

**What’s Inside**

|  |    |
|--|----|
| Anatomy of a Zoom Videoconference Mediation      | 3  |
| FINRA Dispute Resolution Services and FINRA News | 6  |
| Mediation Update                                 | 11 |
| Question and Answer                              | 14 |
| Education and Training                           | 15 |
| Quarterly Arbitrator Disclosure Reminder         | 18 |

**Mission Statement**

We publish *The Neutral Corner* to provide arbitrators and mediators with current updates on important rules and procedures within securities dispute resolution. FINRA’s dedicated neutrals better serve parties and other participants in the FINRA forum by taking advantage of this valuable learning tool.

**FINRA Arbitrators Successfully Conduct Virtual Hearings**

*By Nora Sassounian, Case Administrator, FINRA West Regional Office*



With the outbreak of COVID-19, FINRA arbitration hearings held via Zoom videoconference have become increasingly popular. To date, 15 hearings have taken place by Zoom with more scheduled for the coming weeks. We have received positive feedback from several arbitrators about their Zoom experience.

**What Are Arbitrators Saying?**

A New York-based arbitration panel recently held an evidentiary hearing by Zoom and was pleased at how well the hearing went. The panel understood how important it was for parties to have the option to go forward with their hearings, rather than waiting indefinitely for in-person hearings. However, they wanted to make sure the virtual hearing experience did not sacrifice the important aspects of an in-person hearing. The panel believed it was important to be able to see the parties and witnesses as they were testifying to gauge credibility. Conducting the hearing by Zoom allowed them to do just that. Zoom also allowed parties to easily share documents using the “share screen” feature and show their exhibits to all participants simultaneously.

A Chicago-based panel was very pleased with Zoom’s “breakout rooms” feature, which enabled the panel to meet in a private virtual room for executive sessions. With the success of virtual hearings, some arbitrators have said they would consider using Zoom for prehearing conferences.

An Arizona-based panel suggested that establishing protocols in advance of the hearing can make the Zoom platform an efficient way to conduct hearings. In particular, the panel found that creating a detailed schedule of when witnesses will be introduced and how exhibits will be presented—whether parties will use share screens in Zoom, mail them to FINRA to distribute to the panel (if voluminous) or submit them through the DR Portal—was very helpful in keeping the hearing on track. They cautioned, though, that arbitrators should treat Zoom hearings just like in-person

hearings. Arbitrators should dress professionally, sit up straight and remain engaged throughout the proceedings. They should also avoid distractions like looking at their phones or eating on camera, just like in-person hearings (see [The Neutral Corner, Volume 1—2020](#) for more tips). All the panels agreed that they were able to manage the hearing by Zoom just as well as an in-person hearing, and they would not hesitate to conduct virtual hearings in the future.

### Security Enhancements

FINRA's technology team has leveraged industry-standard encryption on the Zoom platform, as well as a firewall to increase security. Further, FINRA requires all Zoom meetings to be password-protected and to use waiting rooms to prevent unverified participants from joining a Zoom meeting. To date, there have been no instances of "Zoom bombing" during FINRA's virtual hearings.

### Conclusion

If a virtual hearing is scheduled, the assigned FINRA case administrator will guide arbitrators through the process and set up a "trial run" before the hearing. The case administrator will also be available as a resource during the hearing. For additional guidance, a [Virtual Hearing Guide for Arbitrators](#) has been posted on the [Case Guidance and Resources](#) page of our website. As one arbitrator concluded, there is already so much uncertainty in the world right now without the additional stress that comes with unresolved disputes. By using Zoom to conduct hearings, parties can move from a place of uncertainty to one of finality and conclusion.

## Anatomy of a Zoom Videoconference Mediation

*\*By E. Scott Douglas*



As a result of the pandemic-related travel restrictions as well as delays to court and arbitration proceedings, many parties are inquiring about conducting remote mediations using videoconferencing. The following is an example of how a recent mediation unfolded from start to finish using Zoom videoconferencing, supplemented by email, text messaging and phone calls.

### Mediation Day Minus 14

Send an email to all counsel with guidelines for downloading and using Zoom, testing communications and preparing their clients. Encourage the exchange of financial information and briefs if all parties agree.

Arrange a time on the day or two before the mediation to test the videoconference with counsel and participants. Obtain the best email addresses and telephone numbers to send the Zoom invitations.

Send one Zoom invitation to all participants for the pre-mediation test videoconference and another invitation for the mediation hearing.

