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INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



## [In the Absence of an Agreement to Arbitrate, Only “Customers” May Proceed with FINRA Arbitration](#)

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Under the NASD Code of Arbitration Procedure, customers can compel registered members of FINRA to arbitrate certain disputes even when no written arbitration agreement exists. The NASD Code does not define the term “customer,” and the Ninth Circuit has not defined the term. Thus, in a recent action involving the arbitrability of an investment dispute, the Northern District of California was left to wrestle with the meaning of the term “customer.”

In *Wachovia Securities, LLC v. Raifman*, 2010 U.S. Dist LEXIS 122095, Wachovia and one of its financial advisors sought an injunction blocking a FINRA arbitration from proceeding. Some individual investors had entered into a “90% Stock Loan” transaction with a third party. The transaction was to allow the investors to borrow up to 90% of the value of their stock without selling the stock. As part of the transaction, the investors arranged for their trust to open an investment-related account with Wachovia. After that, Wachovia allegedly took steps in relation to the account which were inconsistent with the investment plan. As a result, the individual investors commenced a FINRA arbitration against Wachovia and its investment advisor.

In arguing that the claim was not subject to arbitration, Wachovia asserted that the individual claimants who instituted the arbitration were not the “customers.” This was because the account was opened by the individuals’ *trust*, and not by the individuals themselves. Also, Wachovia did not give the individuals advice with respect to the transaction.

The District Court agreed that the claimants were not Wachovia’s customers for purposes of NASD Rule 12200. The court cited authority from other jurisdictions to support its conclusion that the relationship between Wachovia and the individual investors was “too tenuous for [Wachovia] to reasonable expect that they would be subject to FINRA arbitration with respect to” the transaction. Accordingly, the court enjoined the claimants from proceeding with their FINRA arbitration claims against Wachovia and its financial advisor.