



## **FINRA DISPUTE RESOLUTION** **ARBITRATOR'S REFERENCE GUIDE**

August 17, 2009 Edition

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This booklet contains important information about FINRA Dispute Resolution services, policies, and procedures. For additional information, please go to <http://www.finra.org/ArbitrationMediation/index.htm> or call one of our regional offices.

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## **Overview of FINRA Dispute Resolution**

### **What Is FINRA Dispute Resolution?**

FINRA Dispute Resolution operates the largest securities dispute resolution forum in the world. FINRA Dispute Resolution facilitates the efficient resolution of monetary, business, and employment disputes among investors, securities firms, and employees of securities firms. We offer both arbitration and mediation services through a network of offices across the United States. FINRA Dispute Resolution handles intra-industry employment and business disputes and investor-industry/investment disputes involving stocks, bonds, options, mutual funds, and other types of securities.

Today, FINRA Dispute Resolution is the largest dispute resolution forum in the securities industry – handling some 90 percent of all such arbitrations and mediations in the United States. FINRA Dispute Resolution recruits, trains, and manages a large roster of neutral arbitrators and mediators. FINRA Dispute Resolution has more than 6,500 arbitrators and over 1,000 mediators carefully selected from a diverse cross-section of professionals.

FINRA Dispute Resolution is subject to the same Securities and Exchange Commission oversight as FINRA. The National Arbitration and Mediation Committee makes recommendations to FINRA Dispute Resolution and the Board regarding the conduct of arbitrations, mediations, and other dispute resolution matters.

FINRA Dispute Resolution pledges to provide impartial professional staff and highly trained arbitrators and mediators committed to delivering fair, expeditious, and cost-effective dispute resolution services for investors, brokerage firms, and their employees. FINRA Dispute Resolution wants our customers to view us as the pre-eminent provider of dispute resolution services worldwide.

## FINRA Dispute Resolution Office Directory

<b>Headquarters and Northeast Region</b>  One Liberty Plaza 165 Broadway 27 <sup>th</sup> Floor New York, NY 10006 Telephone: (212) 858-4400 Facsimile: (212) 858-4429	<b>Southeast Region</b>  Boca Center Tower 1 5200 Town Center Circle Suite 200 Boca Raton, FL 33486 Telephone: (561) 416-0277 Facsimile: (561) 416-2267
<b>Western Region</b>  300 S. Grand Avenue Suite 900 Los Angeles, CA 90071 Telephone: (213) 613-2680 Facsimile: (213) 613-2677	<b>Midwest Region</b>  55 West Monroe Street Suite 2600 Chicago, IL 60603 Telephone: (312) 899-4440 Facsimile: (312) 236-9239

### How To Reach Staff By E-mail

firstname.lastname@FINRA.org  
e.g. kelly.smith@FINRA.org

## **The Information Specialist at FINRA**

The Information Specialist is a specially trained Case Assistant who is available to answer your procedural and case-specific questions on any case. FINRA created the Information Specialist position to ensure that your telephone inquiries are handled quickly and efficiently. Parties, counsel, and arbitrators can expect to receive exceptional service from the Information Specialist. An Information Specialist can provide information such as:

- How to file a new claim and case status
- Dates and location of scheduled evidentiary hearings or telephonic hearings
- Contact information for Case Administrator or other staff
- Deadlines/due dates
- The process for or status of scheduling, rescheduling, and cancelling pre-hearing conferences
- Clarification of correspondence received from FINRA
- Confirmation of receipt of correspondence/pleadings to FINRA

You may also communicate to the Information Specialist case-specific information including your response to correspondence received from FINRA. The Information Specialist will alert you if you are required to submit your response in writing. Feel free to give the information specialist your:

- Availability for rescheduling a pre-hearing conference or an evidentiary hearing
- Phone number or other changes to scheduled calls
- Special requests

### **What does this mean for you?**

- Friendly and helpful service available during FINRA's local business hours
- Immediate and accurate answers to your questions
- No recordings that ask you to push buttons!
- While the Information Specialist can help you with most questions/issues, your Case Administrator is still available to speak with you. Ask the Information Specialist to transfer your call to the Case Administrator and to assist you better, specify the reason for your call.

### **Information Specialist Telephone Numbers**

Northeast Region	(212) 858-4200
Western Region	(213) 613-2680
Southeast Region	(561) 416-0277
Midwest Region	(312) 899-4440

## **How to Access The Codes of Arbitration Procedure**

For cases filed before April 16, 2007:

[http://www.finra.org/web/groups/med\\_arb/documents/mediation\\_arbitration/p018653.pdf](http://www.finra.org/web/groups/med_arb/documents/mediation_arbitration/p018653.pdf)

For Customer cases filed on or after April 16, 2007:

[http://www.finra.org/web/groups/rules\\_regs/documents/rule\\_filing/p018365.pdf](http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p018365.pdf)

For Industry cases filed on or after April 16, 2007:

[http://www.finra.org/web/groups/rules\\_regs/documents/rule\\_filing/p018368.pdf](http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p018368.pdf)

## **Effectiveness of the Provisions of the New Customer and Industry Codes**

The Customer and Industry Codes will become effective on April 16, 2007, and will apply to claims filed on or after the effective date.

In addition, the list selection provisions of the new Codes will apply to previously filed claims in which a list of arbitrators has not yet been generated and sent to the parties, or in which an entirely new list of arbitrators must be generated. In these cases, even though a list has been generated under the new Customer or Industry Code, the claim will continue to be governed by the remaining provisions of the old Code.

## **Arbitrator Training**

### **Basic Arbitrator Training Program**

After an arbitrator candidate is informed that his or her application has been approved, the candidate must then proficiently complete FINRA Dispute Resolution's comprehensive arbitrator training program before becoming eligible to serve on arbitration cases. The tuition for our mandatory, basic arbitrator training program is \$125 and includes the following:

1. An online basic arbitrator training course, which requires successful completion of an online examination.
2. An onsite classroom training session, which requires successful completion of a trainer evaluation.
3. An online expungement training course.

FINRA's online training courses are hosted by FIRE Solutions, Inc. To register for our online courses, please complete the enrollment form on the [Arbitrator Training](#) page of FINRA's Web site at [www.FINRA.org](http://www.FINRA.org).

Some states have approved the basic arbitrator training program for continuing legal education (CLE) credit. Please look to the [Arbitrator Training](#) page of our Web site for a list of approved states.

#### Online Basic Arbitrator Training Course

This highly acclaimed skills course requires a thorough review of online self-study materials and successful completion of an examination. After reviewing the materials online, the candidate will begin the 25-question, multiple-choice examination, which is designed to measure the candidate's comprehension of the program's material. Twenty correct answers are required in order to pass the examination.

The course and exam take approximately eight hours to complete, and can be done over a period of 30 days from the date of registration. Payment of the \$125 tuition fee for the training program will be due upon registration for the online basic arbitrator training course.

#### Onsite Classroom Training Session

After successfully completing the online course and examination, the candidate is ready to attend a four-hour onsite classroom training. FINRA conducts onsite trainings across the country throughout the year

Candidates are required to show proof that they have successfully completed the online basic course by printing the notification made available online after completion of the examination.

### Online Expungement Training Course

This mandatory, online, subject-specific course provides an overview of the expungement process. Specifically, the course explains the role of the Central Registration Depository; gives an in-depth review of Rule 2080; and discusses the specific findings arbitrators must make in order for FINRA to waive its right to oppose the expungement request in court. There is an examination at the conclusion of the course, and a grade of 70 percent or greater is required to successfully pass the course. Arbitrators who do not successfully complete the examination for the expungement course may retake the course at no charge.

The course and exam take approximately one hour to complete, and can be done over a period of 30 days from the date of registration.

### Revised Codes of Arbitration Procedure Training

This course is mandatory – and free – for all FINRA arbitrators. Effective April 16, 2007, the revised *Codes of Arbitration Procedure* are more user-friendly; follows a more logical, sequential order; creates separate Codes for customer and industry arbitrations and for mediation; and implements several substantive rule changes. The course provides background information about the Code revision project and discusses the key, substantive changes of the Customer Code with complementary Industry Code highlights. FINRA arbitrators must complete the Mastery Test at the end of the course to receive credit for the training. The course takes approximately two hours to complete, and can be done over a period of 30 days from the date of registration.

### General Notice

Arbitrator candidates who have been approved to the roster, and who successfully pass FINRA's arbitrator training program – as outlined above – become eligible for case service.

Individuals who do not pass the online basic course will have **one** additional opportunity to retake the course. Those who choose to re-register and retake the course will be required to pay an additional \$125.

### **Advanced Arbitrator Training Online**

In addition to the mandatory, basic arbitrator training program, FINRA offers subject-specific online training modules. The following modules are voluntary, unless stated

otherwise.

Arbitrators who successfully complete FINRA's training courses will have this noted on the arbitrator biographical information FINRA shares with parties.

- **Chairperson Training:** The course instructs arbitrators on the added crucial responsibilities of arbitrators assuming the important role of Chairperson. The course requires approximately nine hours of study time, and can be done over a period of 30 days from the date of registration. Payment of the \$100 tuition fee for the course will be due upon registration. There is a test at the end of the training, and a passing grade of 80 percent or greater is required. To register for this online training program, arbitrators can use the online enrollment form on FINRA's Web site at [www.FINRA.org](http://www.FINRA.org).
- **Your Duty to Disclose:** This voluntary, online course focuses on arbitrators' obligations to disclose information to FINRA, parties and co-arbitrators. The course describes FINRA's disclosure requirements, explains the necessity for complete disclosure and its importance to the neutrality of the process, instructs arbitrators on how to correctly make a disclosure and reinforces the need for arbitrators to meet their continuing disclosure obligations. The course takes approximately one hour to complete, and may be completed over a 30-day period. Tuition for the course is \$25. To register for this online training program, arbitrators can use the online enrollment form on FINRA's Web site at [www.FINRA.org](http://www.FINRA.org).
- **Discovery: Abuse and Sanctions:** This voluntary, online course focuses on the respective duties of arbitrators and parties in the discovery process. The course explains FINRA's Discovery Guide; discusses the need for Orders of Confidentiality; guides arbitrators to recognize and address discovery abuses and reviews the array of possible sanctions if they become necessary. The course takes approximately one hour to complete, and may be completed over a 30-day period. Tuition for the course is \$25. To register for this online training program, arbitrators can use the online enrollment form on FINRA's Web site at [www.FINRA.org](http://www.FINRA.org).
- **Direct Communication Rule:** This voluntary, online course provides an overview of FINRA's direct communication rule. The course discusses the benefits of proceeding under the direct communication rule, outlines the types of communication that are not permitted and provides practical guidance in applying the rule in arbitration. The course takes approximately one hour to complete, and may be completed over a 30-day period. Tuition for the course is \$25. To register for this online training program, arbitrators can use the online enrollment form on FINRA's Web site at [www.FINRA.org](http://www.FINRA.org).
- **Understanding the Prehearing Stage: Initial Prehearing Conference:** This

voluntary, online course helps arbitrators manage the Initial Prehearing Conference. The course also assists arbitrators in organizing the Conference, keeping the parties focused on the tasks at hand-of which scheduling hearing dates is primary, and providing practical guidance on other preliminary issues that may arise during the Conference. The course takes approximately one hour to complete, and may be completed over a 30-day period. Tuition for the course is \$25. To register for this online training program, arbitrators can use the online enrollment form on FINRA's Web site at [www.FINRA.org](http://www.FINRA.org).

- **Expungement:** This online course is part of the basic arbitrator training program. It is a mandatory course. The course explains the role of the Central Registration Depository, gives an in-depth review of Rule 2080, and discusses the specific findings arbitrators must make in order for FINRA to waive its right to oppose the expungement request in court. There is an examination at the conclusion of the course, and a grade of 70 percent or greater is required to pass the course. The course takes approximately one hour to complete, and can be done over a period of 30 days from the date of registration. Payment of the tuition fee for the course is included in the cost of the basic arbitrator training program. To register for this online training program, arbitrators can use the online enrollment form on FINRA's Web site at [www.FINRA.org](http://www.FINRA.org).



## The "Top Ten" Ways To Be A Better Arbitrator

1. Maintain control over all arbitration conferences and hearings from the outset. Set "ground rules" of behavior at the beginning—and enforce them!
2. Be familiar with, understand, and be able to interpret the Codes of Arbitration Procedure.
3. Be fully prepared for all conferences and hearings by reading the pertinent documents in advance, including the Code of Ethics for Arbitrators in Commercial Arbitration available on our Web Site.
4. Be punctual in convening all conferences and hearings. If delayed, notify the administrative staff as soon as possible.
5. Discourage abuses of the process, such as: unreasonable requests for discovery, last-minute requests for recusal, redundant evidence or testimony, or procrastination in scheduling.
6. Remember your authority if and when parties fail to comply with your orders or directives.
7. Do not use or tolerate hostile, demeaning, or humiliating words in written or oral communications among lawyers, parties, witnesses, or the administrative staff.
8. Make all reasonable efforts to decide promptly all matters presented for decision. The administrative staff is an integral part of the alternative dispute resolution process. Treat them with courtesy and respect at all times.
9. The administrative staff is an integral part of the alternative dispute resolution process. Treat them with courtesy and respect at all times.
10. Understand and comply with the policies of FINRA Dispute Resolution regarding reimbursement for expenses and arbitrator honorarium.



## **Duties, Obligations, and Ethical Considerations for FINRA Arbitrators**

The American Bar Association and the American Arbitration Association developed the “Code of Ethics for Arbitrators in Commercial Disputes” (“Code of Ethics”) to guide arbitrators in their dealings with parties engaged in disputes.

FINRA Dispute Resolution provides arbitrators appointed to resolve disputes under the Codes of Arbitration Procedure with the Code of Ethics. FINRA Dispute Resolution’s website provides the Code of Ethics at [www.finra.org/arbitrationmediation](http://www.finra.org/arbitrationmediation) by clicking on the “Resources for Arbitrators and Mediators” link. In addition, the Code of Ethics is incorporated into The Arbitrator’s Manual as Appendix A. FINRA Dispute Resolution arbitrators should refer regularly to the Code of Ethics.

**THE FOLLOWING IS INTENDED AS A BRIEF REMINDER OF THE DUTIES AND OBLIGATIONS OF FINRA ARBITRATORS THAT ARISE OUT OF THE CODE OF ETHICS AND OF THE ARBITRATORS’ ETHICAL CONSIDERATIONS UNDER THE CODE OF ETHICS.**

**THE FOLLOWING IS NEITHER AN EXHAUSTIVE LIST NOR A SUBSTITUTE FOR THE CODES OF ARBITRATION PROCEDURE.**

As a FINRA Dispute Resolution Arbitrator, you should:

◆ **Decline to serve on cases unless you can be fair to the parties and available to conduct the arbitration promptly.**

⇒ This includes your ability to be impartial and neutral to all parties throughout a proceeding. You must be impartial in both appearance and in fact.

⇒ Upon accepting an appointment, you should avoid entering into any financial, business, or other relationship that is likely to affect impartiality or might reasonably create an appearance of partiality or bias. Attorneys, expert witnesses, or accountants who are arbitrators should be particularly mindful of this ethical consideration, and should review the ethical considerations of their

profession. For example, an attorney should not accept any engagement involving a party during the pendency of an arbitration and for a reasonable period of time after the matter is concluded. Likewise, an expert witness should disclose previous cases for which he or she was retained which involved any party, counsel, or witness.

⇒ A major goal of arbitration is the prompt resolution of disputes. At the time of appointment, arbitrators should be certain that they have the time required to hear and decide the controversy in a timely manner.

⇒ You should accept an assignment only if you believe that you can conduct the arbitration promptly.

⇒ As an arbitrator, you may apprise FINRA of your general availability, but should not solicit appointments to cases.

◆ **Disclose any circumstances that might prevent you from making an impartial determination or might create an appearance of bias.**

⇒ Your duty to disclose is ongoing. It relates to the subject matter in dispute, and to existing or past, direct or indirect, financial, personal, business, and professional relationships with any of the parties, representatives, witnesses, or your co-panelists. This duty requires that you make a reasonable effort to inform yourself of these relationships or interests. Accordingly, you must carefully review the filed pleadings and the witness lists.

⇒ A list of questions an arbitrator should ask when determining if a disclosure should be made is attached to your Oath of Arbitrator. Focus on both past and present business relationships between you and the parties, counsel, witnesses, fellow arbitrators, and the entities for whom they work.

⇒ Your ongoing duty to disclose includes changes in your or your immediate family member's employment, job functions, or clients since these facts can result in a change to your classification as public or non-public arbitrator.

⇒ A disclosure communicated to the staff should be repeated in front of the parties at the beginning of the hearing. The parties should acknowledge the information and state whether or not they have an objection to proceed.

◆ **After a disclosure is made, determine whether you should withdraw or remain on the panel.**

⇒ If all parties request that you withdraw, honor the request and withdraw.

- ⇒ If less than all parties request that you withdraw - do so unless, after carefully considering the matter:
  - ⇒ you determine that the reason for the challenge is not substantial, and,
  - ⇒ you can nevertheless act and decide the case impartially and fairly.
- ⇒ Consult with the staff if you have any question regarding withdrawal. Keep in mind that sometimes it is less expensive for you to step down in the middle of the proceeding than for the parties to institute a proceeding to vacate an award. On the other hand, this should be balanced by the significance of the disclosure, the disclosed relationships, and the prejudice to a party if you step down or if you do not step down.

◆ **Observe FINRA's guidelines with regard to reimbursement for expenses.**

- ⇒ FINRA has strict guidelines with regard to reimbursement for your expenses as an arbitrator in our forum. Please carefully review and adhere to these written guidelines.

◆ **Prepare for pre-hearing conferences and evidentiary hearings.**

- ⇒ Proper preparation requires that you review the Codes of Arbitration Procedure and FINRA procedural guidelines, such as the FINRA Discovery Guide for customer cases, the Initial Pre-hearing Conference Script (IPHC) and IPHC Scheduling Order, and the Hearing Procedure Script **before** a pre-hearing conference or evidentiary hearing. These and other documents are included in your case packet. Please ask assigned staff to provide the documents to you if any of these documents are missing. We also strongly recommend that you review the Arbitrator's Reference Guide, which is available on our website, <http://www.finra.org/ArbitrationMediation/index.htm>, under the Resources for Arbitrators and Mediators link.
- ⇒ Proper preparation requires that you review all filed claims, answers, specific motions, and responsive papers prior to all conferences and hearings.

◆ **Conduct fair and impartial pre-hearing conferences and evidentiary hearings.**

- ⇒ The arbitrators set the tone for all conferences and hearings at the outset (i.e., presentation of evidence and witnesses, civility of participants, break times, etc.).
- ⇒ FINRA designed the pre-hearing and hearing scripts to facilitate the process. Arbitrators should use the scripts to the greatest extent possible.

- ⇒ Arbitrators must clearly mark all evidence.
- ⇒ The Codes require recorded hearings. Arbitrators must tape record the hearings and ascertain, throughout the proceeding, that the recorder is functioning properly. Arbitrators must clearly mark the tapes and return the tapes and the recorder to the staff at the conclusion of each block of hearings.
- ⇒ Arbitrators must fully and accurately complete all orders and return them to the assigned staff.
- ⇒ Your duty to conduct fair conferences and hearings requires that you afford all parties a full and fair opportunity to be heard on all procedural and substantive issues in dispute.
- ⇒ Arbitrators must avoid comments, questions, facial expressions, or other body language that might convey bias during conferences and hearings.
- ⇒ While you do not want to appear cold and aloof, idle chit chat may be more offensive. In addition, a comment you believe to be insignificant might form the basis for a challenge of the final decision.

◆ **Decide all important issues.**

- ⇒ Arbitrators have a duty to participate in making final and binding decisions in regard to all important procedural issues, all properly submitted claims, and costs.
- ⇒ After the conclusion of any case, arbitrators may refer the conduct of FINRA member firms or individuals associated with those firms for possible disciplinary action.

◆ **Maintain Proper Post-Hearing Conduct.**

- ⇒ Such conduct includes rendering your award as soon as possible, but no later than thirty days after the hearings are closed.
- ⇒ Although FINRA awards are made publicly available, all matters relating to the

- ⇒ arbitration (including the pleadings, motions, evidence, and panel deliberations) are confidential.
- ⇒ Communications with the parties should be scrupulously avoided even after the proceedings are concluded.
- ⇒ Arbitrators generally enjoy quasi-judicial privilege for their deliberations and thought processes. However, discussing the basis for the panel's award to an outside party may waive this immunity for all arbitrators.
- ⇒ Always assume someone is listening. Discussions on elevators, in rest rooms, and in restaurants oftentimes are overheard.
- ⇒ Arbitrators should contact FINRA Dispute Resolution staff immediately if questioned about a case, asked to testify, or asked to sign an affidavit.

FINRA APPRECIATES YOUR SERVICE AS AN ARBITRATOR. THANK YOU FOR YOUR COOPERATION.

## Oath of Arbitrator

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The Oath of Arbitrator is executed by every arbitrator and returned to FINRA Dispute Resolution before the arbitrator makes any decision or attends a hearing. As part of the Oath, you are required to review three documents: the Temporary and Permanent Arbitrator Disqualification Criteria; the Arbitrator Disclosure Checklist; and your Arbitrator Disclosure Report.

FINRA Dispute Resolution

Case #

In the Matter of the Arbitration Between

Claimant(s)

vs.

Respondent(s)

Having been selected as an arbitrator to consider the matter in controversy between the above-captioned parties:

I affirm my duty under the AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes to keep confidential all matters relating to the above-referenced arbitration proceeding and decision, including but not limited to any information, documents, evidence, or testimony presented. My duty is continuous and does not cease at the conclusion of the arbitration or upon my withdrawal as an arbitrator.

I affirm that I am not an employer of, employed by, or related by blood or marriage to any of the parties or witnesses whose names have been disclosed to me; that I have no direct or indirect interest in this matter; I know of no existing or past financial, business, professional, family, or social relationship which would impair me from performing my duties; and that I will decide the controversy in a fair manner and render a just Award.

I have carefully read, reviewed, and considered FINRA Dispute Resolution's Temporary and Permanent Arbitrator Disqualification Criteria. I affirm that, based on the criteria, I am not temporarily or permanently disqualified from being a FINRA arbitrator.

I have reviewed and completed the *Arbitrator Disclosure Checklist* enclosed, and certify that (check one):

☐ I have nothing to disclose.

☐ I made disclosures on the *Arbitrator Disclosure Checklist*.

I have carefully read, reviewed, and considered my *Arbitrator Disclosure Report* and certify that (check one):

☐ I have nothing additional to disclose. My *Arbitrator Disclosure Report* is accurate, current, and up-to-date.

☐ I have noted changes or corrections on the *Report*.

---

Arbitrator's Signature

Date

---

Arbitrator's Name (Print)

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

## Arbitrator Disclosure Checklist

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The *Arbitrator Disclosure Checklist* is sent to the arbitrators as part of the Oath of Arbitrator. It not only provides a reminder to the arbitrators to consider all possible disclosures, but also requires a complete explanation of any possible conflict to the parties.

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Please indicate your response to each of the questions listed below by checking the appropriate box. *Please check “yes” or “no” to each question.* Provide a **full explanation** to any question(s) to which you provided a “yes” response. All affirmative responses and explanations will be sent to the parties.

Case Number: «CaseID»

Arbitrator Name: «RecipientName»

	YES	NO
1. Do you presently represent any person in a proceeding adverse to any party to the arbitration?	[ ]	[ ]
2. Have you represented any other person against any party to the Arbitration in the past five years?	[ ]	[ ]
3. Have you been retained to assist any party as an expert or otherwise In a proceeding involving any party to the arbitration in the last five years?	[ ]	[ ]
4. Have you had any professional or social relationships with counsel for any party in this proceeding or the firm for which they work?	[ ]	[ ]
5. Have you had any professional or social relationships with any party in this proceeding or the firm for which they work?	[ ]	[ ]
6. Have you had any professional or social relationships with any relative of any party, counsel, or identified witness in this proceeding?	[ ]	[ ]
7. Have you ever served as an arbitrator in a proceeding in which any of the identified witnesses or named parties gave testimony?	[ ]	[ ]

8. Have you, your spouse, or any member of your immediate<sup>1</sup> family maintained an account individually, jointly or beneficially with a brokerage firm named in this proceeding? [ ] [ ]
9. Are you employed by, or the spouse or an immediate family member of a person who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business? [ ] [ ]
10. Are you a director or officer of, or the spouse or an immediate family member of a person who is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business? [ ] [ ]
11. Have you ever, as a party to an arbitration or litigation, named a brokerage firm, or been named by a brokerage firm in any civil lawsuit or arbitration proceeding? [ ] [ ]
12. Have you ever been named as a party by an investor in any civil lawsuit or arbitration proceeding? [ ] [ ]
13. Are you a member of any securities-related organization (e.g., Securities Industry and Financial Markets Association) or organization of claimants or attorneys who periodically represent investors in suits against brokerage firms (e.g., Public Investors Arbitration Bar Association)? [ ] [ ]
14. Have any of your relatives named a brokerage firm, or been named by a brokerage firm, in any civil lawsuit or arbitration? [ ] [ ]
15. Have you or a member of your immediate family invested in or held any of the securities that are subject of this dispute during the time periods in question? [ ] [ ]
16. Have you, any member of your immediate family, close social or business associate, been involved in the last five years in a dispute involving the same subject matter as contained in the case to which

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<sup>1</sup>The term "immediate family member" means: (i) a person's parent, stepparent, child, or stepchild; (ii) a member of a person's household; (iii) an individual to whom a person provides financial support of more than 50 percent of the individual's annual income; or (iv) a person who is claimed as a dependent for federal income tax purposes. To the extent you have knowledge, please also consider the employment, financial, and other interests of your mother, father, son and daughter in-laws when answering questions on this form referring to family members. You are not required to seek out the information about your in-laws in responding to this form.

- you are assigned? [ ] [ ]
17. Has any member of your immediate family or household been employed by a brokerage firm? [ ] [ ]
18. Have you had any social or professional relationship with any other arbitrator assigned to this case? [ ] [ ]
19. Has your conduct been an issue in an arbitration or litigation Proceeding (other than a proceeding in which you served as an arbitrator)? For example, if your conduct as a registered representative or manager was an issue in a case, but only the broker-dealer was named as a party, your response should be "yes." [ ] [ ]
20. Do you have any disclosures on your record with the Central Registration Depository ("CRD") system<sup>2</sup> that are not reflected on your disclosure report? [ ] [ ]
21. Within the last ten years, have you ever declared personal bankruptcy? [ ] [ ]
22. Within the last ten years, have you ever been a principal of a company that has declared bankruptcy? [ ] [ ]
23. If you are classified as a non-public ('industry') arbitrator, have you been retired from the industry for five years or more? [ ] [ ]
24. If you answered "yes" to question 23, are you receiving continuing benefits (e.g., pension, health care, etc.) from any of your industry employers? [ ] [ ]
25. Do you work for or serve as an officer or director of an entity that, directly or indirectly, controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business? If yes, provide explanation. [ ] [ ]
26. Are you presently serving as an arbitrator in another matter involving any party or counsel in this proceeding or the firm for which they work? [ ] [ ]
27. Do you hold a professional license(s) of any kind (e.g., in law, accounting, securities, etc.) which is not disclosed on your Disclosure Report? [ ] [ ]

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<sup>2</sup> CRD is an automated, electronic web-based system, which FINRA uses to maintain the qualification, employment and disclosure histories of member firms' registered securities employees.

28. If you answered yes to question 27, please indicate below the license type(s), jurisdiction(s), etc. [ ] [ ]

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29. Have any of the licenses listed above or on your Disclosure Report lapsed (i.e. are not current)? [ ] [ ]

30. Has any professional entity or body with licensing authority denied, suspended or revoked your registration or license (e.g., insurance, real estate, securities, legal, medical, etc.)? [ ] [ ]

31. If you answered yes to questions 11, 12, 19, or 20, was the claim expunged from the CRD system pursuant to FINRA Rule 2080? (Please note that you must disclose all relevant complaints, lawsuits, or arbitration claims, even if they were later expunged from the CRD system). [ ] [ ]

32. **This question for Public Arbitrators ONLY:** Are you an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in either of the past two years from securities industry clients? [ ] [ ]

33. **This question is for Public Arbitrators ONLY:** Are you an attorney, accountant, or other professional whose firm derived \$50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in Rule 12100(p)(1) of the Customer Code or Rule 13100(p)(1) of the Industry Code relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees? [ ] [ ]

Explain and clarify any "yes" answers to the above questions. If needed, attach additional sheet(s).

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Case Number: «CaseID»

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«RecipientName»'s Signature

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Date

## **Arbitrator Disqualification Criteria**

**Criteria for Temporary Disqualification** (Temporary Disqualification will result in temporary declination as to new applicants and a status of "inactive" as to already enrolled arbitrators.)

### **Pending Actions**

Arbitrator is the subject of, or is a party to, a pending investment-related civil action or arbitration claim initiated by a customer; or, civil action or administrative complaint initiated by a regulatory body; or, a civil action or regulatory complaint alleging discrimination or sexual harassment. This provision excludes cases where the arbitrator's conduct in his or her role as an arbitrator is at issue.

### **Subject of Claims or Complaints**

Arbitrator is the subject of, or is a party to, three (3) or more claims or complaints (reportable on Form U-4) within the last ten (10) years regardless of outcome.

### **Filed a Statement of Claim or Complaint**

Arbitrator is a party (excluding representatives and unnamed parties to class actions) that has filed two or more investment-related civil actions or arbitration claims within the last ten (10) years.

### **Final Decisions, Awards**

Arbitrator is the subject of, or is a party to, a final, adverse investment-related court decision or arbitration award of \$25,000 or more within the past seven (7) years resulting from a customer-initiated complaint or claim.

### **Final Regulatory Action**

Arbitrator is the subject of, or is a party to, any final adverse decision issued by any regulatory authority within the past seven (7) years, where the adverse decision does not involve a technical violation or does not give rise to a statutory disqualification.

### **Director of Arbitration's Judgment**

The Director of Arbitration may temporarily remove an arbitrator, if, in his or her sole judgment, it is determined that the arbitrator is not otherwise properly included in the list of eligible neutrals.

### **Footnote**

Temporary Disqualification will result in temporary declination as to new applicants and a status of "inactive" as to already-enrolled arbitrators.

**Criteria for Permanent Disqualification** (Permanent Disqualification means the application of any new applicant will be rejected, and enrolled neutrals will be removed from the roster without possibility of reconsideration.)

**Preamble**

If an arbitrator answers in the affirmative to any questions contained in Question 14 of the Arbitrator Application Form, the arbitrator's explanation for the affirmative answer will be closely reviewed by the Director. If the affirmative answer does not constitute a statutory disqualification, the explanation for the answer will be disclosed to the parties unless the information is non-regulatory or does not reflect negatively on the individual's character and is not significant to an individual's performance as a neutral.

**Misstatement/Omission**

Misstatement or failure to disclose material information.

**Disciplinary Actions**

Final, adverse disciplinary action by any domestic or foreign regulatory or governing professional body on a finding of, including but not limited to, false statement or omissions, material violation of investment-related regulation, or the violation of a non-technical rule of such organizations or statute.

**Misdemeanors/Felonies**

Misdemeanor involving investments, investment-related activities.

**Felonies**

Felony conviction, or plea of guilty or nolo contendere (no contest), to a felony charge.

**Fraud**

Final adverse court decisions where there has been a finding of fraud.

**Statutory Disqualifications**

Statutory disqualifications not included above.

**Decisions, Awards, Involving Discrimination/Sexual Harassment**

Arbitrator is the subject of, or is a party to, a final, adverse regulatory decision or arbitration award involving any discrimination claims, including sexual harassment, in which the arbitrator was found to have engaged directly in sexual harassment or discrimination.

**Director of Arbitration's Judgment**

The Director of Arbitration, upon the approval of the National Arbitration & Mediation Committee, may remove an arbitrator if in his or her judgment the arbitrator is not otherwise properly included in the list of eligible neutrals.

**Footnote**

Permanent disqualification means the application of any new applicant will be rejected and enrolled neutrals will be removed from the pool without possibility of reconsideration.

