

**CODE OF ARBITRATION PROCEDURE  
FOR  
CUSTOMER DISPUTES**

**Text of Proposed Amendments**

**(Deletions are bracketed; additions are underlined.)**

**12100. Definitions**

Unless otherwise defined in the Code, terms used in the Rules and interpretive material, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws.

**(a)** No change.

**(b) Associated Person**

The term "associated person" or "associated person of a member" means a person associated with a member, as that term is defined in paragraph ([u]w).

**(c) – (p) No change.**

**(q) Inactive Member**

The term "inactive member" means a member as defined in paragraph (s) of this rule:

- (1) whose membership is terminated, suspended, cancelled or revoked;
- (2) that has been expelled from FINRA; or
- (3) that is otherwise defunct.

**(r) Inactive Associated Person**

The term "inactive associated person" means a person associated with a member as defined in paragraph (w) of this rule whose registration is revoked or suspended, or whose registration has been terminated for a minimum of 365 days.

**([q]s) Member**

No change.

**([r]t) Non-Public Arbitrator**

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator, and meets any of the following criteria:

- (1) No change.
- (2) is an attorney, accountant, or other professional who has, within the past

five years, devoted 20 percent or more of his or her professional time, in any single calendar year, to any entities listed in paragraph ([r]t)(1) and/or to any persons or entities associated with any of the entities listed in paragraph ([r]t)(1); or

(3) – (4) No change.

For purposes of the non-public arbitrator definition, the term "professional time" shall not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

**([s]u) Panel**

No change.

**([t]y) Party Portal**

No change.

**([u]w) Person Associated with a Member**

No change.

**([v]x) Pleadings**

No change.

**([w]y) Prehearing Conference**

No change.

**([x]z) Pro Se**

No change.

**([y]aa) Public Arbitrator**

The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator, and is not disqualified from service as an arbitrator, as enumerated by any of the criteria below.

**Permanent Disqualifications Based on a Person's Own Activities**

(1) No change.

(2) A person shall not be designated as a public arbitrator, who was, for a total of 15 years or more, an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional time annually, to any entities listed in paragraph ([y]aa)(1) and/or to any persons or entities associated with any of the entities listed in paragraph ([y]aa)(1).

(3) – (4) No change.

**Temporary Disqualifications Based on a Person's Own Activities**

(5) No change.

(6) A person shall not be designated as a public arbitrator who is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional time, in any single calendar year, to any entities listed in paragraph ([y]aa)(1) and/or to any persons or entities associated with any of the entities listed in paragraph ([y]aa)(1) unless the calendar year ended more than five calendar years ago.

(7) – (8) No change.

**Temporary Disqualifications Based on the Activities of Others at a Person's Employer**

(9) A person shall not be designated as a public arbitrator who is an attorney, accountant, or other professional whose firm derived \$50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the course of the past two calendar years, from any entities listed in paragraph ([y]aa)(1) and/or to any persons or entities associated with any of the entities listed in paragraph ([y]aa)(1), or from a bank or other financial institution where persons effect transactions in securities including government or municipal securities, commodities, futures, or options. A person whom FINRA would not designate as a public arbitrator under this subparagraph shall also not be designated as a public arbitrator for two calendar years after ending employment at the firm.

(10) No change.

**Temporary Disqualification Based on the Financial Industry Affiliation of an Immediate Family Member**

(11) No change.

For purposes of the public arbitrator definition, the term "revenue" shall not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

**([z]bb) Respondent**

No change.

**([aa]cc) Statement of Claim**

No change.

**([bb]dd) Submission Agreement**

No change.

**([cc]ee) Third Party Claim**

No change.

**12202. Claims Against Inactive Members and Inactive Associated Persons**

(a) A claim by or against an inactive member or an inactive associated person [in one of the following categories] is ineligible for arbitration under the Code unless the customer agrees in writing to arbitrate after the claim arises.]:

- A member whose membership is terminated, suspended, cancelled or revoked;
- A member that has been expelled from FINRA; or
- A member that is otherwise defunct.]

