



Legal Alert: SEC Rule Proposes to Preclude Certain Collective Action Claims under FINRA Arbitration Rules

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Executive Summary: The Securities and Exchange Commission (SEC) has published a proposed rule applicable to arbitrations conducted by the Financial Industry Regulatory Authority, Inc. (FINRA). See 77 Fed. Reg. 1773. The rule would preclude collective action claims by employees of FINRA members brought under the Fair Labor Standards Act, the Age Discrimination in Employment Act or the Equal Pay Act of 1963 from being arbitrated in a FINRA forum.

In collective actions, unlike class actions, an individual must affirmatively consent or "opt-in" to become a member of the collective action to benefit from the outcome. Absent members (those who do not opt-in) are not precluded from pursuing their claims in other forums. FINRA has expressed the view that once a collective action has been granted, the claims in dispute are administered like a class action and therefore would be precluded from arbitration in FINRA's forum. FINRA further believes that class actions should be handled through the judicial forum, which has procedures to manage such claims.

Responses to the SEC notice should be submitted on or before February 1, 2012.

If you have any questions regarding this Legal Alert or other labor or employment law issues, please contact the author, John Allgood, an attorney in our Atlanta office at jallgood@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.