## **Expedited Proceedings for Senior or Seriously Ill Parties**

On June 7, 2004, FINRA Dispute Resolution implemented on a national basis various measures to expedite arbitration proceedings in matters involving senior or seriously ill parties.

Under these proceedings, FINRA Dispute Resolution staff will endeavor to do the following on an expedited basis:

- Complete the arbitrator selection process;
- Schedule the initial Pre-hearing conference;
- Serve the final award; and
- Determine whether the parties are interested in mediation.

Arbitrators are encouraged to consider the health and age of a party when:

- Scheduling hearing dates;
- Considering postponement requests; and
- Setting discovery deadlines.

### **Introduction**

FINRA Dispute Resolution recognizes that various state statutes provide for speedy trials in civil actions involving senior or seriously ill parties. FINRA Dispute Resolution appreciates the need for expedited hearings in arbitrations involving such parties. FINRA Dispute Resolution conducted a 10-month pilot program in its Southeast Regional Office to expedite arbitration proceedings in matters involving senior or seriously ill parties. Due to the success of the pilot, FINRA Dispute Resolution launched the program on a national basis effective June 7, 2004. FINRA Dispute Resolution intends for these measures to improve the arbitration process for disputes involving senior or seriously ill parties, while maintaining procedural balance and fairness for all involved parties.

### **FINRA Dispute Resolution Staff Actions**

Although FINRA Dispute Resolution staff cannot shorten the time requirements set forth in the Codes of Arbitration Procedure (Codes), upon request, staff will expedite the administration of arbitration proceedings in matters involving senior or seriously ill parties. In such situations, staff will begin the arbitrator selection process, schedule the initial Pre-hearing conference, and serve the final award as quickly as possible. By mutual agreement, parties are also free to reduce the time requirements contained in the Codes. Staff will also determine promptly whether the parties are interested in mediation.

## **Arbitrator Sensitivity**

FINRA Dispute Resolution expects its arbitrators to be sensitive to the needs of senior or seriously ill parties when scheduling hearing dates, resolving discovery disputes, and determining the reasonableness of postponements. At the initial Pre-hearing conference, counsel for a senior or seriously ill party should advise the arbitration panel of the party's desire for expedited hearings. When such a request is made, the arbitration panel is expected to press for hearing dates and discovery deadlines that will expedite the process, yet still provide a fair amount of time for case preparation.



## Order on Request for Direct Communication between Parties and Arbitrators

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### FINRA DISPUTE RESOLUTION

ORDER ON REQUEST FOR DIRECT COMMUNICATION BETWEEN PARTIES AND ARBITRATORS IN THE MATTER OF:

CASE #: \_\_\_\_\_

CLAIMANT(S): \_\_\_\_\_

RESPONDENT(S): \_\_\_\_\_

1. An in-person ☐ or telephonic conference ☐ was held on \_\_\_\_\_.
2. At that conference, all named parties requested that the Panel grant their request to proceed under the Direct Communication Rule in the Codes<sup>1</sup>.
3. The panel grants this request.
4. The parties shall transmit the following correspondence directly to the arbitrators:
  - a. Motion to \_\_\_\_\_,  
including any response, reply, and sur-reply.
  - b. Briefs on \_\_\_\_\_,  
including any response, reply, and sur-reply \_\_\_\_\_.
  - c. Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
5. All parties are hereby instructed that they **may not** have any direct contact with the arbitrators in connection with any request to remove any member of this arbitration panel (including challenges for cause, Director's authority to disqualify challenges, or requests to arbitrator to voluntarily withdraw). Such requests should be sent to the FINRA Dispute Resolution case administrator assigned to this matter, with copies to all other parties.
6. The parties shall use the following method of transmission (e.g., facsimile, electronic mail, overnight courier, or U.S. mail): \_\_\_\_\_

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<sup>1</sup> Customer Code: Rule 12211; Industry Code: Rule 13211; Old Code: Rule 10334

7. The electronic mail/fax/mailling addresses for all named parties and all arbitrators are as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Parties must send documents that exceed 15 pages to FINRA Dispute Resolution only by U.S. mail or overnight courier, even if the parties agree to use the fax as the method of transmitting documents
9. The parties shall send all correspondence identified in this Order on the same day and by the same method of transmission to all parties and arbitrators.
10. All parties agree to notify the FINRA Dispute Resolution if the party is no longer represented by counsel. If counsel no longer represents a party, this Order is automatically rescinded and all parties shall cease direct communication with the arbitrators and direct all communication to the assigned FINRA Dispute Resolution case administrator, with the appropriate number of copies for distribution to the arbitrators.
11. This Order will remain in effect unless amended by the arbitration panel, canceled upon written notice by a party or an arbitrator, or as provided in Paragraph 10.

Dated:

\_\_\_\_\_  
Chairperson  
On Behalf of the Panel

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## Rule on Requests for Documents and Other Evidence

You may be asked to rule on discovery disputes between the parties. Use this list to help determine the relevance of requested documents during the discovery process.

### Relevance

*What is a party attempting to prove (or disprove)?*

Party 1:

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Party 2:

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What is the likelihood of the request leading to the discovery of admissible evidence?

☐ Highly Likely    ☐ Likely    ☐ Unlikely    ☐ Highly Unlikely

### Balancing Test

*Does the relevance outweigh the burden of producing a document?*    ☐ Yes    ☐ No

Comments:

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*Is the request relevant, or is it being made to harass the other party?*

☐ Relevant    ☐ Irrelevant

Comments:

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*Can the request be limited in scope or time frames?*    ☐ Yes    ☐ No

Comments:

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### Confidentiality of Documents

*Do the requested items contain trade secrets or proprietary information or violate the privacy rights of parties or non-parties?*    ☐ Yes    ☐ No

If so, consider: ☐ Redacting portions of the documents.  
☐ Issuing a confidentiality order.

Comments:

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## Discovery Guide Information

The [Discovery Guide](#) is available for use in FINRA arbitration proceedings. In response to questions concerning the Discovery Guide, FINRA Dispute Resolution has prepared a list of frequently asked questions and their answers.

The answers expressed below are staff opinions only and have not been reviewed or endorsed by the Board of Directors of FINRA Dispute Resolution, nor have they been submitted to or approved by the Securities and Exchange Commission. They do not address any FINRA rule or interpretation, or all the possible regulatory and legal issues involved.

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### 1. What is the Discovery Guide?

The Discovery Guide, which includes Document Production Lists, provides to parties in FINRA arbitrations guidance on which documents they should exchange without arbitrator or staff intervention, and guidance to arbitrators in determining which documents customers and member firms or associated persons are presumptively required to produce in customer arbitrations.<sup>1</sup> The Discovery Guide and Document Production Lists are designed for customer disputes with firms and Associated Person(s). The Discovery Guide also discusses additional discovery requests, information requests, depositions, admissibility of evidence, and the use of sanctions.

### 2. When did the Discovery Guide become available for use?

The Discovery Guide became available for use in November 1999.

### 3. How should the Discovery Guide be used by parties and by arbitrators?

The Discovery Guide, including the Document Production Lists, functions as a guide for the parties and the arbitrators; it is not intended to remove flexibility from arbitrators or parties in a given case. Nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide.

### 4. Must a party "turn over" every item in the Discovery Guide List?

The arbitrators and the parties should consider the documents described in Document Production Lists 1, 2, and any other applicable list, presumptively discoverable. Absent a written objection, or an agreement by the parties to the contrary, documents on Document Production Lists 1, 2, and any other applicable list, shall be exchanged by the parties within specified time frames.

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<sup>1</sup> FINRA Dispute Resolution may develop separate Document Production Lists for intra-industry disputes.

**5. May a party request discovery of documents not listed in the Document Production List?**

Under FINRA rules<sup>2</sup>, the parties may request documents in addition to those identified in the Document Production Lists. Further, nothing in the Discovery Guide, including the Document Production Lists, precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide.

**6. May a party object to documents that are on the production lists? If so, what is the proper procedure for objecting?**

A party may object to the production of any document. If any party objects to the production of any document listed in the relevant Document Production Lists, and this objection cannot be resolved by the parties, the party must file written objections with the Office of Dispute Resolution and serve all parties not later than 60 days (30 under the Old Code) following the date the answer is due or filed, whichever is earlier. Objections should set forth the reasons the party objects to producing the documents. The matter will be sent to the arbitrators who will make a final ruling.

**7. When must a party provide the documents outlined in the Discovery Guide?**

The parties should produce all required documents listed in the applicable Document Production Lists not later than 60 days (30 under the Old Code) from the date the answer is due or filed, whichever is earlier.

**8. If a party objects to the production of a document(s), what standard does the arbitrator(s) use to determine if the party must produce the document(s)?**

If a Document Production List is applicable, the Discovery Guide is drafted to guide the arbitrator to order production unless, in the exercise of discretion, the arbitrator believes that there is good cause not to order production.

**9. Does the Discovery Guide apply to simplified arbitration (small claims) proceedings?**

The Discovery Guide is not intended for use in simplified arbitration proceedings<sup>3</sup>. However, the arbitrator may, in his or her discretion, choose to use relevant portions of the Discovery Guide in a manner consistent with the expedited nature of simplified proceedings.

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<sup>2</sup> Customer Code: Rule 12507; Old Code: Rule 10321(b)

<sup>3</sup> Customer Code: Rule 12800; Old Code: Rule 10302

## **Discovery Guide for New Code Cases**

This Discovery Guide and Document Production Lists supplement the discovery rules contained in the Code of Arbitration Procedure for Customer Disputes (“FINRA Customer Code.”) (See Rules 12505-12511.)

No requirement under the Discovery Guide supersedes any record retention requirement of any federal or state law or regulation or any rule of a self-regulatory organization.

The Discovery Guide, including the Document Production Lists serves as a guide for the parties and the arbitrators; it is not intended to remove flexibility from arbitrators or parties in a given case. Arbitrators can order the production of documents not provided for by the Document Production Lists or alter the production schedule described in the Discovery Guide. Nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide. FINRA encourages the parties to agree to the voluntary exchange of documents and information and to stipulate to various matters. The fact that an item appears on a Document Production List does not shift the burden of establishing or defending any aspect of a claim.

The arbitrators and the parties should consider the documents described in Document Production Lists 1 and 2 presumptively discoverable. Absent a written objection, documents on Document Production Lists 1 and 2 shall be exchanged by the parties within the time frames set forth in the FINRA Customer Code. The arbitrators and parties also should consider the additional documents identified in Document Production Lists 3 through 14, respectively, discoverable, as indicated, for cases

alleging the following causes of action: churning, failure to supervise, misrepresentation/omission, negligence/breach of fiduciary duty, unauthorized trading, and unsuitability. For the general document production and for each of these causes of action, there are separate Document Production Lists for firms/Associated Person(s) and for customers.

### **Confidentiality**

If a party objects to document production on grounds of privacy or confidentiality, the arbitrator(s) or one of the parties may suggest a stipulation between the parties that the document(s) in question will not be disclosed or used in any manner outside of the arbitration of the particular case, or the arbitrator(s) may issue a confidentiality order. The arbitrator(s) shall not issue an order or use a confidentiality agreement to require parties to produce documents otherwise subject to an established privilege. Objections to the production of documents, based on an established privilege, should be raised in accordance with the time frame for objections set forth in the Customer Code.

### **Affirmation In The Event That There Are No Responsive Documents or Information**

If a party responds that no responsive information or documents exist, the customer or the appropriate person in the brokerage firm who has personal knowledge (i.e., the person who has conducted a physical search), upon the request of the requesting party, must: 1) state in writing that he/she conducted a good faith search for the requested information or documents; 2) describe the extent of the search; and 3) state that, based on the search, no such information or documents exist.

## **Admissibility**

Production of documents in discovery does not create a presumption that the documents are admissible at the hearing. A party may state objections to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

\* \* \*

## **DOCUMENT PRODUCTION LISTS**

\* \* \*

### **LIST 1**

#### **DOCUMENTS TO BE PRODUCED IN ALL CUSTOMER CASES<sup>1</sup>**

FIRM/ASSOCIATED PERSON(S):

- 1) All agreements with the customer, including, but not limited to, account opening documents, cash, margin, and option agreements, trading authorizations, powers of attorney, or discretionary authorization agreements, and new account forms.
- 2) All account statements for the customer's account(s) during the time period and/or relating to the transaction(s) at issue.
- 3) All confirmations for the customer's transaction(s) at issue. As an alternative, the firm/Associated Person(s) should ascertain from the claimant and produce those confirmations that are at issue and are not within claimant's possession, custody, or control.
- 4) All "holding (posting) pages" for the customer's account(s) at issue or, if not available, any electronic equivalent.
- 5) All correspondence between the customer and the firm/Associated Person(s) relating to the transaction(s) at issue.

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<sup>1</sup> Only named parties must produce documents pursuant to the guidelines set forth herein. However, non-parties may be required to produce documents pursuant to a subpoena or an arbitration panel order to direct the production of documents (see Rule 12513). In addition, the arbitration chairperson may use the Document Production Lists as guidance for discovery issues involving non-parties.

- 6) All notes by the firm/Associated Person(s) or on his/her behalf, including entries in any diary or calendar, relating to the customer's account(s) at issue.
- 7) All recordings and notes of telephone calls or conversations about the customer's account(s) at issue that occurred between the Associated Person(s) and the customer (and any person purporting to act on behalf of the customer), and/or between the firm and the Associated Person(s).
- 8) All Forms RE-3, U-4, and U-5, including all amendments, all customer complaints identified in such forms, and all customer complaints of a similar nature against the Associated Person(s) handling the account(s) at issue.
- 9) All sections of the firm's Compliance Manual(s) related to the claims alleged in the statement of claim, including any separate or supplemental manuals governing the duties and responsibilities of the Associated Person(s) and supervisors, any bulletins (or similar notices) issued by the compliance department, and the entire table of contents and index to each such Manual.
- 10) All analyses and reconciliations of the customer's account(s) during the time period and/or relating to the transaction(s) at issue.
- 11) All records of the firm/Associated Person(s) relating to the customer's account(s) at issue, such as, but not limited to, internal reviews and exception and activity reports which reference the customer's account(s) at issue.
- 12) Records of disciplinary action taken against the Associated Person(s) by any regulator or employer for all sales practices or conduct similar to the conduct alleged to be at issue.

\* \* \*

## **LIST 2**

### **DOCUMENTS TO BE PRODUCED IN ALL CUSTOMER CASES**

#### **CUSTOMER:**

- 1) All customer and customer-owned business (including partnership or corporate) federal income tax returns, limited to pages 1 and 2 of Form 1040, Schedules B, D, and E, or the equivalent for any other type of return, for the three years prior to the first transaction at issue in the statement of claim through the date the statement of claim was filed.
- 2) Financial statements or similar statements of the customer's assets, liabilities and/or net worth for the period(s) covering the three years prior to the first transaction at issue in the statement of claim through the date the statement of claim was filed.

- 3) Copies of all documents the customer received from the firm/Associated Person(s) and from any entities in which the customer invested through the firm/Associated Person(s), including monthly statements, opening account forms, confirmations, prospectuses, annual and periodic reports, and correspondence.
- 4) Account statements and confirmations for accounts maintained at securities firms other than the respondent firm for the three years prior to the first transaction at issue in the statement of claim through the date the statement of claim was filed.
- 5) All agreements, forms, information, or documents relating to the account(s) at issue signed by or provided by the customer to the firm/Associated Person(s).
- 6) All account analyses and reconciliations prepared by or for the customer relating to the account(s) at issue.
- 7) All notes, including entries in diaries or calendars, relating to the account(s) at issue.
- 8) All recordings and notes of telephone calls or conversations about the customer's account(s) at issue that occurred between the Associated Person(s) and the customer (and any person purporting to act on behalf of the customer).
- 9) All correspondence between the customer (and any person acting on behalf of the customer) and the firm/Associated Person(s) relating to the account(s) at issue.
- 10) Previously prepared written statements by persons with knowledge of the facts and circumstances related to the account(s) at issue, including those by accountants, tax advisors, financial planners, other Associated Person(s), and any other third party.
- 11) All prior complaints by or on behalf of the customer involving securities matters and the firm's/Associated Person(s') response(s).
- 12) Complaints/Statements of Claim and Answers filed in all civil actions involving securities matters and securities arbitration proceedings in which the customer has been a party, and all final decisions and awards entered in these matters.
- 13) All documents showing action taken by the customer to limit losses in the transaction(s) at issue.

\* \* \*

### **LIST 3**

#### **CHURNING**

##### **FIRM/ASSOCIATED PERSON(S)**

- 1) All commission runs relating to the customer's account(s) at issue or, in the alternative, a consolidated commission report relating to the customer's account(s) at issue.
- 2) All documents reflecting compensation of any kind, including commissions, from all sources generated by the Associated Person(s) assigned to the customer's account(s) for the two months preceding through the two months following the transaction(s) at issue, or up to 12 months, whichever is longer. The firm may redact all information identifying customers who are not parties to the action, except that the firm/Associated Person(s) shall provide at least the last four digits of the non-party customer account number for each transaction.
- 3) Documents sufficient to describe or set forth the basis upon which the Associated Person(s) was compensated during the years in which the transaction(s) or occurrence(s) in question occurred, including: a) any bonus or incentive program; and b) all compensation and commission schedules showing compensation received or to be received based upon volume, type of product sold, nature of trade (e.g., agency v. principal), etc.

\* \* \*

### **LIST 4**

#### **CHURNING**

##### **CUSTOMER**

No additional documents identified.

\* \* \*

### **LIST 5**

#### **FAILURE TO SUPERVISE**

##### **FIRM/ASSOCIATED PERSON(S):**

- 1) All commission runs and other reports showing compensation of any kind relating to the customer's account(s) at issue or, in the alternative, a consolidated commission report relating to the customer's account(s) at issue.

2) All exception reports and supervisory activity reviews relating to the Associated Person(s) and/or the customer's account(s) that were generated not earlier than one year before or not later than one year after the transaction(s) at issue, and all other documents reflecting supervision of the Associated Person(s) and the customer's account(s) at issue.

3) Those portions of internal audit reports at the branch in which the customer maintained his/her account(s) that: (a) focused on the Associated Person(s) or the transaction(s) at issue; and (b) were generated not earlier than one year before or not later than one year after the transaction(s) at issue and discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the statement of claim.

4) Those portions of examination reports or similar reports following an examination or an inspection conducted by a state or federal agency or a self-regulatory organization that focused on the Associated Person(s) or the transaction(s) at issue or that discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the statement of claim.

\* \* \*

## **LIST 6**

### **FAILURE TO SUPERVISE**

#### **CUSTOMER**

No additional documents identified.

\* \* \*

## **LIST 7**

### **MISREPRESENTATION/OMISSIONS**

#### **FIRM/ASSOCIATED PERSON(S)**

Copies of all materials prepared or used by the firm/Associated Person(s) relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

\* \* \*

## **LIST 8**

### **MISREPRESENTATION/OMISSIONS**

#### **CUSTOMER**

- 1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.
- 2) Copy of the customer's resume.
- 3) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 2.

\* \* \*

## **LIST 9**

### **NEGLIGENCE/BREACH OF FIDUCIARY DUTY**

#### **FIRM/ASSOCIATED PERSON(S)**

Copies of all materials prepared or used by the firm/Associated Person(s) relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

## **LIST 10**

### **NEGLIGENCE/BREACH OF FIDUCIARY DUTY**

#### **CUSTOMER**

- 1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.
- 2) Copy of the customer's resume.

3) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 2.

\* \* \*

## **LIST 11**

### **UNAUTHORIZED TRADING**

#### **FIRM/ASSOCIATED PERSON(S)**

- 1) Order tickets for the customer's transaction(s) at issue.
- 2) Copies of all telephone records, including telephone logs, evidencing telephone contact between the customer and the firm/Associated Person(s).
- 3) All documents relied upon by the firm/Associated Person(s) to establish that the customer authorized the transaction(s) at issue.

## **LIST 12**

### **UNAUTHORIZED TRADING**

#### **CUSTOMER**

- 1) Copies of all telephone records, including telephone logs, evidencing telephone contact between the customer and the firm/Associated Person(s).
- 2) All documents relied upon by the customer to show that the transaction(s) at issue was made without his/her knowledge or consent.

\* \* \*

## **LIST 13**

### **UNSUITABILITY**

#### **FIRM/ASSOCIATED PERSON(S)**

- 1) Copies of all materials prepared, used, or reviewed by the firm/Associated Person(s) related to the transactions or products at issue, including but not limited to research reports, prospectuses, other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents. Upon

further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

2) Documents sufficient to describe or set forth the basis upon which the Associated Person(s) was compensated in any manner during the years in which the transaction(s) or occurrence(s) in question occurred, including, but not limited to: a) any bonus or incentive program; and b) all compensation and commission schedules showing compensation received or to be received based upon volume, type of product sold, nature of trade (e.g., agency v. principal), etc.

## **LIST 14**

### **UNSUITABILITY**

#### **CUSTOMER**

1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.

2) Written documents relied upon by the customer in making the investment decision(s) at issue.

3) Copy of the customer's resume.

4) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 3.

## Discovery Guide for Old Code Cases

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For FINRA arbitrations, the Discovery Guide supplements the section in the Securities Industry Conference on Arbitration (SICA) publication entitled *The Arbitrator's Manual*, and captioned "Pre-hearing Conference," regarding public customer cases.

### **I. The Need for New Discovery Procedures**

Discovery disputes have become more numerous and time consuming. The same discovery issues repeatedly arise. To minimize discovery disruptions, FINRA Dispute Resolution has developed two initiatives to standardize the discovery process: early appointment of arbitrators to conduct an initial Pre-hearing conference and document production lists (Document Production Lists).

No requirement under the Discovery Guide supersedes any record-retention requirement of any federal or state law or regulation or any rule of a self-regulatory organization.

The Discovery Guide and Document Production Lists are designed for customer disputes with firms and Associated Person(s).<sup>1</sup> The Discovery Guide also discusses additional discovery requests, information requests, depositions, admissibility of evidence, and sanctions. The Discovery Guide, including the Document Production Lists, will function as a guide for the parties and the arbitrators; it is not intended to remove flexibility from arbitrators or parties in a given case. For instance, arbitrators can order the production of documents not provided for by the Document Production Lists or alter the production schedule described in the Discovery Guide. Further, nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide. In fact, FINRA Dispute Resolution encourages the parties to agree to the voluntary exchange of documents and information and to stipulate to various matters. The fact that an item appears on a Document Production List does not shift the burden of establishing or defending any aspect of a claim.

### **II. Document Production Lists**

FINRA Dispute Resolution will provide the parties with Document Production Lists (attached to the Discovery Guide) at the time it serves the statement of claim in customer cases. The arbitrators and the parties should consider the documents described in Document Production Lists 1 and 2 presumptively discoverable. Absent a written objection, documents on Document Production Lists 1 and 2 shall be exchanged by the parties within the time frames set forth below.

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<sup>1</sup> FINRA Dispute Resolution may develop separate Document Production Lists for intra-industry disputes.

The arbitrators and parties also should consider the additional documents identified in Document Production Lists 3 through 14, respectively, discoverable, as indicated, for cases alleging the following causes of action: churning, failure to supervise, misrepresentation/omission, negligence/breach of fiduciary duty, unauthorized trading, and unsuitability. For the general document production and for each of these causes of action, there are separate Document Production Lists for firms/Associated Person(s), and for customers.

Rule 10321 provides that the parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration process. As noted, nothing in the Discovery Guide precludes parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide.

#### **A. Time Frames for Document Production and Objections**

The parties should produce all required documents listed in the applicable Document Production Lists not later than 30 days<sup>2</sup> from the date the answer is due or filed, whichever is earlier. If a party redacts any portion of a document prior to production, the redacted pages (or ranges of pages) shall be labeled “redacted.” A party may object to the production of any document, which would include an objection based upon an established privilege such as the attorney-client privilege. If any party objects to the production of any document listed in the relevant Document Production Lists, the party must file written objections with FINRA Dispute Resolution and serve all parties not later than 30 days following the date the answer is due or filed, whichever is earlier. Objections should set forth the reasons the party objects to producing the documents. An objection to the production of a document or a category of documents is not an acceptable reason to delay the production of any document not covered by the objection. A response to an objection should be served on all parties within 10 days from service of the written objections. Objections and responses should be filed with FINRA Dispute Resolution at the time they are served on the parties. The arbitrator(s) shall then determine whether the objecting party has overcome the presumption based upon sufficient reason(s).

#### **B. Confidentiality<sup>3</sup>**

If a party objects to document production on grounds of privacy or confidentiality, the arbitrator(s) or one of the parties may suggest a stipulation between the parties that the document(s) in question will not be disclosed or used in any manner outside of the arbitration of the particular case, or the arbitrator(s) may issue a confidentiality order. The arbitrator(s) shall not issue an order or use a confidentiality agreement to require parties to produce documents otherwise subject to an established privilege. Objections to the production of documents, based on an established privilege, should be raised in accordance with the time frame for objections set forth above.

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<sup>2</sup> All time periods referenced herein are calendar days.

<sup>3</sup> Section II.B. is also applicable to additional discovery requests and information requests (see Sections IV and V).

### **C. Affirmation in the Event that there Are No Responsive Documents or Information**

If a party responds that no responsive information or documents exist, the customer or the appropriate person in the brokerage firm who has personal knowledge (i.e., the person who has conducted a physical search), upon the request of the requesting party, must: 1) state in writing that he/she conducted a good faith search for the requested information or documents; 2) describe the extent of the search; and 3) state that, based on the search, no such information or documents exist.

### **III. The Initial Pre-hearing Conference**

To maximize the efficient administration of a case by the arbitration panel,<sup>4</sup> FINRA Dispute Resolution staff will schedule an initial Pre-hearing conference in which the arbitrator(s) usually participates.<sup>5</sup> The initial Pre-hearing conference gives the arbitrator(s) and the parties an opportunity to organize the management of the case, set a discovery cut-off date,<sup>6</sup> identify dispositive or other potential motions, schedule hearing dates, determine whether mediation is desirable, and resolve any other preliminary issues. During the initial Pre-hearing conference, the arbitrator(s) and the parties should schedule hearing dates for the earliest available time, consistent with the parties' need to prepare adequately for the hearing.

Prior to the Initial Pre-hearing Conference, each arbitrator should become familiar with the claims and defenses asserted in the pleadings filed by the parties. At the initial Pre-hearing conference, the arbitrator(s) should order time limits for discovery that will allow the scheduling of hearing dates within a reasonable time and address all outstanding discovery disputes. If the exchange of properly requested documents has not occurred, the arbitrator(s) should order the production of all required documents, including those outlined in the Document Production Lists (see section II above), within 30 days following the conference.

### **IV. Additional Discovery Requests**

The parties may request documents in addition to those identified in the Document Production Lists pursuant to Rule 10321(b). Unless a longer period is allowed by the

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<sup>4</sup> The panel consists of three arbitrators in most cases. Claims between \$25,000.01 and \$100,000 will proceed with a single arbitrator unless the parties agree in writing to three arbitrators.. Claims of \$25,000 or less are decided by a single arbitrator, generally on the pleadings.

<sup>5</sup> In some instances, the parties may opt out of the initial Pre-hearing conference. To opt out, parties must supply the following information to FINRA Dispute Resolution by the specified deadline:

- 1) a minimum of four sets of mutually agreeable hearing dates;
- 2) a discovery cut-off date;
- 3) a list of all anticipated motions with the motion due dates, opposition due dates, and reply due dates provided;
- 4) a minimum of four dates and times for any proposed Pre-hearing conferences to hear motions; and
- 5) a determination whether briefs will be submitted and, if so, the due date for submission.

<sup>6</sup> FINRA Dispute Resolution recommends that the panel set a cut-off date during the initial Pre-hearing conference for service of discovery requests, giving due consideration to time frames that permit timely resolution of objections and disputes prior to the scheduled exchange of hearing exhibits pursuant to the FINRA Code of Arbitration Procedure.

requesting party, requests should be satisfied or objected to within 30 days from the date of service of the document request. A response to an objection should be served on all parties within 10 days from service of the written objections. Requests, objections, and responses should be filed with FINRA Dispute Resolution at the time they are served on the parties.

A party may move to compel production of documents when the adverse party (a) refuses to produce such documents or (b) offers only to produce alternative documents that are unacceptable to the requesting party. FINRA Dispute Resolution will provide the Chairperson of the panel with the motion, opposition, and reply, along with the underlying discovery documents the parties have attached to their pleadings. The Chairperson should determine whether to decide the matter on the papers or to convene a Pre-hearing conference (usually via telephone). In considering motions to compel, particularly where non-production is based upon an argument asserting an established privilege, such as the attorney client privilege, the arbitrator(s) should always give consideration to the arguments set forth by both sides, particularly as to the relevancy of the documents or information. The arbitrator(s) should carefully consider such motions, regardless of whether the item requested is on any of the Document Production Lists. If in doubt, the arbitrator(s) should ask the requesting party what specific documents it is trying to obtain and what it seeks to prove with the documents.

## **V. Information Requests**

Like requests for documents, parties may serve requests for information pursuant to Rule 10321(b). Requests for information are generally limited to identification of individuals, entities, and time periods related to the dispute; such requests should be reasonable in number and not require exhaustive answers or fact finding. Standard interrogatories, as utilized in state and federal courts, are generally not permitted in arbitration.

Unless a longer period is allowed by the requesting party, information requests should be satisfied or objected to within 30 days from the date of service of the requests. A response to an objection should be served on all parties within 10 days from service of the written objections. Requests, objections, and responses should be filed with FINRA Dispute Resolution at the time they are served on the parties.

A party may move to compel responses to requests for information that the adverse party refuses to provide. FINRA Dispute Resolution will provide the Chairperson of the panel with the motion, opposition, and reply, along with the underlying discovery documents the parties have attached to their pleadings. The Chairperson should determine whether to decide the matter on the papers or to convene a Pre-hearing conference (usually via telephone).

## **VI. Depositions**

Depositions are strongly discouraged in arbitration. Upon request of a party, the arbitrator(s) may permit depositions, but only under very limited circumstances, such as: 1) to preserve the testimony of ill or dying witnesses; 2) to accommodate essential witnesses who are unable or unwilling to travel long distances for a hearing and may not otherwise be required to participate in the hearing; 3) to expedite large or complex cases; and 4) to address unusual situations where the arbitrator(s) determines that circumstances warrant departure from the general rule. Balanced against the authority of the arbitrator(s) to permit depositions, however, is the traditional reservation about the overuse of depositions in arbitration.

## **VII. Admissibility**

Production of documents in discovery does NOT create a presumption that the documents are admissible at the hearing. A party may state objections to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

## **VIII. Sanctions**

The arbitration panel should issue sanctions if any party fails to produce documents or information required by a written order, unless the panel<sup>7</sup> finds that there is “substantial justification” for the failure to produce the documents or information. The panel has wide discretion to address noncompliance with discovery orders. For example, the panel may make an adverse inference against a party or assess adjournment fees, forum fees, costs and expenses, and/or attorneys’ fees caused by noncompliance. In extraordinary cases, the panel may initiate a disciplinary referral against a registered entity or person who is a party or witness in the proceeding, or may, pursuant to Rule 10305(b), dismiss a claim, defense, or proceeding with prejudice as a sanction for intentional failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.

If the panel determines to assess monetary penalties, they should instruct parties to make them payable to one or more parties. Monetary penalties should not be made payable to FINRA, as FINRA is not a party to the arbitration.

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<sup>7</sup> As with other rulings, an arbitration panel’s ruling need only be by majority vote; it need not be unanimous.

