

Content

Title :	Regulations Governing the Organization and Mediation Procedures of Securities Investor and Futures Trader Protection Institution Mediation Committees Ch
Date :	2010.02.04
Legislative :	<p>1. Full 23 articles promulgated per 30 December 2002 Letter No. Taiwan-Finance-Securities-III-0910006394 of the Securities and Exchange Commission, Ministry of Finance; for implementation from the date of issuance</p> <p>2. Articles 2, 4, 5, and 7 amended and issued and Articles 13-1 to 13-4 added per 30 July 2009 Order No. Financial-Supervisory-Securities-Trading-0980038205 of the Financial Supervisory Commission, Executive Yuan</p> <p>3. Articles 12 and 23 amended and issued per 4 February 2010 Order No. Financial-Supervisory-Law-09900542800 of the Financial Supervisory Commission, Executive Yuan; the amended Article 12 shall enter into force from 23 November 2009</p>
Content :	<p>Article 1</p> <p>These Regulations are adopted pursuant to Article 22, paragraph 2 of the Securities Investor and Futures Trader Protection Act (the "Act").</p> <p>Article 2</p> <p>The protection institution shall establish a mediation committee to handle mediations, comprised of 7 to 15 members. One member shall be chairman, a position which shall be held concurrently by the chairman of the board of the protection institution.</p> <p>Prospective members of the mediation committee ("committee members") shall be selected by the protection institution from among candidates possessing the qualifications set forth under Article 6 of these Regulations.</p> <p>Candidates shall be engaged after being reported by letter to the Financial Supervisory Commission, Executive Yuan ("FSC") for recordation, with relevant records and academic background and experience attached, for review and recordation. Hiring of committee members, and any changes thereto, shall be reported to the competent jurisdictional court for recordation within 14 days, with relevant materials attached.</p> <p>Article 3</p> <p>The term of committee members shall be three years; committee members may be re-engaged for successive terms.</p> <p>When committee members vacate their positions, vacancies may be filled through selection of new members. The term of a new committee member shall extend to the conclusion of the original member's term.</p> <p>The position of committee member shall be non-paying; provided, stipends duly paid for attendance, transportation, or the review process are allowed.</p> <p>Article 4</p> <p>A meeting of the mediation committee shall be convened under any of the following circumstances:</p> <p>1. Difficulty reaching an agreement in a mediation as set out in Article 25, paragraph 2 of the Act.</p>

2. The circumstances set out in Article 10 of these Regulations.

A quorum of not less than one-third of the committee members shall be required for meetings of the mediation committee. Meetings shall be presided over by the chairman, with a substitute selected by and from among attending members to serve in the chairman's absence.

For the handling of mediation matters in connection with civil disputes under the provisions of the Act, the mediation committee shall adopt a rotating duty system for committee members.

For a mediation matter under the preceding paragraph, mediation may be conducted if three or more on-duty committee members are in attendance, and a chairman shall be selected by and from among the members in attendance.

Article 5

A person shall be prohibited from serving as a committee member in the presence of any circumstance under Article 30 of the Company Act, Articles 53 and 54 of the Securities and Exchange Act, Article 28 of the Futures Trading Act, or Article 68 of the Securities Investment Trust and Consulting Act; any person already serving under such circumstances shall be dismissed.

Article 6

In addition to freedom from the prohibitive circumstances set out in the preceding article, committee members shall possess one of the following qualifications:

1. Have a combined total of no less than five years of experience in securities, futures, or financial institution operations or administrative management, and have served as head of operations or having held a position equal to or higher than an intermediate civil service ranking.
2. Have served as a judge or public prosecutor or have no less than five years experience as an attorney or certified public accountant.
3. Have served no less than five years as an arbitrator in arbitrations at either a foreign or domestic arbitration institution.
4. Have served no less than five years as an assistant professor or higher position in the law, accounting, or finance department or graduate school of a foreign or domestic tertiary educational institution recognized by the Ministry of Education.

The number of persons qualifying for membership under any single subparagraph of the preceding paragraph may not exceed one-half of the committee's total number.

Article 7

Committee members are prohibited from engaging in any of the following activities during a mediation:

1. Divulging a secret learned during mediation in response to any inquiry other than those duly made in accordance with acts and regulations.
2. Borrowing or lending of monies or securities involving any party to a mediation matter.
3. Any conduct inappropriate for a mediation committee member, or soliciting, agreeing to, or accepting an improper benefit.
4. Any other activities in violation of securities or futures laws or regulations, securities investment trust and consulting laws or regulations, or of the requirements or prohibitions of FSC regulations.

