

## Securities Arbitration Supplementary PROCEDURES

Effective July 1, 1999

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### Introduction

Each year, millions of transactions involving securities and commodities take place. Occasionally, disagreements develop over these transactions. Many of these disputes are resolved by arbitration, the voluntary submission of a dispute to a disinterested person or persons for final and binding determination, under the auspices of the American Arbitration Association.

The American Arbitration Association (AAA), a not-for-profit, public-service organization, offers a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, and government. Disputes administered in accordance with these Supplementary Procedures are administered by the Association's Atlanta Case Management Center. Hearings, however, may be held at locations convenient for the parties. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

### Supplementary Procedures for Securities Arbitration

#### 1. Applicability\*

The Commercial Arbitration Rules of the American Arbitration Association (AAA), together with these Supplementary Procedures, shall apply whenever the parties' arbitration agreement refers to the Securities Arbitration Rules of the American Arbitration Association, or where the parties mutually agree to utilize these Procedures to resolve a securities or commodities dispute. To the extent that there is any variance between the Commercial Arbitration Rules and the Supplementary Procedures for Securities Arbitration, the Supplementary Procedures shall apply.

The Expedited Procedures of the Commercial Arbitration Rules shall also apply whenever they are agreed to by all parties to the dispute.

\*A dispute arising out of a contract, agreement or plan between a consumer and a business will be administered in accordance with the AAA's *Supplementary Procedures for Consumer-Related*

*Disputes* , unless the parties agree otherwise after the commencement of the arbitration. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

## 2. Answers and Third-Party Claims

A respondent may file an answering statement in duplicate with the AAA within 20 days from the commencement of administration, simultaneously sending a copy of the answering statement to the claimant. A party may also file an answer to an amended or new claim, as provided in Section R-6 of the Commercial Arbitration Rules. If no answering statement is filed within the time period stated above, it will be treated as a general denial of the claim.

If a respondent fails to file an answering statement within the time period stated above, the claimant may serve respondent with a written request for an answering statement. A respondent who fails to file an answer within 10 days of such a request may be barred, in the discretion of the arbitrator, from presenting any matter, argument or defense (other than a general denial) that could have been raised in an answering statement, but an arbitrator may not enter an award against a party without hearing evidence to support the making of an award. Arbitrators should endeavor to rule on requests to bar such matters prior to the hearing.

The demand or answer may assert a third-party claim against another party, if the third party is obliged to arbitrate the subject of that party's claim under these rules. The arbitrator is authorized to resolve any dispute over such joinder.

If a counterclaim is asserted, it shall be filed as indicated in Section R-4 of the Commercial Arbitration Rules.

### 3a. Appointment from Panel - Single Arbitrator Cases and Expedited Procedures

Where a dispute is to be heard by a single arbitrator, or administered under the Expedited Procedures of the Commercial Arbitration Rules, the AAA shall immediately after the filing of the answering statement or the expiration of the time within which the answering statement is to be filed, submit simultaneously to each party an identical list of five proposed arbitrators drawn from the National Panel of Securities Arbitrators, from which an arbitrator shall be appointed. The arbitrators contained on the list will not be affiliated with the securities industry.

Each party may strike two names from the list. The list must be returned to the AAA within 20 days from the date of the AAA's transmittal to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from among other members of the panel without the submission of additional lists.

An affiliated arbitrator as provided above is one who has or has had direct involvement in or relationship with the securities brokerage industry for a minimum of three years if now employed in that industry or for a minimum of five years, if no longer so employed. Involvement in, or relationship with, would include (a) employment at a brokerage firm in a professional capacity, whether employed in sales, management, support or trading, or (b) employment as counsel, accountant or other professional who devotes a majority of his or her efforts to brokerage or brokerage-related matters. Persons out of the industry for more than 10 years are

not affiliated. Persons whose firms or direct family members derive significant income from securities brokerage or brokerage-related matters, but who do not qualify as affiliated arbitrators as defined above, may not serve as arbitrators.

### 3b. Appointment from Panel - Three Arbitrator Cases

If the parties have not appointed arbitrators and have not provided any other method of appointment, the arbitrators shall be appointed in the following manner: immediately after the filing of the answering statement or the expiration of the time within which the answering statement is to be filed, the AAA shall submit simultaneously to each party to the dispute two lists of names and biographical information of persons chosen from the panel. The first list, from which one arbitrator will be appointed, will contain five names of arbitrators affiliated with the securities industry. The second list, from which two arbitrators will be appointed, will contain 10 names of arbitrators not affiliated with the securities industry.

Each party to the dispute has 20 days from the transmittal date in which to strike any names objected to, number the remaining names in order of preference, and return the lists to the AAA. If a party does not return the lists within the time specified, all persons shall be deemed acceptable. From among the persons who have been approved on both lists and in accordance with the designated order of mutual preference, the AAA shall invite the arbitrators who will serve.

If appointments cannot be made from the submitted lists, the AAA will submit to the parties a final list of proposed arbitrators, consisting of five to 10 names. Each separately appearing party may strike one name for each arbitrator to be appointed, and return the list to the AAA within 10 days from the date of the AAA's transmittal to the parties. The AAA shall make the appointments from the names remaining on the list.

### 4. Number of Arbitrators

Where the claim of any party exceeds \$100,000, the dispute shall be heard and determined by three arbitrators. Unless the parties otherwise agree, the majority shall be arbitrators not affiliated with the securities industry. All other disputes shall be heard and determined by one arbitrator not affiliated with the securities industry.

### 5. Waiver of Oral Hearing

Where each party's claim does not exceed \$20,000, exclusive of interest and arbitration costs, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing by telephone, or the arbitrator determines that a telephonic hearing is necessary. The parties may also provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

### 6. The Award

In addition to the award provisions contained in the Commercial Arbitration Rules, the following requirements apply:

(a) The award shall contain the names of the parties and representatives, if any, a summary of the issues, including type(s) of any security or product in controversy, the damages and/or other relief requested and awarded, a statement of any other issues resolved, a statement regarding the disposition of any statutory claim, the names of arbitrators, the date when the case was filed, the date of the award, the number and dates of hearings, the location of the hearings. The award shall be signed by the arbitrators concurring in or dissenting from the award.

(b) An award issued under these rules shall be publicly available, on a cost basis. The names of the parties and witnesses will not be publicly available, unless a party expressly agrees to have its name made public in the award.

Rules, forms, procedures and guides are subject to periodic change and updating. To ensure that you have the most current information, see our World Wide Web home page at <http://www.adr.org>

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