## Document Production Lists

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### LIST 1

#### Documents To Be Produced In All Customer Cases<sup>8</sup>

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##### **Firm/Associated Person(s)**

- 1) All agreements with the customer, including, but not limited to, account opening documents, cash, margin, and option agreements, trading authorizations, powers of attorney, or discretionary authorization agreements, and new account forms.
- 2) All account statements for the customer's account(s) during the time period and/or relating to the transaction(s) at issue.
- 3) All confirmations for the customer's transaction(s) at issue. As an alternative, the firm/Associated Person(s) should ascertain from the claimant and produce those confirmations that are at issue and are not within claimant's possession, custody, or control.
- 4) All "holding (posting) pages" for the customer's account(s) at issue or, if not available, any electronic equivalent.
- 5) All correspondence between the customer and the firm/Associated Person(s) relating to the transaction(s) at issue.
- 6) All notes by the firm/Associated Person(s) or on his/her behalf, including entries in any diary or calendar, relating to the customer's account(s) at issue.
- 7) All recordings and notes of telephone calls or conversations about the customer's account(s) at issue that occurred between the Associated Person(s) and the customer (and any person purporting to act on behalf of the customer), and/or between the firm and the Associated Person(s).
- 8) All Forms RE-3, U-4, and U-5, including all amendments, all customer complaints identified in such forms, and all customer complaints of a similar nature against the Associated Person(s) handling the account(s) at issue.
- 9) All sections of the firm's Compliance Manual(s) related to the claims alleged in the statement of claim, including any separate or supplemental manuals governing the duties and responsibilities of the Associated Person(s) and supervisors, any bulletins (or similar notices) issued by the compliance department, and the entire table of contents and index to each such Manual.

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<sup>8</sup> Only named parties must produce documents pursuant to the guidelines set forth herein. However, non-parties may be required to produce documents pursuant to a subpoena or an arbitration panel order to direct the production of documents (see Rule 10322). In addition, the arbitration Chairperson may use the Document Production Lists as guidance for discovery issues involving non-parties.

- 10) All analyses and reconciliations of the customer's account(s) during the time period and/or relating to the transaction(s) at issue.
- 11) All records of the firm/Associated Person(s) relating to the customer's account(s) at issue, such as, but not limited to, internal reviews and exception and activity reports, which reference the customer's account(s) at issue.
- 12) Records of disciplinary action taken against the Associated Person(s) by any regulator or employer for all sales practices or conduct similar to the conduct alleged to be at issue.

## **LIST 2**

### **Documents To Be Produced In All Customer Cases**

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#### **Customer**

- 1) All customer and customer-owned business (including partnership or corporate) federal income tax returns, limited to pages 1 and 2 of Form 1040, Schedules B, D, and E, or the equivalent for any other type of return, for the three years prior to the first transaction at issue in the Statement of Claim through the date the Statement of Claim was filed.
- 2) Financial statements or similar statements of the customer's assets, liabilities, and/or net worth for the period(s) covering the three years prior to the first transaction at issue in the Statement of Claim through the date the Statement of Claim was filed.
- 3) Copies of all documents the customer received from the firm/Associated Person(s) and from any entities in which the customer invested through the firm/Associated Person(s), including monthly statements, opening account forms, confirmations, prospectuses, annual and periodic reports, and correspondence.
- 4) Account statements and confirmations for accounts maintained at securities firms other than the respondent firm for the three years prior to the first transaction at issue in the Statement of Claim through the date the Statement of Claim was filed.
- 5) All agreements, forms, information, or documents relating to the account(s) at issue signed by or provided by the customer to the firm/Associated Person(s).
- 6) All account analyses and reconciliations prepared by or for the customer relating to the account(s) at issue.
- 7) All notes, including entries in diaries or calendars, relating to the account(s) at issue.
- 8) All recordings and notes of telephone calls or conversations about the customer's account(s) at issue that occurred between the Associated Person(s) and the customer (and any person purporting to act on behalf of the customer).

- 9) All correspondence between the customer (and any person acting on behalf of the customer) and the firm/Associated Person(s) relating to the account(s) at issue.
- 10) Previously prepared written statements by persons with knowledge of the facts and circumstances related to the account(s) at issue, including those by accountants, tax advisors, financial planners, other Associated Person(s), and any other third party.
- 11) All prior complaints by or on behalf of the customer involving securities matters and the firm's/Associated Person(s)' response(s).
- 12) Complaints/Statements of Claim and Answers filed in all civil actions involving securities matters and securities arbitration proceedings in which the customer has been a party, and all final decisions and Awards entered in these matters.
- 13) All documents showing action taken by the customer to limit losses in the transaction(s) at issue.

### **LIST 3**

#### **Churning**

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#### **Firm/Associated Person(s)**

- 1) All commission runs relating to the customer's account(s) at issue or, in the alternative, a consolidated commission report relating to the customer's account(s) at issue.
- 2) All documents reflecting compensation of any kind, including commissions, from all sources generated by the Associated Person(s) assigned to the customer's account(s) for the two months preceding through the two months following the transaction(s) at issue, or up to 12 months, whichever is longer. The firm may redact all information identifying customers who are not parties to the action, except that the firm/Associated Person(s) shall provide at least the last four digits of the non-party customer account number for each transaction.
- 3) Documents sufficient to describe or set forth the basis upon which the Associated Person(s) was compensated during the years in which the transaction(s) or occurrence(s) in question occurred, including: a) any bonus or incentive program; and b) all compensation and commission schedules showing compensation received or to be received based upon volume, type of product sold, nature of trade (e.g., agency v. principal), etc.

### **LIST 4**

#### **Churning**

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## **Customer**

No additional documents identified.

### **LIST 5**

#### **Failure To Supervise**

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##### **Firm/Associated Person(s)**

- 1) All commission runs and other reports showing compensation of any kind relating to the customer's account(s) at issue or, in the alternative, a consolidated commission report relating to the customer's account(s) at issue.
- 2) All exception reports and supervisory activity reviews relating to the Associated Person(s) and/or the customer's account(s) that were generated not earlier than one year before or not later than one year after the transaction(s) at issue, and all other documents reflecting supervision of the Associated Person(s) and the customer's account(s) at issue.
- 3) Those portions of internal audit reports at the branch in which the customer maintained his/her account(s) that: (a) focused on the Associated Person(s) or the transaction(s) at issue; and (b) were generated not earlier than one year before or not later than one year after the transaction(s) at issue and discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the Statement of Claim.
- 4) Those portions of examination reports or similar reports following an examination or an inspection conducted by a state or federal agency or a self-regulatory organization that focused on the Associated Person(s) or the transaction(s) at issue or that discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the Statement of Claim.

### **LIST 6**

#### **Failure To Supervise**

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## **Customer**

No additional documents identified.

### **LIST 7**

#### **Misrepresentation/Omissions**

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## **Firm/Associated Person(s)**

Copies of all materials prepared or used by the firm/Associated Person(s) relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being “for internal use only,” and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

## **LIST 8**

### **Misrepresentation/Omissions**

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#### **Customer**

- 1) Documents sufficient to show the customer’s ownership in or control over any business entity, including general and limited partnerships and closely held corporations.
- 2) Copy of the customer’s resume.
- 3) Documents sufficient to show the customer’s complete educational and employment background or, in the alternative, a description of the customer’s educational and employment background if not set forth in a resume produced under item 2.

## **LIST 9**

### **Negligence/Breach Of Fiduciary Duty**

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## **Firm/Associated Person(s)**

Copies of all materials prepared or used by the firm/Associated Person(s) relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being “for internal use only,” and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

## **LIST 10**

### **Negligence/Breach Of Fiduciary Duty**

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#### **Customer**

- 1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.
- 2) Copy of the customer's resume.
- 3) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 2.

#### **LIST 11**

##### **Unauthorized Trading**

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#### **Firm/Associated Person(s)**

- 1) Order tickets for the customer's transaction(s) at issue.
- 2) Copies of all telephone records, including telephone logs, evidencing telephone contact between the customer and the firm/Associated Person(s).
- 3) All documents relied upon by the firm/Associated Person(s) to establish that the customer authorized the transaction(s) at issue.

#### **LIST 12**

##### **Unauthorized Trading**

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#### **Customer**

- 1) Copies of all telephone records, including telephone logs, evidencing telephone contact between the customer and the firm/Associated Person(s).
- 2) All documents relied upon by the customer to show that the transaction(s) at issue was made without his/her knowledge or consent.

#### **LIST 13**

##### **Unsuitability**

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#### **Firm/Associated Person(s)**

- 1) Copies of all materials prepared, used, or reviewed by the firm/Associated Person(s) related to the transactions or products at issue, including but not limited to research reports, prospectuses, other offering documents, including documents intended or identified as being “for internal use only,” and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.
- 2) Documents sufficient to describe or set forth the basis upon which the Associated Person(s) was compensated in any manner during the years in which the transaction(s) or occurrence(s) in question occurred, including, but not limited to: a) any bonus or incentive program; and b) all compensation and commission schedules showing compensation received or to be received based upon volume, type of product sold, nature of trade (e.g., agency v. principal), etc.

#### **LIST 14**

#### **Unsuitability**

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##### **Customer**

- 1) Documents sufficient to show the customer’s ownership in or control over any business entity, including general and limited partnerships and closely held corporations.
- 2) Written documents relied upon by the customer in making the investment decision(s) at issue.
- 3) Copy of the customer’s resume.
- 4) Documents sufficient to show the customer’s complete educational and employment background or, in the alternative, a description of the customer’s educational and employment background if not set forth in a resume produced under item 3.

## **Conduct a Pre-hearing Conference**

Use this checklist to ensure that you have covered all the necessary steps when conducting any Pre-hearing conference. You can then refer to this document if you need to reference the specifics of a conference. The Pre-hearing conference is usually handled with a telephone conference call initiated by FINRA Dispute Resolution staff.

### **Mechanics of a Pre-hearing Conference**

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#### **Preliminary Introductions**

- Identify the participants (parties, attorneys, other individuals listening to the call).
- If necessary, ask the participants to identify themselves each time before they speak.
- Read the case name and number.
- State that you (or the panel) are a neutral arbitrator and are not an employee of FINRA.
- Ask the parties to confirm their acceptance of you (or the panel) as the arbitrator for the Pre-hearing conference.

#### **Issues**

- Ask the party requesting the Pre-hearing conference to explain the problem.
- Ask the other party for its side of the matter.
- The moving party may then respond.
- Arbitrators can ask questions as necessary to identify and clarify the issues. Provide both parties with an opportunity to respond.

#### **Rulings**

- If it is a discovery conference, be specific and issue a reasonable timetable for compliance, including dates and places that the information or documents will be exchanged.
- Confirm your ruling with the parties (make sure all parties understand it fully).

- Do not allow parties to further debate the issue.
- Document your ruling in a Pre-hearing order (you may request party's counsel to submit a draft order for adoption or modification).
- Inform the parties of the maximum fee that the panel can assess for each Pre-hearing session.
- Ask whether there are any other issues prior to concluding the Pre-hearing.

### **Post-Hearing**

- If possible, send a copy of the typed order to FINRA Dispute Resolution by fax or electronic mail.

Remember, when multiple arbitrators participate in a conference call and the arbitrators want to confer-either during the conference or after the parties have finished-make sure all the parties are off the phone before discussing the issues. Verify with the conference operator that only arbitrators are connected to the call.

## Initial Pre-hearing Conference Information<sup>1</sup>

- Please alert FINRA Dispute Resolution staff of any changes to your contact phone number at least 24 hours before the scheduled Initial Pre-hearing Conference.
- FINRA Dispute Resolution's telecommunications provider will call all arbitrators and party representatives for the conference call. Please be available 5 minutes prior to the scheduled time for the conference call.
- FINRA Dispute Resolution staff may or may not attend the call. Please contact FINRA Dispute Resolution staff **prior** to the commencement of the call if you have any questions about the call.
- The chairperson should follow the Initial Pre-hearing Conference Script and complete the scheduling order during the conference. At the conclusion of the conference, the chairperson should sign the order on behalf of the panel and submit it to the FINRA Dispute Resolution staff member assigned to this matter.

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<sup>1</sup> Customer Code Rule 12500; Industry Code Rule 13500

## Initial Pre-hearing Conference Script



### INITIAL PRE-HEARING CONFERENCE Arbitrator's Script

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*[The script is in a regular typeface size. Information in brackets, in italics, is intended to clarify a point for the arbitrator and does not need to be read to the parties. The arbitration panel must be prepared for the conference call and have its schedule/calendar available. The conference operator may call you up to five minutes before or after the appointed time.]*

*The panel Chairperson has the responsibility to record the agreements reached during the conference on the Initial Prehearing Conference Scheduling Order (Scheduling Order). The Chairperson should submit the enclosed Scheduling Order to FINRA Dispute Resolution within 48 hours. The Chairperson may do so by electronic mail or facsimile transmission.*

*The Initial Prehearing Conference (IPHC) procedures set forth below should be followed, but may, in the panel's discretion, be varied to allow all parties a full and fair opportunity to present their respective positions. If a member of the FINRA Dispute Resolution staff participates in the conference, he or she should speak with the Chairperson before the IPHC to discuss their respective parts of the script. If a staff member is present, he/she will begin by introducing the arbitrators. If a staff member is not present, the Chairperson will perform this function.]*

A. **Introduction of the Arbitrators:** We will begin by briefly introducing ourselves.

Will the parties or their representatives introduce themselves and any others who are listening on their end of the line? Since we cannot see each other, please continue to identify yourself by name whenever you speak.

B. **Disclosures:** The panel will now make any disclosure that was not previously contained in the *Arbitrator Disclosure Report*. Arbitrators should confirm on the record their current classifications as either public or non-public arbitrators.

*[This shall include all disclosures previously made, including any disclosures resulting from the Arbitrator Disclosure Checklist, in addition to new disclosures. Arbitrators are reminded that any change in their classification as a public or non-public arbitrator must also be disclosed.]*

As Chairperson, I have the following disclosures *[convey disclosure, if appropriate]*.

- C. **Confirmation of the Panel:** Do the parties confirm acceptance of the panel's composition?
- D. **Oath of Arbitrators:** As Chairperson, I confirm that I have executed my oath and submitted it to FINRA Dispute Resolution. Have the other panelists submitted their oaths?

*[If not, inquire as to whether each arbitrator has read and reviewed FINRA's Temporary and Permanent Arbitrator Disqualification Criteria, the Arbitrator Disclosure Checklist, and the Arbitrator Disclosure Report. If an arbitrator has not received and reviewed the above items, he/she is not permitted to rule on any item on today's agenda. If he/she has reviewed the items, then administer the oath as follows:*

"Do you, as an arbitrator(s) selected to hear this matter in controversy, solemnly swear or affirm that you are not an employer of, employed by, or related by blood or marriage to any of the parties or witnesses whose names have been disclosed to you; that you have no direct or indirect interest in this matter; that you know of no existing or past financial, business, professional, family, or social relationship which would impair you from performing your duties; and that you will decide the controversy in a fair manner, and render a just award?

Do you swear or affirm that, based on FINRA Dispute Resolution's Temporary and Permanent Arbitrator Disqualification Criteria, you are not temporarily or permanently disqualified from being a FINRA arbitrator?

Having reviewed the *Arbitrator Disclosure Checklist*, do you certify that you have made all disclosures of items on the *Arbitrator Disclosure Checklist*?

Do you swear or affirm that your *Arbitrator Disclosure Report* is accurate, current, and up to date, and that you have no additional disclosures to make?"

*The Chairperson should make sure that the oaths are executed in writing and given to the FINRA Dispute Resolution staff for completion of the case file.]*

- E. **Pleadings:** We acknowledge and identify that the following pleadings have been filed by the parties and read by the panel: *[list documents]*.  
*[If one of the parties has failed to submit a signed Submission Agreement, please advise the parties of the following:]*

Any party that has not yet filed a Submission Agreement or otherwise objected to jurisdiction must do so within 30 days or may be subject to sanctions as provided in the *Codes of Arbitration Procedure (Codes)*.

- F. **Mediation:** We want to remind the parties that FINRA Dispute Resolution has a successful, voluntary mediation program. Mediation is an informal process in which a mediator facilitates negotiations between disputing parties. The mediator's role is to help the parties find a mutually acceptable solution to the dispute. Parties who mediate at this forum resolve four out of every five cases.

FINRA Dispute Resolution mediators are trained and experienced in helping parties resolve their disputes. In addition, many are experienced arbitrators, attorneys, and securities industry professionals knowledgeable in employment and securities issues.

The mediation process is designed to proceed on a parallel track with this arbitration, so it does not interfere with the scheduled hearing dates or other matters agreed to during the course of this prehearing conference. If you are interested in mediation, contact the staff member assigned to this case for more information.

*Please select either G or H below, as appropriate, to schedule hearing dates.*

- G. **Selection of Arbitration Hearing Dates (Non-Expedited Cases):** For cases proceeding under the expedited procedures for senior or seriously ill parties, see Section I below. *[Now schedule the arbitration dates. During the IPHC, dates are to be set regardless of a party's failure to prepare for the selection of any of the dates.]*

We begin with the scheduling of hearing dates and we remind the parties that it is better to set aside extra dates to avoid delay in the arbitration process. Expeditious resolution of disputes is one of the goals of arbitration. Therefore, the commencement of evidentiary hearings within nine months or less after this conference is the goal of FINRA and the arbitrators. It is understood that there may be times when this is not feasible. However, the commencement of hearings more than nine months after this conference should be the exception.

The arbitrators promise to avoid causing postponements, absent a genuine emergency. We also pledge to be prepared and on time for all conferences and hearings. In exchange, we expect the parties and counsel to avoid unnecessary postponements, to be prepared, and to be on time, for all conferences and hearings.

Have the parties agreed to hearing dates for consideration by the panel?

1. *[If yes, discuss the dates with the panel.]*
2. *[If no, find out how many days will be required. Continue by requesting the parties' availability for the hearings, on a month-by-month basis, until sufficient dates have been selected.]*

H. **Selection of Arbitration Hearing Dates (Cases Proceeding Under the Expedited Procedures for Senior or Seriously Ill Parties Program):** *[Now schedule the arbitration dates. During the IPHC, dates are to be set regardless of a party's failure to prepare for the selection of any of the dates.]*

We have been informed that this is an expedited case involving senior or seriously ill parties. FINRA's procedures call for the scheduling of hearing dates that will expedite the process, but still provide a reasonable amount of time for case preparation. We remind the parties that it is better to set aside extra dates to avoid delay in the arbitration process.

The arbitrators promise to avoid causing postponements, absent a genuine emergency. We also pledge to be prepared and on time for all conferences and hearings. In exchange, we expect the parties and counsel to avoid unnecessary postponements, to be prepared, and to be on time, for all conferences and hearings.

Have the parties agreed to hearing dates for consideration by the panel?

1. *[If yes, discuss the dates with the panel.]*
2. *[If no, find out how many days will be required. Continue by requesting the parties' availability for the hearings, on a month-by-month basis, until sufficient dates have been selected.]*

I. **Discovery:** The arbitrators wish to remind the parties that FINRA rules require you to fully cooperate with one another with respect to the exchange of documents and information.

*[The following paragraph is for cases in which counsel represents all parties only.]*

We want to remind the parties about FINRA's successful, voluntary Discovery Arbitrator Pilot program. A discovery arbitrator is a lawyer with experience in discovery matters that decides all discovery issues. The discovery arbitrator does not sit on the panel that decides the case. Once the hearing starts, the discovery arbitrator's authority ends. As a voluntary pilot, only parties that stipulate to use the discovery arbitrator may participate. Parties who are interested in the pilot should contact the FINRA staff member assigned to this case or visit FINRA's Web Site at [www.finra.org](http://www.finra.org).

*[The following two paragraphs are for public customer cases only.]*

We would like to confirm that all parties have received a copy of the *Discovery Guide* available for use in customer arbitrations. Has everyone received a copy? *[If anyone has not received a copy, advise the FINRA Dispute Resolution staff to send a copy to the party who has not received the Guide.]*

The *Discovery Guide* provides guidance regarding documents that are presumed discoverable. With few exceptions, these documents should be exchanged automatically without the intervention of the panel.

*[The preceding two paragraphs are for public customer cases only.]*

The arbitrators wish to remind the parties that the panel will not tolerate any abuse of the discovery process. Discovery abuse undermines the integrity and fairness of the FINRA forum. If necessary, the panel will consider a full range of sanctions in order to address discovery abuse by any party.

We would like to hear from the parties regarding the status and progress of their discovery proceedings to date.

Do the parties wish to stipulate to any deadlines or cutoff dates with respect to the filing of discovery requests and motions? *[If so, please memorialize the parties' agreement in the IPHC Scheduling Order.]*

Do the parties wish to schedule a tentative telephonic hearing with the Chairperson to address unresolved discovery disputes? *[If so, please memorialize the date and time in the IPHC Scheduling Order.]*

*[If the parties are going to submit any additional documents regarding discovery for consideration by the panel, they should do so at least 10 days in advance of the scheduled discovery conference.]*

Please be advised that arbitrators will be compensated for decisions rendered on discovery-related motions on the papers. Each arbitrator that participates in deciding the discovery-related motion will receive \$200. A single motion includes the motion and any opposition/replies sent in response to that motion.

The panel will allocate the cost of the honoraria to the parties at the conclusion of the case. FINRA rules also provide a \$200 honorarium for arbitrators that decide contested subpoena requests. The honorarium shall be paid on a per case basis.

- J. **Motions:** *[Under Rule 12503/13503, written motions, other than Motions to Dismiss, must be served at least 20 days before a scheduled evidentiary hearing, unless the panel decides otherwise. Parties have 10 days to respond to a motion, unless the*

*moving party agrees to an extension or the Director or panel decides otherwise. Motions and responses must be served directly on each other party at the same time and in the same manner, and must be filed with the Director, with additional copies for each arbitrator.*

*Motions to Dismiss, governed by Rules 12504/13504 and 12206/13206, have different submission and response deadlines.]*

FINRA rules allow parties to make prehearing motions in writing or orally during any hearing session. Note that there are specific rules for motions to dismiss that differ from the general motion practice rules.

Do the parties intend to file any prehearing motions? If so, please identify which motions you intend to file.

*[If the parties indicate that they intend to file prehearing motions, the panel should set up a briefing schedule for the motions. The briefing schedule for all motions, including Motions to Dismiss, should be memorialized in the Initial Pre-hearing Conference Scheduling Order. If applicable, the panel should specify in the Order the different time frames for a Motion to Dismiss.]*

- K. **Canceled Conferences:** Parties are instructed to notify FINRA Dispute Resolution when scheduled prehearing conferences are no longer needed. FINRA Dispute Resolution should be notified at least 24 hours prior to the scheduled conference.
- L. **Legal Issues:** Are there any unique legal issues that would warrant the filing of briefs in this case?

*[If so, set deadlines for the submission of the briefs and request that the parties attach all cases cited. The briefs should be simultaneously exchanged by the parties and submitted to FINRA Dispute Resolution.]*

- M. **Direct Party and Arbitrator Communication:** Parties and arbitrators may engage in voluntary direct communication as provided under the Codes. All named parties must be represented by counsel in order to participate under the Rule. All named parties must agree to forward correspondence directly to the arbitration panel. If all parties agree to proceed under the Rule, they may send only those documents specifically outlined in the Initial Pre-hearing Conference Scheduling Order (Order), which the arbitration panel will issue following this conference call. Any and all other correspondence, motions, briefs, etc., not identified in the Order, must be forwarded to the FINRA Dispute Resolution case administrator with the appropriate number of copies for FINRA Dispute Resolution to distribute to the arbitration panel. If the parties agree to this method of communication, the parties must also send copies of any motion, response, or brief noted in the Order to their opposing counsel and the FINRA Dispute Resolution case administrator on the same day and by the same method of transmission (e.g., facsimile, overnight courier, electronic mail, or U.S.

mail). Communication by electronic mail or facsimile is permissible only if all parties and arbitrators have such capability and agree to this method of communication during the Initial Pre-hearing Conference. Parties and arbitrators may limit the number of pages that can be transmitted by fax. Parties must not transmit documents that exceed 15 pages to FINRA Dispute Resolution by fax. Parties must transmit such documents to FINRA Dispute Resolution only by overnight courier or U.S. mail. If all parties and arbitrators agree to use electronic mail or facsimile transmissions, all electronic mails or facsimile transmissions should include the appropriate confidentiality message. The parties are prohibited from direct verbal communication with any member of the panel except in the presence of all parties or representatives. Do the parties agree to this method of communication with the arbitrators?

*[If the parties agree to this process, the Chairperson should record the parties' agreement in the Order. The Chairperson should ensure that all correspondence that should be transmitted directly to the panel is listed in the Order. If all parties and arbitrators agree to use electronic mail or facsimile, the Order should reflect all parties' and all arbitrators' electronic mail addresses or fax numbers. The Order should also indicate the appropriate confidentiality message that all parties and arbitrators are encouraged to use in their electronic mail messages and facsimile transmissions.]*

- N. **Party and Arbitrator Communication:** We remind the parties that they may not communicate with any member of the panel except in the presence of all parties or representatives. All correspondence and pleadings must be sent to the FINRA Dispute Resolution staff for distribution to the panel, unless all parties and arbitrators agree to the direct voluntary communication as provided in the Codes.
- O. **Witness Lists:** The Codes of Arbitration Procedure provide for, among other things, the parties' obligation to exchange witness lists at least twenty (20) calendar days prior to the first scheduled hearing date. The panel requests that, concurrently with the parties' timely exchange of the witness lists, the parties send copies of the witness lists to FINRA for forwarding to the panel. The panel's timely receipt of the witness list will enable the arbitrators to review the witness list in advance of the hearing to determine if the appearance of a witness identified in the witness list may create a potential conflict with an arbitrator or otherwise trigger additional disclosures by an arbitrator. To assist the arbitrators in making these conflict checks, the parties should list the business affiliation of each witness, or other descriptive information.
- P. **Other Matters:** Are there any other matters that need to be addressed before the hearing in this proceeding?

*[If a party requests to hold the hearing in an alternative hearing location, i.e. not in one of the 73 designated hearing locations, you should advise the parties that they will be responsible for paying the arbitrators' travel and expenses. Also, if the hearing was originally scheduled to take place in one of Dispute Resolution's four*

*regional offices (Boca Raton, Chicago, Los Angeles, or New York), and the panelists grant a party's request to proceed in an alternative hearing location, please advise the parties that they are responsible for securing and paying for the conference room rental and tape recording costs.]*

- Q. **Conclusion:** As Chairperson, I am submitting a Scheduling Order that confirms what we've agreed to here today. FINRA Dispute Resolution will send a copy of this order to all parties or their representatives. As I read the order, tell me if any statement is incorrect.

*[Read the dates and information you recorded in the Order.]*

Please do not expect the staff to send letters reminding you of your deadlines. The deadlines are your responsibility.

Parties shall submit the appropriate number of copies to staff and shall simultaneously serve one another. Parties are reminded again to use the same form of service with one another as used when filing with FINRA Dispute Resolution, and to do so simultaneously.

Thank you for your participation.

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**Executive Session:**

*Reconnect with a Verizon operator pursuant to the instructions you received at the outset of the call. Confirm with the operator that only the arbitrators are on the line.*

**Assessment of IPHC:** *Discuss and decide whether and how the fee for the IPHC shall be apportioned (who bears the cost) if the matter settles without a hearing.*

***NOTE: Outstanding forum fees that have not yet been resolved or assessed by the panel, the parties or another Rule will be divided equally among the parties when settling parties fail to allocate fees in their settlement agreements.***



## Initial Pre-hearing Conference Scheduling Order

### INITIAL PRE-HEARING CONFERENCE

#### Scheduling Order

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### FINRA DISPUTE RESOLUTION

INITIAL PRE-HEARING CONFERENCE  
SCHEDULING ORDER IN THE MATTER OF:

CLAIMANT(S): \_\_\_\_\_

RESPONDENT(S): \_\_\_\_\_

CASE #: \_\_\_\_\_

An initial Pre-hearing telephonic conference was held in the above captioned matter on \_\_\_\_\_ (month/date/year). Participating in the hearing were: [list the attending individuals]

Chairperson: \_\_\_\_\_

Panelist: \_\_\_\_\_

Panelist: \_\_\_\_\_

Claimant's Representative: \_\_\_\_\_

#1 Respondent's Representative: \_\_\_\_\_

#2 Respondent's Representative: \_\_\_\_\_

FINRA Dispute Resolution Staff: \_\_\_\_\_

The following was agreed upon during the conference and is now entered as the Initial Pre-hearing Conference Scheduling Order:

1. The parties accepted the panel's composition. (If not, please explain.)

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2. The first scheduled hearing session in this matter will begin at: \_\_\_\_\_ (time)  
on \_\_\_\_\_ (month/date/year). The following dates have also been reserved for  
this hearing: \_\_\_\_\_

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3. Discovery cut off date (last day to serve discovery requests) \_\_\_\_\_

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Responses to Discovery requests due \_\_\_\_\_

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4. The Chairperson and parties have tentatively reserved \_\_\_\_\_  
(month/day/year) at \_\_\_\_\_ (time) for a Pre-hearing date to resolve discovery  
matters \_\_\_\_\_

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Discovery Motions due (please specify date): \_\_\_\_\_

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Opposition due (please check the applicable box):

☐ Opposition to Discovery Motions due within ten (10) days of receipt of the  
Motion, in accordance with the applicable Code of Arbitration Procedure for  
Customer or Industry Disputes;

or

☐ Opposition to Discovery Motions due (please specify date and type of Motion  
[if known]):

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Reply Brief, if permitted, due (please specify date):

\_\_\_\_\_  
(please allow FINRA at least one week to forward the pleadings to the Panel prior to any conference call) Method of Delivery (for cases involving Direct Communication):

\_\_\_\_\_  
5. The arbitrators and parties have tentatively reserved \_\_\_\_\_  
(month/day/year) at \_\_\_\_\_ (time) for a Pre-hearing date to  
resolve \_\_\_\_\_

\_\_\_\_\_  
Motions due\* (Please specify date): \_\_\_\_\_

\_\_\_\_\_  
Opposition due\* (please check the applicable box):

☐ Opposition to Motions due within ten (10) days of receipt of the Motion, in  
accordance with the applicable Code of Arbitration Procedure for Customer or  
Industry Disputes;

or

☐ Opposition to Motions due (please specify date and type of Motion [if known]):

\_\_\_\_\_  
Reply Brief, if permitted, due (please specify date): \_\_\_\_\_

\_\_\_\_\_  
(please allow FINRA at least one week to forward the pleadings to the Panel prior to any conference call) Method of Delivery (for cases involving Direct Communication):

\_\_\_\_\_  
*\*Note on Dispositive Motions: Code of Arbitration Procedure Rules 12504 and 12206 for Customer Disputes and Rules 13504 and 13206 for Industry Disputes govern motions to dismiss. The rules set forth specific timeframes for submitting and responding to motions to dismiss.*

6. If Pre-hearing briefs are filed, they must be filed by: \_\_\_\_\_  
\_\_\_\_\_

7. The Codes of Arbitration Procedure outline the parties' obligation to exchange witness lists at least twenty (20) calendar days prior to the first scheduled hearing date. The panel requests that, concurrently with the parties' timely exchange of the witness lists, the parties send copies of the witness lists to FINRA for forwarding to the panel. The panel's timely receipt of the witness list will enable the arbitrators to review the witness list in advance of the hearing to determine if the appearance of a witness identified in the witness list may create a potential conflict with an arbitrator or otherwise trigger additional disclosures by an arbitrator. To assist the arbitrators in making these conflict checks, the parties should list the business affiliation of each witness, or other descriptive information.

Witness lists due (Please specify date): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Communication between parties and arbitrators. (Check one).

☐ All named parties and all arbitrators have agreed to proceed under the voluntary direct communication provisions of the *Codes of Arbitration Procedure (Codes)*. All parties agree that their counsel will alert all other parties, all arbitrators, and the FINRA Dispute Resolution case administrator of any changes in representation. If counsel no longer represents a party, this Paragraph will become inoperative and all parties shall cease direct communication with the arbitrators and direct all communication to the assigned FINRA Dispute Resolution case administrator, with the appropriate number of copies for distribution to the arbitrators.

a) All parties shall send only the following correspondence directly to the arbitrators (e.g., motions, responses, replies, sur-replies, briefs, etc.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b) Parties shall use the following method of transmission when communicating directly with the arbitrators (e.g., electronic mail, facsimile, overnight courier, U.S. mail):

\_\_\_\_\_

If the parties and arbitrators agree to communicate by fax, parties must transmit documents that exceed 15 pages to FINRA Dispute Resolution by overnight courier or U.S. mail.

