



Highlights of [GAO-03-790](#), a report to congressional requesters

Why GAO Did This Study

Employees in the securities industry must submit to binding arbitration in most employment disputes. The Securities and Exchange Commission (SEC) is responsible for overseeing these arbitration programs—the largest being run by NASD and the New York Stock Exchange (NYSE). The Congress asked GAO to examine (1) the circumstances under which NASD and NYSE will arbitrate employment and employment discrimination disputes, and their procedures for selecting and evaluating their arbitrators; (2) the characteristics and outcomes of arbitrated employment and employment discrimination disputes at NASD and NYSE over the last 10 years; and (3) how SEC oversees the arbitration programs at NASD and NYSE and the results of these oversight activities.

What GAO Recommends

To help ensure that only qualified arbitrators hear employment and employment discrimination cases at NASD and NYSE, GAO recommends that SEC direct NASD and NYSE to verify the background information provided by all arbitrator applicants. In addition, GAO recommends that SEC, during its next inspections, continue to review the adequacy of NASD's and NYSE's procedures for evaluating arbitrator performance. SEC, NASD and NYSE all expressed support for the second recommendation, but SEC and NYSE raised concerns about requiring verification at NYSE.

www.gao.gov/cgi-bin/getrpt?GAO-03-790.

To view the full report, including the scope and methodology, click on the link above. For more information, contact Robert Robertson at (202) 512-9889 or robertsonr@gao.gov.

EMPLOYMENT DISPUTES

Recommendations to Better Ensure That Securities Arbitrators Are Qualified

What GAO Found

Arbitration is generally required for most employment disputes, except those dealing with discrimination claims. NYSE will only arbitrate discrimination cases when parties involved agree to arbitrate after the dispute occurs. NASD will arbitrate employment discrimination cases based on agreements entered into between employees and firms before or after a dispute occurs. NASD has instituted additional requirements, however, for these cases, such as requiring that arbitrators not be affiliated with the securities industry. In addition, those chairing hearings for employment discrimination cases must hold a law degree, have 10 years of legal experience, have substantial familiarity with employment laws, and must not have primarily represented employers or employees in the last 5 years.

To qualify to hear cases, NASD and NYSE require that arbitrators have at least 5 years of work experience, supply two letters of recommendation, and complete training in basic arbitration procedures. Arbitrators must also provide information on their complete employment history, including any affiliation with the securities industry, as well as information on whether they have any regulatory or criminal history. Neither organization independently verifies the qualifications for applicants not associated with the securities industry. In addition NASD and NYSE have standard procedures for ensuring that arbitrators selected to hear cases do not have conflicts and for evaluating arbitrator performance. However, evaluations of arbitrators by staff, parties in disputes and other arbitrators on cases are not always completed. Officials at NASD and NYSE noted that if they receive no information about an arbitrator's performance on a case, they assume that the arbitrator's performance was adequate.

Over the last 10 years, 261 (17 percent) of the 1,546 employment disputes arbitrated at NASD or NYSE included a discrimination claim. Discrimination cases differed from cases with disputes that did not involve discrimination in the following ways:

- Discrimination cases required more hearing sessions.
- Employees won discrimination cases less often than cases not involving discrimination claims.
- In cases that employees won, the monetary award in discrimination cases was generally larger than in cases not involving discrimination.

SEC periodically inspects NASD and NYSE arbitration programs. On the basis of its inspections, SEC has recommended improvements. In its most recent inspections of NASD and NYSE, SEC made various recommendations concerning procedures for ensuring that arbitrators are qualified. In addition, SEC recommended that one or both improve procedures for recording information on arbitrator performance in a central database and for disqualifying arbitrators who are poor performers.