(b) If a member or an associated person becomes inactive during a pending arbitration, FINRA will notify the customer about the status change. Within 60 days of receiving notice of a member or an associated person's status change to inactive, a customer may withdraw the claim(s) against such inactive member or inactive associated person with or without prejudice.

**12214. Payment of Arbitrators**

(a) Except as provided in paragraph (b) and in Rule 12800, FINRA will pay the panel an honorarium, as follows:

- [•] (1) \$300 to each arbitrator for each hearing session in which he or she participates;
- [•] (2) an additional \$125 per day to the chairperson for each hearing on the merits;
- [•] (3) \$50 for travel to a hearing session that is postponed pursuant to Rule 12601; and
- [•] (4) \$600 for each arbitrator if a hearing session other than a prehearing conference is postponed within 10 days before a scheduled hearing session pursuant to Rules 12601(a)(1)(B), (a)(2) and (b)(2).

(b) – (e) No change.

**12309. Amending Pleadings**

(a) No change.

**(b) After Panel Appointment**

Once a panel has been appointed, a party may [only] amend a pleading:

(1) if the panel grants a motion to amend in accordance with Rule 12503. Motions to amend a pleading must include a copy of the proposed amended pleading. If the panel grants

the motion to amend, the amended pleading does not need to be re-served on the other parties, the Director, or the panel, unless the panel determines otherwise[.]; or

(2) if FINRA notifies a customer that a member or an associated person has become inactive as set forth in Rule 12202. The customer may amend a pleading within 60 days of receiving notice. The customer must serve the amended pleading on each party and file the amended pleading with the Director.

**(c) Amendments to Add Parties**

Once the ranked arbitrator lists are due to the Director under Rule 12402(d) or Rule 12403(c), [no] a party may only amend a pleading to add a new party to the arbitration if:

(1) [until] a panel has been appointed and the panel grants a motion to add the party. Motions to add a party after panel appointment must be served on all parties, including the party to be added. The party seeking to amend the pleading may serve the party to be added by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery. The party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code. The response may be filed with the Director and served on all other parties by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile [.]; or

(2) FINRA notifies a customer that a member or an associated person has become inactive as set forth in Rule 12202. The customer may amend a pleading to add a new party to the arbitration within 60 days of receiving notice. The customer may serve the party to be added by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery. The customer must serve the amended pleading on each other party and file the amended pleading with the Director.

**(d)** No change.

**12400. Neutral List Selection System and Arbitrator Rosters**

**(a) Neutral List Selection System**

No change.

**(b) Arbitrator Rosters**

FINRA maintains the following roster of arbitrators:

- (1) A roster of non-public arbitrators as defined in Rule 12100([r]t);
- (2) A roster of public arbitrators as defined in Rule 12100([y]aa); and
- (3) No change.

**(c) Eligibility for Chairperson Roster**

No change.

**12601. Postponement of Hearings**

**(a) Postponement of Hearings**

**(1) When a Hearing Shall Be Postponed**

A hearing shall be postponed:

(A) by agreement of the parties[.]; or

(B) if FINRA notifies a customer that a member or an associated person has become inactive as set forth in Rule 12202; the scheduled hearing date is within 60 days of the date the customer receives the notice from FINRA; and the customer chooses to postpone the hearing date.

**(2) When a Hearing May Be Postponed**

A hearing may be postponed:

[•] (A) By the Director, in extraordinary circumstances;

[•] (B) By the panel, in its own discretion; or

[•] (C) By the panel, upon motion of a party.

The panel may not grant a motion to postpone a hearing made within 10 days of the date that the hearing is scheduled to begin, unless the panel determines that good cause exists.

**(b) Postponement Fees**

(1) Except as otherwise provided, a postponement fee will be charged for each postponement agreed to by the parties, or granted upon request of one or more parties. The fee will equal the applicable hearing session fee under Rule 12902. The panel may allocate the fee among the party or parties that agreed to or requested the postponement. The panel may also assess part or all of any postponement fees against a party that did not request the postponement, if the panel determines that the non-requesting party caused or contributed to the need for the postponement. The panel may waive the fees.

