Sedgwick LLP

The
Professional Liability Law Blog
BRINGING PROFESSIONAL LIABILITY INFORMATION TO CALIFORNIA ATTORNEYS,
INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS

SEC Approves New FINRA Arbitration Panel Selection Rule

February 8th, 2011 by Mark Hancock

As we explained in our posts dated October 8 and 28, 2010, FINRA proposed a rule last year that would allow for the selection of all-public arbitraiton panels in disputes involving investors and brokers. The SEC provided its approval of the rule on January 31, 2011. This means that the new panel-selection rule will apply apply to all customer cases requiring a three-arbitrator panel in which arbitrator lists have not been sent as of January 31, 2011.

The FINRA notice to parties which explains the rule can be found here. It provides, in part:

Customers choose the panel selection method; neither the firms nor associated persons can choose the selection method. The rule change expands to all customer cases (whether the customer is a claimant or a respondent) the FINRA Public Arbitrator Pilot Program (Pilot Program) that gave investors filing an arbitration claim against certain firms the option of choosing an all-public panel.

Optional All Public Panel Rule 12403(d)
The new Optional All Public Panel rule provides for an all-public arbitration panel or a majority public panel depending on how the parties exercise their strikes. Under this option, FINRA will send the parties three lists – i.e., one with 10 chair-qualified public arbitrators, one with 10 public arbitrators, and one with 10 non-public arbitrators. Each separately represented party may strike up to four arbitrators on each of the chair-qualified public and public lists, leaving at least six arbitrator names remaining on each party's lists. The rule, however, allows each separately represented party to strike up to all 10 arbitrators on the non-public arbitrator list. By striking all of the arbitrators on the non-public list, any party can ensure that the panel will have three public arbitrators.