aspect of the debate is the role reversal between registered employees and member firms. In most employment disputes, employees prefer to litigate their claims in court before a jury, while companies prefer arbitration. However, some member firms prefer to litigate SOX claims in court, and some registered employees favor arbitration. Based on the authors' experiences, this role reversal may occur because member firms believe that they will fare better in court—arguing technical legal points concerning the scope of the SOX statute. Meanwhile, employees may believe that they will fare better in arbitration because arbitrators will consider the equities of their claims and the realities of the business environment.

Member Firms' Perspective

In an effort to avoid arbitrating SOX whistleblower claims, some member firms argue that SOX claims are employment discrimination claims for purposes of Rule 13201. To support this argument, member firms rely on the language of the SOX statute itself, which explicitly prohibits discrimination against employees who fall within the statute's whistleblower protections.[4] They cite the use of the word "discrimination" throughout the SOX statute and the Department of Labor regulations implementing it.[5] They also rely on the theory that when the text of a statute is clear and unambiguous, a court or arbitrator should not look beyond the statutory language.[6] In short, member firms argue that use of the term "discrimination" in the text of SOX and in the SOX regulations is the same type of discrimination intended to be exempt from arbitration under Rule 13201.

Member firms further argue that the goals of discrimination statutes, such as Title VII of the Civil Rights Act of 1964 (Title VII)[7] or the Age Discrimination in Employment Act (ADEA), are not readily distinguishable from the goal of SOX. These statutes not only protect individuals based on their immutable characteristics, but also protect individuals from discrimination based on their conduct. Member firms argue that the protection of conduct-based activities advances the remedial purpose of the anti-discrimination statutes in the same way as the whistleblower provisions of SOX. Therefore, SOX whistleblower claims should not be distinguished from Title VII or the ADEA with respect to Rule 13201.

Registered Employees' Perspective

On the other hand, registered employees hoping to arbitrate their claims argue that SOX whistleblower claims do not fall within Rule 13201. In support of this argument, they rely on the rule's origin as well as FINRA's recent commentary on the scope of the rule.

In 1998, the Securities and Exchange Commission (SEC) approved Rule 13201.[8] The SEC's approval order contemplated that the rule should be very narrowly construed.[9] It limited Rule 13201 to employment discrimination cases involving civil rights violations where employees claimed that they were discriminated against because of immutable characteristics. The SEC stated that the focus of Rule 13201 related to claims based "on federal anti-discrimination legislation, not on common law claims or other federal law."[10] The SEC further stated that the rule did not apply to claims "created solely by judicial precedents or to other causes of action under state or federal law,"[11] and that "claims alleging 'wrongful

Arbitrability of Sarbanes-Oxley Whistleblower Claims continued

discharge' without any accompanying claim of discrimination on account of age, sex, race, or other status protected by a specific law" would still have to be arbitrated with FINRA.[12]

In 2005, FINRA stated that Rule 13201 does not apply to SOX whistleblower claims—"whistleblower complaints are neither expressly nor impliedly included in Rule 10210(b), and, thus, are not an exception to the compulsory arbitration of employment disputes under Rule 10210(a)."[13] FINRA has always maintained that whistleblower complaints are not included in the definition of "employment discrimination" under the Code.[14] Registered employees argue that the SEC Order and FINRA's comments should be the controlling factors in deciding whether SOX claims must be arbitrated. Since both registered employees and member firms agree to comply with FINRA's arbitration rules, they should abide by FINRA's interpretation of the rule.

Registered employees argue that the clear and unambiguous language of the rule is only limited to claims "alleging employment discrimination...in violation of a statute" and that claims under SOX allege only retaliatory discharge due to whistleblowing or "protected" activity, not employment discrimination. Employment discrimination statutes protect employees from discrimination based on their membership in a protected class. Thus, a discrimination claim requires proof of discrimination based on innate characteristics such as sex, race, color, national origin, age or disability. SOX, on the other hand, protects against retaliation, not one's membership in a protected category.