- c) Below is a list of the electronic mail addresses, fax numbers, or mailing addresses of all named parties, arbitrators, and the FINRA case administrator assigned to this matter:

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- d) All faxes and electronic mail messages should include the confidentiality language previously provided to the parties by FINRA Dispute Resolution.

☐ Parties and arbitrators do not agree to voluntary direct communication between the parties and arbitrators. Parties should not communicate with any member of the panel except in the presence of all parties or representatives. All correspondence and pleadings must be sent to the FINRA Dispute Resolution staff for distribution to the panel, and such correspondence or pleadings should be sent to all parties in the same manner and at the same time it is sent to FINRA Dispute Resolution.

9. Other rulings (e.g., extra fees to be deposited): \_\_\_\_\_

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10. If the parties settle this matter with no further hearings:

- a) The cost of this IPHC will be borne as follows

\_\_\_\_\_ % to Claimant(s), jointly and severally  
\_\_\_\_\_ % to Respondent(s) \_\_\_\_\_, jointly and severally  
\_\_\_\_\_ % assessed to \_\_\_\_\_  
\_\_\_\_\_ % assessed to \_\_\_\_\_  
\_\_\_\_\_ % assessed to \_\_\_\_\_

NOTE: Outstanding forum fees that have not yet been resolved or assessed by the panel, the parties, or another Rule will be divided equally among the parties.

This Order will remain in effect unless amended by the arbitration panel. However, paragraph 8 may be canceled by a party, an arbitrator, or as provided in the paragraph.

Dated:

\_\_\_\_\_  
Chairperson

On behalf of the arbitration panel

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## **The New Motion to Dismiss and Eligibility Rules - Frequently Asked Questions**

The Securities and Exchange Commission (SEC) approved a proposal to adopt Rule 12504 of the Code of Arbitration Procedure for Customer Disputes and Rule 13504 of the Code of Arbitration Procedure for Industry Disputes (collectively, the Codes) to establish procedures that will govern motions to dismiss.<sup>4</sup> The proposal also amends Rules 12206 and 13206 to address motions to dismiss based on eligibility grounds.

In new Rules 12504 and 13504, FINRA is adopting specific procedures to govern motions to dismiss. FINRA also is amending the dismissal provisions of Rules 12206 and 13206 (the eligibility rule) related to time limits on submissions of arbitration claims. The rules will ensure that parties have their claims heard in arbitration, by significantly limiting motions to dismiss filed prior to the conclusion of a party's case-in-chief and by imposing stringent sanctions against parties for engaging in abusive practices under the rules.

FINRA understands that there is significant interest in how the new rules will be applied. Therefore, FINRA is providing the following Frequently Asked Questions (FAQs) to explain the purpose of the rules, how they will be applied, and the procedures arbitrators and parties must follow concerning motions to dismiss in arbitration.

### **Question: What is a motion to dismiss?**

**Answer:** A motion to dismiss is a request made by a party to the arbitrator(s) to remove some or all claims raised by a party filing a claim. Prior to the approval of the new rules, motions to dismiss could be filed at any stage of an arbitration proceeding, but they were often filed before a hearing was held. If the single arbitrator or panel<sup>5</sup> granted a motion to dismiss before a hearing was held (a prehearing motion), the party filing a claim lost the opportunity to have the arbitration case heard by the arbitration panel.

### **Question: Why are the rules necessary?**

**Answer:** FINRA received complaints from users of its arbitration forum that parties were filing prehearing motions routinely and repetitively which had the effect of delaying scheduled hearing sessions on the merits, increasing customers' costs, and intimidating less sophisticated customers. As a result, FINRA believes customers have been spending additional resources to defend against these motions, increasing the costs and processing times of the arbitration process.

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<sup>4</sup> Exchange Act Release No. 59189 (December 31, 2008), 74 Federal Register 731 (January 7, 2009) (File No. SR-FINRA-2007-021).

<sup>5</sup> A single arbitrator ordinarily hears cases involving \$100,000 or less in dispute; a panel of three arbitrators hears larger cases. FINRA uses the term "panel" for both situations in this Notice. In February 2009, the SEC approved FINRA's proposal to raise the amount in controversy heard by a single chair-qualified arbitrator to \$100,000. See Exchange Act Rel. No. 59340 (Feb. 2, 2009) (File No. SR-FINRA-2008-047).

FINRA also learned through an independent study that the number of motions to dismiss filed in customer cases had begun to increase over a two year period, starting in 2004. Even though most motions to dismiss, filed prior to the approval of the new rules, were denied, FINRA became concerned that, if left unregulated, this type of motion practice would limit investors' access to the forum, either by making arbitration too costly or by denying customers their right to have their claims heard in arbitration.

**Question: When will the rules become effective?**

**Answer:** The amendment has an effective date of February 23, 2009, and will apply to motions to dismiss filed on or after the effective date. However, FINRA is imposing a moratorium on filing motions to dismiss prior to the conclusion of a party's case-in-chief from the date of its *Regulatory Notice*, January 23, 2009, until the effective date of the new rules, February 23, 2009. This means that parties may not file such motions from January 23, 2009 to February 23, 2009. The term "case-in-chief" means the main case presented by the party who files the statement of claim, through the use of documentary evidence and witnesses, at an arbitration hearing. FINRA believes that imposing a moratorium on such motions during this pre-effective period will make the arbitration process fair to all parties, will make the new rules simple for staff and arbitrators to apply, and will prevent abuse during the time before the rules become effective. For more information on the moratorium, you may review our [Regulatory Notice 09-07](#).

**Question: Will the new rules change the procedures FINRA uses to administer motions to dismiss in the forum?**

**Answer:** Yes. Prior to the approval of the new rules, FINRA administered all motions, including motions to dismiss, under Rules 12503 and 13503 of the Codes. With the approval of the rules, Rules 12503 and 13503 will no longer apply to motions to dismiss; however, they will apply to all other motions filed in arbitration.

New Rules 12504 and 13504 will govern motions to dismiss. Under these rules, motions filed before a hearing on the merits (i.e., prehearing motions) or motions filed during the hearing on the merits but before a party has concluded its case-in-chief will be referred to as a Rule 12504(a) motion.<sup>6</sup> Motions filed after a party has concluded its case-in-chief will be referred to as a Rule 12504(b) motion.<sup>7</sup>

New Rule 12206(b) will govern motions to dismiss based on eligibility grounds, and will be referred to as eligibility motions.<sup>8</sup>

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<sup>6</sup> FINRA describes this motion using the rule number from the Customer Code for simplicity. However, the description also applies to motions filed under Rule 13504(a) of the Industry Code.

<sup>7</sup> See note 3, the same rationale applies to Rule 13504(b) of the Industry Code.

<sup>8</sup> FINRA describes the eligibility motion using the rule number from the Customer Code for simplicity. However, the description also applies to eligibility motions filed under Rule 13206(b) of the Industry Code.

**Question: Ok. So what are some of the changes that the new rules will make to motions practice?**

**Answer:** The new rules establish procedures that address specifically motions to dismiss. These procedures implement a number of changes from current motions practice, which are listed below:

- Parties must file the motions in writing, separately from the answer, and only after they file the answer.
- Parties must file any Rule 12504(a) motion at least 60 days in advance of a hearing.
- Parties will have 45 days to respond to a Rule 12504(a) motion.
- In the case of an eligibility motion, parties must file any motion to dismiss at least 90 days before a hearing, and the other parties will have 30 days to respond.
- The full panel will decide a Rule 12504(a) motion and an eligibility motion.
- The panel cannot act upon a motion to dismiss a party or claim under Rule 12504(a), unless the panel determines that: (1) the non-moving party signed a settlement and release, or (2) the moving party was not associated with the account, security, or conduct at issue.
- The panel cannot act upon a motion to dismiss a party or claim under Rule 12206(b) unless the panel determines that the claim is not eligible for arbitration because it does not meet the six-year eligibility requirement.
- If a party files a motion to dismiss on multiple grounds including eligibility, the panel must decide eligibility first. If the panel grants the motion on eligibility, it must not rule on any other grounds for the motion.
- The panel must hold a hearing before it grants a Rule 12504(a) motion, unless the parties waive the hearing.
- If the panel grants a Rule 12504(a) motion, the decision must be unanimous and be accompanied by a written explanation.
- If the panel denies a Rule 12504(a) motion, a party may not re-file it, unless specifically permitted by panel order.
- If the panel denies a Rule 12504(a) motion, the panel must assess forum fees against the party who filed the motion.
- If the panel deems a Rule 12504(a) motion frivolous, it must also award reasonable costs and attorneys' fees to the party who opposed the motion.
- If the panel determines that a party filed a motion to dismiss under Rules 12206(b) and 12504(a) in bad faith,<sup>9</sup> it may issue other sanctions under Rules 12212 and 13212 of the Codes.

**Question: How will the rules affect motions to dismiss filed in FINRA's arbitration forum?**

**Answer:** Rules 12504(a)(1) and 13504(a)(1) reinforce FINRA's position that parties have the right to a hearing in arbitration, by clarifying that motions to dismiss filed prior to the conclusion of a party's case in chief, including prehearing motions, are

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<sup>9</sup> See also Rules 13206(b) and 13212(b) of the Industry Code.

discouraged in arbitration. The rules significantly limit motions to dismiss filed prior to the conclusion of a party's case-in-chief.<sup>10</sup> Under the rules, the panel cannot act upon a motion to dismiss a party or claim, unless the panel determines that: (1) the non-moving party previously released the claim(s) in dispute by a signed settlement agreement and/or written release; (2) the moving party was not associated with the account(s), security(ies), or conduct at issue; or (3) the claim does not meet the criteria of the eligibility rule.

**Question: How should arbitrators apply the three exceptions?**

**Answer:** *Prior settlement or release*

A panel cannot act on a motion to dismiss under Rules 12504(a)(6)(A) and 13504(a)(6)(A) unless the panel determines that the non-moving party previously released the claims in dispute by a signed settlement agreement and/or written release. Parties seeking this exception should provide arbitrators with valid documents that indicate that the claims in the current dispute have been resolved in a previous dispute.

*Not associated with the account, security, or conduct at issue*

A panel cannot act on a motion to dismiss under Rules 12504(a)(6)(B) and 13504(a)(6)(B) unless the panel determines that the moving party was not associated with the accounts, securities, or conduct at issue. FINRA intends this exception to apply in cases involving issues of misidentification. For example, the panel could grant a motion to dismiss under this exception if a party files a claim against the wrong person or entity, or a claim names an individual who was not employed by the firm during the time of the dispute.

*Eligibility*

A panel may grant a motion to dismiss on eligibility grounds at any stage of the proceeding, including a prehearing motion, under Rules 12206(b)(7) and 13206(b)(7) if the claim is not eligible for submission to arbitration because six years have elapsed from the occurrence or event giving rise to the claim. Parties seeking this exception should provide arbitrators with valid documents that indicate when the occurrence or event took place.

FINRA emphasizes that these exceptions do not constitute an invitation to parties to file motions to dismiss. The fact that a motion may be filed under one of these exceptions does not mean that the panel should or will grant a motion that does not have merit.

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<sup>10</sup> Rules 12504(a)(6) and 13504(a)(6) of the motion to dismiss rule and Rules 12206(b)(7) and 13206(b)(7) of the eligibility rule.

**Question: How should a party file a Rule 12504(a) motion?**

**Answer:** If a party wishes to file a Rule 12504(a) motion, the party must file the motion in writing, file it separately from the answer, and file it only after the answer is filed. For a Rule 12504(a) motion, the party filing the motion must serve the other parties and the Director of Arbitration with the motion at least 60 days before a scheduled hearing.<sup>11</sup> The parties receiving the Rule 12504(a) motion will have 45 days to respond to the motion.<sup>12</sup> The filing and response deadlines are different under the eligibility rule and are discussed later in this *Notice*.

**Question: Are there procedures that a panel must follow to decide a Rule 12504(a) motion?**

**Answer:** Yes. The full panel must decide a Rule 12504(a) motion.<sup>13</sup> Moreover, the panel may not grant a Rule 12504(a) motion unless an in-person or telephonic prehearing conference on the motion is held or waived by the parties.<sup>14</sup> In addition, prehearing conferences to decide these motions will be recorded.<sup>15</sup>

**Question: What happens if the panel grants a Rule 12504(a) motion?**

**Answer:** If the panel grants a Rule 12504(a) motion (in whole or part), the decision must be unanimous, and must be accompanied by a written explanation.<sup>16</sup> FINRA believes that the type of relief requested by a Rule 12504(a) motion – the complete dismissal of a claim before an evidentiary hearing is completed – justifies the requirement that all arbitrators on the panel agree, based on the evidence presented by the party filing the motion, that the motion should be granted.

**Question: What happens if the panel denies a Rule 12504(a) motion?**

**Answer:** If a panel denies a Rule 12504(a) motion, a panel must assess forum fees associated with the hearing(s) on the motion against the party who filed the Rule 12504(a) motion.<sup>17</sup> The panel decision to deny a Rule 12504(a) motion is not required to be unanimous.

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<sup>11</sup> Rules 12504(a)(3) and 13504(a)(3). Under this provision, parties may agree or the panel may decide to modify this deadline.

<sup>12</sup> *Id.*

<sup>13</sup> Rules 12504(a)(4) and 13504(a)(4) of the motion to dismiss rule and Rules 12206(b)(3) and 13206(b)(3) of the eligibility rule.

<sup>14</sup> Rules 12206(b)(4) and 13206(b)(4) of the eligibility rule and Rules 12504(a)(5) and 13504(a)(5).

<sup>15</sup> *Id.*

<sup>16</sup> Rules 12504(a)(7) and 13504(a)(7) of the motion to dismiss rule and Rules 12206(b)(5) and 13206(b)(5) of the eligibility rule.

<sup>17</sup> Rules 12504(a)(9) and 13504(a)(9) of the motion to dismiss rule and Rules 12206(b)(8) and 13206(b)(8) of the eligibility rule.

FINRA believes that the mandatory assessment of forum fees will deter parties from filing Rule 12504(a) motions that are not meritorious or that fall outside the scope of the three exceptions, and will provide an incentive for parties wishing to file such motions to ensure that their motions to dismiss filed prior to the conclusion of a party's case in chief, including prehearing motions, comply with the intent of the rules.

**Question: May a party re-file a Rule 12504(a) motion that has been denied?**

**Answer:** A party may not re-file a Rule 12504(a) motion that has been denied, unless specifically permitted by panel order.<sup>18</sup> The panel decision to re-file a Rule 12504(a) motion is not required to be unanimous. If a panel denies a Rule 12504(a) motion that was filed before the effective date of the new rules but permits a party to re-file the motion after the effective date, the re-filed Rule 12504(a) motion will be governed by the new rules.

**Question: What happens if the panel determines that a party has filed a motion to dismiss frivolously?**

**Answer:** If a panel determines that a party filed a Rule 12504(a) or eligibility motion frivolously, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.<sup>19</sup> FINRA believes that the risk of monetary penalties and sanctions, imposed either by the panel on its own initiative, or as a result of a party's motion, will deter parties from filing such motions frivolously.

**Question: What happens if the panel determines that a party has filed a motion to dismiss in bad faith?**

**Answer:** If a panel determines that a party filed a Rule 12504(a) or eligibility motion in bad faith, the panel may also issue sanctions against the party that filed the motion.<sup>20</sup> Under the Codes, the panel may sanction a party for failure to comply with any provision in the Code, or any order of the panel or single arbitrator authorized to act on behalf of the panel.<sup>21</sup> Such sanctions may include, but are not limited to: assessing monetary penalties payable to one or more parties; precluding a party from presenting evidence; making an adverse inference against a party; assessing postponement and/or forum fees; and assessing attorneys' fees, costs and expenses.<sup>22</sup>

FINRA believes that the risk of monetary penalties and sanctions, imposed either by the panel on its own initiative, or as a result of a party's motion, will deter parties from filing

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<sup>18</sup> Rules 12504(a)(8) and 13504(a)(8) of the motion to dismiss rule and Rules 12206(b)(6) and 13206(b)(6) of the eligibility Rule.

<sup>19</sup> Rules 12504(a)(10) and 13504(a)(10) of the motion to dismiss rule and Rules 12206(b)(9) and 13206(b)(9) of the eligibility rule.

<sup>20</sup> Rules 12504(a)(11) and 13504(a)(11) of the motion to dismiss rule and Rules 12206(b)(10) and 13206(b)(10) of the eligibility rule.

<sup>21</sup> Rules 12212 and 13212 of the Codes.

<sup>22</sup> *Id.*

a Rule 12504(a) motion in bad faith. Moreover, FINRA believes these enforcement mechanisms will help ensure strict compliance with the rules.

**Question: Do the rules prohibit a party from filing other motions to dismiss?**

No. A party may file a Rule 12504(b) motion and such a motion will not be subject to the exceptions in Rule 12504(a).<sup>23</sup> Thus, a moving party may file a Rule 12504(b) motion based on any applicable theory of law. FINRA expects these motions to be relevant to the case and based on theories that are germane to the issues raised in the non-moving party's case. FINRA believes that by the close of the non-moving party's case, the panel will have heard enough evidence to decide whether a motion filed at this stage of the case should be considered, and, if warranted, granted.

FINRA notes, however, that if a party files a Rule 12504(b) motion, the panel is not required to consider or grant the motion; rather arbitrators will continue to control the hearing process, which includes deciding whether to hear such a motion. Further, the rule will not preclude a panel from assessing parties who file these motions with sanctions, costs, or attorney's fees, if the panel determines that a Rule 12504(b) motion filed at this time is frivolous or in bad faith.<sup>24</sup>

In addition, a party may file a motion to dismiss based on Rules 12212 and 13212 (for material and intentional failure to comply with a panel order if prior warnings or sanctions have proven ineffective) or based on Rules 12511 and 13511 (for discovery abuse). Such motions will not be subject to the exceptions in Rule 12504(a), and will be continue to be governed by their respective rules.

**Question: Are the changes under the eligibility rule the same as the provisions under the motion to dismiss rule?**

Many of the changes under the eligibility rule are the same as those under the motion to dismiss rule, but there are some differences:

- First, the two exceptions to the motion to dismiss rule that prohibit arbitrators from acting on a motion to dismiss prior to the conclusion of a party's case, including a prehearing motion (i.e., a signed settlement agreement and/or written release and the contention that a moving party was not associated with the accounts, securities, or conduct at issue), will not apply to eligibility motions.
- Second, the filing deadlines for eligibility motions are different from those in the motion to dismiss rule. Under the eligibility rule, a party may file a motion to dismiss on eligibility grounds at any stage of the proceeding, except that a party may not file this motion any later than 90 days before the scheduled hearing on the merits,<sup>25</sup>

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<sup>23</sup> Rules 12504(b) and 13504(b) of the motion to dismiss rule.

<sup>24</sup> Note 18.

<sup>25</sup> Rules 12206(b)(2) and 13206(b)(2) of the eligibility rule.

rather than the 60-day timeframe required under the motion to dismiss rule. The 90-day requirement also applies to eligibility motions that include multiple other grounds (i.e., a mixed motion). The 90-day requirement will encourage parties wishing to file an eligibility motion to determine in the early stages of the case whether to pursue their claims in court or to proceed with the arbitration. Further, the rule also provides parties with 30 days to respond to an eligibility motion,<sup>26</sup> instead of the 45 days permitted under the motion to dismiss rule. The 30-day timeframe to respond to eligibility motions will expedite the process, so that the time between filing a claim and resolution of the dispute is shortened.

- Third, if a party files an eligibility motion that includes multiple other grounds, the panel must decide the eligibility issue first.<sup>27</sup> If the panel grants a mixed motion on eligibility grounds, it must not rule on any other grounds for the motion.<sup>28</sup> Further, if a party files a mixed motion, the party responding to the mixed motion will have 45 days to respond. FINRA believes the response time is appropriate in the case of a mixed motion, because the non-moving party will be required to prepare for and address each ground that the moving party uses to argue for dismissal.

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<sup>26</sup> *Id.*

<sup>27</sup> Rules 12206(b)(7) and 13206(b)(7) of the eligibility Rule.

<sup>28</sup> *Id.* The rule also contains other criteria concerning motion to dismiss based on eligibility grounds.

## Hearing Information For All Arbitrators

Thank you for your service as an arbitrator. Please follow the guidelines below to ensure there is a complete record in the case:

1. **Use the Script**: There are two scripts, one for single arbitrator cases and one for 3 member panels. Please be sure to use the correct script.
2. **Use the Attendance List**: Please use this to track attendance of parties, representatives, and witnesses.
3. **Use the Exhibit Lists**: Please use these lists to track Claimant's and Respondent's exhibits.
4. **Use the Tape Log**: Please carefully complete the tape log.
5. **Mark the Tapes**: Please clearly mark each tape with the case number, case name, date of the hearing, and the tape number.



## Hearing Procedure Script - Single Arbitrator Case

**\* SECTION T and U UPDATED \***  
**HEARING PROCEDURE SCRIPT**  
**SINGLE ARBITRATOR CASE**

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The hearing procedures set forth below may, in the discretion of the arbitrator, be varied provided all parties are allowed a **full** and **fair** opportunity to present their respective cases. The FINRA Dispute Resolution staff member, if present, or the Arbitrator will initiate the introduction.

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### ***NOTE TO ARBITRATOR - TAPE RECORDING THE PROCEEDING***

***THERE MUST BE A RECORD KEPT OF EVERY FINRA ARBITRATION HEARING. THIS IS AN IMPORTANT FUNCTION, AND IS REQUIRED UNDER FINRA RULES. IT IS ESSENTIAL THAT CARE BE TAKEN TO PROPERLY RECORD EACH HEARING, AND TO TIMELY TRANSMIT ALL TAPES TO FINRA DISPUTE RESOLUTION.***

***OCCASIONALLY, THE PARTIES REQUEST A STENOGRAPHIC RECORD. IN SUCH CASES, THE ARBITRATOR CAN DETERMINE THAT THE STENOGRAPHIC RECORD WILL BE THE OFFICIAL RECORD AND DISPENSE WITH THE TAPE RECORDING OF THE HEARING. IF A STENOGRAPHIC RECORD IS USED, THE PARTIES ARE REQUIRED TO DEFRAY THE COST OF SUCH RECORD AND PROVIDE FINRA DISPUTE RESOLUTION WITH A COPY OF THE TRANSCRIPT.***

***The single arbitrator should perform the following:***

- ☒ ***Mark the tapes and operate the tape recorder.***
- ☒ ***There are no “off the record” conversations between the parties and yourself. Record the entire proceeding!***
- ☒ ***Check the recording device before the hearing starts to ensure that it is recording properly. Most recorders require that the record and play buttons be depressed simultaneously. Number the tapes in order of their use and label each tape with the case number and the hearing***

date.

- ☒ ***When the tape is finished, punch out the two plastic tabs on the rear of the cassette (the side opposite the opening where the tape is visible) before placing the tape back in its case. This will prevent any alterations or erasures of the tape.***
- ☒ ***Please make sure that the tape recorder is turned off during breaks. Before resuming the hearing after breaks, make sure that you have restarted the tape.***
- ☒ ***At the end of the hearing, all tapes should be returned to the FINRA Dispute Resolution staff member assigned to the case.***

***Note: The following should be covered on the record. Make sure that the tape is recording before proceeding.***

- A. Introduction of the Arbitrator
- B. Restate to the parties any disclosures previously made by the arbitrator. Also, any additional disclosures should be made to the parties at this time. In addition, the arbitrator should confirm on the record that his or her current classification is either a public or a non-public arbitrator.
- C. Elicit names of all persons in attendance and their relationship to the parties (e.g. husband, attorney for claimant, respondent's witness, etc.). ***Ask each party's counsel/representative who should be reflected in the award as counsel/representative for each party. Make a note of each party's response and include it in the Award Information Sheet when you deliberate.***
- D. Obtain oral confirmation from all of the parties or their representatives of their acceptance of the Panel's composition.
- E. Oath of Arbitrator: ***Make the following statement on the record: "I have submitted my properly executed Oath of Arbitrator to the FINRA Dispute Resolution staff."***

***(Note: The following paragraphs are to be read on the record by the Chairperson)***

- F. Formal Opening Of Hearing: This controversy has been submitted to me for hearing in accordance with the Codes of Arbitration Procedure. I am authorized to determine each of the matters set forth in the statements submitted and filed with FINRA Dispute Resolution. Unless the law directs otherwise, all awards rendered pursuant to the Codes will be final and not subject to appeal.

It is suggested that no interruptions be made during an individual's testimony. Parties are entitled to make objections, cross-examine and redirect witnesses, and may, in the

discretion of the arbitrator, present rebuttal testimony. I may ask questions as I deem appropriate.

- G. The submission of this matter to arbitration will not preclude any right of the Association that it would otherwise be authorized to adopt, administer or enforce. If any matter comes to my attention during and in connection my participation in this proceeding, either from the record or from material or communications related to this proceeding, that I have reason to believe may constitute a violation of the Association's rules or the federal securities laws, I may initiate a referral of the matter to the Association for disciplinary investigation. If I make any such referral it will only be initiated after this dispute has been either settled or otherwise disposed of or after a final award has been rendered.
- H. Responsibility of Neutral Arbitrators: I have been selected to serve as a neutral arbitrator to hear and decide this matter. I am not a FINRA Dispute Resolution employee.

Pursuant to Canon I of the ABA/AAA Code of Ethics for Commercial Arbitrators, I, as a neutral arbitrator, have the duty of conducting these proceedings with fairness and integrity. This duty extends to all parties and to this process. Therefore, I respectfully request that all parties and their counsel or representatives refrain from engaging in any conversations or contact with me except while in this room and in the presence of all parties, counsel or representatives. Thank you for your anticipated cooperation.

- I. Oath Administered To Witnesses

***Do you solemnly swear or affirm that the testimony you are about to give shall be the truth the whole truth and nothing but the truth?***

Will each of you please state your name, address, and if applicable, your business affiliation.

Parties and a corporate representative are permitted to remain throughout the proceeding. Expert witnesses are permitted to remain unless the panel determines that the witness should be excused. All other witnesses will now be excused and will be called upon at the appropriate time, unless the panel determines that the witness(es) will remain. ***(Note to Arbitrators: Barring countervailing reasons, expert witnesses who are assisting parties in the presentation of their cases should be permitted to attend all hearings. Generally, there is a presumption that expert witnesses, as opposed to witnesses testifying as to the facts pertinent to the case, will be permitted to attend the entire proceedings.)***

- J. Arbitrator's Exhibit: I have read the papers that have been submitted by the parties. These papers, along with the executed Submission Agreements, will be marked and received into evidence as Arbitrator's Exhibit #1.

**[THE ARBITRATOR SHOULD EXPLAIN THE CONTENTS OF ARBITRATORS' EXHIBIT #1.]**

- K. Other important open matters may be addressed here.
- L. Party Evaluations: As part of FINRA Dispute Resolution's ongoing effort to improve the arbitration process, each party or representative is asked to voluntarily complete an evaluation concerning this arbitration. For your convenience, FINRA has made it possible for you to complete the evaluation online via the Internet. You can find the evaluation form at <http://www.FINRA.org/arbevaluation>. If you do not have Internet access, or have difficulty completing the evaluation online, please ask your case administrator to provide a paper version of the evaluation that you can mail to the address indicated.
- M. Opening Statements: Each party may make an opening statement. It should be limited to what the party intends to prove and should not be a presentation of evidence or of the merits of the case.
- N. Documentary Evidence: Evidence will be marked for identification and shown to the opposing party for review and possible objection to its admissibility. I will rule on any objections asserted and determine whether the document will be received in evidence.
- O. Expected Conduct: All participants are expected to act in a civil manner at all times. Parties and attorneys are requested to be on time for all sessions and to limit breaks to the time allotted. Parties and attorneys are responsible for providing copies of all proposed exhibits to all other parties and me. Parties are encouraged to avoid repetitive arguments. Parties and counsel must direct all objections and motions to me and not to each other.

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***Note to Arbitrator: The administrative announcements have been completed and you will now begin opening statements and the presentation of the evidence. This is a reminder that all further conversations between the parties and the arbitrator should be on the record (e.g. tape recorded). Please ensure that the recorder is operating after your return from any breaks or lunch. In addition, do not leave the completed tapes unattended. You must keep the tapes in a safe, secure place.***

- P. Opening Statements: The parties will now proceed with their opening statements, beginning with the Claimant.
- Q. Presentation Of Evidence: The parties will now present their evidence, beginning with the Claimant.
- R. Inquiry Prior To Closing Argument: Do the parties have any further evidence or testimony to present?

- S. Closing Argument: Each party may make a closing argument. The parties are directed to limit their closing argument to a summation of what he or she believes has been proven. The parties may now begin their closing argument, beginning with the Claimant. Rebuttal is allowed and the Claimant may reserve its entire closing for rebuttal.

***Note to Arbitrator: It is the practice in these proceedings to allow claimants to proceed first in closing argument, with rebuttal argument being permitted. Claimants may reserve their entire closing for rebuttal. The hearing procedure may, however, be varied in the discretion of the arbitrator, provided all parties are allowed a full and fair opportunity to present their respective cases.***

- T. Final Damage Requests: I realize that at the time the claim was initiated the parties may not have had all of the information needed to accurately or completely calculate their claims. Therefore, at this point, I ask that the parties restate their respective claims. For parties requesting damages, please provide me with a summary of your final request for damages. You may present your final damage request as a range, as opposed to a specific monetary amount.

***Note to Arbitrator: If a party's final request for damages is different from the amount stated in its pleading, please record this amount in the Award Information Sheet item number 10.***

- U. Inquiries Prior To Closing Hearing: Do the parties have any other issues or objections that you would like to raise that you have not previously raised?
- V. The decision will be forwarded to the parties, and/or counsel. In order to expedite its delivery, I may execute a handwritten copy of the Award.
- W. Party Evaluations: As I mentioned at the beginning of the case, I ask that each party or representative complete an evaluation of this arbitration. Your participation – while strictly voluntary – greatly assists FINRA Dispute Resolution's ongoing effort to improve the arbitration process. You can find the evaluation form at <http://www.FINRA.org/arbevaluation>. If you do not have Internet access, or have difficulty completing the evaluation online, please ask your case administrator to provide a paper version of the evaluation that you can mail to the address indicated.
- X. FINRA is not responsible for secure disposal of any documents left by the Panel or the parties following a proceeding. This hearing facility will dispose of all remaining materials in its usual manner. If a party wishes to retain secure control of the materials, they must take them when leaving.
- Y. Closing the Hearing: The record will remain open until I arrive at a decision, or I determine that it is closed.

No party will contact me directly. All communications are to be directed to the staff person assigned to this case.

I request that the parties leave the room at the same time.

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***Note to Arbitrator: Take all recorded tapes with you upon leaving the room. These tapes must be sent to the FINRA Dispute Resolution staff member assigned to the arbitration.***



## Hearing Procedure Script - 3 Member Panel

**\* SECTION T and U UPDATED \***  
**HEARING PROCEDURE SCRIPT**

**3 MEMBER PANEL**

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The hearing procedures set forth below may, in the discretion of the arbitrators, be varied provided all parties are allowed a **full** and **fair** opportunity to present their respective cases. The FINRA Dispute Resolution staff member, if present, or the Chairperson will initiate the following.

