



Financial Services Employment Blog

FINRA Board of Governors Authorizes Rule Changes

By Robert Whitman, Cameron Smith, and Samuel Sverdlov

Seyfarth Synopsis: Following FINRA's May 2016 board meeting, its Board of Governors authorized filing with the SEC proposed amendments to several FINRA arbitration-related rules. The Board has proposed amendments to rules regarding gifts and non-cash compensation, chairperson eligibility, and motions to dismiss.

As we previously wrote about [here](#), in June 2015, FINRA's Arbitration Task Force, a group of 13 industry experts, issued a host of recommendations intended to improve the transparency, impartiality and efficiency of FINRA arbitrations. The Task Force report, entitled [Interim Summary of Key Issues](#), did not propose specific rule changes to the Code of Arbitration Procedure. Rather, it made broad-based policy suggestions that, if ultimately adopted by the Board and incorporated into rule amendments, would have a significant effect on FINRA arbitrations.

Earlier this month, the Board met to discuss a number of issues, including specific rulemaking that would impact member firms.

- **Gifts, Gratuities and Non-Cash Compensation.** The Board authorized publication of a Regulatory Notice seeking comment on proposed amendments to FINRA Rule 3220 (Influencing or Rewarding Employees of Others), as well as the adoption of proposed FINRA Rule 3221 (Restrictions on Non-Cash Compensation) and proposed FINRA Rule 3222 (Business Entertainment). These amendments would (1) consolidate the rules regarding gifts, gratuities, and non-cash compensation under a single rule series in the FINRA rulebook; "(2) increase the gift limit based on inflation from \$100 to \$175 per person per year and include a *de minimis* threshold below which firms would not have to keep records of gifts given or received"; and (3) amend the non-cash compensation rules to cover *all securities products*, rather than separate rules covering an exclusive list of products (e.g., investment company securities, variable insurance products, direct participation programs, and public offerings of securities.)
- **Broaden chairperson eligibility.** The Board authorized filing with the SEC proposed amendments to Rules 12400 and 13400 (Neutral List Selection System and Arbitrator Rosters) to revise the arbitration forum chairperson eligibility requirements. In the past, an arbitrator must have served through two arbitrations to the issuance of an award to qualify for service as chairperson. The proposed rule would permit an attorney arbitrator to serve as chair if he or she has served as an arbitrator through award for only one arbitration.
- **Motions to Dismiss.** The Board authorized filing with the SEC proposed amendments to Rules 12504 and 13504 (Motions to Dismiss). The amendments would allow arbitrators to "act upon a motion to dismiss prior to the conclusion of a party's case in chief if the arbitrators determine that the non-moving party previously brought the same dispute against the same party, and the dispute was fully and finally adjudicated on the merits."

All but one of these proposed rule changes will be filed with the SEC. For changes to the gifts, gratuities, and non-cash compensation rules, FINRA has initiated the “Regulatory Notice” process, and seeks comments on the proposed rule. Depending on the comments received, the proposed rule will either go back to the Board for reconsideration or will be filed with the SEC for its review. As always, we will keep you informed as to any changes to the FINRA arbitration rules relevant to employers.

If you have any questions or concerns, please contact your local Seyfarth attorney, [Robert Whitman](mailto:rwhitman@seyfarth.com) at rwhitman@seyfarth.com, [Cameron Smith](mailto:casmith@seyfarth.com) at casmith@seyfarth.com, or [Samuel Sverdlov](mailto:ssverdlov@seyfarth.com) at ssverdlov@seyfarth.com.

www.seyfarth.com



Attorney Advertising. This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP Financial Services Employment Blog | May 20, 2016

©2016 Seyfarth Shaw LLP. All rights reserved. “Seyfarth Shaw” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.