



# ONWALLSTREET

<http://www.onwallstreet.com>

[Back](#)

## UPDATE: SEC Approves FINRA All-Public Panel Option

By [Lorie Konish](#)

February 1, 2011

The Securities and Exchange Commission has approved a rule change to allow the option for all public panels in Financial Industry Regulatory Authority arbitrations, a move both welcomed and criticized by industry experts.

---

Like what you see? [Click here to sign up for On Wall Street's daily newsletter to get the latest on advisor market trends, investment management, retirement planning, practice management, technology, compliance and new product development.](#)

---

The decision comes after FINRA petitioned the SEC for the rule change in October. Prior to the ruling, FINRA arbitration panels were traditionally made up of three people, consisting of two public arbitrators and one arbitrator related to the securities industry.

"This change will give investors an additional choice in selecting their arbitrators when they file claims," FINRA Chairman and Chief Executive Richard Ketchum said in a statement. "We believe that giving investors the ability to have an all-public panel will increase public confidence in the fairness of our dispute resolution process."

In the new process, FINRA will send three lists to parties in an arbitration dispute. The lists include one with 10 chair-qualified public arbitrators, another with 10 public arbitrators and a third with 10 non-public arbitrators. Each represented party in the dispute has the right to strike up to four parties on the chair-qualified public and public lists. With the rule, each separately represented party in arbitration can strike up to all 10 arbitrators on the non-public arbitrator list. If that happens, FINRA will not appoint a non-public arbitrator to that case. The new rules are set to go into effect for cases where a list of potential arbitrators has not yet been sent.

However, the decision drew mixed reviews from industry experts.

The new process might not have an impact on the decisions, but could increase costs, according to Alan Foxman, an attorney in Boca Raton, Fla., who worked in FINRA's arbitration department for eight years.

"Honestly, I think it's probably going to be more of a perception issue than have a real substantive effect on how many cases the firms or the reps win versus how many public customers win," Foxman said.

The decision will place more pressure on both sides of an arbitration case to bring expert witnesses forward, according to Foxman, rather than relying on the expertise of an industry panelist. That could result in higher costs for the process because of the need to pay for those expert witnesses, he said, which could ultimately offset the advantage of not proceeding in court.

"I think that it may increase slightly the costs to all parties involved," Foxman said.

The SEC's approval of the new process is "great" news to Brian Smiley, a partner at Smiley Bishop & Porter LLP, a law firm that represents investors in securities arbitration.

"As a lawyer representing investors, I worry that a lot of the claims that are being brought by investors challenge industry-wide practices," such as auction rate securities or variable annuities, Smiley said. "What happens is without the rule, you end up with arbitrators having to decide these cases that come from firms that engage in the same practices," he said.

The all-public panel option is a step in the right direction toward possibly allowing investors to choose between quasi-judicial forums such as FINRA and judicial forums such as state and federal courts, said Public Investors Arbitration Bar Association President Peter Mougey.

"The norm in FINRA arbitration is that clients are not allowed to gain access to documents that hundreds of other clients have seen in other cases, and the results are drastically different," Mougey said. "There's no mechanism for sharing that within FINRA arbitration as there is in state and federal court. It pretty much boils down to a lack of transparency."

But for Rick Rummage, president of the Rummage Group, a recruiting firm for financial advisors, the new all-public panel option only makes an already tainted process worse. Just bringing a case against an advisor can damage their business and income, Rummage said, and may not even have any merit. Rummage remembers when one of his former clients lost about \$70,000 and brought a case against him, not realizing his fund performance was actually up about 12% a year over five years. Not having an expert on a panel making the decision could only hurt an advisor more, he said.

"Lately, it's just one of those situations where, if you're in the brokerage or banking industry, you're bad," Rummage said. "But the truth is that the vast majority of financial advisors are very good, very honest."

FINRA went to the SEC for approval after conducting a 27-month pilot program that gave investors the option for an all-public panel. In that pilot program, investors chose the all-public option almost 60% of the time. Voluntary participants in the pilot program included 14 firms.

## WHAT DO YOU THINK?

What do you think of this? How could it impact advisors?

DISCUSS

### Related Articles


- [Compliance Officer Role Gains Importance](#)
- [SEC Begins Distributing \\$267 Million Bear Stearns Fair Funds](#)
- [New Regulations to Favor Fiduciary Standard](#)
- [Carlyle Group Settles N.Y. Pension Probe with AG Cuomo](#)
- [Treasury Wants Audit Trail for Derivatives](#)

- Most Popular
- Viewed
- Emailed

1. [11 Essential Tech Tools for Financial Advisors](#)
  2. [12 Fundamentals to Better Marketing](#)
  3. [PNC's Grand Plan](#)
  4. [FSI ONE VOICE 2011: Yet Another Reality Check for Baby Boomers](#)
  5. [Merrill: Boomers Look Ahead to Active Retirement](#)
  6. [11 Essential Tech Tools for Financial Advisors](#)
  7. [11 Essential Tech Tools for Financial Advisors](#)
  8. [Could Chaos, Regulation Spark a Golden Age for Advisors?](#)
  9. [11 Essential Tech Tools for Financial Advisors](#)
  10. [From Book Smart To Street Smart](#)
1. [PNC's Grand Plan](#)
  2. [Morgan Stanley Smith Barney Expects Positive Year For Investors](#)
  3. [The Lab](#)
  4. [Women Advisors: The Future Begins Now](#)
  5. [Women Need Advisors, Annuities for Retirement](#)
  6. [FSI ONE VOICE 2011: Yet Another Reality Check for Baby Boomers](#)
  7. [What CPAs Want](#)
  8. [From Book Smart To Street Smart](#)
  9. [Could Chaos, Regulation Spark a Golden Age for Advisors?](#)
  10. [Ten Ways for Advisors to Focus Resources to Be More Effective](#)

"There's not one good reason to join Ameriprise."  
*There are dozens.*

[Let's Talk](#)



**Ameriprise**  
Financial

MORE WITHIN REACH™

Ameriprise Financial Services, Inc.,  
Member FINRA