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### ***NOTE TO ARBITRATORS - TAPE RECORDING THE PROCEEDING***

***THERE MUST BE A RECORD KEPT OF EVERY FINRA ARBITRATION HEARING. THIS IS AN IMPORTANT FUNCTION, AND IS REQUIRED UNDER FINRA RULES. IT IS ESSENTIAL THAT CARE BE TAKEN TO PROPERLY RECORD EACH HEARING, AND TO TIMELY TRANSMIT ALL TAPES TO FINRA DISPUTE RESOLUTION.***

***OCCASIONALLY, THE PARTIES REQUEST A STENOGRAPHIC RECORD. IN SUCH CASES, THE PANEL CAN DETERMINE THAT THE STENOGRAPHIC RECORD SHALL BE THE OFFICIAL RECORD AND THE PANEL MAY DISPENSE WITH TAPE RECORDING OF THE HEARING. IF A STENOGRAPHIC RECORD IS USED, THE PARTIES ARE REQUIRED TO DEFRAY THE COST OF SUCH RECORD AND PROVIDE FINRA DISPUTE RESOLUTION WITH A COPY OF THE TRANSCRIPT.***

***The chairperson should insure that a member of the panel performs the following:***

- ☒ ***Mark the tapes and operate the tape recorder.***
- ☒ ***With the exception of executive sessions and deliberations, the entire proceeding must be recorded!***
- ☒ ***The assigned person should check the recording device before the hearing starts to ensure that it is recording properly. Remember that***

***most recorders require that the record and play buttons be depressed simultaneously. S/he must number the tapes in order of their use and label each tape with the case number and the hearing date.***

- ☒ ***When the tape is finished, punch out the two plastic tabs on the rear of the cassette (the side opposite the opening where the tape is visible) before placing the tape back in its case. This will prevent any alterations or erasures of the tape.***
- ☒ ***Please make sure that the tape recorder is turned off during breaks and/or executive sessions. Before resuming the hearing after breaks or executive sessions make sure that you have restarted the tape.***
- ☒ ***At the end of the hearing, all tapes should be returned to the FINRA Dispute Resolution staff member assigned to the case.***

***Note: The following should be covered on the record. Make sure that the tape is recording before proceeding.***

- A. Introduction of the Arbitrators
- B. Restate to the parties any disclosures previously made by the arbitrators. Also, any additional disclosures should be made to the parties at this time. In addition, arbitrators should confirm on the record their current classifications as either public or non-public arbitrators.
- C. Elicit names of all parties, their attorneys of record and other representatives, if any. ***Ask each party's counsel/representative who should be reflected in the award as counsel/representative for each party. Make a note of each party's response and include it on the Award Information Sheet when the panel deliberates.***
- D. Obtain oral confirmation from all of the parties or their representatives of their acceptance of the Panel's composition.
- E. Oath Of Arbitrators *(If necessary, the following oath is administered by the Chair. Otherwise, the Chair should state on the record: "We have submitted our properly executed Oaths of Arbitrators to the FINRA Dispute Resolution staff."):*

***Do each of you, as the arbitrators selected to hear and determine the matter in controversy, solemnly swear or affirm that you are not an employer of, employed by, or related by blood or marriage to any of the parties or witnesses whose names have been disclosed to you; that you have no direct or indirect interest in this matter; you know of no existing or past financial, business, professional, family or social relationship which would impair you from performing your duties; and that you will decide the controversy in a fair manner and render a just award?***

***Do each of you swear or affirm that, based on FINRA Dispute Resolution's Temporary and Permanent Arbitrator Disqualification Criteria, you are not temporarily or permanently disqualified from being a FINRA arbitrator?***

***Do each of you, having reviewed the Arbitrator Disclosure Checklist, certify that you have made all disclosures of items on the Arbitrator Disclosure Checklist?***

***Do each of you swear or affirm that your Arbitrator Disclosure Report is accurate, current, and up-to-date, and that you have no additional disclosures to make?***

***(Note: The following paragraphs are to be read on the record by the Chairperson)***

- F. Formal Opening Of Hearing: This controversy has been submitted to this Panel of Arbitrators for hearing in accordance with the Codes of Arbitration Procedure. The Panel is authorized to determine each of the matters set forth in the statements submitted and filed with FINRA Dispute Resolution. Unless the law directs otherwise, all awards rendered pursuant to the Codes will be final and not subject to appeal.

It is suggested that no interruptions be made during an individual's testimony. Parties are entitled to make objections, cross-examine and redirect witnesses, and may, in the discretion of the arbitrators, present rebuttal testimony. The arbitrators may ask questions as they deem appropriate.

- G. The submission of this matter to arbitration will not preclude any of FINRA's rights that it would otherwise be authorized to adopt, administer or enforce. If any matter comes to the attention of this panel during and in connection with this panel's participation in this proceeding, either from the record or from material or communications related to this proceeding, that this panel has reason to believe may constitute a violation of FINRA's rules or the federal securities laws, this panel may initiate a referral of the matter to FINRA for disciplinary investigation. If we make any such referral it will only be initiated after this dispute has been either settled or otherwise disposed of or after a final award has been rendered.
- H. Responsibility of Neutral Arbitrators: We have been selected to serve as neutral arbitrators to hear and decide this matter. We are not FINRA Dispute Resolution employees.

Pursuant to Canon I of the ABA/AAA Code of Ethics for Commercial Arbitrators, we, as neutral arbitrators, have the duty of conducting these proceedings with fairness and integrity. This duty extends to all parties and to this process. Therefore, on behalf of the panel, I respectfully request that all parties and their counsel or representatives refrain from engaging in any conversations or contact with the members of this panel except while in this room and in the presence of all parties, counsel or representatives.

Thank you for your anticipated cooperation.

I. Oath Administered To Witnesses

***Do you solemnly swear or affirm that the testimony you are about to give shall be the truth the whole truth and nothing but the truth?***

Will each of you please state your name, address, and if applicable, your business affiliation.

Parties and a corporate representative are permitted to remain throughout the proceeding. Expert witnesses are permitted to remain unless the panel determines that the witness should be excused. All other witnesses will now be excused and will be called upon at the appropriate time, unless the panel determines that the witness(es) will remain. ***(Note to Arbitrators: Barring countervailing reasons, expert witnesses who are assisting parties in the presentation of their cases should be permitted to attend all hearings. Generally, there is a presumption that expert witnesses, as opposed to witnesses testifying as to the facts pertinent to the case, will be permitted to attend the entire proceedings.)***

- J. Arbitrators' Exhibit: The Arbitrators have read the papers that have been submitted by the parties. These papers, along with the executed Submission Agreements, will be marked and received into evidence as Arbitrators' Exhibit #1.

***[THE CHAIRPERSON SHOULD EXPLAIN THE CONTENTS OF ARBITRATORS' EXHIBIT #1.]***

- K. Other important open matters may be addressed here.

- L. Party Evaluations: As part of FINRA Dispute Resolution's ongoing effort to improve the arbitration process, each party or representative is asked to voluntarily complete an evaluation concerning this arbitration. For your convenience, FINRA has made it possible for you to complete the evaluation online via the Internet. You can find the evaluation form at <http://www.FINRA.org/arbevaluation>. If you do not have Internet access, or have difficulty completing the evaluation online, please ask your case administrator to provide a paper version of the evaluation that you can mail to the address indicated.

- M. Opening Statements: Each party may make an opening statement. It should be limited to what the party intends to prove and should not be a presentation of evidence or of the merits of the case.

- N. Documentary Evidence: Evidence will be marked for identification and shown to the opposing party for review and possible objection to its admissibility. The Panel will rule on any objections asserted and determine whether the document will be received in evidence.

- O. Expected Conduct: All participants are expected to act in a civil manner at all times. Parties and attorneys are requested to be on time for all sessions and to limit breaks to the time allotted. Parties and attorneys are responsible for providing copies of all proposed exhibits to all other parties and to the panel. Parties are encouraged to avoid repetitive arguments. Parties and counsel must direct all objections and motions to the Panel and not to each other.
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***Note to Arbitrators: The administrative announcements have been completed and you will now begin opening statements and the presentation of the evidence. This is a reminder that all further conversations between the parties and the arbitrators should be on the record (e.g. tape recorded). Please ensure that the recorder is operating after your return from any breaks, lunch or executive sessions. In addition, do not leave the completed tapes unattended. The arbitrators must keep the tapes in a safe, secure place.***

- P. Opening Statements: The parties will now proceed with their opening statements, beginning with the Claimant.
- Q. Presentation Of Evidence: The parties will now present their evidence, beginning with the Claimant.
- R. Inquiry Prior To Closing Argument: Do the parties have any further evidence or testimony to present?
- S. Closing Argument: Each party may make a closing argument. The parties are directed to limit their closing argument to a summation of what he or she believes has been proven. The parties may now begin their closing argument, beginning with the Claimant. Rebuttal is allowed and the Claimant may reserve its entire closing for rebuttal.

***Note to Arbitrators: It is the practice in these proceedings to allow claimants to proceed first in closing argument, with rebuttal argument being permitted. Claimants may reserve their entire closing for rebuttal. The hearing procedure may, however, be varied in the discretion of the arbitrators, provided all parties are allowed a full and fair opportunity to present their respective cases.***

- T. Final Damage Requests: We realize that at the time the claim was initiated the parties may not have had all of the information needed to accurately or completely calculate their claims. Therefore, at this point, we ask that the parties restate their respective claims. For parties requesting damages, please provide us with a summary of your final request for damages. You may present your final damage request as a range, as opposed to a specific monetary amount.

***Note to Arbitrators: If a party's final request for damages is different from the amount stated in its pleading, please record this amount in the Award Information***

**Sheet item number 10.**

- U. Inquiries Prior To Closing Hearing: Do the parties have any other issues or objections that you would like to raise that you have not previously raised?
- V. The decision will be forwarded to the parties, and/or counsel. In order to expedite the delivery of the Panel's decision to the parties, the Panel may either execute a handwritten copy of the Award or each Arbitrator may execute a counterpart copy of the Award.
- W. Party Evaluations: As I mentioned at the beginning of the case, I ask that each party or representative complete an evaluation of this arbitration. Your participation – while strictly voluntary – greatly assists FINRA Dispute Resolution's ongoing effort to improve the arbitration process. You can find the evaluation form at <http://www.FINRA.org/arbevaluation>. If you do not have Internet access, or have difficulty completing the evaluation online, please ask your case administrator to provide a paper version of the evaluation that you can mail to the address indicated.
- X. FINRA is not responsible for secure disposal of any documents left by the Panel or the parties following a proceeding. This hearing facility will dispose of all remaining materials in its usual manner. If a party wishes to retain secure control of the materials, they must take them when leaving.
- Y. Closing the Hearing: The record will remain open until the Panel arrives at a decision, or the Panel determines that it is closed.

No party will contact any member of this arbitration panel directly. All communications are to be directed to the staff person assigned to this case.

I request that the parties leave the room at the same time.

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***Note to Arbitrators: Take all recorded tapes with you upon leaving the room. These tapes must be sent to the FINRA Dispute Resolution staff member assigned to the arbitration.***

## **Information for Hearings Not Held at FINRA Dispute Resolution Offices**

1. All requests to proceed in a hearing location that is not one of FINRA Dispute Resolution's 73 designated hearing locations will be ruled on by the arbitrators. If the arbitrators grant this request, the parties are responsible for paying the arbitrators' travel and expenses. All travel and expense receipts should be processed through FINRA Dispute Resolution. Do not send your receipts directly to the parties. Also, if the hearing was originally scheduled to proceed in one of Dispute Resolution's four regional offices (Boca Raton, Chicago, Los Angeles, and New York), and the panelists grant the request to hold the hearing in an alternative location, then the parties are responsible for securing and paying for the conference room rental for the hearing.
2. Please contact the case administrator assigned to this case at the conclusion of the hearing to advise of the status of the case and the number of sessions conducted. Please note that a session is any meeting between parties and arbitrators that lasts four hours or less.
3. To avoid additional room charges, if the hearing concludes prior to the last scheduled hearing date, kindly notify the administrative office on site at the hotel (NOT the front desk) immediately.
4. If there are issues concerning the hearing that require staff intervention, please call the case administrator assigned to this case or any FINRA Dispute Resolution staff member. If you have any problems with the tape recorders or the room (i.e. insufficient lighting, air conditioning), please contact the front desk.
5. Even if your hearing is continuing the following day, please note that any materials left in the hearing room may be discarded. Please make sure that you take with you all important documents and/or personal belongings and inform the parties to do the same.
6. Please return one copy of all exhibits (except Arbitrator's Exhibit One) and tapes to the case administrator assigned to this case.
7. Any special requests by the parties (i.e. photocopies, facsimiles, special audio-visual equipment, phone installation charges) must be paid for by the requesting party. CHARGES FOR PARTY REQUESTS MAY NOT BE BILLED TO FINRA DISPUTE RESOLUTION'S ACCOUNT.

## **Expungement Rules 12805 and 13805 (Including Rule 2080)**

The SEC has approved FINRA Dispute Resolution's new expungement rules. The new rules apply to any expungement order issued on or after January 26, 2009. The new rules are contained in the FINRA Codes of Arbitration Procedure for Customer and Industry Disputes, Rules 12805 and 13805 respectively.

The new rules establish procedures that arbitrators must follow when considering requests for expungement relief of customer dispute information from the CRD System under Conduct Rule 2080. These new procedures are designed to: (1) make sure that arbitrators have the opportunity to consider the facts that support or oppose a decision to grant expungement; and (2) to ensure that expungement occurs only when the arbitrators find and document one of the narrow grounds specified in Rule 2080.

Pursuant to the new rules, in order to grant expungement of customer dispute information under Rule 2080, the panel must:

- (a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under Rule 12800, the Simplified Arbitration procedures, even if a customer did not request a hearing on the merits.
- (b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.
- (c) Indicate in the arbitration award which of the Rule 2080 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2080 grounds for expungement applies to the facts of the case. Therefore, the arbitrators must make one of the following findings:
  - 1. The claim, allegation, or information is factually impossible or clearly erroneous; or
  - 2. The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or
  - 3. The claim, allegation, or information is false.
- (d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.

Rule 2080 requires that all directives to expunge customer dispute information from the CRD system be confirmed by or ordered by a court of competent jurisdiction. It also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute

information or request confirmation of an award. FINRA will generally oppose confirmation of the expungement portion of the arbitration award in most cases where it participates in the judicial proceeding.

For more information about expungement Rules 12805 and 13805, review Regulatory Notice 08-79.

### **Expungement of Defamatory Language**

Under existing CRD policy, FINRA will continue to expunge information from the CRD system – without the need for judicial intervention - if the expungement directives contained in intra-industry awards that involve associated persons and firms are based on the defamatory nature of the information ordered expunged and do not involve any customer dispute information. Arbitrators must clearly state in the award that they are ordering expungement relief based on the defamatory nature of the information in the CRD system.

View Rule 2080 Frequently Asked Questions at the FINRA Web site at:  
<http://www.finra.org/RegulatorySystems/CRD/FilingGuidance/p005224>.

View copies of the Forms U4 and U5 at the FINRA Web site at:  
<http://www.finra.org/EducationPrograms/OnlineLearning/WebcastsforComplianceStaff/p018997>.

## **Injunctive Relief Case Information**

Pursuant to FINRA rules<sup>1</sup>, parties who want a temporary injunction must file for such relief in court. The only related relief available in arbitration at FINRA Dispute Resolution is for permanent injunction.

### **Legal Standard for Deciding Permanent Relief**

FINRA rules<sup>2</sup> provide the legal standard an arbitration panel should apply when deciding a request for permanent injunction. The panel should apply:

- The choice of law as indicated in the parties' agreement; or
- The law of the state where the events occurred, if the parties do not have an agreement.

### **Effective Date of Permanent Injunction**

Under FINRA rules<sup>3</sup>, once the panel has heard all evidence on the request for permanent injunction, it may prohibit the parties from seeking an extension of a court-issued temporary injunction. Arbitrators do not have the authority to modify or dissolve a court's order. However, arbitrators may order the parties to jointly move to modify or dissolve the temporary injunction. If a panel's order conflicts with a pending court order, the panel's order will become effective when the court's order expires.

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<sup>1</sup> Industry Code: Rule 13804; Old Code: Rule 10335

<sup>2</sup> Industry Code: Rule 13804(b)(4); Old Code: Rule 10335(b)(4)

<sup>3</sup> Industry Code: Rule 13804(b)(5); Old Code: 10335(b)(5)



## Order on Request for Permanent Injunction

At the conclusion of a hearing on a request for permanent injunction under FINRA rules<sup>1</sup>, please complete this form.

**An in-person or telephonic hearing on a request for Permanent Injunction under FINRA rules was held in the matter of:**

CLAIMANT(S): \_\_\_\_\_

RESPONDENT(S): \_\_\_\_\_

CASE #: \_\_\_\_\_

The hearing was held on \_\_\_\_\_ (month/date/year).  
The follow individuals participated in the hearing: [list the attending individuals]

Chairperson: \_\_\_\_\_

Panelist: \_\_\_\_\_

Panelist: \_\_\_\_\_

Claimant's Representative: \_\_\_\_\_

#1 Respondent's Representative: \_\_\_\_\_

#2 Respondent's Representative: \_\_\_\_\_

FINRA Dispute Resolution Staff: \_\_\_\_\_

At the hearing for permanent injunction, the following occurred:

1. Respondent \_\_\_\_\_ filed its answer to the statement of claim.

<sup>1</sup> Industry Code: Rule 13804; Old Code: Rule 10335

2. Respondent \_\_\_\_\_ filed its answer to the statement of claim.
3. The parties accepted the panel's composition. (If not, please explain.)
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
4. In determining the request for permanent injunction, the panel used the following legal standard (Select one):
- a. Choice of law as indicated in the parties' agreement; or,
  - b. The law of state where events occurred if there is no agreement.
5. On Claimant \_\_\_\_\_'s request for permanent injunction, the panel rules as follows (circle and complete all selections that apply):
- a. Granted
  - b. Denied
  - c. The permanent injunction filed by \_\_\_\_\_ shall become effective:
    - i. Upon the expiration of the TRO used by the Court on (month/date/year) \_\_\_\_\_ and expire on \_\_\_\_\_
    - ii. Immediately and will expire on (month/date/year) \_\_\_\_\_
6. On Respondent \_\_\_\_\_'s request for permanent injunction, the panel rules as follows (circle and complete all selections that apply):
- a. Granted
  - b. Denied
  - c. The permanent injunction filed by \_\_\_\_\_ shall become effective:
    - i. Upon the expiration of the TRO used by the Court on (month/date/year) \_\_\_\_\_ and expire on \_\_\_\_\_
    - ii. Immediately and will expire on (month/date/year) \_\_\_\_\_
7. The parties are prohibited from seeking an extension of the court's order.  
Yes or No

8. The parties are directed to jointly move the court to modify or dissolve the court order. The parties shall file this motion within \_\_\_\_\_ days from the date of this order.
9. The panel has scheduled additional hearings to resolve damages and other issues as follows:
- a. The next scheduled hearing session will be held on (month/date/year) \_\_\_\_\_ at \_\_\_\_\_ (time). The following dates have also been reserved for this hearing:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- b. The arbitrators and parties have tentatively reserved (month/date/year) \_\_\_\_\_ at \_\_\_\_\_ (time) for a Pre-hearing conference to resolve \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- c. The Chairperson and parties have tentatively reserved \_\_\_\_\_ (month/day/year) at \_\_\_\_\_ (time) for a Pre-hearing conference to resolve the following discovery matters:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- d. If Pre-hearing briefs are filed, they must be filed by: \_\_\_\_\_
- Response filed by: \_\_\_\_\_
- Reply filed by: \_\_\_\_\_
- e. If motions are filed, they must be filed by: \_\_\_\_\_
- Response filed by: \_\_\_\_\_
- Reply filed by: \_\_\_\_\_
10. Other rulings (i.e., arbitration fees, extra fees to be deposited, etc.):
- a. The parties are liable for the increased arbitrator honoraria on the hearing for the permanent injunction as follows: \_\_\_\_\_

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- b. The parties are liable for the reasonable travel expenses of arbitrator, \_\_\_\_\_, who traveled outside his or her assigned hearing location as follows:

Claimant #1 is assessed \_\_\_\_\_

Claimant #2 is assessed \_\_\_\_\_

Respondent #1 is assessed \_\_\_\_\_

Respondent #2 is assessed \_\_\_\_\_

Respondent #3 is assessed \_\_\_\_\_

11. If the parties settle this matter with no further hearings:

- a. The cost of this permanent injunction hearing and any other hearing, including initial Pre-hearing conference or Pre-hearing conference, will be borne as follows:

Claimant #1 is assessed \_\_\_\_\_

Claimant #2 is assessed \_\_\_\_\_

Respondent #1 is assessed \_\_\_\_\_

Respondent #2 is assessed \_\_\_\_\_

Respondent #3 is assessed \_\_\_\_\_

- b. Is this preliminary assessment joint and several? Yes or No

- c. If this preliminary assessment is joint and several, state below the parties against whom it is made (circle all that applies):

- i. Claimants only
- ii. Respondents only
- iii. Claimants and Respondents

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NOTE: FINRA rules<sup>2</sup> provide that chairperson shall receive \$375.00 for a single session and \$700 for each double session on the permanent injunction, while panelists shall receive \$300 for each single session and \$600 for each double session. The Rule provides that the parties shall equally pay the difference between regular and the injunctive relief honorarium<sup>3</sup> and that the arbitrators may reallocate this additional amount among the parties in the award. ***This increased honorarium applies only to hearings for permanent injunction and does not apply to Pre-hearing conferences or additional hearings on damages or other issues.***

FINRA rules<sup>4</sup> provides that the parties shall jointly bear an arbitrator's reasonable travel-related costs and expenses for required travel to a hearing location other than the arbitrator's primary hearing location(s). The arbitrator may reallocate such costs and expenses among the parties in the award.

If a member firm fails to satisfy an invoice, FINRA Dispute Resolution will debit the member firm's CRD account.

This order will remain in effect unless amended by the arbitration panel.

Dated:

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Chairperson's Name and Signature

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Panelist's Name and Signature

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Panelist's Name and Signature

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<sup>2</sup> Industry Code: Rule 13804(b)(6)(c); Old Code: Rule 10335(b)(6)(c)

<sup>3</sup> Industry Code: Rules 13214 and 13804(b)(6)(c)

<sup>4</sup> Industry Code: Rule 13804(b)(6)(A); Old Code: Rule 10335(b)(6)(A)

## Arbitrator Reimbursement Information in Injunctive Cases

FINRA rules<sup>1</sup> concerning injunctive relief procedures was amended to require parties to pay an arbitrator's **reasonable** travel expenses and costs if FINRA Dispute Resolution has determined that the arbitrator must travel to a hearing location other than his or her hearing location(s). To ensure that you receive prompt reimbursement, FINRA Dispute Resolution will reimburse you before receiving payment from the parties. When the case concludes, FINRA Dispute Resolution will request payment from the parties.

Due to the expedited nature of the injunctive relief procedures and because parties will be billed for your expenses, all Arbitrator Travel and Expense Forms, complete with all required documentation, must be submitted within 5 business days of completion of the hearing in which they were incurred. Arbitrator Travel and Expense Forms not timely submitted may not be reimbursed.

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<sup>1</sup> Industry Code: Rule 13804(b)(6)(A); Old Code: Rule 10335(b)(6)(A)

## Frequently Requested and Produced Documents in Employment Cases

Use this list to help determine the relevance of requested documents during the discovery process for employment cases.\* If a party requests one of the documents listed below, it is probably discoverable, although you'll make this decision on a case-by-case basis.

### Employment Cases

<i>Documents requested from the firm</i>	<i>Documents requested from the employee</i>
<ul style="list-style-type: none"><li>➤ Personnel records</li><li>➤ Employee manuals</li><li>➤ Commission runs</li><li>➤ Branch profit and loss (for raiding cases)</li><li>➤ Employee contracts</li><li>➤ Forms RE-3, U-4, and U-5</li><li>➤ Bonus paid to RRs in same title or group</li></ul>	<ul style="list-style-type: none"><li>➤ Income tax returns</li><li>➤ Employment contracts and arrangements with the firm</li><li>➤ Appointment calendars/notebooks and related material</li></ul>

\* You should always ensure that you have the most current discovery guidelines. Check with the staff member assigned to the case.

Case Number: \_\_\_\_\_

Case Name: \_\_\_\_\_

### Attendance List

Claimant(s)	Respondent(s)
Representative(s)	
Witnesses	



**Case Number:** \_\_\_\_\_

**Case Name:** \_\_\_\_\_

## List of Claimant's Exhibits

[illegible]



**Case Number:** \_\_\_\_\_

**Case Name:** \_\_\_\_\_

## List of Respondent's Exhibits

[illegible]

## Tape Log

**CASE NUMBER:** \_\_\_\_\_ **CASE NAME:** \_\_\_\_\_

Date	Session	Tape #	Description

1. **Write on the cassette tape the following information:**  
 Date  
 Case number  
 Tape number
  
2. **State at the beginning of each tape:**  
 Date  
 Case number  
 Tape number  
 Session (morning or afternoon)  
 Names of the Panelists
  
3. **Description: Enter a description for each tape, e.g.:**  
 Motions decided  
 Opening remarks  
 Witness' name  
 Closing remarks  
 Special notations



## Award Information Sheet (National Edition)

**\* Section 13 updated \***

### Award Information Sheet

**CASE NUMBER:**

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To prepare an award, FINRA Dispute Resolution needs certain information from the panel. After the panel has reached a decision, please provide the following information to the staff person assigned to the case.

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1. Please indicate the nature of the **initial** claim that was filed. Note: AP is the abbreviation for Associated Person.

- |   |   |
|---|---|
| <input type="checkbox"/> Customer vs. Member & AP | <input type="checkbox"/> Member vs. Member & AP |
| <input type="checkbox"/> Non-Member vs. Member    | <input type="checkbox"/> Customer vs. Member    |
| <input type="checkbox"/> Member vs. Member        | <input type="checkbox"/> Other _____            |
| <input type="checkbox"/> Member vs. Customer      | <input type="checkbox"/> Member vs. AP          |
| <input type="checkbox"/> Customer vs. AP          | <input type="checkbox"/> AP vs. Member          |
| <input type="checkbox"/> AP vs. Customer          | <input type="checkbox"/> AP vs. Member & AP     |

2. Change of party representation, if any?

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3. Who did counsel/representative for claimant state that they want reflected on the Award as counsel/representative?

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4. Who did counsel/representative for respondent state that they want reflected on the Award as counsel/representative?

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5. Parties who did not appear, if any?

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6. Did a party have an expert witness testify? If yes, which party?

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7. Hearing dates, with the time the hearing started and concluded, excluding deliberation sessions:

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8. Were any amendments made to the pleadings at the hearing? ☐ Yes ☐ No

(a) If an amendment was made to the pleadings, was it oral or written?

☐ Oral

☐ Written

(b) If any amendments were made to the pleadings, please describe below (include amendments to the dollar amount of any claim): \_\_\_\_\_

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9. Did the parties make any substantive or procedural motions?

☐ Yes

☐ No

(a) If a motion was made, which party made the motion?

Claimant: \_\_\_\_\_

Respondent: \_\_\_\_\_

Claimant: \_\_\_\_\_

Respondent: \_\_\_\_\_

(b) If a motion was made, please describe the motion, the response, and the panel's ruling below:

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(c) If a motion for expungement was made, please see the “Expungement” section below.

10. Was any party’s final damage requests presented at the close of the hearing different from what were requested in their pleading requesting damages? *See the Hearing Script section T.*

☐ Yes      ☐ No

(a) If yes, please identify the party and its final damage request below: \_\_\_\_\_

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11. Did anything unusual occur at the hearing that the panel wishes to include in the award?

☐ Yes      ☐ No

(a) If the answer to this question is yes, please describe below (please attach additional pages if necessary): \_\_\_\_\_

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## 12. **Expungement**

Was expungement requested? ☐ Yes    ☐ No

A. If yes, which party(ies) requested expungement? \_\_\_\_\_

\*(If more than one party requested expungement, please provide the same information for each party seeking expungement.)

B. Was the expungement request made:

- ☐ In a pleading (i.e. Statement of Answer)?
- ☐ Orally at the hearing?
- ☐ In a Stipulated Agreement?

☐ In a motion?

- C. If case was filed by a customer or is an intra-industry case that requests expungement of customer dispute information, the panel must make a Rule 2080 finding and comply with Rule 12805 or Rule 13805.

Note: The panel must hold a recorded hearing session (by telephone or in person) to decide the request for expungement. Please review Rules 12805 and 13805, for customer cases and industry cases respectively, for more information on these procedures.

1. Did the panel conduct either an in-person or a telephonic hearing to determine the request for expungement?

☐ In-person hearing

☐ Telephonic hearing

- (a) What issues and/or evidence were considered by the panel in granting the expungement? Please describe which party submissions the panel relied upon (You may attach additional pages if necessary):

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2. Did the parties reach a settlement in this case?

☐ Yes

☐ No

- (a) If yes, did the panel review the settlement documents and consider the amount of payments made to any party and any other terms and conditions of settlement? \_\_\_\_\_

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3. Is the expungement request granted? ☐ Yes

☐ No

(a) If expungement is granted, the panel must identify which of the following Rule 2080 finding(s) it is making in order to grant the expungement request.

1) The claim, allegation, or information is factually impossible or clearly erroneous:

☐ Yes

☐ No

2) The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds:

☐ Yes

☐ No

3) The claim, allegation, or information is false:

☐ Yes

☐ No

(b) If the expungement is granted, the panel *must* provide a brief written explanation of the reason(s) for its finding that one or more Rule 2080 grounds for expungement applies to the facts of the case (Please provide additional pages if necessary): \_\_\_\_\_

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D. For Intra-Industry Claims Only (Please review “Defamation Claims in Intra-Industry Disputes” below.)

1. If the claim is between a FINRA member firm and a current or former associated person, and the panel intends to order the expungement of information not related to a customer dispute from the Central Registration Depository (“CRD”), state whether the expungement order is based on the defamatory nature of the information, and if so, clearly state in the award that the “expungement order is based on the defamatory nature of the information in the CRD system.”

## **Expungement Rules 12805 and 13805 (Including Rule 2080)**

The SEC has approved FINRA Dispute Resolution's new expungement rules. The new rules apply to any expungement order issued on or after January 26, 2009. The new rules are contained in the FINRA Codes of Arbitration Procedure for Customer and Industry Disputes, Rules 12805 and 13805 respectively.

The new rules establish new procedures that arbitrators must follow when considering requests for expungement relief of customer dispute information from the CRD System under Conduct Rule 2080. These new procedures are designed to: (1) make sure that arbitrators have the opportunity to consider the facts that support or oppose a decision to grant expungement; and (2) to ensure that expungement occurs only when the arbitrators find and document one of the narrow grounds specified in Rule 2080.

Pursuant to the new rules, in order to grant expungement of customer dispute information under Rule 2080, the panel must:

- (a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under Rule 12800, the Simplified Arbitration procedures, even if a customer did not request a hearing on the merits.
- (b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.
- (c) Indicate in the arbitration award which of the Rule 2080 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2080 grounds for expungement applies to the facts of the case. Therefore, the arbitrators must make one of the following findings:
  - 1. The claim, allegation, or information is factually impossible or clearly erroneous; or
  - 2. The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or
  - 3. The claim, allegation, or information is false.
- (d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.

Rule 2080 requires that all directives to expunge customer dispute information from the CRD system be confirmed by or ordered by a court of competent jurisdiction. It also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award.

FINRA will generally oppose confirmation of the expungement portion of the arbitration award in most cases where it participates in the judicial proceeding.

**These new rules do not affect FINRA's practice of permitting expungement, without judicial intervention, of information from the CRD system as directed by arbitrators in intra-industry arbitration awards that involve associated persons and firms based on the defamatory nature of the information ordered expunged.**

For more information about expungement Rules 12805 and 13805, review Regulatory Notice 08-79.

### **Defamation Claims in Intra-Industry Disputes**

Under existing CRD policy, FINRA will expunge information from the CRD system – without the need for judicial intervention – if the expungement directives contained in intra-industry awards that involve associated persons and firms are based on the defamatory nature of the information ordered expunged and do not involve any customer dispute information. Arbitrators must clearly state in the award that they are ordering expungement relief based on the defamatory nature of the information in the CRD system. Rule 2080 applies in intra-industry cases that request expungement of customer dispute information.

View Rule 2080 Frequently Asked Questions at the FINRA Web site at:  
<http://www.finra.org/RegulatorySystems/CRD/FilingGuidance/p005224>.

13. Award:

USE THE FOLLOWING PAGES TO ENSURE THAT THE PANEL DECIDED ALL CLAIMS AND OTHER RELIEF REQUESTS.

