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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.

## FINRA DR Portal—Getting Started



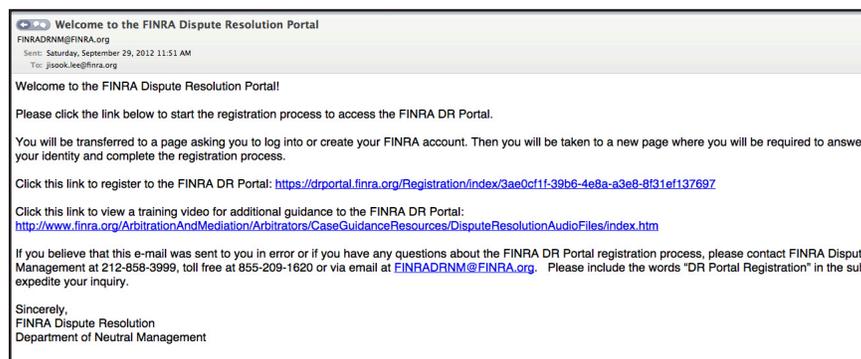
In October, FINRA launched a new self-service portal for neutrals: the FINRA DR Portal. The DR Portal—a secure website that provides entitled users easy access to their information and self-service capabilities—allows active arbitrators and mediators to view information about their assigned cases online and to view and update their profile information. You can refer to [Volume 4—2012](#) of this newsletter for additional discussion about the DR Portal.

We are steadily introducing the DR Portal to FINRA's neutral roster. Each week, we send emails to a limited number of neutrals inviting them to register for the portal. We anticipate that this process may take several months. Therefore, do not be concerned if you have not yet received a portal invitation email.

**Arbitrators cannot register for the portal until they receive an email invitation from FINRA.**

When you receive your email inviting you to register for the FINRA DR Portal, follow these step-by-step instructions:

1. Before you attempt to create an account and access the DR Portal, you must make sure that you are using a compatible browser. The DR Portal is compatible with Internet Explorer 8 and higher, Firefox 13 and higher and Google Chrome.
2. After receiving your registration invitation with the subject line **Welcome to the FINRA Dispute Resolution Portal**, click on the link in the email.



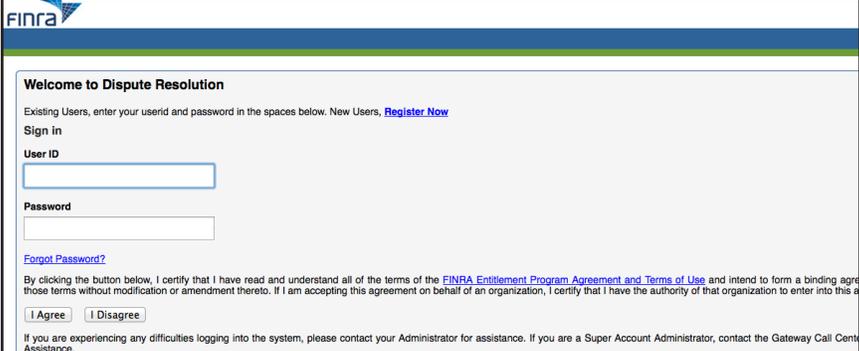
### Comments, Feedback and Suggestions

Please send your suggestions and comments to:

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New York, New York 10006

You may also email Jisook at [Jisook.Lee@finra.org](mailto:Jisook.Lee@finra.org).

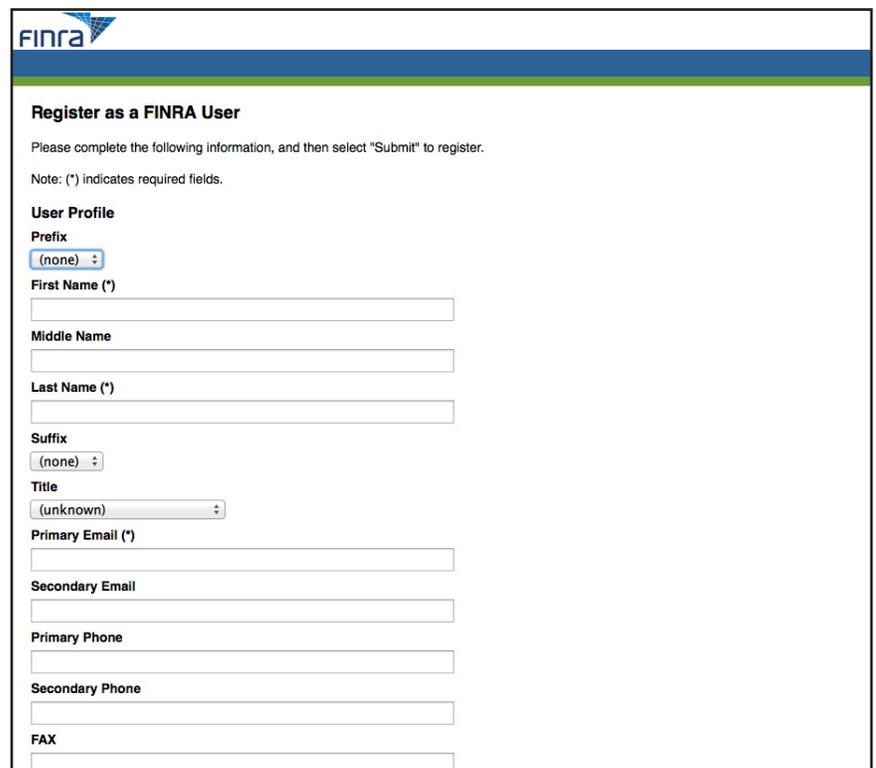
3. The link in the email will take you to the **Welcome to Dispute Resolution** log-in page where you will log in or create your FINRA account.
4. Click on **Register Now** to create a new user profile.



