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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.

Dispute Resolution and FINRA News

Case Filings and Trends



Arbitration [case filings](#) from January through August 2013 reflect a 19 percent decrease compared to cases filed during the same eight-month period in 2012 (from 3,096 cases in 2012 to 2,519 cases in 2013). Customer-initiated claims decreased by 13 percent through August 2013, as compared to the same time period in 2012.

Arbitration cases filed identified the following securities (listed in order of decreasing frequency): common stock, mutual funds, annuities, options, variable annuities, limited partnerships, corporate bonds, preferred stock, certificates of deposit and auction rate securities. The top two causes of action alleged were breach of fiduciary duty and negligence.

Recent New Jersey Court Ruling on Mediation Agreements

New Jersey's state Supreme Court recently ruled that mediation settlement agreements will not be enforceable without a written and signed agreement by the parties before the mediation concludes. If it is too difficult to complete the written terms of the agreement for signature the same day, the mediation should continue for "a brief but reasonable period of time to allow for the signing of the settlement."

This ruling emphasizes the importance of encouraging parties to memorialize their agreements as soon as possible. Having the agreements in writing makes them enforceable and reduces the risk of litigation after the fact. When parties enter into a written and signed settlement agreement after mediating within FINRA's jurisdiction, FINRA has the ability to enforce it. FINRA has the authority to suspend a member firm or registered representative who does not fulfill an obligation agreed to in a fully executed settlement agreement. This is a service that FINRA provides that distinguishes our forum from others. This strengthens settlement agreements by ensuring they are binding and enforceable with the assistance of our program.

Please review a summary of the case [here](#).

Comments, Feedback and Suggestions

Please send your suggestions and comments to:

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Fifth Annual Securities Dispute Resolution Triathlon

October 19 – 20, 2013

FINRA and the Hugh L. Carey Center for Dispute Resolution of St. John's University School of Law are proud to present the Fifth Annual Securities Dispute Resolution Triathlon. The triathlon provides student teams from participating law schools an opportunity to demonstrate their advocacy skills in negotiation, mediation and arbitration of a securities dispute.

FINRA neutrals are invited to serve as judges, mediators and arbitrators in this event. Attorneys who serve as judges or neutrals during the triathlon will be eligible to receive Continuing Legal Education (CLE) credit through St. John's University School of Law. If you are interested in serving as a judge or neutral, complete the online [participation form](#).

Please visit our website for more details about the [triathlon](#).

Securities Arbitration & Mediation Hot Topics 2013

On June 4, FINRA participated on the panel at the Securities Arbitration & Mediation Hot Topics program at the New York City Bar Association. The panel of experienced practitioners and senior representatives from FINRA examined rule changes and provided practical advice on arbitrating and mediating claims at FINRA.

Arbitrators who missed the live program may view the video-on-demand at the New York City Bar Association's website. The video normally costs \$226.50 for nonmembers; however, using the discount code **FINRAcourtesy**, FINRA arbitrators can view the video at the FINRA rate of \$127.50 for six months following the program.

The course can be accessed through the [NYC Bar website](#). Please be sure to select the video-on-demand option.

PLI Securities Arbitration 2013

On August 1, FINRA participated in the Practising Law Institute's (PLI) Securities Arbitration 2013 program. The program featured FINRA staff, FINRA arbitrators, noted academics and experienced attorneys who represent both customers and industry parties. Among other topics, the program discussed tips for practicing in FINRA's forum, proposed changes to FINRA's arbitration rules and enhancements to the arbitration hearing process.

DR Portal: Register Now

FINRA is reminding neutrals to register in the DR Portal. In addition to being able to review and update your profile information, print disclosure reports, view case status and details and view a history of case assignments and honorarium earned, the portal now offers a schedule-sharing tool that helps parties and arbitrators agree on available hearing dates. Although this function has been rolled out in pilot arbitration cases only, it will soon be available for all cases.

The portal provides a collaborative tool that allows neutrals and parties to find mutually agreeable dates to schedule (or reschedule) hearing sessions. When a hearing needs to be scheduled, FINRA will publish proposed dates in the portal and invite neutrals and parties to log into the portal to enter their availability, saving time and needless phone calls. You will also be able to avoid blocking sets of dates indefinitely, allowing you to keep your calendars open to schedule other events. Ultimately, FINRA will be able to schedule hearings quickly with fewer disruptions to the case.

