

## SECURITIES ARBITRATION FAIRNESS SURVEY - 2006

The Pace Investor Rights Project (affiliated with Pace University School of Law) is conducting this survey for the Securities Industry Conference on Arbitration (SICA), a group made up of representatives from securities self-regulatory organizations, the Securities Industry Association, and the **general public**.

The purpose of this survey is to evaluate the fairness of the arbitration of customer claims at both NASD Dispute Resolution, Inc. ("NASD") and the New York Stock Exchange ("NYSE"). Our mission is to study whether participants **believe** the securities arbitration process is conducted simply, fairly, economically and without bias by the arbitrators. We need YOUR participation and feedback to accomplish this mission.

You are receiving this questionnaire because NASD or NYSE records show that you were involved in a dispute between a customer and a brokerage firm and/or its registered representative(s) ("associated person(s)") filed for arbitration in its forum in the last five years. Please take a few minutes to complete the questionnaire below and return it in the self-addressed postage-paid return envelope provided. Please be assured that your responses will be kept completely confidential and will never be used in any way to permit identification of you. Your responses will be used only in aggregate form.

If you have been involved in more than one such dispute in the last five years, please answer the questions below by focusing on the **MOST RECENT** dispute that resulted in an arbitration award following a live or paper hearing.

1. In the past five years, have you been involved in a dispute between a customer and a securities brokerage firm and/or its registered representative(s) ("associated person(s)") that was filed for arbitration before NASD or the NYSE?
  - A. Yes, I was involved as a customer. **GO TO Question 2.**
  - B. Yes, I was involved as a corporate representative of a securities brokerage firm. **GO TO Question 2.**
  - C. Yes, I was involved as an associated person of a brokerage firm. **GO TO Question 2.**
  - D. Yes, I was involved as a lawyer or other representative of a party. **GO TO Question 3.**
  - E. No, I was not involved in any such dispute. **STOP. Do not continue with this survey, but please mail it back.**
  
2. Were you represented by a lawyer in that dispute? (If you were involved in more than one such dispute, answer with respect to the most recent one.)
  - A. Yes, I was represented by a lawyer.
  - B. Yes, I was represented by a lawyer through a law school clinic.
  - C. No, I chose to represent myself because I did not want to be represented.
  - D. No, I represented myself because I could not afford to retain a lawyer.
  - E. No, I represented myself because I could not find a lawyer to represent me.
  - F. No, I was represented by a non-lawyer.

**GO TO Question 5**

3. **(Lawyers/Representatives only)** In the past five years, how many disputes between a customer and a securities brokerage firm and/or its registered representative(s) ("associated person(s)") that were filed for arbitration before NASD or the NYSE were you involved in?

- A. I have been involved in only one such dispute, and I represented (select any that apply):  
     the customer  
     the brokerage firm  
     the associated person.

**GO TO Question 6.**

- B. I have been involved in more than one such dispute.

4(a). Overall, in the past five years, have you primarily represented customers or securities industry parties in these disputes?

- A. I primarily represented customers.  
B. I primarily represented registered representatives/"associated persons."  
C. I primarily represented the brokerage firm.  
D. Do not know/Do not recall

4(b). In the most recent of these disputes, whom did you represent (select all that apply)?

- A. The customer  
B. The brokerage firm.  
C. The associated person.

5. In the past five years, how many of these disputes have you been involved in?

- A. One  
B. 2 to 5.  
C. 6 to 10.  
D. More than 10.  
E. Do not know/Do not recall.

6a. Did the customer agreement in the most recent dispute contain a clause requiring the parties to resolve that dispute through arbitration?

- A. Yes. GO TO Question 6b.  
B. No. **GO TO Question 7.**  
C. Do not know/Do not recall. GO TO Question 7.

6b. Were you aware before the dispute arose that the customer agreement contained an arbitration clause?

- A. Yes.

