

ADR – Corporate Counsel

F.A.I.R. – The Evolution Of An Employment ADR Program

The Editor interviews **Stephanie Morse-Shamosh**, Manager, F.A.I.R., UBS Financial Services Inc (UBS).

Editor: Tell us about the UBS Forum for Alternate Issue Resolution (F.A.I.R.) program.

Morse-Shamosh: F.A.I.R. was established in January 1999 to provide employees and managers of UBS with expanded opportunities to resolve workplace disputes. The main goal of the F.A.I.R. Program is to promote the early, internal resolution of workplace issues through open and honest communication between the parties. F.A.I.R. is now in its seventh year. We have seen the number and complexity of matters handled by F.A.I.R.'s Issue Resolution Office (I.R.O.) increase significantly over the years.

Editor: Why did UBS create the F.A.I.R. program?

Morse-Shamosh: Several factors converged at about the same time to lead our Company to conclude that our employees ought to have more options for handling workplace disputes. First, we considered the increasing time and expense involved in defending employment cases in court and/or before the EEOC. We observed that even when the Company prevailed in the litigation, all parties suffered litigation costs, lost time, decreased productivity and diminished workplace morale. The unfortunate reality is that the courts and federal and state agencies cannot effectively deal with the employment cases on their dockets.

Second, the Company considered the effect of a 1999 National Association of Securities Dealers (NASD) arbitration rule change that no longer compelled our registered employees to file discrimination and harassment claims in arbitration as opposed to court. When faced with the possibility that a large segment of our workforce could now go directly to court to pursue employment claims, it made good business sense to offer streamlined alternatives to litigation.

Third, the Company took note of the increasing emphasis being placed on alternative dispute resolution (ADR) processes by the courts, the EEOC and other federal and state agencies.

Finally, and most significantly, the Company decided that, in an increasingly complex working environment, providing employees with more options for resolving workplace conflicts was the right thing to do. By giving employees additional avenues for privately and expeditiously expressing their workplace concerns, we hoped to improve good working relationships and attract and retain valuable employees.

Editor: How does F.A.I.R. work?

Morse-Shamosh: The F.A.I.R. Program builds on our Company's current and highly-effective Open Door Policy in order to give employees and managers more options for resolving employment disputes without resorting to the courts. The four options available through F.A.I.R. are:

- **Open Door:** As in the past, employees are encouraged to resolve conflicts informally through discussions with the



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person(s) involved, their managers and/or their Human Resources representatives.

- **The Issue Resolution Office:** If the Open Door is unsuccessful or if employees choose not to access the Open Door option, employees may speak with the Program Manager, a trained facilitator, who will help them evaluate and manage their dispute resolution options. The Program Manager for the I.R.O. can be contacted anonymously through an "800" Hotline.

- **Mediation:** Employees may request that a neutral third-party mediator be retained by the Company to help the parties resolve their dispute in a mutually satisfactory way. If the Company agrees to mediate, we will pay up to 100% of the mediator's costs and administrative fees so long as the mediator is mutually agreeable to the parties.

- **Arbitration:** Employees may request a neutral third-party arbitrator to hear evidence and render a final decision that is binding on the parties. If the Company agrees to arbitrate, we will pay the majority of the arbitrator's costs and the majority of administrative fees so long as the arbitrator is mutually agreeable to the parties.

These options are all voluntary and may be accessed in any order—though the logical sequence for most disputes is the order listed above. However, if an employee wishes to mediate or arbitrate his/her dispute, the Company must also agree to do so.

Editor: Tell us about the Company's experience with F.A.I.R.

Morse-Shamosh: Upon rollout, and contrary to some initial fears, the Company did not experience an "open floodgates" response to F.A.I.R. To date, the vast majority of employment conflicts continue to be managed and resolved by direct contact between the parties involved and/or management and their Human Resources representatives (i.e. through the Open Door process).

And, as with any new program, it took some time for F.A.I.R. to become embedded in the Company's policies, procedures and culture. We further recognize that to support the Program's success, we must continue to educate our workforce about the Program's availability and usefulness.

Nevertheless, we have been particularly pleased with the expanded use of the I.R.O. by employees and managers as a means for internally resolving workplace

disputes. Specifically, the I.R.O. has established itself as a source of information, guidance, coaching and problem-solving support regarding all sorts of workplace disputes on a nation-wide basis.