Please visit [PLI's website](#) for more information about the Securities Arbitration 2013 program.

SEC Rule Approvals

Discovery Guide to Include General Guidance on Electronic Discovery and Product Cases

On September 16, 2013, the SEC approved FINRA's proposed amendments to the Discovery Guide used in customer arbitration proceedings. The amended Guide will provide general guidance on electronic discovery issues and product cases and clarify the existing provision relating to affirmations made when a party does not produce documents specified in the Guide.

The amendments will become effective later this fall. Please visit FINRA's website for more information about [SR-FINRA-2013-024](#).

One Panel Composition Method

On September 18, 2013, the SEC approved FINRA's proposed change to [Rule 12403](#) of the Customer Code to simplify arbitration panel selection in cases with three arbitrators. Under the rule change, FINRA will no longer require a customer to elect a panel selection method. Parties in all customer cases with three arbitrators will get the same selection method. FINRA will send parties three lists: (1) 10 chair-qualified public arbitrators; (2) 10 public arbitrators; and (3) 10 non-public arbitrators. Parties may strike four arbitrators on the chair-qualified public list and four arbitrators on the public list. However, any party may select an all-public arbitration panel by striking all of the arbitrators on the non-public list. If a party wants a non-public arbitrator on the panel, the party can limit its strikes on the non-public list, leaving any or all of the 10 non-public arbitrators on the list. However, leaving non-public arbitrators on the list does not guarantee that FINRA will appoint one to the panel. The parties may strike different non-public arbitrators from the list, and collectively they may strike all of the non-public arbitrators on the list. In addition, the selected non-public arbitrators may not be available to serve. Under these circumstances, FINRA will appoint an all-public panel unless the parties agree to request a supplemental list of non-public arbitrators.

This amended rule will be effective on September 30, 2013. Please visit FINRA's website for more information about [SR-FINRA-2013-023](#).



Questions and Answers

Questions and Answers: Dissenting Opinions

Question: Do awards have to be unanimous?

Answer: No. Awards do not have to be unanimous. [Rules 12410 and 13414](#) of the Codes provide that rulings and determinations of the panel must be made by a majority of the arbitrators. An arbitrator who disagrees with the majority will be identified in the award as a dissenting arbitrator and have the opportunity to provide a dissenting opinion with the final award.

Question: I am not in agreement with my co-panelists about the award. Do I need to write a dissenting opinion in the award?

Answer: No. You do not need to write a dissenting opinion when you disagree with the majority ruling. If you would like to include an explanation, please remember to be respectful, professional and focused on the substantive issues that are the bases for your dissent. A dissent should identify the points where you disagree with your co-panelists and explain your perspective on these substantive issues. For instance, if you disagree with the majority's decision on the finding of liability on the part of the respondent, an appropriate dissent would be your rationale, based on the facts of the case, as to why you disagree with this finding. The dissent should never comment on the performance or behavior of the other arbitrators; nor should it disclose private discussions that occurred during the deliberation. FINRA expects arbitrators to be respectful of one another, even when they disagree, and to maintain decorum and professionalism in the forum.

Mediation Update

Mediation Statistics



From January through August 2013, parties initiated 304 mediation cases. FINRA also closed 368 mediation cases during this period. Approximately 81 percent of these cases concluded with successful settlements, and the average case turnaround time was 88 days.

Annual Membership Fee Due September 1, 2013

The deadline for FINRA mediators to submit their \$200 annual membership renewal fee was September 1. If you have not submitted your \$200 mediator renewal fee but are interested in remaining active on the roster, please contact [Marilyn Molena](#) regarding your mediator availability status.

Mediation Settlement Month

October is Mediation Settlement Month. FINRA invites all active mediators on the roster to participate in this event to help promote mediation. During this annual event, mediators reduce their rates to encourage parties to explore FINRA's mediation program. At the same time, parties who are familiar with FINRA's mediation services may be encouraged to try new mediators on our roster.

The following special rates will apply during Mediation Settlement Month:

Amount of Claim	Length of Mediation	Mediation Session Fee
\$25,000 and under	4 hours	\$100/party
\$25,000.01 - \$100,000	4 hours	\$200/party
Over \$100,000	8 hours	\$500/party

Here are some additional guidelines for participating in settlement month:

- Parties can mediate telephonically or in-person.
- Unspecified claim amounts will be assessed the \$25,000.01 – \$100,000 mediation session rate.
- Parties will pay mediators at their regular hourly rates for any time spent beyond the above listed hours.

