P.R.I.M.E. Finance
Panel of Recognized International Market Experts in Finance

Regulatory Approaches to ADR

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Regulator Approaches to ADR/Use of Experts

- **Germany**
  - Conciliation boards can be used for disputes between consumers/investors and financial institutions
  - Conciliation boards are operated by BaFin and other regulatory bodies
  - Section 342 of the Investment Code (in German) sets out procedures
  - No similar process exists in connection with disputes between regulator and regulated entities
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- **France**
  - AMF has an institutional mediator who resolves 80-90% of investor claims relating to financial instruments
  - Banking claims are outside AMF’s jurisdiction
  - Current mediator is a senior Supreme Court judge who was until recently a member of AMF Enforcement Committee
  - Banking agencies also have an ombudsman process
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- **Hong Kong**
  - No ADR scheme exists for disputes between regulator and regulated entities
Regulator Approaches to ADR/Use of Experts

• **Australia**
  - No formal requirement exists to utilize ADR in disputes
  - Limited use in
    - Freedom of information act requests
    - Resolution of tax audits
    - Case conferencing
    - Resolution of disputes prior to commencing proceedings
  - Recent ASIC disclosure agreement
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• **United Kingdom**
    • Since 1998, powerful encouragement for mediation
  – Enforcement Rules of the Financial Services Regulators
    • Support for mediation in suitable enforcement matters
    • Settlement and mediation portion of website ([www.fca.org.uk](http://www.fca.org.uk))
      – “Mediation can work within regulation to supplement the informal settlement discussions which can be part of the regulatory process and to provide a way of progressing a case where settlement discussions are unlikely to lead to an agreed settlement.”
  – Experience with mediation process
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• **United States**
  – Interagency ADR Working Group ([www.adr.gov](http://www.adr.gov))
    • Established pursuant to Administrative Dispute Resolution Act of 1996
      – Act authorized use of ADR process to resolve disputes with the federal government
    • Led by U.S. Department of Justice
    • Many agencies contribute, including CFTC and SEC
  – Working Group focuses on following areas:
    • Workplace disputes
    • Contracts and procurement disputes
    • Regulatory enforcement disputes
    • Claims against the government