### Mediation Day Minus 1 or 2

Conduct a Zoom test with all participants. Participants will log into Zoom using the invitation link in the previously scheduled test meeting. The mediator will admit participants from the secure waiting room. Conduct a brief meeting to test communications and address any questions or concerns.

### Mediation Day

9:00 Initiate the Zoom videoconference. Bring all participants into the main Zoom conference using the secure waiting room feature. Conduct the joint opening session to introduce all participants, explain the process and conduct opening statements if anyone wishes to make one (a rarity these days).

- 9:05 Place all Respondents and their counsel in a designated breakout room. Conduct the opening session with Claimants and their counsel. If parties prefer to disconnect from the conference rather than wait in a breakout room, they can be re-invited at the appropriate time.
- 10:15 Close the session with Claimants' group and move them into a designated breakout room. Bring Respondents' group from their breakout room into the main conference (or invite them to join a new Zoom conference if they choose not to use the breakout room feature). Conduct the opening session with Respondents.
- 11:20 Join Claimants' breakout room to provide an evaluation and discuss an opening demand. Identify any non-monetary issues. Leave Claimants' breakout room to let them determine their opening demand.
- 11:45 Obtain the opening demand from Claimants' counsel. Confirm the terms in an email back to counsel to create an outline for negotiations.
- 11:50 Message Respondents' counsel and set up a private call or separate video conference to discuss the opening demand from Claimants. Confirm the terms by email to counsel.
- 12:00 Respondents' counsel calls the mediator to discuss the counteroffer and terms. Confirm in an email to Respondents' counsel. Allow time for discussion between counsel and clients.
- 12:20 Respondents' counsel emails the mediator with a formal counteroffer and additional terms. Mediator and Respondents' counsel discuss by telephone.
- 12:25 Email the counteroffer to Claimants' counsel and follow up by telephone or separate video conference to discuss. Allow time for a private discussion between counsel and clients.
- 12:35–4:25 Exchange numerous counteroffers/demands by email and telephone and clarify additional non-monetary issues and objectives raised by the parties. Use a variety of negotiating tools to avoid impasse and keep negotiations moving forward.

4:25        Reach an agreement. Move all participants from their breakout rooms back into the main conference, or initiate a new Zoom videoconference with counsel for both sides, to confirm the terms of the settlement and preparation of the written settlement agreement.

4:50        Adjourn the conference.

### Commentary

I have now conducted a number of mediations on Zoom with minor variations in timing, process and communication tools. In each case, counsel and their clients expressed a great deal of satisfaction with the process. In almost all cases, the parties and counsel were physically located in a number of different states and often in different time zones. Everyone was able to remain at home while participating fully in the mediation.

As we grow more accustomed to the use of videoconference as an effective alternative to in-person mediations, we may conclude that for many cases, the expense and inconvenience of traveling to remote meeting sites is not justified and would be better spent resolving the case.

*\* E. Scott Douglas has been a full-time mediator since 1997. During that time he has successfully mediated more than 3,000 cases, with the majority of them related to securities and financial market disputes. From 1984 – 1997, Mr. Douglas was a partner in the Long Beach, CA office of Keesal Young & Logan.*

## New Name: FINRA Dispute Resolution Services

FINRA Office of Dispute Resolution has officially changed its name to FINRA Dispute Resolution Services. This change highlights our focus on customer service and helps distinguish FINRA Dispute Resolution Services from FINRA Enforcement for our external stakeholders, lawmakers and the media. The name change also highlights our unique functions and speaks to our role as a neutral administrator of FINRA's arbitration and mediation forum.

## FINRA Dispute Resolution Services and FINRA News

### COVID-19 Hearing Postponements and Virtual Hearings



In response to the evolving coronavirus disease 2019 (COVID-19), FINRA has decided to administratively postpone all in-person arbitration and mediation proceedings scheduled through September 4, 2020 unless the parties stipulate to proceed telephonically or by Zoom or the panel orders that the hearings will take place telephonically or by Zoom. If you have an in-person hearing or mediation session scheduled through this date, you will be contacted by FINRA staff to reschedule or discuss remote scheduling options. Please note that postponing a hearing will not affect other case deadlines. All case deadlines will continue to apply and must be timely met unless the parties jointly agree otherwise. We recognize that this decision may cause inconvenience and we do not make it lightly. We are taking this preventative action out of an abundance of caution, in the interest of public safety. The well-being of our FINRA employees, arbitrators, stakeholders and communities is of paramount importance.

