What Every Investor Should Know About The Securities Arbitration Process

I. General Considerations

- Most disputes between investors and securities brokerage firms are resolved by securities arbitration because of the contract entered into between the investor and the firm at the time the investor opens an account with the firm. The securities arbitration process is loosely based on the judicial process but is less formal. Unlike many court proceedings, arbitration is generally confidential and documents are not publicly available. The goal of securities arbitration is to be quicker, more efficient and less expensive than the judicial process. Arbitrators are instructed to be guided by the law but are not bound by the law – fairness and equity are encouraged. Arbitration awards are generally final and can be challenged only on very narrow grounds.

- Investors should be aware that there are time limits to file an arbitration claim. A claim is not eligible for arbitration if "six years has elapsed from the occurrence or event giving rise to the claim." In addition, other time limits (statutes of limitations) imposed by state and federal law may apply. Aggrieved investors should seek legal counsel promptly to eliminate time limitation issues, if possible.

- While it is impossible to determine the ultimate way that an investor's case will develop because of unknown factors and developments, this overview should be helpful in providing an investor with some reference points regarding how securities arbitration cases proceed and the work to be done by attorneys. On average, securities arbitration cases take 12 to 18 months from the date the investor's claim is filed until the hearing is completed. However, this schedule may vary significantly based on factors such as how vigorously the defendants defend, the reasonableness of defendants, rulings by the arbitrators, the fragmentation of the hearings, the number of motions filed, whether the case is settled etc. Suffice it to say that if defendants want to adopt "scorched-earth defense tactics", the time will increase.

- There is a streamlined procedure called Simplified Arbitration for claims of $50,000 or less (excluding interest and expenses). In such cases, a single arbitrator will decide the case "on the papers" submitted by the parties. There is usually no in-person hearing.

- Basic Factors to Keep in Mind. These factors can significantly impact the length of the case and the time expended.

  - Amount at Issue
  - Number of Defendants
  - Number of Investors
  - Type(s) of securities at issue
  - Number of transactions at issue
  - Number of Accounts
  - Relevant Time Period
  - Likelihood and Number of Experts
  - Collection Issues, if any
  - Unique/Unusual Considerations

Page Perry, LLC
Protecting Investor Rights
Atlanta, Georgia
www.pageperry.com
(877) 673.0047

II. The Securities Arbitration Process

A. Investigative Stage (Certain to occur)

- Meetings with investor; collect and analyze documents; internet (fact) research; Bloomberg (securities) research; preliminary legal research; meetings/interviews with third party witnesses; consider hiring expert to analyze accounts; discussion with clients and expert; review and analyze expert's analysis; begin developing chronology and case playbook.

- This is a very important stage. Most investors don't appreciate all the claims that they may have nor the defenses that may exist. These matters need to be fully vetted. Remember that, unlike in court, a Statement of Claim is often viewed by the arbitrators almost like the investor's sworn testimony.

- The investigative stage can take anywhere from several weeks to several months depending on the size and complexity of the case and the number of relevant documents involved.

B. Complaint Stage (Certain to occur)

- Draft Statement of Claim (complaint) describing the investor's claims and preliminary motions, if any; review and revise same; prepare Submission Agreements. File Statement of Claim and Submission Agreement.

- Preparation of the Statement of Claim generally takes 2 to 4 weeks but can be longer in complex cases.

- Filing fees range from $50 - $1,800, depending on the stated dollar amount of the claim. FINRA also charges hearing session fees. The per session fee for a panel of three arbitrators ranges from $600 - $1,200, depending on the dollar amount of the claim.

C. Answer/Counterclaim Stage (Certain/Possible)

- Review and analyze Answer; consult with investors re same; identify new considerations; respond to counterclaims.

- Review and analyze motions, if any; respond to same; legal research.

- Answers and Counterclaims are due 45 days after respondent's receipt of the Statement of Claim.

D. Arbitrator Selection Stage (Certain to occur)

- Review and investigate proposed arbitrators; Google searches on arbitrators; obtain and review of past awards; third party inquiries; discussion with client(s); possible challenges; rank acceptable arbitrators in order of preference.

- Don't underestimate the importance of this process. Remember that these are the people who determine who wins and how much.

- Arbitrator profiles are served 30 days after the answer is due and arbitrators are typically appointed within 30 days after arbitrator ranking forms are submitted to FINRA.

E. Initial Pre-hearing Conference (Certain to occur)

Essentially a scheduling telephone conference with Arbitrators and Opposing Counsel (may be done by Agreement).

- The key dates of the proceeding are established and the final hearing dates are typically set during this conference.

- Prepare for conference; determine possible hearing dates; determine availability of investor, witnesses, attorneys and arbitrators; outline a schedule for case.