Arbitration Panel Decisions

Firms in two arbitration cases challenged the arbitrability of these claims, and in both cases, the arbitration panels decided that SOX claims are subject to arbitration. In *Schaffran v. Alliance Management Capital, LP, et al.* and a pending arbitration case, the panels unanimously ruled that SOX whistleblower claims are not employment discrimination claims and, therefore, are subject to arbitration.[15]

Conclusion

Although many arbitration panels have not yet encountered the issues described in this article, two arbitration panels have decided that SOX claims are not "employment discrimination" claims under Rule 13201, and should be subject to arbitration. Prior arbitration awards are not viewed as binding precedents but are instructive. They should be considered by future arbitration panels that decide whether SOX claims are discrimination claims under Rule 13201.

The views expressed in this article are solely the authors' and do not necessarily reflect FINRA's views or policies.

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Endnotes:

1 The new Code of Arbitration Procedure became effective on April 16, 2007 with renumbered Code provisions. Prior to April 16, 2007, Rule 10210 governed statutory employment discrimination claims; Rule 10210 and Rule 13201 are identical.

2 445 F.3d 121, 127 (2d Cir. 2006).

3 Although some of the events referenced in this article involved the entity known at the time as NASD, for the sake of simplicity, we will refer to FINRA throughout.

4 *See* 18 USC §1514A(a)(1).

5 *See* 18 USC §1514A(b)(1) & (c)(2)(A) & (C); 29 C.F.R. 1980.100(a), 1980.102(b), 1980.103, 1980.104, 1980.114.

6 *See* Desiderio v. NASD, 191 F. 3d 198 (2d Cir 1999); *see also* John Hancock Ins. Co. v. Wilson, 254 F.3d 48, 58-60 (2d Cir. 2001) (refusing to consider extrinsic evidence of FINRA's intent where the NASD Code provision was unambiguous).

7 Title VII is the federal discrimination statute that prohibits discrimination on the basis of race, color, religion, sex and national origin.

8 Prior to April 16, 2007, Rule 10210 governed statutory employment discrimination claims; Rule 10210 and Rule 13201 are identical.

9 *See* Securities and Exchange Commission, Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Arbitration of Employment Discrimination Claims, Rule 10201(b), (June 22, 1998), (hereinafter, the "Order"), *http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p011630.pdf*.

10 *Id*. at 12.

11 *Id*. at 8.

12 *Id*. at 8, n. 25.

13 Letter from Jean I. Feeney, Vice President and Chief Counsel of FINRA, to Wayne N. Outten, January 26, 2005. Personal files of Wayne N. Outten, New York, New York.

14 *Id*.

15 The first case in which an arbitration panel decided that SOX claims are subject to arbitration was FINRA 04-06498, Schaffran v. Alliance Capital Management LP, et al. The second case is pending, and details of the case will be available once an award has been issued.

Dispute Resolution News

Case Filings

Arbitration case filings from January 1 through November 30, 2007, reflect a 32 percent decrease compared to cases filed during the same 11-month period in 2006 (from 4,358 cases in 2006 to 2,953 cases in 2007). Case filings are down about 50 percent from the post-crash, high water mark of 8,943 set in 2003.

The overall turnaround time to process an arbitration case (hearing and simplified) from January 1 through November 30, 2007, remained at 13.8 months from the same period in 2006. The average processing time from service of claim to issuance of award in hearing cases declined to 15.9 months (from 16.7 months in 2006).

Neutral Roster Call-In Workshop

On November 6, 2007, FINRA Dispute Resolution senior staff conducted a call-in workshop for neutrals, attended by nearly 1,500 arbitrators and mediators. President Linda Fienberg and Executive Vice President George Friedman discussed the consolidation of NASD and NYSE dispute resolution programs and its effects on neutrals; dispositive motions—both the current practice and FINRA's new rule proposals; and the amended representation rule and its impact on out-of-state counsel and non-attorney representatives. If you missed the workshop, you may listen to a recording of it on our Web site.

www.finra.org/ArbitrationMediation/ResourcesforArbitratorsandMediators/p009530.