Further, FINRA will waive postponement fees when parties stipulate to adjourn in-person hearing dates scheduled from September 7 through December 31, 2020. To avoid postponement fees, parties must provide written notice of the stipulation to adjourn more than 20 days prior to the first scheduled hearing date. Parties stipulating to adjourn in-person hearing dates should also consider stipulating to changing other case deadlines.

As noted above, FINRA Dispute Resolution offers virtual hearing services (via Zoom and teleconference) to parties in all cases by joint agreement or by panel order. These services provide high-quality, secure, user-friendly options for conducting video and telephonic hearings and sharing documents remotely. Staff is available to schedule virtual hearings and provide technical support, and also makes available a Virtual Hearing Guide for Arbitrators. Parties that are interested in exploring this option are encouraged to contact their Case Administrator for details.

## COVID-19 Reduced Fee Program

FINRA is currently offering to parties in arbitration cases the remote use of the mediation process (via Zoom and/or by telephone) at a reduced rate. The COVID-19 Reduced Fee Program features the following benefits:

- Parties will receive a random list of 10 national mediators along with their mediator disclosure reports for consideration and ranking;
- The mediator payment for his/her service is \$100 an hour split by the parties; and
- FINRA waives mediation filing fees and administrative fees (FINRA receives no revenues)

If you are interested in participating in this program, please advise your case administrator who will have the appropriate mediation administrator contact the parties to discuss further and help assist with scheduling the virtual mediation.

## Virtual Hearing Statistics

Rather than postponing their hearings, some parties have opted to go forward with virtual hearings by Zoom. To date, FINRA has received 54 motions for Zoom hearings:

- 38 contested motions
  - 28 customer contested motions
    - 12 granted
    - 5 denied
    - 11 open
  - 10 intra-industry contested motions
    - 5 granted
    - 4 denied
    - 1 open
- 16 joint motions (four in customer cases)

Please review the [Virtual Hearing Guide for Arbitrators](#) for on the [Case Guidance and Resources](#) page for more information about conducting Zoom hearings.

## Register for the DR Portal Today

If you have not already done so, we strongly encourage arbitrators and mediators to register for the DR Portal ([portal](#)). The portal allows you to:

- file case documents including the electronic Oath of Arbitrator and Checklist, the Initial Prehearing Conference Scheduling Order, general, dismissal and postponement orders and the AIS;
- access information about assigned cases, including case documents, upcoming hearings and arbitrator payment information;
- schedule hearings;
- update profile information;
- view and print the disclosure report;
- update the last affirmation date on the disclosure report; and
- review list selection statistics to see how often your name has appeared on arbitrator ranking lists sent to parties and how often you have been ranked or struck on those lists.

Portal registration is reflected on the disclosure reports that parties review when selecting arbitrators and mediators.

## Arbitration Case Filings and Trends

[Arbitration case filings](#) from January through May 2020 reflect a four percent increase compared to cases filed during the same five-month period in 2019 (from 1,486 cases in 2019 to 1,545 cases in 2020). Customer-initiated claims decreased by 16 percent through May 2020, as compared to the same time period in 2019.

## Portal How-to Videos

If you need assistance updating your profile or submitting the Oath of Arbitrator or other forms in the [portal](#), the [portal how-to videos](#) are here to help. These videos are quick tutorials for arbitrators on navigating to the Update Form and Oath of Arbitrator. They also include information on how to disable pop-up blockers in different Internet browsers.

## Practising Law Institute Securities Arbitration 2020 (Webinar)

The Practising Law Institute's (PLI) [Securities Arbitration 2020](#) provides an opportunity to hear about the latest developments and hot topics directly from FINRA Dispute Resolution Services leadership, arbitrators, noted academics and experienced attorneys who represent both customers and industry parties. PLI's distinguished faculty will provide practical tips for handling product arbitrations and settling cases. They will also explore ethical challenges involved in arbitrator disclosure and replacement and will discuss diversity and inclusion and the elimination of bias in the forum. Finally, they will take a look at the latest hot topics and future trends in securities arbitration.

The program will be presented as a webinar on September 10, 2020 from 9 a.m. – 5 p.m. Eastern Time. A recorded version may be viewed later. CLE credit will be available.

FINRA arbitrators and mediators will receive a 25 percent discount off the regular registration fee. To receive the discount, please enter this code at checkout: **HGPO SA920**.