- The initial prehearing conference is typically set within a month after the arbitrators are appointed.

F. Discovery Stage (Certain to occur)

- Within 60 days of the date the Answer is due, each party must produce or object to producing certain documents deemed by FINRA to be presumptively discoverable. The documents are identified in Document Production Lists 1 and 2 found in the Discovery Guide provided to the parties by FINRA upon service of the Statement of Claim.

- Draft discovery requests for defendants; review and analyze defendants' document productions and discovery responses; confer with defendants on discovery disagreements; file motions to compel on contested discovery matters; prepare for and participate in hearings on discovery motions;

- Consider need for subpoenas and/or orders of production; if needed, draft appropriate motions to panel.

- Analyze and review defendants' discovery requests; gather and analyze responsive documents from investors; draft appropriate objections to defendants' discovery requests; confer with defendants on discovery disagreements; respond to defendants' motion to compel; prepare for and participate in hearings on discovery motions.

- Anticipate 2 rounds of discovery by each side.

- Continue independent investigation and development of facts.

- Deal with need and/or desirability of depositions; if necessary, draft appropriate motions to panel. – Note that depositions are not generally allowed in securities arbitration.

- The length of the discovery process is determined in the prehearing conference. It typically lasts 6 to 8 months but can be longer.

- Securities arbitration discovery generally focuses on document exchanges. Except for identification of individuals, entities or time periods related to the dispute, information requests are not favored and court-style interrogatories and requests to admit facts are not permitted.

G. On-going Case Development Stage (Certain to occur)

- On-going integration of new facts and documents into case structure; preparation of hearing strategy; monitor and integrate important factual and legal developments.

H. Motions Stage (May occur)

- Draft and file appropriate substantive motions; related legal research; prepare for and participate in conferences with arbitrator(s).

- Respond to defendants' motions; draft and file responses; legal research; prepare for and participate in conferences.

- The most common motions filed in securities arbitration are motions to compel compliance with discovery requests and amend pleadings.

- Motions can be filed at any time but are not usually filed until between 30 and 150 days before the scheduled hearing.

I. Mediation/Settlement Stage (May occur)

- According to FINRA statistics, most securities arbitration cases are settled prior to final hearing. Settlement involves compromise on the part of each party. Cases are typically settled via either mediation or exchanges of offers by counsel.

- Confer with defendants on an agreeable mediator; arrange mediation and set parameters; prepare mediation statement and exhibits; prepare clients for mediation; identify third party evidence to be used at mediation (e.g. experts, key witnesses, etc.); prepare for and attend mediation.

continued on next page.

- Alternatively or additionally, parties may engage in independent settlement discussions involving a back and forth process; necessitates various communications with investors.

- Settlement or mediation can occur at any time during the proceeding but typically occurs within the last 120 days before the first scheduled hearing date.

J. Hearing Preparation Stage (Certain to occur unless case is settled)

- If not already done, engage and work with expert (since engaging an expert is a significant expense borne by the investor, it is often done as part of the Hearing Preparation stage). Identify and organize important documents for proving investors' claims and defeating defendants' defenses and counterclaims (if any); prepare exhibit books; prepare hearing exhibits/power points; identify witnesses we will call and witnesses we may call; determine exhibits to be used with each witness; prepare witnesses for direct and cross examination; prepare for examination of defendants' witnesses; prepare and exchange pre-hearing and/or post-hearing briefs; file motions for orders of appearance and/or subpoenas; service of same; prepare anticipated opening and closing arguments.

- This is an intense period that involves more constant interaction between the investor and counsel.

- Twenty day exchange – 20 days prior to the first hearing date the parties are required to exchange a list of the witnesses that they may call and serve any previously unserved documents they may use at the hearing.

K. Hearing Stage (Certain to occur unless case is settled)

- Attend and conduct hearing; opening arguments and closing arguments; direct and cross examination of witnesses; presentation of documentary evidence; review and analyze transcripts; deal with unexpected developments; on-going witness preparation; possible post-hearing brief on select issues.

- Arbitrators typically try to schedule the final hearing dates of a case at a time within 9 months after the initial prehearing conference but that time frame is often extended due to scheduling conflicts.

- It is very important that the investor be prepared to attend the entire hearing.

L. Expenses that can be incurred by the investor in a securities arbitration case

The largest part of these expenses are typically incurred close to the hearing. Cases which are settled generally avoid many of these expenses.

- Attorneys fees (arrangements vary depending on case and client preference)
- Filing Fee
- Travel Costs
- Expert Witness Costs (optional)
- Forum Fees
- Miscellaneous Costs (copying, Legal Research, Bloomberg Reports, Hearing Exhibits)
- Court Reporter (optional)