We conducted an online poll of workshop participants two days after the workshop and received responses from an impressive 71 percent of the nearly 1,500 survey recipients. An early analysis of the results tells us that:

- neutrals like the workshops and want them to continue;
- having the workshops every quarter is about the right frequency; and
- many arbitrators would like us to also make use of newer technologies, like webcasts and podcasts.

We continue to evaluate the suggestions that came out of the survey. You will read more about this in future issues of *The Neutral Corner*.

Although we conduct the workshops on a quarterly basis, we encourage you to submit questions throughout the year. Contact your case administrator with case-specific questions. For more general dispute resolution inquiries, you may submit them on the Questions and Feedback page of our Web site.

FINRA Proposed Rule Filing

On November 2, 2007, FINRA filed a proposal with the SEC, SR-FINRA-2007-21, to amend Rules 12206 and 12504 of the Customer Code and Rules 13206 and 13504 of the Industry Code, to address motions to dismiss and amend the provision of the eligibility rule related to dismissals.

If approved, the proposed rule will permit the panel to grant a respondent's motion to dismiss prior to the conclusion of a party's case on only two grounds—a

signed settlement and/or written release and factual impossibility. The proposal will also require the panel to award costs and attorneys' fees to a party that opposed a motion to dismiss deemed frivolous by the panel, and will permit the panel to issue other sanctions if it determines that a party filed a motion under this rule in bad faith. It will also permit member firms and associated persons to file a motion to dismiss at the conclusion of a party's case in chief, based on any theory of law.

For more information on the proposal, visit *www.finra.org/RulesRegulation/RuleFilings/2007RuleFilings/P037392*.

On October 2, 2007, FINRA published a *Notice to Parties on Motions to Dismiss Prior to Award under the Code of Arbitration Procedure for Customer Disputes and Industry Disputes* to provide users of the forum with guidance on filing motions to dismiss. The *Notice* addresses FINRA's current policy concerning motions to dismiss and reminds parties that filing them in bad faith may result in sanctions by the panel.

You may view the *Notice* at the following site: *www.finra.org/ArbitrationMediation/ResourcesforParties/NoticestoParties/p037078*.

Regulatory Notice: Deferred Variable Annuities

In November 2007, FINRA published *Regulatory Notice 07-53*, summarizing its new rule governing deferred variable annuity transactions. On September 7, 2007, the SEC approved new NASD Rule 2821 regarding broker-dealers' compliance and supervisory responsibilities for deferred variable annuities. For more information about this new rule, you may review the *Notice* at:

www.finra.org/RulesRegulation/NoticestoMembers/2007NoticestoMembers/P037403.

Arbitrators may encounter cases involving deferred variable annuities. If you need additional information about these products, applicable rules and laws to assess the case before you, we recommend that you ask the parties to brief you on the relevant issues. Remember, *The Arbitrator's Manual* offers guidance on legal research:

> When in doubt about an issue, legal or otherwise, arbitrators should request briefs from the parties. If cases are cited in a party's motion or brief, and the arbitrators wish to read the full court opinions, the arbitrators should ask the parties to supply copies, and if necessary, the arbitrators may look up the cited authorities themselves. Arbitrators generally should review only those materials presented by the parties to the arbitrator.

For additional guidance about this important topic, please contact the staff member assigned to your case.

Electronic Discovery

By Rachel Glasgow, Case Administrator Manager of the Northeast Region

Introduction

The nature of discovery—the scope and types of documents sought—is part of a changing litigation landscape. Developments in technology are radically changing the way information is transmitted, produced and retained. Because an increasing number of records are created and stored electronically, arbitrators can no longer expect parties to engage solely in the exchange of paper documents. Arbitrators must understand the basic technology related to electronically stored information (ESI) for effectively managing and ruling on discovery-related issues.

