

Special Arbitration Procedure (SAP) for Investors of Firms that Entered into an Auction Rate Securities (ARS) Settlement with FINRA

Adjudication of Auction Rate Securities-Related Consequential Damage Claims

Arbitrations under the SAP will be administered in accordance with the FINRA Code of Arbitration Procedure for Customer Disputes (Code), **except that:**

1. **Claim Filing:** Rule 12302 is revised to provide that the FINRA Claim Form must be completed and constitutes the Initial Statement of Claim and Submission Agreement for purposes of the Code of Arbitration Procedure. Investors who elect to proceed under the SAP may not **also** file a regular arbitration for claims related to Eligible ARS.
 - Only a Firm that has entered into an ARS settlement with FINRA may be named as a respondent in the SAP (hereinafter referred to as “Firm”);
 - Investors with Eligible ARS-related claims have a choice to proceed with a regular arbitration at FINRA under the Code **OR** to participate in the SAP, which will then be the Investors’ exclusive remedy for resolving claims against the Firm related to Eligible ARS;
 - The SAP is for the recovery of consequential damages only and no other claim related to ARS securities may be brought and/or continued in any forum against the Firm by any Investors who elect to submit a claim in the SAP;
 - Any Investors who choose to pursue such claims shall bear the burden of proving that they suffered consequential damages and that such damages were caused by Investors’ inability to access funds consisting of Investors’ ARS purchases through Firm;

- Investors proceeding under the SAP may not recover as consequential damages any attorneys' fees incurred in connection with this ARS SAP arbitration or any related mediation proceeding;
 - Claims relating to securities other than the Eligible ARS may not be asserted in the SAP;
 - Investors who previously arbitrated or previously settled and released claims relating to their Eligible ARS securities are not eligible to participate in the SAP;
 - Investors who participated in the ARS settlement and who choose to participate in the SAP must file the attached SAP Claim Form to initiate an SAP case. The Claim Form is also available on FINRA's web site at: <http://www.finra.org/ArbitrationMediation/index.htm>; and
 - Any claim filed requesting the SAP that does not include a Claim Form will be considered deficient under the Code; a Claim Form must be submitted before the claim moves forward under the SAP procedures.
2. **Fees:** Rules 12600, 12800, 12900, and 14110 are modified to provide that the Firm will pay for all forum and filing fees, hearing session fees, and other fees (with the exception of fees assessed for postponements at the Investors' request) assessed under the Code, including all fees and expenses of arbitrators or mediators, and any additional surcharges or fees FINRA may deem necessary to administer the SAP cases. FINRA will charge hearing session fees at the rate of \$450 per session for single arbitrator SAP cases, and \$1,200 per session for three arbitrator SAP cases.

3. **Joinder:** Rules 12312, 12313, and 12314 related to the joinder of parties and claims shall not apply to the SAP. Each claim must be filed by the account holder(s) for the account in which the Eligible ARS securities were purchased. Except for accounts in the same household, claims regarding ARS securities purchased by different account holders in different accounts cannot be combined without the express written consent in advance by Firm.

4. **Answer:** Solely for the purposes of this proceeding, the Firm will not contest liability relating to the illiquidity of the underlying ARS position or to the ARS sales, including any claims of misrepresentations or omissions of its agents. Firm shall not be able to use as part of its defense an investor's decision not to sell ARS holdings¹ prior to the ARS settlement date nor the investor's decision not to borrow money from Firm if such loan facility was made available to ARS holders. Firm also agrees not to assert statutes of limitations or repose or any other time bar principles, except that Firm may assert lack of eligibility to proceed under the SAP, as defined below.
 - For purposes of a claim proceeding under the SAP, Rule 12206 is modified to provide that no claim shall be eligible for submission to arbitration under the SAP where six years have elapsed from the date an Investor accepted the Firm's offer to purchase the ARS at issue in the claim.

¹ However, arbitrators may consider a firm's unconditional buy-back offer at par, including the timing and delivery of such offer, in their determination of consequential damages.

5. **Arbitrator Selection:** Rule 12401 is modified to provide that each case asserting claims for consequential damages under \$1,000,000 (one million dollars) shall be decided by a single chair qualified public arbitrator who will be appointed through FINRA's list selection process for single arbitrator cases. Rule 12401 is further modified to provide that for cases with consequential damages claims of \$1,000,000 (one million dollars) or greater, if both parties agree, three public arbitrators will be appointed through FINRA's list selection process.

6. **Simplified Procedure:** Rules 12401 and 12800 are modified to provide that the parties may agree to proceed under the simplified arbitration procedures, that is, cases decided on the papers without a hearing, in cases with amounts in controversy **above** \$50,000.

7. **Hearings in Other Cases:** Unless the Investors request otherwise, a telephonic hearing will be held in lieu of an in-person hearing for cases where claims for consequential damages are less than \$100,000. The parties may agree to a telephonic hearing for claims of \$100,000 or greater.
 - The evidentiary hearing should begin within 180 days of the filing of Investor's Claim Form. However, the final determination as to the scheduling of hearings will be made by the arbitrator(s) taking into account the specific circumstances of each claim.

8. **Mediation:** By agreement of the parties, the case may proceed to mediation under FINRA's auspices, with all fees and expenses to be paid by Firm. If the parties fail to settle their dispute, the case will continue in arbitration under the SAP.

9. **Discovery:** The Discovery Guide will not apply. Discovery requests may be served by any party as soon as ten days after the Claim Form is served and responses shall be due within 30 days of receipt of such requests, but in no event sooner than 20 days after the answer is due. Rules 12506 and 12507 are revised to limit the scope of all discovery to the following issues:

➤ Firm to Produce to Investors:

- A. Reasonable and limited discovery from Firm that is specific to the Investors' account(s) with Firm and that bears directly on the issue of whether the Investors suffered consequential damages because of the illiquidity of their ARS positions;
- B. Information and documents related to any affirmative defenses raised by Firm; and
- C. Information and documents related to any expert testimony.

➤ Investors to Produce to Firm:

- A. Reasonable and limited discovery from Investors that bears directly on the issue of whether the Investors suffered consequential damages because of the illiquidity of their ARS positions; and
- B. Information and documents related to any expert testimony.

- All discovery disputes shall be resolved as expeditiously as possible and no later than 30 days prior to the hearing.

10. **Subpoenas:** Rule 12512 is modified to provide that any objections to subpoenas must be submitted within five days of the receipt of the motion to issue the subpoena. The party requesting the subpoena shall have five days from the receipt of those objections to respond to them. The arbitrator shall attempt to resolve any disputes concerning subpoenas as expeditiously as possible.

11. **Awards:** Arbitrators may not consider or issue awards on claims of punitive, exemplary, or treble damages.

12. **Motions:** Rule 12503 is amended to provide that Firm will not assert motions to dismiss until after presentation of Investors' case in chief. In addition, Rule 12503(b) is amended to require a response to any non-dispositive motion within five days of receipt of the motion.