Initial Claim

\_\_\_\_\_ shall  
[Party(ies)]

pay to \_\_\_\_\_

\_\_\_\_\_  
[Party(ies)]

a. Compensatory damages awarded, if any? \_\_\_\_\_

\_\_\_\_\_

b. Punitive or RICO damages awarded, if any? \_\_\_\_\_

- Authority for Punitive or RICO Damages (e.g., brief description of legal citation):

\_\_\_\_\_

\_\_\_\_\_

c. Is interest awarded? Specifically indicate the percentage of interest awarded. \_\_\_\_\_

\_\_\_\_\_

- Date interest on the award begins to accrue? \_\_\_\_\_

\_\_\_\_\_

- Date interest on the award ceases to accrue? \_\_\_\_\_

\_\_\_\_\_

d. Attorneys' Fees awarded, if any? \_\_\_\_\_

- Authority for Attorneys' Fees (e.g., statute, contract): \_\_\_\_\_

\_\_\_\_\_

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e. Costs awarded, if any? \_\_\_\_\_

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f. Other damages, costs, or fees awarded (e.g., witness fees): \_\_\_\_\_

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g. Specific performance granted, if any? Describe completely (Please attach additional pages if necessary): \_\_\_\_\_

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h. Injunctive relief granted, if any? Describe completely (Please attach additional pages if necessary): \_\_\_\_\_

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i. Is the award **joint and several** against two or more parties? ☐ Yes ☐ No

If yes, the award is joint and several against the following respondents: \_\_\_\_\_

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j. If an explained decision is required, please include the explanation in the space provided below. (Please attach additional documents if necessary):

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☐ Counterclaim/ ☐ Cross-Claim/ ☐ Third Party Claim (Please check the box for the appropriate claim that was filed. Please include the panel's decision/ruling for each additional Counterclaim, Cross-Claim, and/or Third Party Claim that was filed).

\_\_\_\_\_ shall  
pay to \_\_\_\_\_  
[Party(ies)] [Party(ies)]

a. Compensatory damages awarded, if any? \_\_\_\_\_

b. Punitive or RICO damages awarded, if any? \_\_\_\_\_

- Authority for Punitive or RICO Damages (e.g., brief description of legal citation):

c. Interest or the percentage of interest awarded, if any? \_\_\_\_\_

- Date interest on the award begins to accrue? \_\_\_\_\_

- Date interest on the award ceases to accrue? \_\_\_\_\_

d. Attorneys' Fees awarded, if any? \_\_\_\_\_

- Authority for Attorneys' Fees (e.g., statute, contract): \_\_\_\_\_

e. Costs awarded, if any? \_\_\_\_\_

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f. Other damages, costs, or fees awarded (e.g., witness fees): \_\_\_\_\_

---

g. Specific performance granted, if any? Describe completely (Please attach additional pages if necessary): \_\_\_\_\_

---

h. Injunctive relief granted, if any? Describe completely (Please attach additional pages if necessary): \_\_\_\_\_

---

i. Is the award **joint and several** against two or more parties? ☐ Yes ☐ No

If yes, the award is joint and several against the following respondents: \_\_\_\_\_

j. If an explained decision is required, please include the explanation in the space provided below. (Please attach additional documents if necessary):

#### 14. Explained Decision Fees

The Explained Decision Rule provides that the panel will allocate the cost of the additional \$400 honorarium to the parties as part of the final award. Please indicate how this additional honorarium should be assessed:

Claimant #1 is assessed \_\_\_\_\_

Claimant #2 is assessed \_\_\_\_\_

Respondent #1 is assessed \_\_\_\_\_

Respondent #2 is assessed \_\_\_\_\_

#### 15. Hearing Session Fees:

Code of Arbitration Procedure Rules 12902(b) for Customer Disputes and 13902(b) for Industry Disputes provide that arbitrators, in their awards, shall determine the amount chargeable to the parties as hearing session fees and shall determine who shall pay such fees. Hearing session fees may be described as the direct costs of administering the arbitration proceeding.

The panel may assess hearing session fees among the parties in any fashion. In deciding how to assess hearing session fees among the parties, the panel might consider the following factors:

- Temporary waivers of filing fees or hearing session deposits granted because of financial hardship.
- Actions by any party that may have prolonged the length of the hearing.
- The legitimacy of arguments made or positions taken.
- Disruptions or time delays caused during hearing sessions.
- The ultimate merits of the case (i.e., who prevailed or substantially prevailed).

Assessment of Hearing Session Fees:

Specify *below* the parties against whom the hearing session fees are to be assessed *and* the percentage of hearing session fees to be assessed to each.

Claimant(s) \_\_\_\_\_ assessed \_\_\_\_\_%

\_\_\_\_\_ assessed \_\_\_\_\_%

Respondent(s) \_\_\_\_\_ assessed \_\_\_\_\_ %  
\_\_\_\_\_ assessed \_\_\_\_\_ %

(a) Please indicate whether you wish to have the respondent(s) reimburse the claimant(s) for the non-refundable portion of the claim-filing fee paid to FINRA Dispute Resolution.

☐ Yes ☐ No

(b) Please indicate whether hearing session fees are to be assessed *jointly and severally* against any of the parties. ☐ Yes ☐ No

If yes, please state below the parties to be assessed *jointly and severally*.

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#### 16. Fees For Discovery-Related Motions and Contested Subpoena Requests

Fees for decisions rendered on discovery-related motions on the papers, and for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing, are designed to cover payments made to arbitrators for these decisions.

The panel may assess \$200 per arbitrator for each arbitrator who participates in the decision on a discovery-related motion. The panel may also assess \$200 per arbitrator for each arbitrator who participates in the decision on a contested subpoena request. This honorarium is paid on a per case basis to each arbitrator who decides the contested subpoena request. Parties shall not be assessed more than \$600 in fees per case for decisions rendered on contested subpoena requests without a pre-hearing conference.

Please note: The panel may decide to allocate the fees for decisions rendered on discovery-related motions on the papers, and for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing conference, in the same manner as the pre-hearing conference sessions and hearing sessions. Also, parties shall be assessed a maximum of \$600 per case for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing conference.

##### A. Calculation of Discovery-Related Motion Fees:

Specify *below* the parties against whom the discovery-related motion fees are to be assessed *and* the percentage of discovery-related motion fees to be assessed to each.

Claimant(s) \_\_\_\_\_ assessed \_\_\_\_\_ %

\_\_\_\_\_ assessed \_\_\_\_\_ %

Respondent(s) \_\_\_\_\_ assessed \_\_\_\_\_ %

\_\_\_\_\_ assessed \_\_\_\_\_ %

(a) Please indicate whether the fees are to be assessed *jointly and severally* against any of the parties. ☐ Yes ☐ No

If yes, please state below the parties to be assessed *jointly and severally*.

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#### B. Calculation of Contested Subpoena Request Fees:

Specify *below* the parties against whom the contested subpoena request fees are to be assessed *and* the percentage of contested subpoena request fees to be assessed to each.

Claimant(s) \_\_\_\_\_ assessed \_\_\_\_\_ %

\_\_\_\_\_ assessed \_\_\_\_\_ %

Respondent(s) \_\_\_\_\_ assessed \_\_\_\_\_ %

\_\_\_\_\_ assessed \_\_\_\_\_ %

(a) Please indicate whether the fees are to be assessed *jointly and severally* against any of the parties. ☐ Yes ☐ No

If yes, please state below the parties to be assessed *jointly and severally*.

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## 17. Injunctive Relief Fees:

- a. The Injunctive Relief Rule<sup>2</sup> provides that the increased arbitrator honoraria for the hearing on the request for permanent injunction should be assessed equally against the parties but that the arbitrators may reallocate this additional amount among the parties in the award. Please indicate how these additional honoraria should be assessed:

Claimant #1 is assessed \_\_\_\_\_

Claimant #2 is assessed \_\_\_\_\_

Respondent #1 is assessed \_\_\_\_\_

Respondent #2 is assessed \_\_\_\_\_

If the assessment is joint and several against any party, state below the parties against whom it is made (circle all that applies):

- i. Claimants only
- ii. Respondents only
- iii. Claimants and Respondents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b. The Injunctive Relief Rule also provides that the parties are jointly liable for the reasonable travel-related costs and expenses of an arbitrator who is required to travel to a hearing location other than the arbitrator's primary hearing location(s). The Rule further provides that the arbitrators may reallocate this expense. Please indicate how the expenses should be assessed.

Arbitrator \_\_\_\_\_, traveled outside his or her assigned hearing location and incurred \$\_\_\_\_\_ in reasonable travel-related costs and expenses.

Arbitrator \_\_\_\_\_, traveled outside his or her assigned hearing location and incurred \$\_\_\_\_\_ in reasonable travel-related costs and expenses.

Arbitrator \_\_\_\_\_, traveled outside his or her assigned hearing location and incurred \$\_\_\_\_\_ in reasonable travel-related costs and expenses.

<sup>2</sup> Industry Code: Rule 13804; Old Code: Rule 10335

The parties are liable for those reasonable travel related costs and expenses as follows:

Claimant #1 is assessed \_\_\_\_\_

Claimant #2 is assessed \_\_\_\_\_

Respondent #1 is assessed \_\_\_\_\_

Respondent #2 is assessed \_\_\_\_\_

If the assessment is joint and several against any party, state below the parties against whom it is made (circle all that applies):

- i. Claimants only
- ii. Respondents only
- iii. Claimants and Respondents

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c. Is a disciplinary referral appropriate in this case? ☐ Yes ☐ No

If a referral is appropriate, contact the staff assigned to the case for guidance and a copy of the Arbitrator Disciplinary Referral Form.

Thank you for your service in this matter. FINRA Dispute Resolution looks forward to working with you again in the future.

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## Disciplinary Referral Information

During the course of the hearing, you may hear evidence of serious wrongdoing that you believe warrants further investigation and possible disciplinary action. FINRA Dispute Resolution relies on arbitration panels to refer appropriate matters for investigation.

As an arbitrator you have sole discretion as to whether to make a disciplinary referral based on the evidence. Disciplinary referrals to the appropriate FINRA Regulatory Policy & Oversight District Office may be warranted if:

- The conduct of the brokerage house or the individual representative shows substantial unethical or dishonest conduct by a member firm or its associated person.
- The conduct of the brokerage house or individual representative may have materially violated securities laws or FINRA rules.
- The conduct involves abusive sales or trading practices.

In general, you should refer only matters that are of a regulatory interest. Issues you ordinarily would not refer for disciplinary review include:

- Contractual disputes between a member firm and its customer (in the absence of bad faith).
- Disputes between member firms.
- Disputes between a member firm and its employees.

*A disciplinary referral is not a recommendation that discipline be imposed, but a recommendation that the appropriate FINRA Regulatory Policy & Oversight District Office conduct an investigation to determine whether disciplinary action is appropriate.*

You have great discretion in determining whether to refer a case for a disciplinary inquiry or not. If you determine a referral is appropriate, complete the “FINRA Dispute Resolution Arbitrator Referral Form For Potential Disciplinary Matters” and forward it to the staff person assigned to your case.



## Disciplinary Referral Form

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### **FINRA DISPUTE RESOLUTION** **ARBITRATOR REFERRAL FORM FOR POTENTIAL DISCIPLINARY MATTERS**

Rule 12104(b)<sup>1</sup> of the Customer Code and Rule 13104(b) of the Industry Code provides:

Only at the conclusion of an arbitration, any arbitrator may refer to FINRA for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of FINRA's rules, the federal securities laws, or other applicable rules or laws.

See also IM-12000 of the Customer Code ("Failure to Act Under Provisions of the Code of Arbitration Procedure for Customer Disputes"); IM-13000 of the Industry Code ("Failure to Act Under Provisions of the Code of Arbitration Procedure for Industry Disputes"); or IM-10100 of the Old Code ("Failure to Act under Provisions of the Codes of Arbitration Procedure".)

The American Stock Exchange, International Stock Exchange, Municipal Rulemaking Securities Board, Nasdaq Liffe Markets, and the Philadelphia Stock Exchange have agreements with FINRA Dispute Resolution for use of its forum. The agreements provide that members of the exchanges and associated person are bound by FINRA Dispute Resolution's rules. If an arbitrator wants to refer for disciplinary action a party that is a member of one of these exchanges or an associated person, the arbitrator should use this form.

This form is to be used by arbitrators who want to refer potential disciplinary violations to FINRA Dispute Resolution for investigation. It should be completed at the conclusion of the arbitration and submitted to the FINRA Dispute Resolution along with a signed copy of the arbitration award. You should not discuss in this form the basis for your award in the arbitration case. In this form, you should discuss only those facts and circumstances that underlie your decision to refer this case for

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<sup>1</sup> Old Code Rule 10105 provides: The submission of any matter to arbitration under this Code shall in no way limit or preclude any right, action or determination by the Association which it would otherwise be authorized to adopt, administer or enforce. If any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Association's Rules or the federal securities laws, the arbitrator may initiate a referral of the matter to the Association for disciplinary investigation; provided, however, that any such referral should only be initiated by an arbitrator after the matter before him has been settled or otherwise disposed of, or after an award finally disposing of the matter has been rendered pursuant to Rule 10330 of the Code.

disciplinary investigation. Attach additional sheets if necessary.

## I. CASE INFORMATION

Case No.: \_\_\_\_\_ Case Administrator/Telephone: \_\_\_\_\_

Case Name: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_ Location: \_\_\_\_\_

Date of Arbitration Award or Settlement/Withdrawal of Case: \_\_\_\_\_

Name of Arbitrator Making Referral: \_\_\_\_\_

Arbitrator's Address: \_\_\_\_\_

Arbitrator's Phone: \_\_\_\_\_ Fax Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

Who is being referred for regulatory review? Be specific as to member firms and/or associated persons, and include applicable CRD numbers.

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## II. BASIS FOR REFERRAL

Nature of Potential Violation (check all that apply):

<input type="checkbox"/> Suitability	<input type="checkbox"/> Unauthorized trading	<input type="checkbox"/> Failure to comply with injunction
<input type="checkbox"/> Trading ahead	<input type="checkbox"/> Selling away	<input type="checkbox"/> Failure to submit to arbitration
<input type="checkbox"/> Churning	<input type="checkbox"/> Failure to supervise	<input type="checkbox"/> Failure to comply with other order of arbitrator(s)
<input type="checkbox"/> Fraud	<input type="checkbox"/> Other (please be specific as nature of potential violation)	

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In what geographical location did the activity that is the basis for the referral take place? (This information is critical to determine which District will investigate the referral.)

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When did the activity that is the basis of the referral take place? (It is not necessary to identify exact dates; the year and duration of the activity are sufficient.)

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Please explain the reason for referral in narrative form. Provide details that would be helpful to an investigator, such as specific actions, names, dates, etc. Examples: For fraud or misrepresentation, identify the specific nature of the fraud, any specific misrepresentations that were made, when they were made, to whom, etc. For a referral based on unsuitability, churning, unauthorized trading, etc., identify the specific securities and trades that justify the referral, including dates. Referrals that state only "the representative misrepresented something to the customer," or "there was unauthorized trading," for example, do not provide sufficient information to investigators, especially where the arbitration covered many transactions over a period of years. If you identified any aggravating circumstances, please identify these as well.

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Please identify any particular documents presented during the case that justify or would be useful in investigating the referral.

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Please identify any person whose testimony justifies or would be useful in investigating the referral. If you know the date(s) on which they testified, please provide the date(s):

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***Thank you for your referral. You should not contact FINRA Dispute Resolution or Regulation staff, or discuss this matter with any person, including the parties or their counsel in the arbitration proceeding. Should anyone contact you to discuss this referral, please contact the case administrator immediately.***

Arbitrator's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Peer Evaluation Information

FINRA Dispute Resolution continuously evaluates its arbitrators and the hearing process in an effort to improve the effectiveness of its arbitrators and its arbitration program.

Please complete a Peer Evaluation Form at the conclusion of each arbitration. Your comments regarding your co-panelists are confidential and will not be shared without your permission.

Peer Evaluation Forms may be downloaded from the FINRA Dispute Resolution Web site at [www.FINRA.org](http://www.FINRA.org); click on the [Arbitration & Mediation](#) tab, the link for [Resources for Neutrals](#) then finally the link for Case Related Information and Forms.



## **Arbitrator Honorarium Information Frequently Asked Questions**

- 1. As an arbitrator on the roster of FINRA Dispute Resolution, am I entitled to compensation for my service?**

Yes, arbitrators are compensated at the rate of \$200 per hearing session, with an additional \$75 per day when acting as Chairperson at the hearings on the merits.

- 2. Does the additional \$75 per day paid to an arbitrator acting as Chairperson apply to prehearing conferences?**

No, the additional \$75 per day for Chairpersons applies only to evidentiary hearings.

- 3. What is considered a “hearing session”?**

A hearing session is any meeting between the parties and the arbitrator(s), including a Pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

- 4. Can two hearing sessions be held in a single day?**

Yes. In many instances, evidentiary hearings are scheduled for four hours in the morning and four hours in the afternoon. When two, four-hour sessions are held in a single day, an arbitrator’s honorarium is \$400, or \$475 if the arbitrator is acting as Chairperson.

- 5. So, what you’re saying is that an arbitrator can make \$475 a day – maximum – and that includes serving as Chair. That figure is considerably lower than the amount paid by other dispute resolution forums. Can I demand my hourly rate, as I do in the other forums?**

No. The arbitrators’ honorarium is set at a fixed rate. Arbitrators should not ask the parties, or the FINRA staff member assigned to the case, to pay a higher rate.

**6. Who is responsible for collecting my fees from the parties?**

Unlike other forums, FINRA Dispute Resolution pays the arbitrator honorarium for members of its roster from fees collected from the parties. Parties do not pay arbitrators directly. This is another important reason why arbitrators should not discuss any issue regarding their honorariums with the parties or their representatives.

**7. Will I be compensated for handling any discovery motions?**

Yes. Effective September 26, 2005, FINRA provides arbitrators an honorarium of \$200 to decide discovery-related motions on the papers. This rule applies to any discovery order of an arbitrator or panel issued on or after September 26, 2005. If more than one arbitrator considers a discovery-related motion, each arbitrator will receive \$200. The panel will allocate the cost of the honoraria to the parties in the arbitration award.

**8. I understand that arbitrators are often required to read and review lengthy materials in preparation for a hearing, or prior to rendering an award. Are arbitrators compensated for the time spent studying materials?**

No. The honorarium applies only to hearings and does not cover “study time.”

**9. What if a case settles before the hearing, after I’ve read all the materials in preparation? Aren’t I entitled to compensation for the time I spend needlessly?**

We place great value on the time contributed by arbitrators serving on the FINRA Dispute Resolution roster. However, arbitrators are not currently compensated for their preparation time, regardless of whether a case proceeds to hearing or is settled.

**10. What if a hearing is postponed? Are arbitrators compensated for the time they set-aside for a hearing that is ultimately cancelled?**

Yes, an arbitrator will receive \$100 if a hearing on the merits is postponed, adjourned or canceled within three business days before a scheduled hearing session. *[Please note: if an arbitrator appears at a cancelled hearing because FINRA staff was unable to notify the arbitrator, the arbitrator will receive \$50 for his/her trouble.]*

**11. The honorarium I've been receiving is less than \$200 per hearing session. Why is that?**

The Rules were revised in 1999 to increase the arbitrators' honorarium to \$200 per hearing session. If you are serving on a case that was filed prior to 1999, your honorarium will be at the lesser rate that was in effect at the time the case was filed.

**12. What about expenses? Can I be reimbursed for expenses?**

Arbitrators are reimbursed for reasonable, local expenses. For further details, please refer to the "Guidelines for Arbitrator Reimbursement." A copy can be obtained from your local regional office.

*FINRA Dispute Resolution recognizes that the arbitrators on its roster are the backbone of the process. Arbitrators are essential to the forum's delivery of fair, neutral, and expedient dispute resolution. We are better able to serve the parties who rely on us because of the arbitrators who serve us. FINRA Dispute Resolution appreciates each of its loyal and dedicated arbitrators.*



## Guidelines for Arbitrator Reimbursement

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Thank you for agreeing to serve as an arbitrator for FINRA Dispute Resolution. To better serve our users, we are continuing our efforts to reduce the costs of case administration. Accordingly, please be conscientious regarding any expenses you may incur while performing your duties.

### **FINRA Arbitrator Expense Reports**

All FINRA Arbitrator Expense Reports must be submitted within 30 calendar days of the date the expense was incurred. For additional copies of the Arbitrator Expense Report, go to <http://www.finra.org/ArbitrationMediation/index.htm> or contact your case administrator.

All reimbursable expenses should be itemized on the FINRA Expense Report. Original receipts (not copies) for all reimbursable expenditures must be attached. In completing the expense report, you must include the following in the space provided:

- your Arbitrator ID number,
- the case number (include in “Overall Business Purpose” section),
- the case name (include in “Overall Business Purpose” section).

Failure to properly complete the expense report will delay reimbursement.

### **What expenses are reimbursable?**

First, you must determine your arbitrator category. This will determine which expenses are reimbursable.

**Category One: Arbitrators who live or work within 120 miles of their primary hearing location.**

**Category One arbitrators will be reimbursed for:**

- **Local Transportation:** You will be reimbursed for mileage (up to 120 miles each way), parking, and toll charges incurred traveling to and from the

hearing location. For expenses incurred in 2009, the mileage rate is \$.55 cents per mile (per IRS Regulation). Actual miles driven should be entered on the expense report. Commuter trains, subways, buses, or other forms of convenient, low-cost public transportation should be used whenever possible.

- ☛ **Meals:** You will receive lunch at the hearing provided by FINRA Dispute Resolution, or be reimbursed up to a maximum of \$20 for expenses (including any gratuities). Arbitrators can use their \$20 allowance to purchase any food they wish (i.e., coffee, breakfast, lunch, snack, etc.), as long as they remain within the \$20 daily allowance. You will need to submit receipts for **all** meal expenses.

**Category Two: Arbitrators who elect to serve in additional hearing locations other than their primary hearing location.**

- ☛ **Meals:** You will receive lunch at the hearing provided by FINRA Dispute Resolution, or be reimbursed up to a maximum of \$20 for expenses (including any gratuities). Arbitrators can use their \$20 allowance to purchase any food they wish (i.e., coffee, breakfast, lunch, snack, etc.), as long as they remain within the \$20 daily allowance. You will need to submit receipts for **all** meal expenses.

Category Two arbitrators are not entitled to reimbursement of any expenses except for meals.


**Category Three: Arbitrators who live more than 120 miles from their primary hearing location.**


Category Three arbitrators will be reimbursed for reasonable reimbursable expenses when serving in their primary hearing location. (Category Three arbitrators will be treated as Category Two arbitrators for additional hearing locations) ***For each case, you must first obtain the written authorization from FINRA Dispute Resolution before incurring expenses.*** Failure to obtain such written authorization will result in FINRA Dispute Resolution's refusal to reimburse you.


- ☛ **Lodging:** You may be reimbursed for your lodging on the night before the hearing. The lodging must be at the hotel where the hearing is scheduled, or at a hotel approved by FINRA Dispute Resolution. Arbitrators staying in a private residence with family or friends will be reimbursed for a hostess gift to extend appreciation to friends or relatives for their hospitality not to exceed \$100 per stay.
- ☛ **Meals:** You may be reimbursed for meal expenses incurred while at the hearing, up to a maximum of \$55. These amounts include any gratuities added to the bills. Arbitrators can use their \$55 allowance to purchase any food they wish (i.e., coffee, breakfast, lunch, snack, etc.), as long as they remain within the \$55 daily allowance. If serving at a FINRA Dispute


Resolution location, lunch may be provided at the hearing. If so, your daily food allowance will be reduced by \$20.

You will need to submit receipts for **all** meal expenses.

 **Telephone Calls:** You may be reimbursed for reasonable telephone calls that are necessary for business and personal reasons (such as to immediate family members).


 **Air and Train Travel:** You may be reimbursed for the lowest, *refundable*, airline ticket available for the trip. If you desire to use transportation other than the lowest refundable air fare available, any excess charges will not be reimbursed. If you purchase nonrefundable tickets, no reimbursement will be allowed in the event of a cancellation. You are strongly encouraged to schedule reservations as far in advance as possible to obtain the most favorable fares. Train travel in lieu of air travel is an acceptable alternative when scheduling permits its use and ticket costs are the same or less than air travel. On occasion, FINRA Dispute Resolution may obtain airline tickets for you. In such cases, all unused airline tickets must be returned to FINRA Dispute Resolution immediately if you will not be using them.

 **Airport Ground Transportation:** You may be reimbursed for airport limousines, buses, or other forms of convenient, low-cost public ground transportation whenever traveling to and from the airport and hearing location. The costs of taxis or rental cars are only reimbursable to the extent that other lower cost alternatives (such as hotel courtesy vans) are not available. Car rentals will be reimbursed for economy size cars only.

 **Automobile Use:** Should you choose not to fly, or if no flights are available, or if it is more economical to drive than to fly, FINRA Dispute Resolution's policy is to reimburse you for mileage, parking, and toll charges incurred in traveling to and from the hearing location. For expenses incurred in 2009, the mileage rate is \$.55 cents per mile (per IRS Regulation). Actual miles driven should be entered on your expense report. FINRA Dispute Resolution will also reimburse you for per diem meal expenses incurred while traveling to and from the hearing location in amounts not to exceed those listed above.

**Category Four: Arbitrators who are asked by FINRA Dispute Resolution to serve in a hearing location in which they did not previously volunteer to serve.**

Category Four arbitrators will be reimbursed for reasonable reimbursable expenses. ***For each case, you must first obtain the written authorization from FINRA Dispute Resolution before incurring expenses.*** Failure to obtain such written authorization will result in FINRA Dispute Resolution's refusal to reimburse you.

 **Lodging:** You may be reimbursed for your lodging on the night before the hearing. The lodging must be at the hotel where the hearing is scheduled, or

at a hotel approved by FINRA Dispute Resolution. Arbitrators staying in a private residence with family or friends will be reimbursed for a hostess gift to extend appreciation to friends or relatives for their hospitality not to exceed \$100 per stay.

- 🍽️ **Meals:** You may be reimbursed for meal expenses incurred while at the hearing, up to a maximum of \$55. These amounts include any gratuities added to the bills. Arbitrators can use their \$55 allowance to purchase any food they wish (i.e., coffee, breakfast, lunch, snack, etc.), as long as they remain within the \$55 daily allowance. If serving at a FINRA Dispute Resolution location, lunch may be provided at the hearing. If so, your daily food allowance will be reduced by \$20.

You will need to submit receipts for **all** meal expenses.

- ☎️ **Telephone Calls:** You may be reimbursed for reasonable telephone calls that are necessary for business and personal reasons (such as to immediate family members).

- ✈️ **Air and Train Travel:** You may be reimbursed for the lowest, *refundable*, airline ticket available for the trip. If you desire to use transportation other than the lowest refundable air fare available, any excess charges will not be reimbursed. If you purchase nonrefundable tickets, no reimbursement will be allowed in the event of a cancellation. You are strongly encouraged to schedule reservations as far in advance as possible to obtain the most favorable fares. Train travel in lieu of air travel is an acceptable alternative when scheduling permits its use and ticket costs are the same or less than air travel. On occasion, FINRA Dispute Resolution may obtain airline tickets for you. In such cases, all unused airline tickets must be returned to FINRA Dispute Resolution immediately if you will not be using them.

- 🚗 **Airport Ground Transportation:** You may be reimbursed for airport limousines, buses, or other forms of convenient, low-cost public ground transportation whenever traveling to and from the airport and hearing location. The costs of taxis or rental cars are only reimbursable to the extent that other lower cost alternatives (such as hotel courtesy vans) are not available. Car rentals will be reimbursed for economy size cars only.

- 🚗 **Automobile Use:** Should you choose not to fly, or if no flights are available, or if it is more economical to drive than to fly, FINRA Dispute Resolution's policy is to reimburse you for mileage, parking, and toll charges incurred in traveling to and from the hearing location. For expenses incurred in 2009, the mileage rate is \$.55 cents per mile (per IRS Regulation). Actual miles driven should be entered on your expense report. FINRA Dispute Resolution will also reimburse you for per diem meal expenses incurred while traveling to and from the hearing location in amounts not to exceed those listed above.

**Category Five: Arbitrators who have a secondary hearing location(s) in close proximity to their primary hearing location will receive the same reimbursement arrangement as in Category One (see above) for their secondary hearing location(s) as for their primary hearing location.** (For example, an arbitrator may have his/her primary HLC as New York City, NY and his/her secondary HLC as Newark, NJ. The arbitrator would be reimbursed for services on the same basis when serving either in New York City or in Newark.)

### **NON-REIMBURSABLE EXPENSES<sup>1</sup>** **For All Arbitrator Types**

The following expenses are considered personal. Under **no** circumstances will arbitrators be reimbursed for the following:

- 🛎 Hotel amenities such as hotel spas, recreational sports, in-room movies, mini-bar, and hotel room refrigerator charges.
- 👤 Expenses of anyone accompanying an arbitrator to a hearing or while traveling. Combined charges should be adjusted to exclude expenses incurred by the accompanying person. In addition, any difference between single and double room rates because of an accompanying person should be deducted from the total expense.
- 🎧 Airline headsets and any other items for personal use. If charges for reimbursable items and personal items are combined, the charges should be adjusted to exclude personal items.
- 🍷 Any alcoholic beverage.

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<sup>1</sup> Expenses not considered as “business expenses” by the IRS.

## Glossary of Terms

**Answer:** A response to the statement of claim, which specifies the relevant facts and available defenses.

**Arbitral Immunity:** Arbitrators are protected from suits arising out of their quasi-judicial conduct in arbitration proceedings.

**Award:** An award is a document stating the disposition of a case.

**Arbitrator:** A private, disinterested person chosen to decide disputes between parties.

**Arbitrator's Exhibit #1:** The pleadings submitted by the parties including the executed Submission Agreements (see **Pleadings**).

### Associated Person

### Bond

### Broker

**Case Administrator:** FINRA Dispute Resolution staff members who serve as neutral administrators of the arbitration forum.

**Challenge for Cause:** A party's request to the Director of Arbitration to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer will be resolved in favor of the customer.

### Central Registration Depository (CRD)

### Churning/Excessive Trading

**Claim:** An allegation or request for relief.

**Compensatory Damages:** Compensatory or actual damages consist of both general and special damages. General damages are the natural, necessary, and usual result of the wrongful act or occurrence in question. Special damages are those which are the natural, but not the necessary and inevitable result of the wrongful act.

**Cross Claim:** A claim asserted by a respondent against another already-named respondent.

**Cross-Examination:** The examination of a witness by the opposing party. Cross-examination usually follows direct examination and may be limited to the scope of testimony on direct examination.

**Closing Argument:** A party's final statement made at the close of the arbitration hearing. It is a summary of what the party thinks he/she proved with the testimony and evidence presented.

**Compliance Department:** An internal department at a securities firm that oversees market activity and ensures that trading complies with the rules and regulations of the [Securities and Exchange Commission \(SEC\)](#) and self-regulatory organizations.

**Code of Ethics:** All arbitrators must read and comply with the ethical standards in the "Code of Ethics for Arbitrators in Commercial Disputes." Arbitrators are encouraged to refer to the Code of Ethics regularly. The Code of Ethics is not a substitute for nor does it supersede applicable law, or the FINRA Code of Arbitration Procedure. The Code can be found in Appendix A of *The Arbitrator's Manual*.

## [Commissions](#)

## [Confirmations](#)

**Counterclaim:** A claim asserted against a claimant by a respondent.

**Court Reporter:** A person who keeps a stenographic record of the proceedings.

**Damages:** Pecuniary compensation which may be recovered.

## [Dealer](#)

**Deposition:** A discovery device by which one party asks questions of the other party or other party's witness under oath and which is recorded and transcribed by a court reporter.

**Direct Examination:** The first questions of a witness by the party on whose behalf the witness is called. The second such questions (after cross-examination) are called redirect examination.

**Disciplinary Referral:** An arbitrator(s)' referral to the appropriate FINRA District Office to investigate an occurrence or practice that the arbitrator(s) find to potentially violate FINRA's rules or regulations.

**Discovery:** The pre-hearing stage of a case in which parties request information or documents from each other in preparing for the hearing.

### Discretionary Account

**Evidence:** A party's offer of testimony, writings, material objects, or other things to prove the existence or non-existence of a fact.

**Executive Sessions:** A private, off-the-record conference among the arbitrators during the course of the hearing to decide matters that have arisen such as evidentiary objections or motions.