This article highlights the distinct qualities of electronic discovery and introduces arbitrators to this new world of discovery.

Scope of Electronic Discovery Production

On December 1, 2006, ESI became a separate discovery category under the Federal Rules of Civil Procedure (Federal Rules). ESI includes, but is not limited to:

- emails;
- Web pages;
- word processing files; and
- databases stored in the memory of computers, magnetic disks, optical disks and flash memory.[1]

ESI also contains information known as metadata. Metadata or embedded data provide information about an electronic file, such as the date they were created, their author, when and by whom they were edited, what edits were made, and, in the case of email, the history of its transmission.[2] With respect to spreadsheets, the embedded data also refer to the computational formulas. Metadata are not a separate document—but an integral part of the electronic document it describes—and are not available for conventional paper records.

Discovery of ESI raises markedly different issues from conventional discovery of paper records. Compared to paper records, ESI is:

- exponentially greater in volume;
- located in multiple places; and
- fragile because of its dynamic and mutable nature—opening a digital file can change information about that file.[3]

The volume and multiple locations of ESI may lead to disputes about the scope of discovery. ESI that is not readily accessible, *e.g.*, deleted data or back up information, may be so expensive and burdensome to produce that it ultimately outweighs the need for the information. In addition, ESI may be incomprehensible when separated from the system that created it.[4]

The form of production also impacts how easily the information can be electronically searched, whether relevant information is obscured or sensitive information is revealed and how the information can be used in later stages of the arbitration.[5] For example, parties must decide between producing Tagged Image File Format (TIFF), Portable Document Format (PDF) files or documents in native format. TIFF or PDF files are snapshots that cannot be altered, while native files, *e.g.*, Word documents, can be altered.

Facilitate Exchange of Documents and Information

To facilitate resolution, the Federal Rules require parties to negotiate the terms of the scope, method of production and cost of electronic discovery. These mandatory "meet and confer" sessions "emphasize early attention by the parties to electronic discovery issues...."[6] FINRA encourages parties to fully cooperate in the exchange of documents and information, especially in the context of ESI. Although parties and arbitrators are not bound by the Federal Rules, they should consider the benefit of engaging in early "meet and confer" sessions.

During these sessions, arbitrators should encourage counsel to discuss:

- the ESI available and where it is stored;
- the ease and/or difficulty and cost of producing information;
- the schedule and format of production;
- the preservation of information; and
- agreements about privilege or work-product protection.[7]

Counsel should also engage in early negotiation of search terms to be used when researching electronic documents responsive to requests.

Addressing ESI Discovery Issues

When deciding ESI discovery issues, arbitrators must balance the potential relevance of the evidence against the accessibility of the information. Whether this analysis is satisfied often depends on the type of data being requested. Less accessible data may include: systems data, such as when people logged on and off a computer or network; the Web sites they visited; offline archival media; backup tapes designed for restoring computer systems in the event of disaster; and deleted files and legacy data.[8] Information created under old or legacy systems may not be retrievable, usable, accessible or intelligible with new technology hardware or software. Although accessing these types of information may be difficult, arbitrators must carefully examine the request and determine whether the need for the information outweighs the difficulty of obtaining it.

Arbitrators should consider ways to decrease the burden and cost of production by limiting the scope and time frame of the requested information. Another option to decrease the burden of production is to determine whether the information can be obtained from a more convenient, less burdensome or less expensive source. To resolve disputes regarding the format in which the information exists, arbitrators should identify any available alternatives, the benefits and drawbacks of these alternatives and the usability of the produced format.[9]

Electronic Discovery ***continued***

Arbitrators may still utilize existing tools to manage the discovery process even when electronic discovery is involved in a particular case. As appropriate, arbitrators may shift the cost to the requesting party, narrow broad requests and encourage cooperation and discussion among counsel.

Conclusion

Despite the changes in the scope of discovery and the challenges surrounding the unique nature of electronic discovery, standards arbitrators should apply when deciding discovery disputes have not changed. The test still remains a balance of the equities—the reasonableness of the request versus the cost and burdens of production.