## SEC Rule Approvals

### Applying Minimum Fees to Requests for Expungement of Customer Dispute Information

On May 26, 2020, the Securities and Exchange Commission (SEC) approved FINRA's proposal to amend [Part IX \(Fees and Awards\)](#) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and the Code of Arbitration Procedure for Industry Disputes (Industry Code, together, Codes) to apply minimum filing fees to requests for expungement of customer dispute information, whether the request is made as part of the customer arbitration or the associated person files an expungement request in a separate arbitration (straight-in request). The rule change will also apply a minimum member surcharge and process fee to straight-in requests, as well as a minimum hearing session fee to expungement-only hearings. Please see [SR-FINRA-2020-005](#) for more information. FINRA will announce the effective date in a Regulatory Notice.

### Regulatory Notice 20-11: Expanded Options for Customers if a Firm or Associated Person Is or Becomes Inactive

The SEC approved a proposal to amend FINRA Rules [12100](#), [12202](#), [12214](#), [12309](#), [12400](#), [12601](#), [12702](#), [12801](#) and [12900](#) of the Customer Code to expand a customer's options to withdraw an arbitration claim if a member or an associated person becomes inactive before a claim is filed or during a pending arbitration. In addition, the proposed amendments will allow customers to amend pleadings, postpone hearings, request default proceedings and receive a refund of filing fees when they withdraw their arbitration claims. The amendments will be effective for cases filed on or after June 29, 2020. Please review [Regulatory Notice 20-11](#) for more information.

### Regulatory Notice 20-15: Amendment to the Membership Application Program (MAP) Rules

The SEC approved FINRA's proposal to amend the MAP rules to prevent a member firm with substantial arbitration claims from avoiding payment of the claims should they go to award or result in a settlement by shifting its assets, which are typically customer accounts, or its managers or owners, to another firm and closing down. The amendment will also address

situations in which member firms are considering hiring individuals with pending arbitration claims where there are concerns about payment of those claims should they go to award or result in a settlement, as well as concerns about the adequacy of the supervision of those individuals by the hiring member firm. The rules will become effective on September 14, 2020. Please review [Regulatory Notice 20-15](#) for more information.

## Mediation Update

### Mediation Staff Changes



Mara Weinstein has joined the Mediation Department as a national mediation administrator. Mara joined FINRA in 2015 as a neutral recruiter and trainer in the Department of Neutral Management. Previously, she was the Director of Dispute Resolution Services & Training and Education for the International Institute for Conflict Prevention and Resolution. Mara brings a wealth of dispute resolution experience to her new role. Welcome Mara!

As Mara takes on her new role, we will say goodbye to our dear colleague Leon De Leon in August. Leon joined FINRA, then NASD, in 1986 as an analyst in Corporate Finance and then worked as an investigator in Enforcement. In 1994 Leon joined the Arbitration Department as a staff attorney before moving to Mediation in 1996 as one of the original mediation administrators. He has been instrumental in expanding and improving the mediation program and has been a tireless advocate. Please join us in thanking Leon for his contributions to the forum and wish him well.

### COVID-19 Reduced Fee Mediation Program

FINRA's Mediation Department is now offering [a reduced fee mediation program](#) for parties that use remote mediation through August 31, 2020. To date, more than 100 mediators have agreed to participate in the program, which features the following benefits:

- Parties will receive a random list of 10 national mediators along with their mediator disclosure reports for their consideration and ranking;
- The mediator payment for his/her service is \$100 an hour split by the parties; and
- FINRA waives mediation filing fees and administrative fees (FINRA receives no revenues).

Please contact FINRA's [Mediation Department](#) if you have any questions about this program.

### Mediation Statistics

[From January through May 2020](#), parties initiated 195 mediation cases, a decrease of 19 percent from the same period in 2019. FINRA also closed 258 cases during this time. Approximately 87 percent of these cases concluded with successful settlements.

### Mediation Program for Small Arbitration Claims

FINRA's [Telephonic Mediation Program for Small Arbitration Claims](#) continues to receive positive feedback from parties and mediators. Active FINRA arbitration cases with initial claims of \$50,000 or less are eligible for the program. Claims for \$25,000 or less are eligible for mediation at no cost. Claims for more than \$25,000 through \$50,000 are eligible for a reduced fee of \$50 per hour (divided by the parties). FINRA collects no mediation filing fees for these cases.