Article 8

Except under any of the following circumstances, a committee member may not be released from his or her position prior to the conclusion of his or her term:

1. The committee member is a public functionary and receives a disposition ordering dismissal or suspension.
2. The committee member is a certified public accountant and receives a disposition under Article 37, paragraph 3, subparagraph 2 or 3 of the Securities and Exchange Act or Article 40, subparagraph 3 or 4 of the Certified Public Accountant Act.
3. The committee member is an attorney and is subject to disciplinary measures under Article 44, subparagraph 3 or 4 of the Lawyer's Act.
4. The committee member has a mental or physical disability preventing continued service.
5. The committee member fails to attend meetings when notified, for a total of one-half or more of the meetings in a given year.
6. The committee member has committed a material violation of any provision of the subparagraphs of the preceding article.

Article 9

Under any of the following circumstances, a committee member shall automatically recuse him/herself from mediation proceedings:

1. The committee member or the member's spouse is a party to the mediation matter or the agent of one of the parties.
2. The committee member or committee member's spouse is related, by blood or marriage or within the second degree of kinship, to a party to the mediation or the director or supervisor of a party to the mediation.
3. The committee member or the member's spouse has a relationship of joint obligee, joint obligor, or debtor with a party to the mediation.
4. The committee member or the member's spouse is employed by a party to the mediation or at one of their affiliated enterprises, or are serving as that party's attorney, CPA, or in any position at their securities underwriting firm, or has left such position for less than one full year.
5. Any other circumstance causing a committee member to doubt their capacity to carry out mediation in an independent and impartial manner.

Article 10

Upon the occurrence of a circumstances in the preceding article, where a committee member fails to recuse him/herself from the proceedings or where facts are sufficient to determine a likelihood of bias in performing his or her duties, the protection institution may, upon an application by a party or on its own initiative, convene a meeting of the mediation committee to make a decision to withdraw the committee member from the proceedings.

The decision referred to in the preceding paragraph shall be produced through the consent of a majority of the mediation committee members.

Article 11

The scope of matters subject to handling by the mediation committee shall be limited to those set forth under Article 22, paragraph 1 of the Act; applications for mediation shall be refused where there exists any circumstance in the subparagraphs of Article 23, paragraph 1 of the Act. The applicant or the applicant's appointed agent in a mediation matter shall fill out an application and apply to the protection agency for mediation, providing copies for each of the respondents in the matter.

A party to a mediation shall provide the power of attorney if it appoints an agent.

Article 12

Where any of the following circumstances is present in an application for mediation or is discovered in the course of mediation, the protection institution shall reject the application for mediation and specify its reasons; provided that where the circumstances can be rectified, a period for rectification shall be prescribed.

1. The circumstances set forth in Article 23, paragraph 1 of the Act.
2. A civil dispute arising out of securities or futures trading, and involving an institution not approved by the FSC for such operations, or personnel of such an institution.
3. The applicant for mediation or the respondent lacks the capacity to be a party to the mediation.
4. The applicant or the respondent has no capacity to make juridical acts, is limited in capacity to make juridical acts and has not obtained the approval of his or her statutory agent, or has been declared by a court to be placed under assistance and has not obtained the consent of his or her assistant.
5. The application is made by an agent with a defective power of attorney.
6. A party to the mediation is ineligible.
7. An application document is formally defective or deficient in other respects.
8. Executive title has already been obtained for the same matter under provisions of another act.

Article 13

Except under the circumstances set out in the preceding article, the protection institution shall, after receipt of an application for mediation, serve copies of the application on the respondents and notify them to state within a specified time limit whether they will accept mediation. Failure to make such a statement by the time limit will be deemed rejection of mediation by the respondent.

Article 13-1

After accepting an application for mediation regarding a securities investment or futures trading dispute involving a small amount of money as set forth in Article 25-1 of the Act, the protection institution, unless a circumstance under Article 12 exists, shall immediately set a mediation date, notify the parties to the mediation to appear, and serve a copy of the mediation application on the respondent, notwithstanding the provisions of the preceding Article.

Article 13-2

If the respondent to a securities investment or futures trading dispute case involving a small amount of money as set forth in Article 25-1 of the Act, without due cause, does not appear on the mediation date, then if a mediation proposal is put forward in accordance with the applicant's request or the ex officio powers of the committee members, the intent and content of the proposal shall be recorded in or attached to the mediation meeting minutes which, after being signed in approval by a majority of the committee members in attendance, shall be drawn up into a written mediation proposal and the committee shall serve the proposal on the parties to the

mediation.