Endnotes:

1 Rothstein, Barbara J., Hedges, Ronald J. and Wiggins, Elizabeth C., "Managing Discovery of Electronic Information: A Pocket Guide for Judges" (Federal Judicial Center, 2007), 2.

2 *Id.* at 3.

3 *Id.*

4 *Id.*

5 *Id.* at 13.

6 Bauer, Matthew W. and Korzha, Ilona I., "E-Discovery Under New Jersey Court Rules" (New Jersey Lawyer, August 2007), 33

7 Pocket Guide, supra at 5.

8 *Id.* at 7.

9 *Id.* at 14.

A useful reference for arbitrators is the Federal Judicial Center's "Managing Discovery of Electronic Information: A Pocket Guide for Judges", available at *www.fjc.gov.*

Question and Answer: Respondent's Failure to Submit a Uniform Submission Agreement

Question: How should arbitrators address a respondent's failure to submit a signed and dated Uniform Submission Agreement (USA)?

Answer: If prior warnings have failed, arbitrators should consider sanctions to address a respondent's failure to submit a signed and dated USA, absent a specific jurisdictional challenge.

Arbitrators have wide discretion in addressing a respondent's failure to submit a signed USA. Under Rules 12212 and 13212 of the Customer and Industry Codes, respectively, possible sanctions include:

- assessing monetary penalties payable to one or more parties;
- precluding a party from presenting evidence;
- making an adverse inference against a party;
- assessing postponement and/or forum fees; and
- assessing attorneys' fees, costs and expenses.

In addition, member firms and associated persons who fail to comply with an order of the panel may be referred to FINRA Enforcement for possible disciplinary action, which can include suspension or termination of FINRA membership or registration.

Pursuant to Rules 12302 and 13302 of the Codes, a claimant must submit a USA at the time of filing a Statement of Claim. FINRA will not serve the claim until the claimant submits a signed and dated USA. According to Rules 12303 and 13303 of the Codes, respondents must file a signed and dated USA within 45 days of receipt of the Statement of Claim. FINRA has noted, however, that some member firms and associated persons named as respondents in arbitration proceedings fail to submit a signed and dated USA in a timely manner.

As stated in *Notice to Members 04-11,*[1] a party's failure to sign and submit the USA may cause confusion, lead to ancillary litigation and undermine the enforceability of arbitration awards. For example, Section 13 of the Federal Arbitration Act (FAA) requires that a motion to confirm an arbitration award must include the parties' agreement to arbitrate. Although a claimant may be able to demonstrate that a respondent who fails to execute a USA is required to arbitrate pursuant to FINRA rules, failure to execute the USA can unnecessarily hinder the claimant's ability to seek confirmation of an award pursuant to Section 13 of the FAA.

Question and Answer: Respondent's Failure to Submit a Uniform Submission Agreement continued

In the Initial Prehearing Conference Script[2] provided to the arbitrators, FINRA asks arbitrators to remind the parties of their obligation to sign the USA. After the arbitrators acknowledge all pleadings, the script provides:

> If one of the parties has failed to submit a signed Submission Agreement, please advise the parties of the following: "Any party that has not yet filed a Uniform Submission Agreement or otherwise objected to jurisdiction must do so within 30 days or may be subject to sanctions as provided in the Codes of Arbitration Procedure (Codes)."

Member firms and associated persons named as respondents must submit signed and dated USAs, and failure to comply may result in sanctions or disciplinary action.

Endnotes:

1 *Notice to Members 04-11* can be found at: *http://www.finra.org/RulesRegulation/NoticestoMembers/2004NoticestoMembers/p003272.*

2 The Initial Prehearing Conference Script can be found at: *http://www.finra.org/ArbitrationMediation/ResourcesforArbitratorsandMediators/GeneralInformationandReference/index.htm.*

Mediation and Business Strategies Update

Mediation Outreach

Director Kenneth Andrichik, Assistant Director Julie Crotty and Senior Mediation Administrator Ed Sihaga held the department's final focus group meeting of the year in New York in early December. Consistent with focus groups held in Chicago and Boca Raton, they spoke with a small group of regular mediation clients, including several investor and brokerage firm representatives.