To date, more than 90 percent of the cases mediated through this program have reached a settlement. While conducting mediations, FINRA mediators emphasize the value of telephonic mediation and help parties understand the strengths and weaknesses of their cases and help them shape their own outcomes.

Telephonic mediation offers seniors, or those with difficulty traveling, the option to participate in a mediation from the comfort of their own homes. Telephonic mediation also provides mediators with additional opportunities to mediate in hearing locations across the country, regardless of the mediator's home base.

We encourage parties and counsel in small cases to consider using the telephonic mediation program.

### Keep It Current

Keeping your mediator disclosure report up-to-date—including the number of times you have mediated cases, your success rate and types of cases mediated—matters to parties when selecting a mediator. Parties have also requested references from mediators who do not list them on their disclosure report. Please add references to your disclosure report, so parties may consider them when selecting a mediator. If you have a cancellation policy, please include it in your disclosure report. You can update your mediator profile anytime through the [portal](#).

## Mediator Training Opportunities

Occasionally, FINRA receives information about mediator training that we think would be of interest to our mediators. We will post information and links to these training opportunities on the [Resources for Mediators](#) page on our website.

## Become a FINRA Mediator

Do you have mediator experience? Consider joining the FINRA mediator roster. Please email the [Mediation Department](#) for more information.



## Question and Answer

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### Additional Questions for Arbitrators

**Question** At what stage of the arbitration proceeding can parties request additional information from arbitrators?

**Answer** Under Rules [12402\(c\)\(2\)](#), [12403\(b\)\(2\)](#) and [13403\(c\)\(2\)](#) of the Codes, parties can request additional information when they receive the lists of proposed arbitrators for their cases. At that time, “[i]f a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator and will send any response to all of the parties at the same time.” If the information is not solely case-specific, FINRA will also update the arbitrator’s disclosure report so the information is available for parties on all cases going forward.

The opportunity to pose questions to the arbitrators supplements an arbitrator’s own continuing duty to disclose circumstances that might preclude the arbitrator from rendering an objective and impartial decision. As a result, FINRA sends party-submitted questions to arbitrators throughout the life of a case. In doing so, FINRA seeks to ensure the integrity of final awards and minimize the number of motions to vacate an award based on an arbitrator’s failure to disclose.

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## Education and Training

### Arbitrator Trainings



The following is a summary of FINRA's advanced arbitrator training courses. All training courses are free and available online at any time. We encourage arbitrators to complete them to ensure they have the most current information about these topics.

### Online Trainings Available Through FINRA's Learning Management System

FINRA offers most of its advanced trainings through [FINRA's Learning Management System](#) (LMS). Arbitrators must register in the LMS before they can access the courses. After arbitrators complete a course, FINRA will add the completed training information to the arbitrator's disclosure report. The advanced training courses available to arbitrators are:

- **Chairperson Training:** Instructs arbitrators on the added responsibilities of serving as the chairperson of the panel.
- **Civility in Arbitration:** Helps arbitrators evaluate their obligations before and during service on a case and set a proper tone for conducting fair and efficient hearings.
- **Discovery, Abuses & Sanctions:** Focuses on the respective duties of arbitrators and parties in the discovery process, explains the Discovery Guide and helps arbitrators recognize and address discovery abuses.
- **Expungement:** This mandatory course provides an overview of the expungement process and gives an in-depth review of FINRA [Rule 2080](#) and [Rules 12805](#) and [13805](#) of the Codes. The course also explains the importance of CRD.
- **Understanding the Prehearing Stage:** Helps arbitrators manage and organize the Initial Prehearing Conference.
- **Your Duty to Disclose:** Explains the importance of arbitrator disclosure and instructs arbitrators on how to make complete disclosures.

### Video Training Available Through FINRA's Advanced Arbitrator Training Page

Arbitrators may access video training courses directly from FINRA's [Advanced Arbitrator Training Web page](#), with no registration required. After arbitrators complete a course, they can send an email to FINRA to confirm completion and request that FINRA include the training on their disclosure report.

In addition to viewing a training video, arbitrators may download the accompanying training documents available on the Web page.

- Explained Decisions: Helps arbitrators understand the explained decisions rules and apply them in an arbitration case.
- Motions to Dismiss: Explains the three types of motions to dismiss and provides guidance to arbitrators on how to address them during arbitration.
- Anti-Money Laundering Requirements and Suspicious Activity Reporting: Discusses anti-money laundering requirements and provides guidance to arbitrators about what to do if suspicious activity report (SAR) issues arise during arbitration; explains how suspicious activity reporting fits into anti-money laundering regulation; and helps arbitrators understand and follow the confidentiality requirements for SARs.