- B. No.
- C. Do not know/Do not recall

7. What was the primary reason this dispute was filed in an arbitration forum?

- A. Believed arbitration would be faster than court.
- B. Believed arbitration would be less expensive than court.
- C. Believed arbitration would be more fair than court.
- D. Believed arbitration would provide a larger recovery than court.
- E. Believed arbitration was required.
- F. Preferred arbitration for other reasons.
- G. A lawyer recommended it.
- H. Did not initiate the claim.
- I. Do not know/do not recall.

8. Before the most recent dispute was filed in arbitration, did you have concerns about the securities arbitration forum? (select all that apply)

- A. No, I had no concerns.
- B. Yes, I was concerned that it would be expensive.
- C. Yes, I was concerned that it would be a slow process.
- D. Yes, I was concerned that it would not be a fair process.
- E. Yes, I was concerned about the composition of the arbitration panel.
- F. Yes, I was concerned that the arbitrators would be biased.
- G. Yes, I had other concerns.
- H. I do not recall if I had any concerns.

9. With respect to your most recent dispute, in what state was the hearing scheduled to take place? (If the dispute was a Simplified Arbitration that took place on the papers, write "paper case.")

\_\_\_\_\_

10. What was the approximate amount of damages (excluding punitive damages, attorneys' fees, interest and costs) claimed in this most recent dispute?

- A. Not exceeding \$25,000
- B. \$25,001 - \$50,000
- C. \$50,001 - \$100,000
- D. \$101,000 - \$250,000
- E. \$250,001 - \$1,000,000
- F. More than \$1,000,000
- G. Do not know/do not recall

11. How was this most recent dispute resolved?

- A. The arbitration panel issued an award of damages to the customer after a hearing.

B. In a single-arbitrator case, the arbitrator issued an award of damages to the customer based on written submissions (a "paper" case).

If answered A or B **GO TO Questions 12a-b.**

C. The claimant voluntarily withdrew the claim.

D. The parties settled the claim on their own.

E. The parties settled the claim with the aid of a mediator.

F. In a single-arbitrator case, the arbitrator did not award damages to the customer based on written submissions (a "paper" case).

G. The arbitration panel dismissed the case before a hearing began

H. The arbitration panel did not award damages to the customer after a hearing.

I. Do not know/do not recall

**GO TO Question 13 for C-I**

12a. What was the approximate amount of the total award in this most recent dispute?

A. \$1.00 – 10,000

B. \$10,001 – 50,000

C. \$50,001 – 250,000

D. \$250,001 – 1,000,000

E. More than \$1,000,000

F. Do not know/do not recall

12b. What percentage of damages (excluding punitive damages, attorneys' fees, interest and costs) originally claimed does this represent?

A. Less than 1

B. 1-10

C. 11-25

D. 26-49

E. 50-74

F. 75-99

G. 100

H. Do not know/do not recall

13. How many arbitrators were appointed to decide this dispute?

A. Three. **GO to Question 14a.**

B. One. **GO to Question 15.**

C. No arbitrators were appointed.

D. Do not know/Do not recall

**If C or D, GO to Question 16**

14a. Did you know, prior to the filing of the arbitration, that one arbitrator would be connected in some way with the securities industry (an "industry arbitrator") and the other two would not be connected in any way with the securities industry (a "public arbitrator")?



- A. Yes
- B. No
- C. Do not recall

14b. Did you know, at any time during the dispute, which arbitrator was the industry arbitrator and which arbitrators were public arbitrators?

- A. Yes
- B. No
- C. Do not recall

14c. Would you say that the performance of the industry arbitrator and the public arbitrators was different?

- A. Yes
- B. No
- C. There was no opportunity to assess the performance of the arbitrators.
- D. Do not know/Do not recall

14d. Would you say that the industry arbitrator favored one side over the other at any time during the dispute?

- A. No
- B. Yes, the industry arbitrator favored the customer.
- C. Yes, the industry arbitrator favored at least one securities industry party.
- D. There was no opportunity to assess whether the arbitrators favored any party.
- E. Do not know/do not recall

14e. Was the award unanimous?