The written mediation proposal of the preceding paragraph shall record the following matters:

1. The content of the mediation proposal.
2. The statutory time period for any expression of disagreement.
3. That any disagreement shall be expressed in writing.
4. The legal effect of any disagreement expressed other than during the statutory time period.

Article 13-3

After the mediation proposal of the preceding Article is served on the parties to the mediation, if neither party expresses dissent within the peremptory period of 10 days, the mediation will be deemed successfully concluded on the basis of the proposal, and the committee members shall draw the proposal up into a mediation agreement, provide a statement of the reasons, and then send the agreement together with the original case file directly to the court for approval.

Article 13-4

If during the peremptory period under the preceding Article a party to the mediation expresses dissent, the committee members shall set a new mediation date and notify both parties to the mediation to appear.

The mediation date of the preceding paragraph may not be more than 20 days after the date on which the expression of disagreement is received.

The notification under paragraph 1 shall specify the following:

1. The new mediation date that has been set.
2. The reason for setting a new mediation date and the main points of the expression of disagreement.
3. That if the party who has expressed disagreement, without legitimate reason, fails to appear, it shall be deemed as intent to reach a mediation agreement in accordance with the proposal.

If on the new mediation date set by the committee members the party expressing dissent, without due cause, fails to appear, the mediation will be deemed successfully concluded on the basis of the proposal, and the procedures set out in the preceding article shall be followed.

Article 14

Each of the two parties to a mediation may choose from one to three persons to attend and assist with the mediation.

A third party with an interest in a mediation matter may participate in the mediation with the consent of a committee member; the committee member may directly notify the third party of its participation.

Article 15

Mediation procedures will be undertaken by committee members at the protection institution or another appropriate location, and may be closed to the public. Committee members and those attending as assistants or in an administrative capacity shall maintain confidentiality with respect to the matter under mediation.

Article 16

While mediation is ongoing, the protection institution may, as needed and in accordance with the provisions of Article 17 of the Act, request that an issuer, a securities firm, a securities service enterprise, a futures enterprise, or institutions connected with the securities and futures

markets assist or provide relevant materials, which need not be restricted to evidence that the parties to the mediation submit or request be investigated.

Article 17

A party to the mediation or a party's agent may make requests to read, transcribe, or pay to have copied, related documents, tables, or items.

Article 18

Committee members shall adopt a diplomatic and earnest attitude, provide appropriate guidance to the parties to a mediation, and make their best efforts to seek an agreement between the two parties.

Article 19

The protection institution may consider collecting basic costs or required fees, depending on circumstances. Its standards for collection shall be reported to the FSC for approval.

Article 20

Multiple persons with common interests comprising a single party may apply jointly for mediation.

While mediation is ongoing, a third party with claims based on interests common to it and one of the parties to the mediation may, with the consent of both parties to the mediation, participate as a party to the mediation. Multiple persons with common interests may select from among themselves one or more persons to apply for mediation or to undertake mediation on behalf of the group, and may replace or increase or decrease the number of persons selected. The respondent shall be given written notice of the selection, replacement, or increase or decrease of such persons.

When committee members find it appropriate to select a party or parties to undertake mediation on behalf of a party composed of multiple entities with common interests, the committee members may recommend or assist in choosing such a party or parties.

The party or parties selected to undertake mediation may not withdraw from mediation, enter into an agreement, or agree to a mediation proposal except with the consent of all the multiple parties it represents.

Article 21

Within seven days of the day on which mediation is successfully completed, the protection institution shall submit the mediation agreement to the jurisdictional court for ratification.

After ratification of the mediation agreement referred to in the preceding paragraph by the jurisdictional court, the protection institution shall serve the agreement on the parties to the mediation within seven days after its receipt of the agreement from the court.

If the mediation agreement referred to in paragraph 1 fails to be ratified by the court due to content in conflict with laws or regulations, the protection institution shall inform the parties to the mediation of the reasons within seven days from the day it receives notification from the jurisdictional court.

Article 22

In the event mediation is unsuccessful, the parties to the mediation may apply to the protection institution to issue a certificate of failed mediation.

The certificate referred to in the preceding paragraph shall be issued

within seven days from application.

Article 23

These Regulations shall enter into force from the date of issuance.

Article 12 of these Regulations as amended on 4 February 2010 shall enter into force from 23 November 2009.

Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System