- FINRA receives no revenue from the mediator payments, and all mediation filing fees will be reduced by 50 percent for this special event.
- For claims already filed in arbitration, parties receive a waiver of the postponement fee if they adjourn to mediate through FINRA's Mediation Program.
- Parties must agree to mediate by October 31, 2013, and conduct their mediation by December 31, 2013.

Small Claims Mediation Program

Parties in active arbitration cases only may be interested in mediating through the Small Claims Mediation Program. The program offers low or no cost telephonic mediation (depending on the claim amount) for claims of \$50,000 or less. Please visit our [website](#) for more information about this program.

Education and Training

FINRA Dispute Resolution Arbitrator Trainings



The following is a summary of FINRA's advanced arbitrator training courses. All trainings are free, and arbitrators are encouraged to complete these courses to ensure that they have the most current information about these topics.

Online Trainings Available Through FINRA Learning Management System

FINRA offers most of its advanced trainings through [FINRA's Learning Management System](#) (LMS). Arbitrators must register in the LMS before accessing the courses. The courses are provided online where arbitrators review the course information, answer practice questions throughout the course and complete the exam online. After completing a course, FINRA will add this information to the arbitrator's disclosure report.

Arbitrators can also print the course materials in a PDF format. Arbitrators can then complete the exam online or on paper.

- **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.
- **Direct Communication Rule:** Provides an overview of FINRA's direct communication rule and its practical application.
- **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 of Arbitration Procedure. The course also explains the role of CRD.
- **Revised Code of Arbitration Procedure:** Discusses the key, substantive changes of the Customer Code with complementary Industry Code highlights from the 2007 revision of the Code of Arbitration Procedure.

- **Understanding the Prehearing Stage:** Helps arbitrators manage and organize the Initial Prehearing Conference.
- **Your Duty to Disclose:** Explains the importance of disclosure to the neutrality of the process and instructs arbitrators on how to make disclosures.

Compliance-Related Courses

In addition to arbitrator trainings, FINRA offers compliance-related courses through the [LMS](#). Arbitrators may review the course catalog and register for any of the listed courses, such as “Suitability and Know Your Customer Obligations” and “Diminished Decisional Capacity.” These courses are available to arbitrators at a discounted member rate of \$12.50 instead of \$25. Arbitrators may also purchase the entire library of e-learning courses for \$45.

Written Materials for Arbitrator Training Courses

FINRA provides PDF (printable and searchable) versions of all of its arbitrator trainings, offered through the LMS, on [FINRA’s website](#). The training materials are provided as a resource to all arbitration participants—including parties, parties’ representatives and arbitrators—who want to refresh their knowledge.

Video Trainings Available Through FINRA’s Advanced Arbitrator Training Page

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

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.
- **Operating the Digital Recorder:** Provides step-by-step instructions on how to operate the digital recorder for offsite hearings to ensure that arbitrators comply with the requirement under FINRA’s Code of Arbitration Procedure to make a tape, digital or other recording of every hearing. Completion of this course is not included on an arbitrator’s disclosure report.
- **Completing the Arbitrator Expense Report:** Provides an overview of the Guidelines for Arbitrator Reimbursement and offers step-by-step instructions on how to complete the Arbitrator Expense Report. Completion of this course is not included on an arbitrator’s disclosure report.

Other Resources

- **Neutral Workshops:** [Neutral workshops](#) provide information about new developments within FINRA’s dispute resolution program for practicing arbitrators and mediators, and allow them to hear directly from DR senior leaders. FINRA pre-records neutral workshops and posts the audio files on FINRA’s website for arbitrators and mediators to listen to 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 Tip: Keeping FINRA Apprised of Issues That May Affect Your Service



Some arbitration cases, particularly contentious or complex ones, require arbitrators to be periodically available for hearings for months, possibly years. Before accepting a case, please consider whether there are any circumstances that might prevent you from meeting your obligation to participate fully in the proceedings. If you think you might have a personal or health issue that could affect your participation in the case, even if it seems remote, please consider whether you should accept the appointment. Even if you decide that the chances of disruption are minimal and accept the case, please inform FINRA of any possible issues that might affect the hearing.

Parties invest a significant amount of time and money preparing for and presenting their cases. Withdrawing in the middle of a case could cause substantial delay and expense for the parties in resolving their case.

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