### Compliance and Regulatory Courses

In addition to arbitrator training, FINRA offers compliance and regulatory courses online. Arbitrators may review the course catalog on [FINRA's website](#). FINRA also provides free podcasts and webinars on regulatory topics, which can be accessed directly from FINRA's [online learning page](#).

### Other Resources

- **FINRA's Website:** FINRA continually updates its [website](#) to provide up-to-date information. Among other things, the website provides information about rule changes, updated arbitration procedures and new training opportunities.



- **Neutral Workshops:** [Neutral workshops](#) provide information about developments within FINRA’s dispute resolution program and best practice tips for arbitrators and mediators. The most recent workshop focused on expungement of customer dispute information. FINRA posts the video workshops as video files on FINRA’s website for arbitrators and mediators to view at any time.
- **DR Monthly Email:** FINRA distributes a monthly email that highlights new developments in FINRA’s dispute resolution program. For example, the email includes information about SEC rule filings and approvals and arbitrator training. The email is sent at the beginning of each month to all available arbitrators and mediators on the roster, as well as to individual subscribers.

## Arbitrator Disclosure Reminder



As a reminder, arbitrators should review their disclosure reports regularly to ensure that all information is accurate and current. Even if arbitrators are not currently assigned to cases, their disclosure reports may be sent to parties during the arbitrator selection process. Giving parties the most current and complete information, helps them make informed decisions when selecting their panel. Arbitrators should log in to the [portal](#) to update their disclosure reports.

### Last Affirmation Dates on Arbitrator Disclosure Reports

In 2017, FINRA enhanced arbitrator disclosure reports by publishing the date that arbitrators last affirmed the accuracy of their disclosure reports. The affirmation date appears prominently at the top of the disclosure report that parties review during the arbitrator selection process. Parties may consider the affirmation date when making decisions about ranking and striking arbitrators.

In order to provide parties with the most current arbitrator information, we are asking arbitrators to review their disclosure reports regularly and affirm the information in the disclosure report. Arbitrators can affirm their disclosures and refresh the affirmation date by submitting an update through the portal or by submitting an Oath of Arbitrator when assigned to a case. Even if you have no changes, you can update the affirmation date by affirming the information on your disclosure report and submitting an update form through the portal. If you would like to register in the portal or need to reactivate a dormant account, please send an email to [Dispute Resolution Neutral Management](#) to request an invitation. Please include “request portal invitation” in the subject line.

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Southeast Region

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Neutral Management and Editor of  
*The Neutral Corner*

## FINRA Dispute Resolution Services Offices

### Northeast Region

FINRA Dispute Resolution Services  
One Liberty Plaza, 27th Floor  
165 Broadway  
New York, NY 10006  
Phone: (212) 858-4200  
Fax: (301) 527-4873  
[neprocessingcenter@finra.org](mailto:neprocessingcenter@finra.org)

### West Region

FINRA Dispute Resolution Services  
300 S. Grand Avenue, Suite 1700  
Los Angeles, CA 90071  
Phone: (213) 613-2680  
Fax: (301) 527-4766  
[westernprocessingcenter@finra.org](mailto:westernprocessingcenter@finra.org)

### Southeast Region

FINRA Dispute Resolution Services  
Boca Center Tower 1  
5200 Town Center Circle, Suite 200  
Boca Raton, FL 33486  
Phone: (561) 416-0277  
Fax: (301) 527-4868  
[fl-main@finra.org](mailto:fl-main@finra.org)

### Midwest Region

FINRA Dispute Resolution Services  
55 West Monroe Street, Suite 2600  
Chicago, IL 60603-1002  
Phone: (312) 899-4440  
Fax: (312) 236-9239  
[midwestprocessingcenter@finra.org](mailto:midwestprocessingcenter@finra.org)

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*The Neutral Corner* is published by  
FINRA Dispute Resolution Services in  
conjunction with FINRA Corporate  
Communications. Send all  
correspondence to Jisook Lee, Associate  
Director of Neutral Management and  
Editor of *The Neutral Corner*:

FINRA Dispute Resolution Services  
One Liberty Plaza  
165 Broadway, 27th Floor  
New York, NY 10006

Or call (212) 858-4400.

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165 Broadway  
New York, NY 10006

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