

# Class Action Waivers in Arbitration Agreements: Where Do We Stand?

by Bettina Eckerle

A FINRA arbitration panel recently upheld Charles Schwab & Co.'s arbitration agreement that required customers to waive their rights to file a class-action lawsuit, despite the fact that FINRA rules ensure that customers may pursue class action claims in lieu of arbitration.

The decision would have effectively ended class claims for investors who have signed similar arbitration agreements with other firms, if that were the end of the story, but it is not. FINRA recently filed an appeal with its internal appeal board, the National Adjudicatory Council.

FINRA's enforcement division had brought a complaint last year claiming that FINRA's rules prohibit class-action waivers by brokerage and investment banking firms. The panel in February dismissed part of the complaint, ruling that while Schwab's contract did in fact violate FINRA rules, FINRA may not enforce them because they are in conflict with the Federal Arbitration Act.

Let's monitor closely what happens in the appeal. It is an interesting case from a precedent-setting perspective, and on different levels. I would be grateful for tweets or e-mails with any questions or comments.

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