The screenshot shows the FINRA Dispute Resolution login page. At the top left is the FINRA logo. The main heading is "Welcome to Dispute Resolution". Below this, it says "Existing Users, enter your userid and password in the spaces below. New Users, [Register Now](#)". There is a "Sign in" section with two input fields: "User ID" and "Password". Below the password field is a link for "Forgot Password?". At the bottom, there is a checkbox for "I Agree" and a button for "I Disagree". A small disclaimer at the very bottom states: "By clicking the button below, I certify that I have read and understand all of the terms of the FINRA Entitlement Program Agreement and Terms of Use and intend to form a binding agreement with those terms without modification or amendment thereto. If I am accepting this agreement on behalf of an organization, I certify that I have the authority of that organization to enter into this agreement." Below the disclaimer, it says: "If you are experiencing any difficulties logging into the system, please contact your Administrator for assistance. If you are a Super Account Administrator, contact the Gateway Call Center for Assistance."

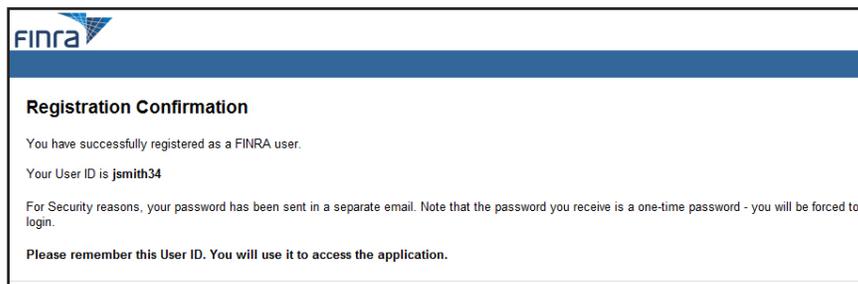
You **must** use the link in the registration email; you will not be able to register directly on FINRA.org. If you have not received your invitation and would like to register with the portal, please send an email to FINRA [Neutral Management](#) and include “request portal invitation” in the subject line.

5. Enter the registration information. The email address that you use in the initial registration form will be the email that is listed as your primary email address in your disclosure profile with FINRA. If you need to update your email address with FINRA, you must update your account information in the portal. FINRA staff cannot make this change. For more information about updating your email address, please refer to page 15 of the [User Guide](#).

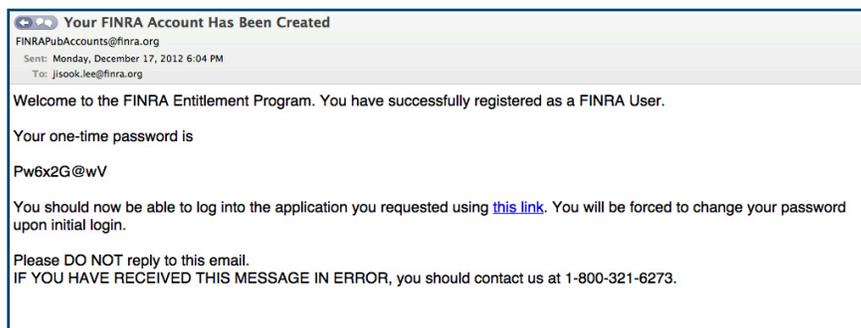


The screenshot shows the FINRA registration form. At the top left is the FINRA logo. The title is "Register as a FINRA User". Below the title, it says "Please complete the following information, and then select 'Submit' to register." and "Note: (\*) indicates required fields." The form is divided into sections: "User Profile", "Prefix" (dropdown menu with "none" selected), "First Name (\*)" (text input), "Middle Name" (text input), "Last Name (\*)" (text input), "Suffix" (dropdown menu with "none" selected), "Title" (dropdown menu with "unknown" selected), "Primary Email (\*)" (text input), "Secondary Email" (text input), "Primary Phone" (text input), "Secondary Phone" (text input), and "FAX" (text input).