Based on feedback from these focus groups, National Mediation Administrator Leon de Leon and staff members designed a short Internet survey for frequent users of FINRA's dispute resolution forum.

Mr. Andrichik and Ms. Crotty served as guest lecturers at several securities arbitration and mediation clinic programs that assist investors with limited resources. They discussed the mediation process and securities issues with law students, guiding them through a simulated FINRA mediation. This year, they spoke at the securities arbitration and mediation clinics at Fordham, Hofstra, New York, Northwestern, Pace and St. John's law schools. Ms. Crotty also served as a guest lecturer at New York University Law School's mediation clinic.

Another Successful Mediation Settlement Month

October's Mediation Settlement Month event was a success, offering incentives to promote mediation and to educate potential parties about its benefits. As in prior years, hundreds of mediators agreed to reduce their fees for Settlement Month, which allowed parties to reap substantial savings through mediation. The event generated press coverage in Dow Jones and *InvestmentNews*, among other media sources.

Business Strategies Foreign Outreach Efforts

Highlighting FINRA's efforts to provide services internationally, Mr. Andrichik and Assistant Director William Kimme met with a delegation of judges from Jordan to discuss mediation and arbitration administration issues.

Senior Mediation Administrator Rosari Domenick provided a tour of the Midwest Regional Office in Chicago to Pablo Andrade Monge, the dispute resolution services director for the Quito, Ecuador, Chamber of Commerce. During the same week, Mr. Monge visited the Northeast Regional Office in New York and met with Mr. Andrichik, Ms. Crotty and Mr. Kimme. The visit culminated with Mr. Monge's participation in Mediation Settlement Day, where his organization served as a sponsor.

On November 27, Mr. Kimme joined John Hennessy of FINRA's International group and David Jaffe of FINRA Enforcement to make a presentation to the China Securities Regulatory Commission delegation. Mr. Kimme provided information about FINRA's current arbitration and mediation services.

Year End Thank You

We look forward to continuing our partnership with our mediators in 2008 and thank all of them for their valued service on our roster.

National Update

We are pleased to welcome Erroll Angara, Manager of National Recruitment for the Department of Neutral Management. Ms. Angara joined FINRA's Midwest Regional Office in January 2003 and served as a case administrator. Prior to joining FINRA, she served as an account manager in the business development group of a legal recruitment and consulting company in Chicago, where she worked with corporations and law firms around the country to help identify staffing needs. She also has 10 years of litigation experience as a paralegal with law firms in Chicago and holds bachelor's degrees in political science and philosophy. Ms. Angara's responsibilities include recruiting arbitrators nationwide and developing new strategies and systems to facilitate arbitrator recruitment. If you know someone interested in serving as an arbitrator or mediator, please have him or her contact Ms. Angara at (212) 858-4106 or *Erroll.Angara@finra.org*.

Regional Updates

NOTE: Participants must successfully complete the online portion of Basic Arbitrator Training before attending an onsite training program. Please visit the Arbitrator Training page at *www.finra.org* for more information about the online training. FINRA generally requires a minimum of nine attendees to conduct an onsite session.

Northeast Regional Update

During the next three months, the Northeast Regional Office will conduct the following in-person Basic Arbitrator Training programs:

Philadelphia, PA	February 13, 2008
Newark, NJ	March 12, 2008

If you are interested in attending a Basic Arbitrator Training program in any of these cities, please contact Cicely Moise at (212) 858-3963 or Cicely.Moise@finra.org.

