



FINRA CLE
SuperCourse

Friday, September 14, 2012



The Sofitel Hotel
45 West 44th Street (Bet. Fifth and Sixth Avenues)
New York, NY

[Program Coursebook \(PDF\)](#)

[eCoursebook \(ePub\)](#)
for Nook, eReader, iPhone and iPad

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Our application to the New York State CLE Board is currently pending.

This course is not eligible for Illinois MCLE credit.

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CLE INFORMATION

Please enter below the State(s) that you are admitted to and your ID Number(s)

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Friday, September 14 – Opening Statements



9:00a – 9:05a
NETWORK CHAIR
Roger McCleary
Beirne Maynard & Parsons (Houston, TX)



9:05a – 9:10a
FINRA CLE SUPERCOURSE SEMINAR CHAIRS
John Worden -- Schiff Hardin (San Francisco, CA)



Stacie Hartman -- Schiff Hardin (Chicago, IL)

Session I



9:10a – 9:30a
FINDERS KEEPERS? RISKS OF UNREGISTERED
BROKER-DEALERS
Brian Miller
Akerman Senterfitt (Miami, FL)
Unregistered finders are important cogs in efforts to raise capital, but they come with risks when they engage in “broker-dealer” activities. Brian Miller, Chair of the Securities Litigation Practice at Akerman Senterfitt, will outline current regulations and responsibilities, discuss the finder exception from registration, distinguish finders from broker-dealers, trends in enforcement, penalties for using unregistered broker-

Seminar Agenda

- FRI SEPT 7:30a Continental Breakfast and Program
14 Registration
- FRI SEPT 9:00a Opening Statements
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- FRI SEPT 9:10a CLE Session I
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- FRI SEPT 10:50a Coffee and Refreshment Break
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- FRI SEPT 11:20p CLE Session II
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- FRI SEPT 1:00p CLE Session III – Working-Lunch
14 Break-Out Sessions
- FRI SEPT 2:00p CLE Session IV
14
- FRI SEPT 3:40p Closing Statements
14

dealers, and considerations when working with finders.



9:30a – 9:50a

DEVELOPMENTS IN CANADIAN SECURITIES
CLASS ACTION LAW: IMPLICATIONS FOR U.S.
COMPANIES

Sean Boyle

Blake Cassels & Graydon (Canada)

In direct contrast to the decision of SCOTUS in *Morrison v. National Bank of Australia*, Sean K. Boyle, a litigation partner at Blakes in Vancouver, B.C., will discuss recent developments in Canada's securities class action law, including the trend to expand Canada's securities law's extra-territorial reach.



9:50a – 10:10a

THE GOVERNMENT AND YOU: FOR WHOM
THE WHISTLE BLOWS

Stacie Hartman

Schiff Hardin (Chicago, IL)

Dodd-Frank ushered in new whistleblower provisions for the SEC and CFTC. Stacie Hartman will discuss the serious consequences that can result from the Commissions' new laws and regulations, as well effective internal compliance programs to counteract Dodd-Frank incentives to report to the Government before giving the company a full opportunity to investigate and deal with problems on its own.



10:10a – 10:30a

LESSONS LEARNED FROM LENDER LIABILITY
LITIGATION

Joe Cohen

Beirne Maynard & Parsons (Houston, TX)

As interest rates soared in the late 1970's, and the price of oil dropped in the early 1980's, troubled borrowers adopted a new strategy: preemptive lender liability suits against banks. Financial institutions responded by adopting practices to limit exposure. Though arbitration clauses limit jury exposure in many cases, a number still make their way to the courthouse. Joe Cohen has represented financial institutions for more than 30 years, and will share winning strategies for defending lender liability cases.



10:30a – 10:50a

GETTING TO KNOW YOU: FINRA'S NEW
SUITABILITY RULES

Larry Polk

Sutherland Asbill & Brennan (Atlanta, GA)

Implemented July 9, 2012, FINRA's revised Know-Your-Customer and Suitability rules require firms to use reasonable diligence in opening and maintaining every account, and to obtain essential facts concerning every customer. FINRA's guidance on these rules introduce several new obligations on broker dealers, such as the suitability of investment strategies and hold recommendations, along with new supervisory requirements. Larry Polk, who represents registered reps and broker-dealers in in FINRA arbitrations as

well as state and federal courts, will discuss these changes and offer best practices for compliance with the rules.