We have also observed a marked change in the profile of callers and the types of disputes being raised. In particular, we are receiving more calls from our commissioned sales force and our professional employees than in the past. While many continue to express conflicts with managers or co-workers, they are doing so with a greater sense of urgency, anxiety and dependency on the I.R.O. staff as problem-solvers.

We believe that many of these behaviors as well as the increase in claims are linked to recent trends in the financial services industry as well as world affairs generally.

For similar reasons, we are observing a subtle shift in the types of disputes being handled by the I.R.O. More callers are seeking confidential guidance and/or intervention in resolving business and compensation-related disputes.

In this regard, generally speaking, disputes that involve business management issues unrelated to any claims of disparate or unfair treatment are referred back to the appropriate business managers. However, the I.R.O. will provide advice to employees on how they may best frame their business issues to management. We have also been called upon in some business disputes to assist management in the fact-finding and dispute resolution process.

In the final analysis, the overwhelming majority of the issues brought to our attention are resolved through improved communication. Most claims filed with the I.R.O. have resulted in case closures. It is also interesting to note that over the entire period of the F.A.I.R. program the number of claims alleging violation of legally protected rights (e.g., discrimination, harassment or retaliation) has remained relatively low.

Editor: Does F.A.I.R. play a role in the Company's compliance system?

Morse-Shamosh: Generally the F.A.I.R. program is designed to handle employment-related issues. However, we work very closely with our Legal and Compliance Department including representatives from the Company's Ethics Hotline. When employees contact F.A.I.R. regarding strictly compliance issues, we will refer the employee to our Ethics Hotline so that he/she can speak to a compliance manager. Conversely, when the Ethics Hotline receives calls about predominantly employee-related disputes, those calls will be referred to F.A.I.R. We get calls from people who might not know about the Ethics Hotline, or might otherwise be reluctant to call the Ethics Hotline directly. In these situations, we are able to provide employees with information about the Ethics Hotline and quickly get them to the right company representatives to address their concerns.

When I make referrals to the Ethics Hotline I may not always have enough information to identify the persons or the practice that is the subject of the call. When I do learn enough specific information from the employee to put me on notice of a specific matter that may involve a potential violation of company

policy or law, I will often make a referral directly to our Legal Department. I will provide our attorneys with as much information as I can about the matter. From that point on, however, the Legal Department will handle the investigation.

To the extent that a matter presents both business/compliance elements and employee-relations concerns, we might work with the Legal and Compliance Department on parallel tracks. i.e. F.A.I.R. will investigate the employee relations claims while the Legal & Compliance Department will investigate whether or not there has been a compliance breach. However, we put up a wall between our business areas to ensure that we conduct independent investigations.

We also play a role in recommending interventions as appropriate, if we discover lapses in our managers' behavior or judgment. Unless addressed, these behaviors could place the Firm at significant risk. Such interventions might involve internal or external coaching.

In addition, we provide input on the trends we are observing to our training groups so they can draw on these experiences when designing leadership and other development programs, and to our Employment Law Group for their consideration in designing harassment prevention training.

Editor: The F.A.I.R. Program is now in its seventh year, how has it withstood the test of time?

Morse-Shamosh: F.A.I.R. was designed as a voluntary in-house ADR program such that it is up to our employees to decide whether and in what order to access a program option. In addition, with respect to the mediation and arbitration options, both management and the employee must agree to participate. The voluntary nature of the F.A.I.R. Program is based, in large part, on our Company's culture and this Program feature has served us well to date. It has given the Company maximum flexibility to solve workplace problems. At the same time, we believe this feature, as well as the ability to call the I.R.O. Hotline anonymously, has encouraged employees and managers to access the program as they have been doing on an increased basis.

We have also been scrupulously aware of our responsibility to act with discretion, to maintain the confidence of our callers to the greatest extent possible and to reinforce the Company's non-retaliation policy. In addition to providing a safe environment for employees to discuss their concerns, we try to be as creative as possible in exploring all avenues to successful resolution of issues. In this way, we have been able to establish a high degree of credibility for the program at all levels of the organization. Finally, we have the ongoing support of the Company's senior management that is critical to the success of any employee initiative.

However, because our business is constantly changing, in order to sustain our program's effectiveness, it is imperative that we continually re-assess how we are doing and whether we are using best practices to meet the needs of our employees. We remain committed to being as open and flexible in assessing our Program's effectiveness as we are to resolving the individual employee conflicts our program is dedicated to address.