- A. Yes
- B. No
- C. Do not know/Do not recall

15. Would you say that any public arbitrator favored one side over the other at any time during the dispute?

- A. No
- B. Yes, a public arbitrator favored the customer.
- C. Yes, a public arbitrator favored at least one securities industry party.
- D. There was no opportunity to assess whether the arbitrator favored any party.
- E. Do not know/do not recall

Based on your experiences in the **MOST RECENT** dispute in which you were involved that was filed for arbitration before NASD or the NYSE, please indicate the extent to which you agree or disagree with statements 16-34 according to the key below. If your dispute did not progress enough to enable you to evaluate the statement, answer "NA." Please answer these questions, to the extent they apply, even if your dispute did not progress to a hearing.

SA = STRONGLY AGREE  
A = AGREE  
N = NEITHER AGREE NOR DISAGREE  
D = DISAGREE  
SD = STRONGLY DISAGREE  
NA = NOT APPLICABLE  
DK = DON'T KNOW

16. The arbitration panel appeared competent to resolve the dispute.
17. The arbitration panel did not understand the issues involved in the case.
18. The arbitration panel was open-minded.
19. The arbitration panel was impartial.
20. The arbitration panel appeared competent to resolve pre-hearing issues.
21. The discovery process enabled me to obtain the information needed for a hearing.
22. The arbitration hearings took too long.
23. At the hearing, the arbitration panel listened to the parties, their representatives and their witnesses.
24. At the hearing, the arbitration panel understood the legal arguments in the case.
25. At the hearing, the arbitration panel did not provide a sufficient amount of time for the parties to present their evidence.
26. At the hearing, the arbitration panel did not provide a sufficient amount of time for the parties to argue the merits of their case.
27. I am satisfied with the outcome.
28. I would be more satisfied if I had an explanation of the award.
29. The outcome was not very different from my initial expectations.
30. The arbitration process was too expensive.

31. The arbitration panel did not apply the law to decide the dispute.
32. I would recommend to others that they use arbitration to resolve their securities disputes.
33. I have a favorable view of securities arbitration for customer disputes.
34. As a whole, I feel that the arbitration process was fair.



35. In the last five years, have you ever been a party or represented a party *in at least one civil court case* (not involving a criminal, matrimonial or custodial matter and excluding class action lawsuits)? (select all that apply)

- A. No. GO TO question 36.
- B. Yes, I was a plaintiff.
- C. Yes, I represented a plaintiff.
- D. Yes, I was a defendant.
- E. Yes, I represented a defendant.
- F. Do not know/Do not recall

35a. Focusing on your most recent experience in a civil court case, how different do you think your result from the arbitration would have been had it proceeded in court?

- A. Very different
- B. A little different
- C. Exactly the same
- D. Do not know

35b. As compared to your most recent experience in a civil court case, how fair is securities arbitration?

- A. Very fair
- B. Somewhat fair
- C. Equally fair
- D. Not fair at all
- E. Do not know

36. Based on your experiences in one or more securities arbitration customer disputes, if you had the choice, would you choose arbitration to resolve a customer dispute in the future? (select all that apply)

- A. Yes, I would choose arbitration over court.
- B. No, I would not choose arbitration because the process is not fair.
- C. No, I would not choose arbitration because the process is more expensive than court.
- D. No, I would not choose arbitration because the process takes more time than court.

- E. No, I would not choose arbitration because the arbitrators are not competent to resolve customer-broker disputes.
- F. I'm not sure.
- G. None of the above.

37. Are you familiar with changes that the securities arbitration forums have made to their procedural rules in the last five years?

- A. Yes, I think the changes have made the process fairer.
- B. Yes, I think the changes have not made a difference.
- C. Yes, I think the changes have made the process less fair
- D. No, I am not familiar with the changes.

38. Would you be willing to be interviewed on the telephone to discuss further your experiences with securities arbitration?

- A. Yes
- B. No

If yes, please provide your contact information below:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No. (daytime) \_\_\_\_\_

Telephone No. (nighttime) \_\_\_\_\_

E-mail address \_\_\_\_\_

**THANK YOU FOR YOUR PARTICIPATION!!**