**Exhibits:** A document or any other item presented or identified in proof of facts to the arbitrators.

**Expert Witness:** One who is particularly knowledgeable in a specialized field.

**Filing:** A party's delivery to the Director of Arbitration of the statement of claim or other pleadings.

### Form U4

### Form U5

**Federal Rules of Evidence:** Rules that govern the admissibility of evidence in trials in the federal courts. Several states have adopted rules of evidence based on the federal rules. While the Federal Rules of Evidence do not as a general matter govern the conduct of arbitration proceedings, the rules of evidence do, however, often provide good, practical guidance on what evidence is probative.

**FINRA:** Financial Industry Regulatory Authority. FINRA is the largest non-governmental regulator for all securities firms doing business in the United States.

**FINRA Dispute Resolution:** FINRA Dispute Resolution operates the largest securities dispute resolution forum in the world. FINRA facilitates the efficient resolution of monetary, business, and employment disputes between investors, securities firms, and employees of securities firms.

**Hearing Session Fees:** Fees charged for arbitration hearings.

**Injunctive Relief:** A prohibitive equitable remedy directed to a party, forbidding the party from doing some act or restraining the party in the continuance thereof.

**Interrogatories:** Written questions directed to a party, witness, or other person having information of interest in the case.

**Limited Partnership:** Organization made up of a general partner, who manages a project, and limited partners, who invest money but have limited liability and are not involved in day-to-day management. Typical limited partnerships are in real estate, oil and gas, and equipment leasing.

### Margin

### Misrepresentation

**Monthly Statements:** A firm's summary for customers of the transactions that occurred over the preceding month.

**Motion:** A party's request to the arbitrator(s) for the purpose of obtaining a ruling directing some act to be done in favor of the requesting party. Common motions include requests to:

- Bar a late answer.
- Bar a witness or document not exchanged.
- Consolidate separate proceedings/sever claims.
- Compel production of documents or witnesses.
- Change hearing location.

### Mutual Fund

### New Account Information Form

**Oath of Arbitrator:** Attestation or affirmation by the arbitrator that the arbitrator will decide the controversy in a fair manner and render a just award.

**Objection:** The act of a party who objects to some matter or procedure during the hearing.

**Opening Statement:** A party's statement made at the start of the hearing. It is limited to what a party intends to prove, and should not be a presentation of a party's evidence.

### Option

**Order of Production/Appearence:** An arbitrator's order requiring production of certain documents or an appearance at the hearing.

### Order Ticket

**Pleadings:** A statement describing a party's causes of action or defenses. Documents that are considered pleadings are: a statement of claim, an answer, a counterclaim, a cross claim, a third party claim, and any replies.

**Postponement/Adjournment:** A party's request to the arbitrator(s) to hold the hearing on a date subsequent to the one scheduled.

**Prehearing Conference:** Any hearing session, including an Initial Prehearing Conference, that takes place before the hearing on the merits begins.

### Prospectus

**Party:** A person or entity making or responding to a claim in an arbitration proceeding.

**Punitive Damages:** Damages on an increased scale awarded over and above what will barely compensate for property loss. Punitive damages are not intended to right a wrong, but are intended to punish the wrongdoer and to deter future wrongdoing.

**Rebuttal Testimony:** Form of evidence that is presented to contradict or nullify other evidence that has been presented by an adverse party.

### Registered Representative

**Rescission:** A return of the injured party to the position before the wrongful conduct.

**Respondent:** A party against whom a statement of claim or third party claim has been filed.

### Securities and Exchange Commission (SEC)

### Self-Regulatory Organization (SRO)

### Specific Performance

**Service:** Delivery of the statement of claim or other pleadings to those parties named in the arbitration.

**Statute of Limitations:** A statute of prescribing limitations to the right of action on certain described causes of action; that is, declaring that claims not brought within a specified period of time cannot be a basis for recovery.

**Subpoena:** A command to appear at a certain time and place to give testimony upon a certain matter. It can also require the production of books, papers, and other things.

### Stock

### Suitability

**Testimony:** Evidence given by a competent witness under oath or affirmation.

**Third Party Claim:** A claim asserted against a party not already named in the statement of claim or any other previous pleading.

**Unauthorized Trading**

**Submission Agreement:** A document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

## **Special Procedures for California Cases**

### **Out-of-State Counsel in California Arbitrations FINRA DISPUTE RESOLUTION GUIDELINES FOR COMPLIANCE WITH AMENDMENTS TO CALIFORNIA CIVIL PROCEDURE CODE SECTION 1282.4**

#### **Introduction**

These guidelines apply to all parties and their counsel whose arbitration cases have been or will be heard by the FINRA Dispute Resolution arbitration forum anywhere in the state of California. On June 26, 2006, the California legislature further amended the California Code of Civil Procedure section 1282.4 ("section 1282.4") to require non-California attorneys to meet certain obligations before they may represent parties in private arbitration proceedings in California. The amendments, which became effective on January 1, 2007, were enacted in response to the California Supreme Court's decision in Birbrower, Montalbano, Condon & Frank v. Superior Court, 17 Cal. 4th 119 (1998) ("Birbrower"), which holds that, under certain circumstances, non-California attorneys who appear in California arbitration proceedings are engaged in the unauthorized practice of law in violation of California Business & Professions Code section 6125.

To assist participants in our arbitration forum to comply with section 1282.4, as amended, FINRA Dispute Resolution has developed the following Guidelines, effective January 1, 2007.

**Please note that the statutory amendments address only arbitration, not mediation proceedings.**

#### **GUIDELINES FOR APPEARANCE BY ATTORNEYS IN THE FINRA ARBITRATION FORUM IN CALIFORNIA**

##### **Attorneys Who Are Admitted to Practice in California**

- Attorneys who are admitted to practice in California must include their California bar number on the initial correspondence and the initial pleading submitted to FINRA Dispute Resolution.

##### **Attorneys Who Are Not Admitted to Practice in California**

An attorney who is not licensed in the state of California may not appear in the FINRA Dispute Resolution arbitration forum in California in a representative capacity unless he or she associates with a California attorney who will be attorney of record, and provides the Western Regional Office of FINRA Dispute Resolution in Los Angeles, California with a completed Certificate of Out-of-State Arbitration Counsel ("Certificate") and notice of intent to appear at the arbitration. As set forth in greater detail below, an out-of-state attorney cannot participate in a case until FINRA Dispute Resolution approves his or her Certificate, and the attorney files the Certificate with the California State Bar.

- A non-California attorney (i.e., out-of-state attorney) may participate fully in the arbitration hearing on the merits, provided that all of the following steps are completed:
  - the out-of-state attorney submits a notice of intent to appear at the arbitration to the Western Regional Office when the initial pleading is filed. This notice may take the form of a letter;
  - the out-of-state attorney submits a completed Certificate to the Western Regional Office and the State Bar of California when the initial pleading is filed, and serves it on all arbitrators, parties and their counsel whose addresses are known to the attorney at the time the Form is submitted;
  - FINRA Dispute Resolution reviews the Certificate submitted by the out-of-state attorney. If the out-of-state attorney does not complete the Certificate or file the Certificate with the initial pleading, the claim will be deemed deficient and will not be served on opposing parties and counsel until the out-of-state attorney has submitted a completed Certificate;
  - If FINRA Dispute Resolution approves the Certificate, it will mark the Certificate “Approved” and return it to the out-of-state attorney;<sup>1</sup>
  - the out-of-state attorney files the approved Certificate with the State Bar of California, and serves it upon all parties and their counsel in the arbitration whose addresses are known to the attorney at the time the Certificate is filed;<sup>2</sup> and
  - the California attorney has entered an appearance as counsel of record. The California attorney’s notice of appearance must be filed with the initial pleading, and should include the attorney’s California Bar number, and contact information.
  
- The State Bar of California requires a filing fee for registration of attorneys who are not admitted to practice in California. Fee information, forms, and other information can be obtained on the web site of the State Bar of California at [www.calbar.ca.gov](http://www.calbar.ca.gov).

### **When the Guidelines Apply**

- These Guidelines apply only to FINRA Dispute Resolution arbitration proceedings taking place in California, in which the selected arbitrators are located in California.

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<sup>1</sup> Section 1282.4 states that, in the in the absence of special circumstances, repeated appearances shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration for which the certificate was filed.

<sup>2</sup> Section 1282.4 also states that failure within a reasonable period of time to serve this Certificate on all other parties and counsel in the arbitration whose addresses are known to the Applicant and to file the Certificate with the State Bar of California shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration for which the certificate was filed.

## **Determination of Location of FINRA Dispute Resolution Proceedings**

- The location of arbitration proceedings is governed by the Submission Agreement, Rule 12213 of the Customer Code, and Rule 13213 of the Industry Code, which provide that the Director of Arbitration shall set the initial hearing location, and that the arbitrators may set the location thereafter.

## **How Guidelines Affect FINRA Dispute Resolution Administration of Arbitration Proceedings**

- **Question: When must California counsel enter an appearance?**  
Answer: California counsel must enter their appearance when the initial pleading is filed.
- **Question: Under Ca. Civil Procedure Code sec. 1282.4, can the panel require the out-of-state attorneys to verify their compliance with the rules?**  
Answer: Under the statute, the panel has the authority to request verification of compliance with the Guidelines at any time. Pursuant to this authority, the panel will be instructed to ask out-of-state attorneys on the record, at the initial prehearing conference, whether the Certificate has been filed with the State Bar.
- **Question: Do the Guidelines apply to mediation cases?**  
Answer: No. The statute and these Guidelines apply only to arbitration cases in the FINRA Dispute Resolution arbitration forum. FINRA Dispute Resolution takes no position on the applicability of the statute or Birbrower to mediation cases. Counsel or other representatives participating in mediations should take whatever actions they deem necessary to comply with applicable California law, including but not limited to legal research and consulting with counsel and/or the California State Bar.
- **Question: What happens if an out-of-state attorney fails to comply with these Guidelines?**  
Answer: Attorneys who fail to comply with these Guidelines and with the statute are subject to possible penalties under state law, and risk being prohibited from representing their client in arbitration.
- **Question: What happens if an out-of-state attorney files a Certificate that is approved by FINRA Dispute Resolution, but an opposing party challenges the out-of-state attorney's participation in the case before the panel?**  
Answer: FINRA Dispute Resolution's approval of an attorney's appearance does not override the arbitrators' authority to later determine whether an out-of-state attorney may appear in a particular case. Like judges deciding *pro hac vice* motions, the arbitrators have the ultimate authority to determine whether an attorney has complied with the statute and whether he or she may appear in the case.
- **Question: My opponent's counsel is an out-of-state attorney who has not complied with the Guidelines. What can I do?**  
Answer: You may raise the issue with the arbitrators. You may also notify the State Bar of conduct you believe violates section 1282.4.

- **Question: Counsel is an out-of-state attorney, but her law firm has offices in California. Does she need to comply with the Guidelines?**

Answer: Before entering an appearance in the case, counsel should consult with the State Bar.

**CERTIFICATE OF OUT-OF-STATE ARBITRATION COUNSEL**  
**PURSUANT TO CAL. CIV. PRO. CODE SECTION 1282.4**  
**Filed with**  
**FINRA DISPUTE RESOLUTION, WESTERN REGIONAL OFFICE**  
**and the**  
**STATE BAR OF CALIFORNIA**

The Certificate of Out-of-State Arbitration Counsel ("Certificate") following these instructions must be completed by attorneys not admitted to practice in California who seek to represent a party in a FINRA arbitration proceeding in California. The Certificate also can be found on the web site of the State Bar of California at [www.calbar.ca.gov](http://www.calbar.ca.gov) > Attorney Resources > Out-of-State Attorney Arbitration Counsel.

The Certificate and the initial pleading must be filed with the FINRA Dispute Resolution Western Region Office in Los Angeles, California. The address is:

FINRA Dispute Resolution  
Western Regional Office  
300 S. Grand Avenue, Suite 900  
Los Angeles, CA 90071

The Certificate also must be filed with the State Bar of California and must be served upon all other parties and counsel in the arbitration whose addresses are known to the attorney. Please contact the State Bar of California for the applicable fee. The Certificate should be filed at the following address:

The State Bar of California  
Office of Special Admissions/Specialization  
180 Howard Street  
San Francisco, CA 94105-1639

For more information, you may contact the State Bar by email at [ossac@calbar.ca.gov](mailto:ossac@calbar.ca.gov) or by calling (415) 538.2111.

Failure to comply with Section 1282.4 may subject you to possible civil and/or criminal penalties under California law.



**The State Bar of California**  
Office Of Special Admissions/Specialization  
180 Howard Street • San Francisco, CA 94105-1639  
(415) 538-2111 • [osaacar.ca.gov](http://osaacar.ca.gov)

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File No. \_\_\_\_\_

9.43

## **Certificate of Out-Of-State Attorney Arbitration Counsel (OSAAC) California CCP §128.4 and California Rules of Court Rule 9.43**

There are two steps to this process and all fields must be completed.

**Instructions.** (1) One Certificate must be completed and signed by each out-of-state attorney ("Applicant"). This Certificate must be served on all other parties and counsel in the arbitration whose addresses are known to the Applicant, the arbitral forum and the State Bar of California (at the address above together with a non-refundable processing fee of \$50 in the form of a check made payable to the State Bar of California.) (2) If the Arbitral forum or arbitrator(s) approve(s) the appearance of the Applicant, the Applicant must serve a copy of this Certificate bearing such written approval on all other parties and counsel in the arbitration whose addresses are known to the Applicant and file the original Certificate with the State Bar of California at the address above. Service must comply with California Code of Civil Procedure Section 1013a.

### **I. APPLICATION FOR CERTIFICATE**

1. Arbitral Forum (If none, name of arbitrator(s)): \_\_\_\_\_

2. Address of Arbitral Forum (or arbitrator(s)): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ + \_\_\_\_\_

3. a) Arbitration Case Number: \_\_\_\_\_

b) Arbitration Name (or names of parties): \_\_\_\_\_

4. Street Address of Arbitration Hearing Site in California: \_\_\_\_\_

5. Name of Out-of-State Attorney ("Applicant"): \_\_\_\_\_

6. Applicant's Firm Name: \_\_\_\_\_

Applicant's Office Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ + \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Email: \_\_\_\_\_

7. Applicant's Residence Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ + \_\_\_\_\_

8. a) Bar Number of Active State Bar of California Attorney of Record Associating with Applicant: \_\_\_\_

b) Name of California attorney of record: \_\_\_\_\_

9. Address of California Attorney of Record: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ + \_\_\_\_\_ Phone: (\_\_\_\_)\_\_\_\_ - \_\_\_\_\_

10. All courts before which Applicant has been admitted to practice. Attach additional sheets if necessary.

Date Admitted	State/Court (e.g. Ohio, 9th Circuit, etc.)	Status (e.g. Active)
_____	_____	_____
_____	_____	_____

11. All applications by Applicant to appear in California courts as counsel pro hac vice or out-of-state arbitration counsel in the last 2 years from the date on this application. Attach additional sheets if necessary.

Date	Case Name (or Names of Parties)	Court or Forum	Result (Granted/ Denied)
_____	_____	_____	_____
_____	_____	_____	_____

12. If Applicant has made repeated appearances, list any special circumstances warranting Applicant's appearance in this arbitration. \_\_\_\_\_

13. Applicant represents that Applicant: (i) is not currently on suspension or disbarred from the practice of law before any court; (ii) is not a resident of the State of California; (iii) is not regularly employed in the State of California; and (iv) is not regularly engaged in substantial business, professional or other activities in the State of California.

14. Applicant agrees to be subject to the jurisdiction of the courts of the State of California with respect to the law of the State of California governing the conduct of attorneys to the same extent as a member of the State Bar of California.

**Applicant declares under penalty of under the laws of the State of California that the foregoing is true and correct and that this certificate is executed on:**

Date: \_\_\_\_\_ Applicant's Signature: \_\_\_\_\_

***(CERTIFICATE BEARING ORIGINAL SIGNATURE IS REQUIRED – COPY WILL NOT BE ACCEPTED)***

## **II. APPROVAL/DISAPPROVAL OF ARBITRAL FORUM/ARBITRATOR**

*(Certificate bearing original signature must be returned to Applicant – copy will not be accepted)*

*(Applicant: Certificate bearing original signature of Arbitral Forum/Arbitrator must be returned to the State Bar)*

Subject to the provisions of California Code of Civil Procedure ("CCP") Section 1282.4 and applicable law, Applicant's appearance in the arbitration matter referenced in Section 1 above is **(check one)**  
☐ approved or ☐ disapproved. \*

Approved By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print or type)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\* Note that CCP Section 1282.4 states that, in the absence of special circumstances, repeated appearances shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration for which the Certificate was filed. Also, failure within a reasonable period of time to serve this Certificate on all other parties and counsel in the arbitration whose addresses are known to the Applicant and file the Certificate with the State Bar of California shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration for which the certificate was filed. An applicant is not an Out-of-State Arbitration Counsel until approved, and the application is not complete until such approval is sent to the State Bar.

**Inactive California Attorneys Acting as Arbitrators in California Arbitrations  
FINRA DISPUTE RESOLUTION GUIDELINES FOR COMPLIANCE WITH RULE 2.30 OF THE  
RULES AND REGULATIONS OF THE CALIFORNIA STATE BAR**

**The following only affects arbitrators and mediators who are also attorneys admitted to the California State Bar. If you are not an attorney, or if you are an attorney who is admitted to a bar other than California, the following does not affect you.**

On September 19, 2007, the California State Bar issued a letter advising FINRA that attorneys who are members of the State Bar must be on active status in order to act as arbitrators or mediators in California cases. The specific rule cited is Rule 2.30 of the Rules and Regulations of the State Bar, which prohibits an inactive member from working as a private arbitrator, mediator or other dispute resolution provider, law clerk, paralegal, real estate broker or CPA. The letter states that “No member practicing law, or occupying a position where he or she is called upon in any capacity to give legal advice OR examine the law or pass upon the legal effect of any act, document or law shall be enrolled as an inactive member.”

The State Bar has asked FINRA to notify arbitrators and mediators who may be affected by this opinion. Questions about the opinion, or how to comply with the applicable State Bar rules, should be directed to the following:

Djinna M. Gochis  
Assistant Chief Trial Counsel  
The State Bar of California  
1149 South Hill Street  
Los Angeles, CA 90015-2299  
(213) 765-1000

If you are an attorney admitted in California, and are on active status with the State Bar, you need take no action. **If you are on inactive status with the State Bar, please notify Barbara Brady, Vice President and Director of Neutral Management at [Barbara.Brady@finra.org](mailto:Barbara.Brady@finra.org) or (212) 858-4352.** Arbitrators and mediators must keep their disclosures current, including their bar status. If your bar status has changed from what is reflected on your Arbitrator and/or Mediator Disclosure Report, please contact Ms. Brady.

## **Special Procedures for Florida Cases**

### **Non-Lawyer Representation in Florida**

On July 3, 1997, the Florida Supreme Court held that compensated non-lawyer representation of investors in securities arbitration constitutes the unauthorized practice of law, and enjoined non-lawyers from representing investors for compensation in securities arbitration proceedings.<sup>1</sup> In October 1997, FINRA Dispute Resolution notified parties that, in response to the court's order, FINRA Dispute Resolution will now require that persons representing investors in arbitration proceedings in Florida affirm either that they are licensed to practice law (and to provide a bar identification number if issued by the bar to which the person is admitted), or that they are not receiving compensation in connection with the arbitration proceeding.

The information below addresses several questions that have arisen during the implementation of the policy. Because the implications of the Florida Supreme Court's decision depend upon the facts and circumstances of each particular case, the information is not intended to provide legal advice concerning the impact of the injunction on specific cases.

#### **Scope of the Injunction**

The Florida Supreme Court's injunctive order applies to persons who

- are not licensed to practice law in any jurisdiction; and
- who represent investors in a securities arbitration for compensation.

The Order does not apply to persons who:

- are licensed to practice law in any jurisdiction, even if they are not licensed to practice law in Florida;
- represent parties to securities arbitrations other than investors; or
- represent investors but who are not compensated for doing so.<sup>2</sup>

#### **Representation of Florida Investors in Arbitrations Held in Florida**

A non-lawyer representative may not represent any investor, whether or not a resident or citizen of Florida, for compensation in any FINRA Dispute Resolution securities arbitration proceeding held in Florida, regardless of whether the non-lawyer representative is a Florida citizen or resident. Representation includes, but is not limited

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<sup>1</sup> 696 So. 2nd 1178 (Fla. 1997). The Supreme Court's decision approved the position taken by the Florida Bar Standing Committee on the Unauthorized Practice of Law in October 1996.

<sup>2</sup> This communication addresses only the scope of the Florida Supreme Court's July 3, 1997 injunction and FINRA Dispute Resolution's response thereto. FINRA Dispute Resolution does not take a position with respect to whether conduct outside the scope of the injunction is or is not the unauthorized practice of law in the State of Florida.

to; filing claims, answers or counterclaims; conducting discovery; presenting opening or closing statements, raising objections, presenting evidence, examining witnesses, or otherwise appearing at a hearing or related proceeding on behalf of a claimant; and preparing, filing or presenting written or oral motions or memoranda.<sup>3</sup>

A non-lawyer representative also may not provide legal services or advice in Florida to an investor for compensation in connection with any FINRA Dispute Resolution securities arbitration whether or not the arbitration is held in Florida.

### **Representation in Arbitrations Held Outside of Florida**

The injunction does not apply to non-lawyer representation in any FINRA Dispute Resolution securities arbitration proceeding held outside of the state of Florida, even if either the investor or the non-lawyer representative is a Florida citizen or resident, or to the arbitration held outside of Florida, as long as the services and advice are also provided outside of the state of Florida. However, a non-lawyer representative may not provide legal advice or services to investors in Florida, even if the advice or services concern a FINRA Dispute Resolution securities arbitration held outside of Florida.

### **Conclusion**

**No non-lawyer representative may represent any investor for compensation in any FINRA Dispute Resolution arbitration proceeding conducted in Florida, or provide legal advice or services in Florida to an investor for compensation in connection with any FINRA Dispute Resolution arbitration proceeding, whether the proceeding is held in Florida or elsewhere.** Therefore, FINRA Dispute Resolution will now require that persons representing investors in a FINRA Dispute Resolution proceeding in Florida affirm in writing either that they are licensed to practice law, or that they are not receiving compensation for their services in connection with the arbitration. Lawyers must identify the state in which they are licensed and provide their attorney identification number, if issued in that state. This requirement will apply to all pending and future arbitrations filed with FINRA Dispute Resolution. Representatives failing to satisfy this requirement will not be permitted to appear in any FINRA Dispute Resolution arbitration proceeding in Florida.

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<sup>3</sup> The place of initial hearing is determined by the Director of arbitration and the place of each hearing thereafter is determined by the arbitrators. FINRA Code of Arbitration Procedure Rule 10315.



## Award Information Sheet (Florida Edition)

**\* Section 14 updated \***

### Award Information Sheet

### CASE NUMBER:

To prepare an award, FINRA Dispute Resolution needs certain information from the panel. After the panel has reached a decision, please provide the following information to the staff person assigned to the case.

1. Please indicate the nature of the **initial** claim that was filed. Note: AP is the abbreviation for Associated Person.

- |   |   |
|---|---|
| <input type="checkbox"/> Customer vs. Member & AP | <input type="checkbox"/> Member vs. Member & AP |
| <input type="checkbox"/> Customer vs. Member      | <input type="checkbox"/> Non-Member vs. Member  |
| <input type="checkbox"/> Member vs. Member        | <input type="checkbox"/> Other _____            |
| <input type="checkbox"/> Member vs. Customer      | <input type="checkbox"/> Member vs. AP          |
| <input type="checkbox"/> Customer vs. AP          | <input type="checkbox"/> AP vs. Member          |
| <input type="checkbox"/> AP vs. Customer          | <input type="checkbox"/> AP vs. Member & AP     |

2. Change of party representation, if any?

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3. Who did counsel/representative for claimant state that they want reflected on the Award as counsel/representative?

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4. Who did counsel/representative for respondent state that they want reflected on the Award as counsel/representative?

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5. Parties who did not appear, if any?

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6. Parties challenging jurisdiction, if any?

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7. Did a party have an expert witness testify? If yes, which party?

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8. Hearing dates, with the time the hearing started and concluded, excluding panel deliberations:

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9. Were any amendments made to the pleadings at the hearing? ☐ Yes ☐ No

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(a) If an amendment was made to the pleadings was it oral or written?

☐ Oral

☐ Written

(b) If any amendments were made to the pleadings, please describe below  
(include amendments to the dollar amount of any claim): \_\_\_\_\_

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10. Did the parties make any substantive or procedural motions?

☐ Yes

☐ No

(a) If a motion was made, which party made the motion?

Claimant: \_\_\_\_\_

Respondent: \_\_\_\_\_

Claimant: \_\_\_\_\_

Respondent: \_\_\_\_\_

(b) If a motion was made, please describe the motion, the response, and the panel's ruling below:

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(c) If a motion for expungement was made, please see the "Expungement" section below.

11. Was any party's final damage requests presented at the close of the hearing different from what were requested in their pleading requesting damages? *See the Hearing Script section T.*

☐ Yes

☐ No

(a) If yes, please identify the party and its final damage request below: \_\_\_\_\_

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12. Did anything unusual occur at the hearing that the panel wishes to include in the award?

☐ Yes      ☐ No

(a) If the answer to this question is yes, please describe below (please attach additional pages if necessary):

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### 13. **Expungement**

Was expungement requested? ☐ Yes    ☐ No

A. If yes, which party(ies) requested expungement? \_\_\_\_\_

\*(If more than one party requested expungement, please provide the same information for each party seeking expungement.)

B. Was the expungement request made:

- ☐ In a pleading (i.e. Statement of Answer)?
- ☐ Orally at the hearing?
- ☐ In a Stipulated Agreement?
- ☐ In a motion?

- C. If case was filed by a customer or is an intra-industry case that requests expungement of customer dispute information, the panel must make a Rule 2080 finding and comply with Rule 12805 or Rule 13805.

Note: The panel must hold a recorded hearing session (by telephone or in person) to decide the request for expungement. Please review Rules 12805 and 13805, for customer cases and industry cases respectively, for more information on these procedures.

1. Did the panel conduct either an in-person or a telephonic hearing to determine the request for expungement?

☐ In-person hearing

☐ Telephonic hearing

- (a) What issues and/or evidence were considered by the panel in granting the expungement? Please describe which party submissions the panel relied upon (You may attach additional pages if necessary):

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2. Did the parties reach a settlement in this case?

☐ Yes

☐ No

- (a) If yes, did the panel review the settlement documents and consider the amount of payments made to any party and any other terms and conditions of settlement? \_\_\_\_\_

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3. Is the expungement request granted? ☐ Yes ☐ No

- (a) If expungement is granted, the panel must identify which of the following Rule 2080 finding(s) it is making in order to grant the expungement request.

1) The claim, allegation, or information is factually impossible or clearly erroneous:

☐ Yes

☐ No

2) The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds:

☐ Yes

☐ No

3) The claim, allegation, or information is false:

☐ Yes

☐ No

(b) If the expungement is granted, the panel *must* provide a brief written explanation of the reason(s) for its finding that one or more Rule 2080 grounds for expungement applies to the facts of the case (Please provide additional pages if necessary): \_\_\_\_\_

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D. For Intra-Industry Claims Only (Please review “Defamation Claims in Intra-Industry Disputes” below.)

1. If the claim is between a FINRA member firm and a current or former associated person, and the panel intends to order the expungement of information not related to a customer dispute from the Central Registration Depository (“CRD”), state whether the expungement order is based on the defamatory nature of the information, and if so, clearly state in the award that the “expungement order is based on the defamatory nature of the information in the CRD system.”

## **Expungement Rules 12805 and 13805 (Including Rule 2080)**

The SEC has approved FINRA Dispute Resolution's new expungement rules. The new rules apply to any expungement order issued on or after January 26, 2009. The new rules are contained in the FINRA Codes of Arbitration Procedure for Customer and Industry Disputes, Rules 12805 and 13805 respectively.

The new rules establish new procedures that arbitrators must follow when considering requests for expungement relief of customer dispute information from the CRD System under Conduct Rule 2080. These new procedures are designed to: (1) make sure that arbitrators have the opportunity to consider the facts that support or oppose a decision to grant expungement; and (2) to ensure that expungement occurs only when the arbitrators find and document one of the narrow grounds specified in Rule 2080.

Pursuant to the new rules, in order to grant expungement of customer dispute information under Rule 2080, the panel must:

- (a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under Rule 12800, the Simplified Arbitration procedures, even if a customer did not request a hearing on the merits.
- (b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.
- (c) Indicate in the arbitration award which of the Rule 2080 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2080 grounds for expungement applies to the facts of the case. Therefore, the arbitrators must make one of the following findings:
  - 1. The claim, allegation, or information is factually impossible or clearly erroneous; or
  - 2. The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or
  - 3. The claim, allegation, or information is false.
- (d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.

Rule 2080 requires that all directives to expunge customer dispute information from the CRD system be confirmed by or ordered by a court of competent jurisdiction. It also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award.

FINRA will generally oppose confirmation of the expungement portion of the arbitration award in most cases where it participates in the judicial proceeding.

**These new rules do not affect FINRA's practice of permitting expungement, without judicial intervention, of information from the CRD system as directed by arbitrators in intra-industry arbitration awards that involve associated persons and firms based on the defamatory nature of the information ordered expunged.**

For more information about expungement Rules 12805 and 13805, review Regulatory Notice 08-79.

### **Defamation Claims in Intra-Industry Disputes**

Under existing CRD policy, FINRA will expunge information from the CRD system – without the need for judicial intervention – if the expungement directives contained in intra-industry awards that involve associated persons and firms are based on the defamatory nature of the information ordered expunged and do not involve any customer dispute information. Arbitrators must clearly state in the award that they are ordering expungement relief based on the defamatory nature of the information in the CRD system. Rule 2080 applies in intra-industry cases that request expungement of customer dispute information.

View Rule 2080 Frequently Asked Questions at the FINRA Web site at:  
<http://www.finra.org/RegulatorySystems/CRD/FilingGuidance/p005224>.

14. **Award:**

**USE THE FOLLOWING PAGES TO ENSURE THAT ALL CLAIMS AND OTHER RELIEF REQUESTS HAVE BEEN DECIDED BY THE PANEL.**

**Initial Claim**

\_\_\_\_\_ shall  
[Party(ies)]

pay to \_\_\_\_\_  
\_\_\_\_\_  
[Party(ies)]

a. Compensatory damages awarded, if any?

- On which claims for relief did you find the respondent(s) liable? Please provide the statutory, tort or common law bases for liability.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- On which claims for relief did you find no liability?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Punitive or RICO damages awarded, if any? \_\_\_\_\_

\_\_\_\_\_

- Authority for Punitive or RICO Damages (e.g., brief description of legal citation):

\_\_\_\_\_  
\_\_\_\_\_

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c. Is interest or the percentage of interest awarded, if any? \_\_\_\_\_

- Date interest on the award begins to accrue? \_\_\_\_\_
- Date interest on the award ceases to accrue? \_\_\_\_\_

d. Attorneys' Fees.

1) Did any party request attorneys' fees? If so, which party(ies)? \_\_\_\_\_

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2) Were any attorneys' fees requests granted or denied? Which party(ies)?

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3) Authority for attorneys' fees (e.g., statute, contract): \_\_\_\_\_

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e. Costs awarded, if any? \_\_\_\_\_

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f. Other damages, costs, or fees awarded (e.g., witness fees): \_\_\_\_\_

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g. Specific performance granted, if any? Describe completely: \_\_\_\_\_

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h. Injunctive relief granted, if any? Describe completely: \_\_\_\_\_

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i. Is the award ***joint and several*** against two or more parties?

☐ Yes

☐ No

If yes, the award is joint and several against the following respondents: \_\_\_\_\_

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j. If an explained decision is required, please include the explanation in the space provided below. (Please attach additional documents if necessary):

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☐ Counterclaim/ ☐ Cross-Claim/ ☐ Third Party Claim (Please check the box for the appropriate claim that was filed. Please include the panel's decision/ruling for each additional Counterclaim, Cross-Claim, and/or Third Party Claim that was filed).