Refreshment and Coffee Break



Session II



11:20a – 11:40a

EXPANDING LIABILITY FOR FINANCIAL PROFESSIONALS

Jeff Hines

Goodell DeVries Leech & Dann (Baltimore, MD)

Documents don't always tell the tale. Trial lawyer Jeff Hines will discuss the difference between discretionary, non-discretionary, and Hybrid accounts and the proposed Uniform Professional Standard.



11:40a – 12:00p

SECURITIES LIABILITIES OF ATTORNEYS, CPA'S AND OTHER PROFESSIONALS

Judy Burnthorn

Deutsch Kerrigan & Stiles (New Orleans, LA)

Secondary participants in securities transactions such as CPAs, accountants, appraisers and other professionals, although not considered "sellers" or primary violators, nonetheless have been joined in securities lawsuits as aiders and abettors. SCOTUS appeared to have abolished that practice in Central Bank of Denver (1994), but the Circuits have split on "scheme liability". Judy Burnthorn will discuss the current state of the law, and the potential for securities liability on the part of such secondary players.



12:00p – 12:20p

THE CONTINUED EROSION OF OVERBROAD CLASS ACTIONS – THE 9TH CIRCUIT TAKES ACTION

Scott O'Connell

Nixon Peabody (Boston, MA)

The permissible scope of class actions has been substantially narrowed. In-house counsel should be incorporating class-waiver arbitration provisions which are now presumptively valid (Concepcion). Classes defined by extrapolation and data models have been dealt a death-blow rendering them vulnerable to Daubert challenges (Walmart). Efforts to pursue state court class actions will increase because failure in federal court will not bar re-litigation in state court (Bayer).

12:20p – 1:00p

PANEL: CHALLENGES AND OPPORTUNITIES WITH PARALLEL PROCEEDINGS IN COURT AND



ARBITRATION

Moderator: Joel Hoxie
Snell & Wilmer (Phoenix, AZ)
Case strategy and pleadings; jurisdiction and discovery; and case resolution from the perspective of the defendant (e.g., securities issuer, fund manager, life insurance company) and the broker-dealer/FINRA respondent in arbitration. Tools for responding parties to likelihood of a successful resolution despite the complications involved in parallel forum litigation.

Presentations By:



David King
Bass Berry & Sims
(Nashville, TN)



Scott Garley
Gibbons (New York, NY)

Session III – Lunch Break-Out Sessions



1:00p – 2:00p
TRACK A:
FINRA ARBITRATIONS
Moderator: John Worden
Schiff Hardin (San Francisco, CA)
Room: Trocadero

As FINRA arbitration awards get bigger and bolder, including punitive damages, litigants have been trying to undo the previously undoable – vacate those awards by motion under the Federal Arbitration Act or applicable state statute. Every day brings us a new case decision and a new tactic. The group will discuss recent developments in this area and real war stories as well as related strategies for challenging or affirming FINRA arbitration awards. *With Discussion By:*
Kyle Dufrane – Dykema (Detroit, MI)
Clint Corrie – Beirne Maynard & Parsons (Dallas, TX)
William Wright – Deutsch Kerrigan & Stiles (New Orleans, LA)



1:00p – 2:00p
TRACK B:
THE COMPULSORY ARBITRATION CLAUSE AND FEDERAL CLAIMS FOR RELIEF
Moderator: John Vaught
Wheeler Trigg O'Donnell (Denver, CO)
Room: Odeon

Trial lawyer John Vaught will analyze the 2nd Circuit case of *In re American Express Merchants' Litigation* and its conclusion that arbitration clauses that attempt to compel

arbitration may not be enforceable to bar the litigation of claims under federal law, in that case, the federal antitrust laws.



1:00p – 2:00p

TRACK C:

SEC AND FINRA ENFORCEMENT ACTIONS

Moderator: Brian Rubin

Sutherland Asbill & Brennan (Washington, DC)

Room: St. Germain

Brian Rubin, formerly Deputy Chief Counsel of Enforcement at NASD and Senior Enforcement Counsel with the SEC, will lead a discussion on the current hot issues in SEC and FINRA enforcement actions and provide tips on handling investigations.