6. You will see the **Registration Confirmation** with your User ID on your screen. Be sure to write down your user ID and/or print this screen.



7. You will immediately receive a separate email with your temporary password. Click on the words **this link** in the email and enter your User ID and the temporary password on the **Welcome to Dispute Resolution** page. You must enter the password exactly as it appears; the system is case sensitive. After entering this information, click **I agree**.



8. You will be prompted to reset your password. Once you reset your password click **Continue**.
9. Log into the DR Portal by entering your **User ID** and **new password**. The first time you log in, you will be asked to answer several challenge questions to verify your identity. If you have difficulty logging in using this link, please try the link in your initial invitation email.
10. You will then receive a message **Welcome to the FINRA Dispute Resolution Portal**. Click on the link to access the portal.

For an overview of the DR Portal and registration instructions, please refer to the [DR Portal Video](#) and [User Guide](#) which are posted on the [DR Portal Web page](#). Please contact the Department of Neutral Management if you have any questions at (855) 209-1620.

## Arbitration Awards: The Offset Option



In most cases that conclude with an award, arbitrators will order one party to pay another party. However, in some awards, arbitrators may order opposing parties to pay each other monetary damages. For example, arbitrators may order that the claimant pay the respondent \$5,000 and the respondent pay the claimant \$100,000. In cases where arbitrators order opposing parties to pay each other monetary damages in an award, FINRA encourages arbitrators to clarify whether each party should pay the other or offset the awarded amounts.

Please review the article [Arbitration Awards: The Offset Option](#) for guidance on how to clarify offsets when drafting awards. FINRA previously published this article in [Volume 4—2008](#) of this newsletter which is available—along with all previous volumes of [The Neutral Corner](#)—for you to review on our website. Arbitrators should contact their case administrator if they have any questions about exercising the offset option.

## Dispute Resolution and FINRA News

### Case Filings and Trends

#### 2012



In 2012, arbitration [case filings](#) reflected a nine percent decrease compared to cases filed in 2011 (from 4,729 cases in 2011 to 4,299 cases in 2012). Customer-initiated claims decreased by 16 percent. Of the total cases filed in 2012, 2,586 (60 percent) were customer-initiated claims. The remainder of the cases, 1,713 (40 percent), were intra-industry claims.

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

#### January to February 2013

Arbitration case filings from January through February 2013 reflect a 21 percent decrease compared to cases filed during the same two-month period in 2012 (from 744 cases in 2012 to 588 cases in 2013). Customer-initiated claims decreased by 9 percent through February 2013, as compared to the same time period in 2012.

From January through February 2013, the top two causes of action alleged remained breach of fiduciary duty and negligence.

### Arbitrator Reimbursement Policy

Effective February 1, 2013, arbitrators must provide receipts only for expenses of \$25 or more. In response to arbitrator feedback, FINRA changed its previous policy that required receipts for any expenditure of \$10 or more. For more information about FINRA's arbitrator reimbursement policy, please review [Guidelines for Arbitrator Reimbursement](#) posted on FINRA's [Forms and Tools](#) Web page.

## FINRA Launches Small Claims Telephonic Mediation Pilot Program

FINRA launched a [pilot program](#) offering parties in simplified cases pro bono or reduced-fee telephonic mediation. Participation in the pilot program, which began on January 15, is voluntary and open to cases involving claims of \$50,000 or less.

The pilot program offers mediation at no cost for cases involving claims of \$25,000 or less in damages. Reduced-fee mediation (\$50 per hour) would be available for cases with damage claims between \$25,000.01 and \$50,000. FINRA will not charge any administrative fees for these cases.

FINRA mediators who are interested in participating in this pilot can send an email to [SmallClaims@FINRA.org](mailto:SmallClaims@FINRA.org).

Neutrals may also review the article [“Telephonic Mediation: An Overview” by Joan Stearns Johnsen](#) (Volume 5—2010) for information about conducting mediations by telephone.

## Updated Scripts and Forms

The following forms are now available online for arbitrators to complete and submit electronically:

- Order on Request for Permanent Injunction;
- Attendance List;
- List of Claimant’s Exhibits;
- List of Respondent’s Exhibits;
- Award Information Sheet;
- Simplified Case Checklist;
- Promissory Note Case Checklist; and
- Disciplinary Referral Form.

The Initial Prehearing Conference Script and Initial Prehearing Conference Order have also been updated to include headings by topic, page numbers and additional guidance for pro se parties, among other changes.

### **FINRA Annual Conference**

FINRA's 2013 Annual Conference will take place in Washington, D.C., May 20 – 22. During the event, financial services industry professionals and regulators will exchange ideas on timely compliance and regulatory topics.