\_\_\_\_\_ shall  
[Party(ies)]

pay to \_\_\_\_\_:  
[Party(ies)]

a. Compensatory damages awarded, if any?

- On which claims for relief did you find the respondent(s) liable? Please provide the statutory, tort or common law bases for liability.

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- On which claims for relief did you find no liability?

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b. Punitive or RICO damages awarded, if any? \_\_\_\_\_

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- Authority for Punitive or RICO Damages (e.g., brief description of legal citation):

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c. Interest or the percentage of interest awarded, if any? \_\_\_\_\_

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- Date interest on the award begins to accrue? \_\_\_\_\_

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- Date interest on the award ceases to accrue? \_\_\_\_\_

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d. Attorneys' Fees.

1) Did any party request attorneys' fees? If so, which party(ies)? \_\_\_\_\_

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2) Were any attorneys' fees requests granted or denied? Which party(ies)?

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3) Authority for attorneys' fees (e.g., statute, contract): \_\_\_\_\_

---

e. Costs awarded, if any? \_\_\_\_\_

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f. Other damages, costs, or fees awarded (e.g., witness fees): \_\_\_\_\_

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g. Specific performance granted, if any? Describe completely: \_\_\_\_\_

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h. Injunctive relief granted, if any? Describe completely: \_\_\_\_\_

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i. Is the award ***joint and several*** against two or more parties?

☐ Yes

☐ No

If yes, the award is joint and several against the following respondents: \_\_\_\_\_

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j. If an explained decision is required, please include the explanation in the space provided below. (Please attach additional documents if necessary):

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**14. Explained Decision Fees**

The Explained Decision Rule provides that the panel will allocate the cost of the additional \$400 honorarium to the parties as part of the final award. Please indicate how this additional honorarium should be assessed:

Claimant #1 is assessed \_\_\_\_\_

Claimant #2 is assessed \_\_\_\_\_

Respondent #1 is assessed \_\_\_\_\_

Respondent #2 is assessed \_\_\_\_\_

## 15. Forum Fees:

FINRA Rules 10205(c) and 10332(c) provide that arbitrators, in their awards, shall determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees may be described as the direct costs of administering the arbitration proceeding. They consist of filing fees, hearing fees, fees for decisions rendered on discovery-related motions without a pre-hearing conference, and fees for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing conference. Filing fees are designed to cover some of the actual costs incurred by FINRA Dispute Resolution from the initial filing of a claim up to the pre-hearing conference. Hearing session fees are designed to cover some of the actual costs of administering a hearing. Fees for decisions rendered on discovery-related motions on the papers, and for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing, are designed to cover payments made to arbitrators for these decisions.

Forum fees chargeable to the parties shall be assessed on a per hearing session basis, or for decisions rendered on discovery-related motions on the papers or contested motions for the issuance of a subpoena without a pre-hearing conference. A hearing session is any meeting among the parties and the panel that lasts four hours or less, including a pre-hearing conference with the panel. As a general rule, the aggregate chargeable for each hearing session *may equal but shall not exceed* the amount of the largest initial hearing deposit made by any party. **For example**, if the largest initial hearing session deposit is \$750, the panel may charge or assess up to \$750 per hearing session. (If you decide to assess forum fees against a customer staff will inform you of the rule that applies.) The total amount of forum fees that a panel may assess is determined by multiplying the number of hearing sessions times the hearing deposit. **For example**, if there were four hearing sessions and the largest initial hearing session deposit is \$750, the panel may assess total forum fees up to four (4) times \$750.

In addition, a panel may assess for Pre-hearing conferences held with the parties and the full panel or one arbitrator. In the **above example**, if one Pre-hearing conference lasting one session in duration was conducted among the parties with the full panel, the panel may assess an additional amount up to \$750. If one Pre-hearing conference lasting one session in duration was conducted among the parties with the Chairperson only, the panel may assess an additional amount up to \$450.

Additionally, the panel may assess fees for decisions rendered on discovery-related motions on the papers. The panel may assess an additional amount of \$200 per arbitrator for each arbitrator who participates in the decision on the discovery-related motion. The panel may also assess fees for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing conference. The panel may assess \$200 per arbitrator for each arbitrator who participates in the decision on the contested subpoena request. This honorarium is paid on a per case basis to each arbitrator who decides the contested subpoena request. Parties shall not be assessed more than

\$600 in fees per case for decisions rendered on contested subpoena requests without a pre-hearing conference.

The panel may assess forum fees among the parties in any fashion. In deciding how to assess forum fees among the parties, the panel might consider the following factors:

- Temporary waivers of filing fees or hearing session deposits granted because of financial hardship.
- Actions by any party that may have prolonged the length of the hearing.
- The legitimacy of arguments made or positions taken.
- Disruptions or time delays caused during hearing sessions.
- The ultimate merits of the case (i.e., who prevailed or substantially prevailed).

**To calculate the total amount of forum fees the panel may assess in this arbitration, this office has provided you with the amount of the hearing session deposit for a Pre-hearing conference session and for a regular hearing session.**

Please note: The panel may decide to allocate the fees for decisions rendered on discovery-related motions on the papers, and for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing conference, in the same manner as the pre-hearing conference sessions and hearing sessions. If, however, the panel decides to allocate the fees in a different manner, please provide a list of each discovery-related motion and advise how the panel wishes to allocate the related fee. Please note that each arbitrator is only compensated \$200 per case for a decision rendered on a contested motion requesting the issuance of a subpoena without a pre-hearing conference. Also, parties shall be assessed a maximum of \$600 per case for decisions on contested motions requesting the issuance of a subpoena without a pre-hearing conference.

Calculation of Forum Fees:

\_\_\_ Regular Hearing sessions x \$\_\_\_\_\_ Hearing session deposit = \$\_\_\_\_\_

**plus** \_\_\_ Prehearing sessions with **three** arbitrators x \$\_\_\_\_\_ Hearing session deposit = \$\_\_\_\_\_

**plus** \_\_\_ Prehearing sessions with **one** arbitrator x \$\_\_\_\_\_ Hearing session deposit = \$\_\_\_\_\_

**plus** \_\_\_ Decisions rendered on discovery-related motions with one arbitrator x \$200.00

**plus** \_\_\_\_\_ Decisions rendered on discovery-related motions with two arbitrators x  
\$400.00

**plus** \_\_\_\_\_ Decisions rendered on discovery-related motions with three arbitrators x  
\$600.00

**plus** \_\_\_\_\_ Arbitrator(s) x \$200 per case for decisions rendered on contested subpoena  
requests (maximum assessment of \$600 per case)

Total Forum Fees = \$ \_\_\_\_\_

**Provide below the specific parties against whom the forum fees are to be assessed and the specific dollar amounts.**

Claimant(s) \_\_\_\_\_ assessed \$ \_\_\_\_\_

\_\_\_\_\_ assessed \$ \_\_\_\_\_

Respondent(s) \_\_\_\_\_ assessed \$ \_\_\_\_\_

\_\_\_\_\_ assessed \$ \_\_\_\_\_

(a) Please indicate whether you wish to have the respondent(s) reimburse the claimant(s) for any claim-filing fee paid to FINRA Dispute Resolution.

☐ Yes ☐ No

(b) Please indicate whether forum fees are to be assessed **jointly and severally** against any of the parties. ☐ Yes ☐ No

If yes, please state below the parties to be assessed **jointly and severally**.

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#### 16. Injunctive Relief Fees:

- a. The Injunctive Relief Rule<sup>1</sup> provides that the increased arbitrator honoraria for the hearing on the request for permanent injunction should be assessed equally against the parties but that the arbitrators may reallocate this additional amount among the

<sup>1</sup> Industry Code: Rule 13804; Old Code: Rule 10335

parties in the award. Please indicate how these additional honoraria should be assessed:

Claimant #1 is assessed \_\_\_\_\_

Claimant #2 is assessed \_\_\_\_\_

Respondent #1 is assessed \_\_\_\_\_

Respondent #2 is assessed \_\_\_\_\_

If the assessment is joint and several against any party, state below the parties against whom it is made (circle all that applies):

- i. Claimants only
- ii. Respondents only
- iii. Claimants and Respondents

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- b. The Injunctive Relief Rule also provides that the parties are jointly liable for the reasonable travel-related costs and expenses of an arbitrator who is required to travel to a hearing location other than the arbitrator's primary hearing location(s). The Rule further provides that the arbitrators may reallocate this expense. Please indicate how the expenses should be assessed.

Arbitrator \_\_\_\_\_,  
traveled outside his or her assigned hearing location and incurred \$ \_\_\_\_\_  
in reasonable travel-related costs and expenses.

Arbitrator \_\_\_\_\_,  
traveled outside his or her assigned hearing location and incurred \$ \_\_\_\_\_  
in reasonable travel-related costs and expenses.

Arbitrator \_\_\_\_\_,  
traveled outside his or her assigned hearing location and incurred \$ \_\_\_\_\_  
in reasonable travel-related costs and expenses.

The parties are liable for those reasonable travel related costs and expenses as follows:

Claimant #1 is assessed \_\_\_\_\_

Claimant #2 is assessed \_\_\_\_\_

Respondent #1 is assessed \_\_\_\_\_

Respondent #2 is assessed \_\_\_\_\_

If the assessment is joint and several against any party, state below the parties against whom it is made (circle all that applies):

- i. Claimants only
- ii. Respondents only
- iii. Claimants and Respondents

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c. Is a disciplinary referral appropriate in this case? ☐ Yes ☐ No

If a referral is appropriate, contact the staff assigned to the case for guidance and a copy of the Arbitrator Disciplinary Referral Form.

Thank you for your service in this matter. FINRA Dispute Resolution looks forward to working with you again in the future.

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## ATTORNEY'S FEES IN FLORIDA ARBITRATIONS

This information is being furnished to all parties and arbitrators assigned to arbitrations conducted in the State of Florida.

Please carefully review the decision in Moser vs. Barron Chase Securities, Inc. The case discusses attorney's fees in Florida arbitrations.

\* \* \* \* \*

KATHRYN B. MOSER, Petitioner, vs. BARRON CHASE SECURITIES,  
INC., Respondent.

No. SC96714

SUPREME COURT OF FLORIDA

783 So. 2d 231; 2001 Fla. LEXIS 628; 26 Fla. L. Weekly S  
195

April 5, 2001, Decided

**COUNSEL:** Allan J. Fedor and Franell Fedor of Fedor & Fedor, Largo, Florida, and Richard R. Logsdon, Clearwater, Florida, for Petitioner.

Karol K. Williams, Tampa, Florida, and Eugene M. Kennedy, Fort Lauderdale, Florida, for Respondent.

**JUDGES:** ANSTEAD, J., WELLS, C.J., and SHAW, HARDING, PARIENTE, LEWIS and QUINCE, JJ., concur.

**OPINIONBY:** ANSTEAD

**OPINION:**

ANSTEAD, J.

We have for review Barron Chase Securities, Inc. v. Moser, 745 So. 2d 965 (Fla. 2d DCA 1999), which expressly and directly conflicts with Josephthal Lyon & Ross, Inc. v. Durham, 734 So. 2d 487 (Fla. 5th DCA 1999), on the issue of the jurisdiction and authority of a circuit court to award attorney's fees following arbitration proceedings. We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. We quash the Second District's decision reversing the circuit court's award of attorney's fees, and hold that a trial court has the

authority to remand proceedings to an arbitration panel, if such remand is necessary for the trial court to determine the issue of attorney's fees.

This case arose out of claims initially brought by petitioner, Kathryn B. Moser ("Moser"), against Barron Chase Securities, Inc., ("Barron"), and Carl W. Allen, Jr., a broker for Barron, that proceeded through arbitration with the National Association of Securities Dealers (NASD), and to the circuit court for confirmation of the arbitration award. Because one of her claims was based on a Florida statute that also provided for attorney's fees, Moser included a claim for attorney's fees in the arbitration proceedings. Upon granting Moser a monetary award on her claims the arbitration panel also concluded that "the Claimant's request for attorney's fees is referred to a court of competent jurisdiction." The trial court held a hearing upon Moser's petition to correct and confirm the arbitration award and her petition for an award of attorney's fees and subsequently awarded fees to Moser based upon the language in the arbitration award referring the fee claim.

At the trial court hearing expert testimony was presented by witnesses for the plaintiff and for the defendant relating to NASD practice and procedure concerning awards. The expert testimony reflected that awards are typically drafted by NASD staff rather than the arbitrators who actually heard and decided the case. One of the experts, an arbitrator himself, testified that at training, NASD emphasizes to both arbitrators and staff that they should not specify the decisional bases of their awards. One expert testified that out of dozens of awards he reviewed over the years, he had never seen one which specifically found a violation of chapter 517, Florida Statutes<sup>1</sup>, even though the claimants in those cases, given the issues submitted, could not have recovered without such a finding. The defense expert, however, countered that while it is true that arbitrators are discouraged from setting out a rationale for an award, arbitrators remain free to state the legal theory upon which a party prevailed<sup>2</sup>. This expert indicated that the reason for a policy of brevity and for not specifying the basis of an award is simply to reduce the potential for further litigation after an award.

At issue upon our review is the Second District's holding that the trial court lacked authority to grant attorney's fees to Moser for successfully prosecuting her claim in arbitration, because the award did not explicitly specify that she prevailed on her statutory claim. The parties agree that Moser is entitled to attorney's fees if she prevailed on her statutory claim.

## RELEVANT STATUTORY PROVISIONS

Florida statutory and case law authorize and endorse the resolution of disputes through arbitration. However, there has been substantial confusion as to the procedure and appropriate forum for recovering attorney's fees incident to arbitration proceedings.

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<sup>1</sup> Section 517.211(6), Florida Statutes (1997), provides: "In any action brought under this section, including an appeal, the court shall award reasonable attorney's fees to the prevailing party unless the court finds that the award of such fees would be unjust."

<sup>2</sup> The defense expert testified that he had seen some awards that did specify the basis for recovery.

Section 682.11, Florida Statutes (1997), provides: "Unless otherwise provided in the agreement or provision for arbitration, the arbitrators' and umpire's expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award." (Emphasis added.) This provision has been construed to vest jurisdiction for the award of attorney's fees in the circuit court. See *Davidson v. Lucas*, 579 So. 2d 886, 887 (Fla. 2d DCA 1991).

In *Turnberry Associates v. Service Station Aid, Inc.*, 651 So. 2d 1173 (Fla. 1995), we approved the holding in *Davidson*, but held that arbitrating parties may waive their right to have the circuit court address the issue and agree that the arbitrators may do so<sup>3</sup>. District courts have since consistently addressed this issue in accordance with *Turnberry*. See *Barron Chase Securities, Inc.*, 745 So. 2d at 967; *Charbonneau v. Morse Operations, Inc.*, 727 So. 2d 1017, 1020 (Fla. 4th DCA 1999); *GCA, Inc. v. 90 S.W. 8th St. Enterprises*, 696 So. 2d 1230, 1233 (Fla. 3d DCA 1997); *Robert Gay Const. Co. v. Ceco Bldg. Sys.*, 680 So. 2d 1124, 1126 (Fla. 1st DCA 1996). Notwithstanding, confusion remains as to the authority of a trial court to award fees when an arbitration award is silent or ambiguous as to whether the award was based on a legal theory that carries with it an entitlement to attorney's fees.

## RELEVANT CASE LAW

As mentioned earlier, the Second District held here that the circuit court was without authority to grant fees on an arbitration award that fails to set out that it is predicated upon a claim that carries with it an entitlement to fees. See *Barron Chase Securities, Inc.*, 745 So. 2d at 967. Similarly, in *Pharmacy Management Services, Inc. v. Perschon*, 622 So. 2d 75 (Fla. 2d DCA 1993), the Second District reversed an award of fees and held that because the arbitrators failed to "inform" the parties of the legal basis of an award in a multiple claim arbitration the trial court had no authority to award fees. See *id.* at 76.

In *Raymond, James & Associates v. Wieneke*, 591 So. 2d 956 (Fla. 2d DCA 1991), however, the court approved an award of fees where arbitration claims were filed under both the common law and under section 517.211. In making an award for the *Wienekes*, the arbitrators did not specify the basis of the award, but stated "that they 'determined to make an award in favor of the Claimants and against [Raymond James] for attorneys' fees.'" *Id.* at 957. After the trial court ruled that such language was sufficient to authorize an award of fees under section 517.211, the Second District affirmed, holding that the arbitrators' comments about attorney's fees was a sufficient "signal" to the courts that the statutory claim was allowed.

The Fifth District has also accepted such "signaling" language from arbitrators as a basis for an award of attorney's fees. In *Josephthal Lyon & Ross v. Durham*, 734 So. 2d

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<sup>3</sup> *Turnberry* further held that the issue of whether a party has waived its rights, if contested, is to be determined by the circuit court. See 651 So. 2d at 1175. Waiver is not an issue here. In *Turnberry* we also suggested that the Legislature reexamine this issue to be certain legislative policy was being followed. While we continue to invite legislative review we note that no change has been made to the statutory scheme.

487 (Fla. 5th DCA 1999), the claimant asserted various state and federal claims, including one under chapter 517. At arbitration, Durham prevailed and was awarded compensatory damages, although the award did not specify the specific basis upon which Durham prevailed. As to attorney's fees, the award provided:

The respondents be and hereby are liable, jointly and severally, and shall pay to the Claimant her attorney's fees as determined by a court of competent jurisdiction. Id. at 488. Based upon the attorney's fees reference in the award, the circuit court awarded fees to Durham. On appeal, the Fifth District affirmed, holding that although the award did not specify the precise claim upon which Durham prevailed, "this language [in the award] was sufficient to permit a fee award under section 517.211(6)." Id. at 489 (citing Wieneke, 591 So. 2d at 957-58).

The Fifth District also considered the issue in *Kirchner v. Interfirst Capital Corp.*, 732 So. 2d 482 (Fla. 5th DCA 1999), where the court held that "although the arbitrator must indicate that the one seeking attorney's fees prevailed on a cause of action authorizing fees, this indication may be either direct or indirect." Id. at 483 (emphasis added). *Kirchner* is distinguishable from *Durham*, however, in that the Fifth District found that the arbitrators in *Kirchner* had expressly indicated that the award was predicated upon a theory which provided for attorney's fees.

In the instant case Moser asserts that the trial court properly entertained and determined her claim for attorney's fees based upon the express language in the arbitration award referring the claim for attorney's fees to the circuit court. As shown by the relevant case law at the district court level discussed above, we agree that the courts have recognized similar language by arbitrators as an acceptable, although indirect, means by which arbitrators have informed the circuit court of the basis of their decision for purposes of facilitating the court's award of attorney's fees. As such, we conclude the trial court did not err in interpreting the award language as an indication that Moser prevailed on her statutory claim. Indeed, without such an implicit finding, there would have been no reason for the arbitrators to refer the matter to the circuit court. A finding against the claimant on her statutory claim would have made a reference of the attorney's fee issue to the circuit court unnecessary.

## ARBITRATION CODE

While we have found on this record a sufficient basis for the trial court to act, we recognize the need for clarification of a trial court's authority under the arbitration code on this issue in order to avoid similar problems in the future. Although we approve the trial court's action, we acknowledge, as noted above, that there appears to be a great deal of uncertainty concerning the procedure for the award of attorney's fees in arbitration proceedings. This confusion is only exacerbated when an award fails to set out the basis for the award and a trial court must look for "signals" or speculate as to the basis of an award in exercising its statutory authority to determine and award fees. The Florida Arbitration Code provides little guidance as to the contents of an award but, instead, focuses on the procedural framework within which the parties may seek to

confirm, vacate, or modify an award<sup>1</sup>. See *Air Conditioning Equipment, Inc. v. Rogers*, 551 So. 2d 554, 556 (Fla. 4th DCA 1989). For example, section 682.09(1), states that "the award shall be in writing and shall be signed by the arbitrators." Section 82.14(1)(c) provides for the modification or correction of an award where "the award is imperfect as a matter of form, not affecting the merits of the controversy." Last, section 682.13 provides a list of criteria upon which an award may be challenged. However, it is limited to concerns which may taint the process such as fraud, partiality and the like, and says nothing about the essentials of an award. See *id.*

Under the code it has been held that an award does not have to reflect the precise reasoning, findings of facts, conclusions of law, or ultimately the basis upon which a decision was arrived at by the arbitrators. See generally *Prudential-Bache Securities, Inc. v. Shuman*, 483 So. 2d 888, 889 (Fla. 3d DCA 1986). The Shuman court reasoned that the legal basis of an award is immaterial to the subsequent determination by a trial court of whether an award should be vacated. See *id.* ("The fact that the relief granted is such that it could not or would not be granted by a court of law or equity is not a ground for vacating or modifying the award."). This view appears to be consistent with a policy favoring the termination of disputes with an arbitration decision and limited review by the courts.

Notwithstanding our recognition of this underlying policy, we find the practice of arbitrators not disclosing the basis upon which an award is made inadequate and inconsistent with the policy goals of the arbitration process as provided by the Florida Legislature with regard to the award of attorney's fees. As noted above, the code vests exclusive authority, absent waiver by the parties, over the award of fees in the circuit court. We do not believe that the Legislature on the one hand would have vested the authority in trial courts to resolve the attorney's fees issue, and, yet, on the other hand, would have restricted that authority by not permitting trial courts to compel the assistance of arbitrators in order to determine the issue.

NASD's practice of discouraging disclosure of the basis of an award as described in the trial court proceedings also raises concerns as to the due process rights of the parties as it relates to a property interest in recovering attorney's fees incurred in litigating securities violations cases<sup>2</sup>. The courts have long held that rights to attorney's fees granted by statute are substantive rather than procedural. See, e.g., *U.S. Security*

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<sup>1</sup> §§ 682.09, 682.10, 682.12- 682.15, Fla. Stat. (1997).

<sup>2</sup> Article I, section 9 of the Florida Constitution provides that "no person shall be deprived of life, liberty or property without due process of law." (Emphasis added.) See also U.S. Const. amend. XIV, § 1 (same). The notion of a property interest encompasses a variety of valuable interests that go well beyond the traditional view of property. See 16B Am. Jur.2d, Constitutional Law, § 585 (1998). However, these interests do not make up some exclusive list; rather, they are defined in light of existing rules or understanding. See *Perry v. Sindermann*, 408 U.S. 593, 601, 33 L. Ed. 2d 570, 92 S. Ct. 2694 (1972). As stated by the Third District: Procedural due process rights derive from a property interest in which the individual has a legitimate claim. Once acquired, a property interest falls within the protections of procedural due process. A property interest may be created by statute, ordinance or contract, as well as policies and practices of an institution which support claims of entitlement. *Metropolitan Dade County v. Sokolowski*, 439 So. 2d 932, 934 (Fla. 3d DCA 1983) (footnotes omitted). This Court has further recognized that "property rights are among the basic substantive rights expressly protected by the Florida Constitution." *Department of Law Enforce. v. Real Property*, 588 So. 2d 957, 964 (Fla. 1991).

Insurance Co. v. Cahuasqui, 760 So. 2d 1101, 1107 (Fla. 3d DCA 2000). As such, the due process standards necessary in safeguarding such a right must provide for a "meaningful, full, and fair" hearing to the affected individual. Rucker v. City of Ocala, 684 So. 2d 836, 841 (Fla. 1st DCA 1996).

In the instant case, the record reveals that Moser, a sixty-seven-year-old clerk at a pharmacy at the time, invested her savings and retirement funds with Barron. The broker in charge of Moser's investments allegedly committed various irregularities resulting in the depletion of Moser's funds. As previously mentioned, section 517.211(6) provides remedies, including the payment of attorney's fees, for just the kind of irregularities allegedly committed by Barron. However, since Moser brought her claim under several theories and the award fails to specify the basis for her recovery, the respondent contends that she is not entitled to fees since one cannot tell on the face of the award whether she is entitled to recovery of fees. In effect, then, the arbitrators' arbitrary action in failing to indicate the basis of an award would effectively deprive Moser of not just a "meaningful, full, and fair hearing," Rucker, 684 So. 2d at 841, but of any hearing at all on the denial of a property interest in attorney's fees expressly provided for by section 517.211(6)<sup>3</sup>. The Fifth District rightfully expressed concern about such an outcome in *Kirchner* wherein it opined, "It would be an empty victory for [a claimant] to have prevailed in obtaining redress from her broker who violated the consumer protection provisions of the securities law if she now had to use her recovered investment to pay the fees to her lawyer made necessary by defendant's violation of its statutory duty." 732 So. 2d at 484. We agree with this concern.

We hold today that where a party brings claims in arbitration based upon several theories, one or more of which provide for the recovery of attorney's fees, the arbitration award must specify the theory under which the claimant prevailed, or otherwise clearly indicate whether the claimant has prevailed on a theory that would permit the trial court to award fees. In the event that the award fails to reflect such a finding, the circuit court may remand the matter to the arbitration panel for the purpose of resolving the issue. Thereafter, the circuit court may determine the fee issue in accord with the finding of the arbitrators.

We believe this holding is implicitly mandated by Florida's statutory schemes, both as to attorney's fees and arbitration, and especially the code provision vesting authority in the circuit court to award fees. Section 682.14(1)(c) of the code also provides for the modification or correction of an award where the award is inadequate as a matter of form. We conclude that to the extent that knowledge of the basis of an award is necessary for the subsequent determination of an entitlement to attorney's fees, an award without a basis is per se inadequate and subject to correction by the trial court.

Accordingly, based on the foregoing, we quash that part of the Second District's decision in *Moser* which reversed the trial court's ruling in its determination of the issue

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<sup>3</sup> We note that in the instant case, the claimant expressly asked the arbitrators to indicate the basis of their decision. Despite this request by Moser, the arbitrators chose not to do so. See *Moser*, 745 So. 2d at 966.

of entitlement to attorney's fees, and remand this case to the district court for further proceedings consistent herewith.

It is so ordered.

WELLS, C.J., and SHAW, HARDING, PARIENTE, LEWIS and QUINCE, JJ., concur.

## **Special Procedures for New Jersey Cases**

### **FINRA Dispute Resolution Guidelines and FAQ's for New Jersey Cases Involving Out-of-State Attorneys**

#### **Introduction**

In January 2007, the Committee on the Unauthorized Practice of Law in New Jersey (Committee) issued Opinion 43 to address an inquiry regarding whether an out-of-state attorney may appear before a panel of the American Arbitration Association in New Jersey.<sup>4</sup> The Committee determined that an out-of-state attorney may represent a party in an arbitration proceeding conducted in New Jersey, if there has not been a complaint filed in New Jersey on the issue and if the attorney is admitted and in good standing in another jurisdiction.<sup>5</sup> While Opinion 43 continues to permit representation by an out-of-state attorney in alternative dispute resolution forums, it changes the prerequisites for appearance by the out-of-state attorney.

According to Opinion 43, an out-of-state attorney must satisfy all of the requirements of Rule of Professional Conduct 5.5 (RPC 5.5).<sup>6</sup> Further, Opinion 43 requires, as part of the initial filing process, that the out-of-state attorney provide proof of compliance with RPC 5.5 to the alternate dispute resolution forum, particularly proof of registration with the Clerk of the Supreme Court and payment of the required fees.

#### **Guidelines for Attorneys Who Are Not Admitted to Practice in New Jersey**

Based on the requirements set forth in Opinion 43, FINRA Dispute Resolution has developed the following guidelines for attorneys who are not admitted to practice in New Jersey (i.e., out-of-state attorneys).

Out-of-state attorneys may participate fully in an arbitration hearing on the merits held in an FINRA, New Jersey forum, provided that the out-of-state attorneys satisfy the following criteria:

- Comply with all of the requirements of New Jersey RPC 5.5; and
- Provide proof, in the initial pleading, of:
  - (1) registration with the Clerk of the New Jersey Supreme Court; and
  - (2) payment of the required fees.

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<sup>4</sup> Committee on the Unauthorized Practice of Law, Opinion 43 (Supplementing Opinion 28), January 2007 (visited March 13, 2007) <[http://www.judiciary.state.nj.us/notices/ethics/UPLC\\_Opinion43supplementingop28.pdf](http://www.judiciary.state.nj.us/notices/ethics/UPLC_Opinion43supplementingop28.pdf)>.

<sup>5</sup> Id.

<sup>6</sup> Id. at p. 3.

First, the New Jersey Rules of Professional Conduct can be found on the web site of the New Jersey Judiciary at [www.judiciary.state.nj.us](http://www.judiciary.state.nj.us) > Supreme Court > Rules of Court > Part I Appendices > Rules of Professional Conduct.

Second, to register with the Clerk of the Supreme Court, out-of-state attorneys should complete a form, which requires the out-of-state attorneys to certify that they meet the criteria to practice in New Jersey, and to designate the New Jersey Supreme Court as the agent for service. The form can be found on the web site of the New Jersey Judiciary at [www.judiciary.state.nj.us](http://www.judiciary.state.nj.us) > Supreme Court > Form – Designation of Clerk as Agent for Service of Process – Multijurisdictional Practice. The form should be filed at the following address:

Clerk of the Supreme Court of New Jersey  
Hughes Justice Complex  
P.O. Box 970  
Trenton, NJ 08625-0970

Finally, the Supreme Court of New Jersey requires a filing fee for registration of out-of-state attorneys. For more information on fees, forms, and other information, you should contact the New Jersey Supreme Court by sending an email to [supremect.mailbox@judiciary.state.nj.us](mailto:supremect.mailbox@judiciary.state.nj.us) or by calling (609) 984-4371.

## **FINRA Dispute Resolution Service Requirements**

### **• Arbitration**

If the out-of-state attorney represents the claimant, the claimant must file proof of compliance with RPC 5.5 along with other documents, as required under Rule 12302(a) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Rule 13302(a) of the Code of Arbitration Procedure for Industry Disputes (Industry Code) (together, Codes). The Director of Arbitration (Director) will serve promptly on the respondents the proof of compliance along with other documents, as required under Rules 12302(d) and 13302(d) of the Codes.

If the out-of-state attorney represents the respondent, the respondent must file proof of compliance with RPC 5.5 along with other documents, as required under Rules 12303(a) and 13303(a) of the Codes. The respondent must serve each party and the Director with a copy of the proof of compliance as well as other documents, as required under Rules 12303(c) and 13303(c) of the Codes.

### **• Mediation**

If the out-of-state attorney represents a party in mediation, the out-of-state attorney must provide proof of compliance with RPC 5.5 at the outset of a mediation.

## **Determination of Location of FINRA Dispute Resolution Proceedings**

- These Guidelines apply to FINRA Dispute Resolution arbitration and mediation proceedings taking place in New Jersey.

- The location of arbitration proceedings is governed by the Submission Agreement and Rules 12213 and 13213 of the Codes, which provide that the Director of Arbitration shall set the initial hearing location, and that the arbitrators may set the location thereafter.

### **How Guidelines Affect FINRA Dispute Resolution Administration of Arbitration Proceedings**

- **Question: When must out-of-state attorneys enter their appearance?**  
Answer: Out-of-state attorneys must enter their appearance when their client's initial pleading is filed.
- **Question: What happens if an out-of-state attorney fails to comply with these Guidelines?**  
Answer: Out-of-state attorneys who fail to comply with RPC 5.5 are subject to possible penalties under state law, and risk being prohibited from representing their client in arbitration.
- **Question: Do the Guidelines apply to mediation cases?**  
Answer: Yes. In Opinion 43, the Committee states that out-of-state attorneys may represent a client in mediation in New Jersey, provided that the out-of-state attorney has satisfied the requirements of RPC 5.5.
- **Question: My opponent's counsel is an out-of-state attorney who has not complied with the Guidelines. What can I do?**  
Answer: You may address issues concerning the qualifications of a representative with the appropriate state agency or licensing authority.
- **Question: What happens if an out-of-state attorney files a form, but an opposing party challenges the out-of-state attorney's participation in the case before the panel?**  
Answer: Arbitrators should encourage the parties to address issues concerning the qualifications of a representative with the appropriate state agency or licensing authority. Under Rules 12208(d) and 13208(d) of the Codes, issues regarding the qualifications of a person to represent a party in arbitration may be determined by an appropriate court or other regulatory agency. Rules 12208(d) and 13208(d) also state that in the absence of a court order, the arbitration proceeding shall not be stayed or otherwise delayed pending resolution of such issues.