1:00p – 2:00p

TRACK D:

MEDIATING SECURITIES CLAIMS

Moderator: Bruce Friedman

Bingham McCutchen (Santa Monica, CA)

Room: Orleans

Timing, preparing for, presentation and conduct of mediation, including selection of a mediator, analysis of damages, insurance and structuring of settlements. *With Discussion By:*

Peter Critchell – Chartis Insurance (New York, NY)

Brian Miller – Akerman Senterfitt (Miami, FL)

Larry Polk – Sutherland Asbill Brennan (Atlanta, GA)



1:00p – 2:00p

TRACK E:

CUSTOMER DISPUTES – THE ROAD LESS TRAVELED

Moderators: Cory Braddock and Matt Fischer
Snell & Wilmer (Phoenix, AZ)

Room: Monmatre

Matthew Fischer and Cory Braddock will discuss opportunities to prevail in customer dispute cases by veering from the ordinary path. Discussion topics will include: (1) when not to compel arbitration; (2) taking an aggressive approach with a sympathetic claimant; and (3) when and how to seek an award of attorneys' fees and costs. *With Discussion By:*

Kathy Klock – Akerman Senterfitt (West Palm Beach, FL)

Session IV



2:00p – 2:20p

DUTIES OF PUBLIC COMPANIES TO DISCLOSE SEC INVESTIGATIONS

Jim McLoughlin

Moore & Van Allen (Charlotte, NC)

Trial lawyer Jim McLaughlin provides an analysis of the recent, post-financial-crisis case law and whether those cases change the consensus guidance on public disclosure of

SEC investigations.



2:20p – 2:40p

**EFFECTIVE MOTIONS AND PRESENTATIONS
BEFORE THE FINRA ARBITRATION PANEL**

Anthony Soukenik

Sandberg Phoenix & von Gontard (St. Louis,
MO)

Practical advice for motion and "day of"
presentations from an arbitrator who has
handled more than 100 cases, 25 as chair,
and who has represented claimants,
respondents and employee brokers.



2:40p – 3:00p

LITIGATING AGAINST FINRA AND THE SEC

Brian Rubin

Sutherland Asbill & Brennan (Washington,
DC)

Do the regulators have a "home court"
advantage? Brian Rubin, formerly Deputy
Chief Counsel of Enforcement at NASD and
Senior Enforcement Counsel with the SEC,
will provide an overview of the regulatory
litigation process as well as results from the
recently released [Annual Sutherland
SEC/FINRA Litigation Study](#). Discussion will
reveal how often judges award the monetary
sanctions and suspensions demanded by the
prosecutors, and how likely it is that charges
will be dismissed and a settlement discount
given.



3:00p – 3:20p

**DISCOVERY IN FINRA CUSTOMER
ARBITRATION PROCEEDINGS: A VIEW FROM
ONE YEAR AFTER THE REVISED DISCOVERY
GUIDE**

Richard De Palma

Thompson Hine (New York, NY)

Effective May 16, 2011, FINRA substantially
amended the Discovery Guide (and related
sections of the Customer Code) in customer
arbitration proceedings, purportedly to make
the process simpler and smoother. One year
after implementation, critics of the revised
Discovery Guide abound on both sides of the
bar. This discussion will focus on key
changes, issues in the first year of
implementation, impact of the Discovery
Task Force on future amendments, and
whether the stated goals of the revision have
been met.



3:20p – 3:40p

**ARBITRATION CLAIMS BY SOPHISTICATED
INVESTORS: A PROFITABLE INVESTMENT**

Jeff Wild

Lowenstein Sandler (Roseland, NJ)

Most companies and other savvy investors
assume that their sophistication is a bar to
recovery after an investment or deal goes
bad. But even ultra-sophisticated investors
can make FINRA and other arbitration a very
profitable investment. Learn how.

Closing Statements

3:40p – 3:45p



NETWORK CHAIR
Roger McCleary
Beirne Maynard & Parsons (Houston, TX)

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