Please visit [FINRA's website](#) for more information about the conference.

Please visit the [Hearing Scripts and Forms Web page](#) to review these updated forms. We encourage you to take advantage of these electronic forms to help you keep the case moving forward.

### **SEC Rule Filing**

#### **Proposed Rule Change to Amend FINRA's Customer and Industry Codes of Arbitration Procedure to Revise the Public Arbitrator Definition**

FINRA filed a proposed rule change with the Securities and Exchange Commission (SEC) to amend the Customer and Industry Codes of Arbitration Procedure to revise the definition of "public arbitrator." The proposed definition would exclude persons associated with a mutual fund or hedge fund from serving as public arbitrators and to require individuals to wait for two years after ending certain affiliations before they may be permitted to serve as public arbitrators.

The notice was published in the *Federal Register* on January 11, 2013, and the comment period ended on February 7. On February 20, FINRA filed an extension through April 17 for the SEC to act on the proposed rule change. Please visit our website for more information about [SR-FINRA-2013-003](#).

### **SEC Rule Approval**

#### **Subpoenas for the Appearance of Witnesses and the Production of Documents**

The SEC approved amendments to the Customer and Industry Codes of Arbitration Procedure which direct arbitrators, in most instances, to issue orders (arbitrator orders), instead of issuing subpoenas, when industry parties seek the appearance of witnesses or the production of documents from non-party firms or their employees or associated persons.

The amendments became effective on February 18, 2013, for all motions filed on or after the effective date that request a subpoena under [Rule 12512](#) or [13512](#), or an arbitrator order under [Rule 12513](#) or [13513](#).

Please visit our website to review [Regulatory Notice 13-04](#).



## Questions and Answers

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### State Regulator Inquiries

**Question:** What should I do if a state securities regulator contacts me about obtaining documents or information related to an arbitration I served on?

**Answer:** If a state securities regulator asks you for documents or information from a FINRA arbitration you served on, please contact [Todd Saltzman](#), Deputy Director of FINRA Case Administration, immediately. We have an established protocol for producing documents and information to a state regulator and will work with you and the state regulator to provide the information requested.

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### Time Limits

**Question:** As arbitrators, do we decide questions about eligibility of a claim or are those issues decided by a court?

**Answer:** Eligibility issues regarding a claim are decided by arbitrators, not the court. The U.S. Supreme Court clarified in *Howsam v. Dean Witter* that arbitrators decide procedural time limitation questions. Consistent with this decision, FINRA updated then Rule 10304, now [Rule 12206](#), to clarify that arbitrators will resolve any questions regarding the eligibility of a claim. Therefore, if a party files a motion to dismiss a claim because the time to file has expired, arbitrators have the authority to review the information the parties provide and make a decision about the eligibility of a claim—whether to proceed with the case or dismiss it because the time has expired to file the claim.

Arbitrators may also review the training module on [Motions to Dismiss](#) available on our website.

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## Mediation and Business Strategies Update



### 2012 Mediation Case Statistics

During 2012, FINRA's Mediation Program experienced a decrease in mediation cases consistent with the decline of arbitration cases filed. Parties initiated 572 mediation cases, a 13 percent decrease from 2011. FINRA also closed 776 cases. Approximately 79 percent of these cases concluded with successful settlements, and the average case turnaround time was 100 days.

### January through February 2013

From January through February 2013, parties initiated 83 mediation cases. FINRA also closed 81 mediation cases during this period. Approximately 75 percent of these cases concluded with successful settlements.

### Mediation Outreach

On January 24, 2013, Kenneth Andrichik, Director of Mediation and Chief Counsel of FINRA Dispute Resolution, presented an update on FINRA's mediation program at the Labor Disputes Conference sponsored by the New York State Bar Association Labor and Employment Section (ADR Committee).

## Arbitrator Tip: Surreptitious Recording



It has come to FINRA's attention that parties may be surreptitiously recording arbitration proceedings—by audio and/or video—without the knowledge or consent of the arbitrators and all parties. FINRA recommends that arbitrators address the issue of surreptitious recordings at the outset of the hearing.

When opening the hearing, arbitrators should announce that the digital recording (or stenographic record) will be the official record of the hearing, and the parties should refrain from making any audio or video record of the proceedings in any manner that has not been agreed upon in advance by all parties and arbitrators. This prohibition does not include occasions when parties choose to use their own stenographers, with the arbitrators' permission. If arbitrators notice that a party is attempting to make an audio or video recording of the hearing using an individual electronic device (*e.g.*, smartphone, computer, tablet, etc.)—other than taking notes—they should advise the party that no such recording should be made absent the agreement of all participants.

If arbitrators feel uncomfortable confronting a party about this issue, they should contact the assigned FINRA staff member.

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