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FINRA DISPUTE RESOLUTION TASK FORCE ISSUES ITS FINAL REPORT AND RECOMMENDATIONS

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The FINRA Dispute Resolution Task Force, which was formed in June 2014 to recommend enhancements to the FINRA arbitration and mediation forums, recently issued its Final Report and Recommendations. While FINRA is not required to adopt the Task Force’s 51 recommendations, between 1997 and 2007, NASD (FINRA’s predecessor) issued rules adopting nearly all of the 70 recommendations included in a similar report that was issued in 1996 (known as the Ruder Report). It is likely, therefore, that many of the Task Force’s recommendations will be adopted by FINRA over the next several years.

The Task Force’s Final Report and Recommendations covers a wide range of issues and several of Task Force’s key recommendations are summarized below:

- **Arbitrator Compensation:** Although arbitrator compensation was increased in 2014 for the first time in over 15 years, the Task Force recommended that arbitrator compensation be further increased from \$300 to \$500 per hearing session (typically, a hearing day comprises two sessions), and that the chairperson’s additional compensation be increased from \$75 to \$125 per day. The Task Force stated that these amounts are below “market rates,” but believed that increasing arbitrator fees to “market rates” would impose too great a burden on the FINRA arbitration forum.
- **Challenging the Appointment of an Arbitrator:** The Task Force recommended allowing parties to challenge the appointment of an arbitrator on the grounds that the arbitrator has been appointed to serve on multiple related cases, such as cases involving the same broker dealer or the same product. Currently, FINRA only considers this type of challenge on a case-by-case basis.
- **Class Arbitration Waivers:** The Task Force “strongly endorsed” FINRA’s policy prohibiting class arbitration waivers.
- **Explained Decision Requirement:** The Final Report stated that “expanding the use of explained decisions is one of the most important things FINRA can do to increase transparency in the system.” After considering several options, the Task Force recommended that an explained decision be required

in every case, unless one of the parties notifies the Panel that it does not want an explained decision. Currently, the FINRA Rules require a written, explained decision only when requested by both parties.

- **Contents of Explained Decisions:** The Task Force recommended maintaining the brief, fact-based format that is called for by FINRA Rule 12904(g), with the addition of “some explanation of reasons for the amount of damages . . . without requiring complex calculations.”
- **Expungement Requests:** The Task Force recommended that all expungement requests be decided by a special arbitration panel made up of individuals from the chairperson roster who have received training on expungements, unless an expungement request relates to an arbitration that was decided on the merits and the chairperson of the arbitration panel has completed expungement training.
- **Motions to Dismiss:** In addition to the current grounds allowed for a motion to dismiss, the Task Force recommended that motions to dismiss be permitted on the grounds that the dispute was previously concluded through adjudication or arbitration and memorialized in an order, judgment, award, or decision.

The Final Report also discusses several other important topics that were debated by the Task Force but were not the subject of a formal recommendation because the Task Force did not reach a consensus. Because the Task Force did not provide a recommendation on these issues, it is probably less likely that FINRA will implement rules addressing these topics over the next few years. Some of the important issues on which the Task Force was unable to reach a consensus are whether FINRA arbitration should continue to be mandatory, whether a FINRA representative should be required to participate in expungement proceedings, whether FINRA arbitrators should be required to strictly follow the law, whether to abandon the six-year eligibility rule, whether FINRA should bar attorneys from practicing in FINRA arbitrations based on misconduct, and whether special rules should be created for large claims where more than \$20 million in damages are sought (note, however, that unlike the other topics where the Task Force failed to reach a consensus, the Task Force included its subcommittee’s proposal on special rules for large claims in the Final Report “for the information of the NAMC,” FINRA’s National Arbitration and Mediation Committee).



For additional information about the Task Force's Final Report and Recommendations and its potential impact on FINRA arbitrations, please contact Jeff Willis, Ben Rogers, or Dan Laney of Rogers & Hardin LLP.