Midwest Regional Update

On October 31, 2007, the Midwest Regional office hosted a focus group with arbitrators and party representatives to discuss FINRA Dispute Resolution's transition to the new business process. Regional Director Scott Carfello and Executive Vice President and Director of Arbitration George Friedman hosted the event. Participants in the focus group provided positive feedback on the new business process.

During the next three months, the Midwest Regional Office will conduct the following in-person Basic Arbitrator Training programs:

Louisville, KY	February 20, 2008
Milwaukee, WI	March 5, 2008
St. Louis, MO	March 26, 2008

If you are interested in attending a Basic Arbitrator Training program in any of these cities, please contact Deborah Woods at (312) 889-4431 or Deborah.Woods@finra.org.

West Regional Update

Arbitrators and Mediators Licensed to Practice Law in California Must Be on Active Status with the State Bar

On September 19, 2007, the California State Bar issued a notice to FINRA stating that individuals licensed to practice law in California must be on active status with the California State Bar in order to serve as arbitrators or mediators in California cases. In accordance with the notice, FINRA notified the arbitrators and mediators who might be affected by this new policy. FINRA's October 4 letter advised all arbitrators and mediators who serve in California hearing locations of this rule. Arbitrators or mediators who are California-licensed attorneys on inactive status should notify the West Regional Office.

During the next three months, the West Regional Office will conduct the following in-person Basic Arbitrator Training programs:

Phoenix, AZ	February 12, 2008
Los Angeles, CA	March 11, 2008
Boise, ID	March 27, 2008

If you are interested in attending a Basic Arbitrator Training program in any of these cities, please contact David Newson at (213) 613-2693 or David.Newson@finra.org.

Regional Updates continued

Southeast Regional Update

On November 13, 2007, the Southeast Regional office hosted a focus group of seven arbitrators and nine party representatives to discuss FINRA Dispute Resolution's transition to the new business process. Vice President and Regional Director Rose Schindler and Executive Vice President and Director of Arbitration George Friedman hosted the event. Participants expressed satisfaction with the new process and stated that the transition was seamless.

During the next three months, the Southeast Regional Office will conduct the following in-person Basic Arbitrator Training programs:

New Orleans, LA	February 6, 2008
Columbia, SC	March 12, 2008
Boca Raton, FL	March 25, 2008

If you are interested in attending a Basic Arbitrator Training program in any of these cities, please contact Lanette Cajigas at (561) 447-4911 or Lanette.Cajigas@finra.org.

Arbitrator Tip: Scheduling Arbitration Hearings

Providing Full Hearing Days

Arbitration hearings at FINRA Dispute Resolution generally take place from 9 a.m. to 5 p.m. local time. This schedule provides parties with a seven-hour hearing day to conduct and conclude a hearing efficiently and on time. Remember that arbitration is intended to be a faster, more cost-effective alternative to litigation. In that spirit, please adhere to the 9 a.m. to 5 p.m. schedule to ensure that an arbitration hearing is expeditious and cost-effective for the parties. Please note that this is a "default" schedule that the parties and arbitrators can vary as they see fit. FINRA staff will accommodate the parties and arbitrators should they desire to start earlier in the day, end later or hold hearings on weekends or holidays.

Occasionally, parties and arbitrators may agree to start a hearing shortly after 9 a.m. or end a hearing shortly before 5 p.m. to accommodate a participant's schedule. However, repeated delays caused by arbitrators scheduling shorter hearing sessions may result in increased costs to the parties. For example, a hearing that could have concluded after four full-length hearing sessions (a morning and an afternoon session on two consecutive days) might run five sessions because an arbitrator insisted on leaving early during the first two days.

Recurrent Scheduling Conflicts

Be sure to disclose recurrent scheduling conflicts in your arbitrator profile—for example, regular teaching obligations or recurring meetings—so parties are aware of your availability and can make informed decisions during the arbitrator selection process.

You may update your disclosure report at *www.finra.org*. Go to the Arbitration and Mediation page and select Update Your Arbitrator Profile. You may also email your updates to *PanelUpdate@finra.org*.

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