(2) If a postponement request is made by one or more parties within 10 days before a scheduled hearing session and granted, the party or parties making the request shall pay an additional fee of \$600 per arbitrator. If more than one party requests the postponement, the arbitrators shall allocate the \$600 per arbitrator fee among the

requesting parties. The arbitrators may allocate all or a portion of the \$600 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the postponement. In the event that a request results in the postponement of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely postponement request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

(3) No postponement fee will be charged if a hearing is postponed:

[•] (A) Because the parties agree to submit the matter to mediation administered through FINRA, except that the parties shall pay the additional fees described in Rule 12601(b)(2) for late postponement requests;

[•] (B) By the panel in its own discretion; or

[•] (C) By the Director in extraordinary circumstances.

(4) No postponement fee under Rule 12601(b)(1) or additional fee of \$600 per arbitrator under Rule 12601(b)(2) will be charged if a customer postpones a hearing under Rule 12601(a)(1)(B).

(c) No change.

## 12702. Withdrawal of Claims

(a) Before a claim has been answered by a party, the claimant may withdraw the claim against that party with or without prejudice.

(b) After a claim has been answered by a party, the claimant may only withdraw it against that party with prejudice unless:

(1) the panel decides otherwise;

(2) [, or] the claimant and that party agree[.] otherwise; or [.]

(3) a customer filed a claim and the party that answered the claim is a member or an associated person that became inactive, as set forth in Rule 12202, during a pending arbitration.

## 12801. Default Proceedings

### (a) Applicability of Rule

A claimant may request default proceedings against any respondent that falls within one of the following categories and fails to file an answer within the time provided by the Code:

- (1) A member whose membership has been terminated, suspended, canceled, or revoked;
- (2) A member that has been expelled from [the] FINRA;
- (3) A member that is otherwise defunct; or
- (4) An associated person whose registration is revoked, suspended, or terminated, regardless of the number of days since termination], revoked, or suspended].

**(b) - (f) No change.**

**12900. Fees Due When a Claim Is Filed**

**(a) – (b) No change.**

**(c) Partial Refund of Filing Fee**

(1) If a claim is settled or withdrawn more than 10 days before the date that the hearing on the merits under Rule 12600 is scheduled to begin, a party paying a filing fee will receive a partial refund of the filing fee in the amount indicated in the schedule below, less any other fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 12902. [No] Except as set forth in Rule 12900(c)(3), no refund will be paid if FINRA receives notice that a claim is settled or withdrawn within 10 days of the date that the hearing on the merits under Rule 12600 is scheduled to begin.

**Partial Refund for Settlement or Withdrawal  
More Than 10 Days Before Hearing on the Merits**

<u>Amount of Claim</u> (exclusive of interest and expenses)	<u>Refund</u>
\$.01 to \$1,000	\$25
\$1,000.01 to \$2,500	\$50
\$2,500.01 to \$5,000	\$125
\$5,000.01 to \$10,000	\$250
\$10,000.01 to \$25,000	\$300
\$25,000.01 to \$50,000	\$450
\$50,000.01 to \$100,000	\$750
\$100,000.01 to \$500,000	\$1,125
\$500,000.01 to \$1,000,000	\$1,300
\$1,000,000.01 to \$5,000,000	\$1,400
Over \$5,000,000	\$1,500
Non-Monetary/Not specified	\$1,200

(2) No change.



(3) If FINRA notifies a customer that a member or an associated person has become inactive during a pending arbitration, as set forth in Rule 12202(c), and the customer withdraws the claim(s) against such member or associated person within the 60 day time period specified in the rule, FINRA will remit a full refund per the schedule in Rule 12900(a) to the customer even if the customer withdraws the claim(s) within 10 days of the date that the hearing on the merits under Rule 12600 is scheduled to begin.

(d) No change.