Financial Industry Regulatory Authority

FINRA Dispute Resolution
Party's Reference Guide

May 21, 2013 Edition

Table of Contents

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.

Overview of FINRA Dispute Resolution 5

FINRA Dispute Resolution Office Directory 6

How To Reach Staff By E-mail 6

The Information Specialist at FINRA 7

Questions to FINRA Dispute Resolution Staff 8

How To Find An Attorney 8

How to Access The Codes of Arbitration Procedure 10

Effectiveness of the Provisions of the New Customer and Industry Codes 11

Mediation Overview 12

Mediation Myths & Realities 13

Summary of Mediation Fees 16

Request For Mediation 17

Common Reasons Why a Claim is Deficient 20

Hearing Location 23

Arbitrator List Selection 24

Summary of Arbitration Fees 25

Expedited Proceedings for Senior or Seriously Ill Parties 28

© 2013 FINRA, Inc. All Rights Reserved.

Table of Contents, continued

Filing Statements of Answer 30

Certificate of Service Form Information..... 32

Certificate of Service Form 33

Amendments to Pleadings 33

Correspondence with Parties and FINRA Dispute Resolution 36

Settlement or Withdrawal of a Claim..... 37

Discovery Guide..... 38

The New Motion to Dismiss and Eligibility Rules - Frequently Asked Questions..... 39

How to Obtain FINRA Awards 47

Initial Pre-hearing Conference Information 48

Initial Pre-Hearing Conference Script..... 49

Opting out of the Initial Telephonic Pre-hearing Conference 58

The “Top Ten” Standards of Good Practice at Arbitration Hearings..... 59

Hearing Procedure - Parties 60

FINRA Dispute Resolution Arbitration Evaluation Form..... 65

Award Payment Information..... 70

Procedure for Ordering Copies of Tapes and Documents 72

Glossary of Terms..... 73

© 2013 FINRA, Inc. All Rights Reserved.

Table of Contents, continued

Special Procedures for California Cases 79

Out-of-State Counsel in California Arbitrations 79

Certificate of Out-of-State Arbitration Counsel 83

Special Procedures for Florida Cases 87

Non-Lawyer Representation in Florida 87

Attorney's Fees in Florida Arbitrations 89

Special Procedures for New Jersey Cases 96

FINRA Dispute Resolution Guidelines and FAQ's for New Jersey Cases Involving Out-of-State Attorneys 96

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

Headquarters and Northeast Region

One Liberty Plaza
27th Floor
165 Broadway
New York, NY 10006
Telephone: (212) 858-4400
Facsimile: (212) 858-4429

Southeast Region

Boca Center Tower 1
5200 Town Center Circle
Suite 200
Boca Raton, FL 33486
Telephone: (561) 416-0277
Facsimile: (561) 416-2267

Western Region

300 S. Grand Avenue
Suite 900
Los Angeles, CA 90071
Telephone: (213) 613-2680
Facsimile: (213) 613-2677

Midwest Region

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

Questions to FINRA Dispute Resolution Staff

If you have any questions, call or e-mail the appropriate FINRA Dispute Resolution office.

FINRA Dispute Resolution is not authorized to give you legal advice or to comment on the merits of your case. If you feel that you need legal advice, we recommend that you consult a lawyer.

How To Find An Attorney

FINRA Dispute Resolution staff members are often asked to make recommendations or referrals regarding legal representation. In our capacity as impartial administrators of this alternative dispute resolution forum, rather than specific recommendations, we can offer the following guidance:

For general information on obtaining legal assistance, we suggest you contact your state, county, or city bar association.

The SEC offers the following sound advice on its website:

> If you need help in finding a lawyer who specializes in resolving securities complaints, you may want to try the following:
>
> - If you already have a lawyer, consult with him or her about your options and whether you need a lawyer who specializes in securities.
>
> - You may want to call several bar associations to obtain a varied listing of lawyers in your area. Many lawyers will offer to consult with you initially for free or charge a minimal fee.
>
> - Broaden your list of potential securities lawyers by consulting directories of attorneys. The Martindale-Hubbell® Law Directory can be found at many libraries or at their website. It lists lawyers by state and jurisdictions. Some state and local bar associations also compile directories and may list attorneys according to specialty.
>
> For your convenience, we have listed below the names of two national bar associations that may provide you with referrals in your area. This is not a complete list and you may want to check with your state, county or city bar associations. We cannot endorse or recommend a specific lawyer to you, vouch for the competence of

any lawyer recommended to you by a bar association or referral service, nor recommend the services of one bar association over another.

The SEC website also offers information about bar associations and other directories of attorneys who specialize in securities complaints. You may also find additional information at these websites:

- American Bar Association
- Public Investors Arbitration Bar Association

Clinics - Several law schools provide legal representation through securities arbitration clinics. These clinics help parties who have smaller claims and who are unable to hire a lawyer. Under the supervision of attorneys, law students will represent qualified parties in arbitrations and mediations before FINRA. Parties need to determine if they qualify for help from a clinic; some clinics will not handle claims above a set amount, or if your household income is too high.

You may learn more about arbitration clinics by checking our website at FINRA - How to Find an Attorney.

How to Access The Codes of Arbitration Procedure

For cases filed before April 16, 2007:
http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbion/documents/arbmed/p018653.pdf

For Customer cases filed on or after April 16, 2007:
FINRA - Rules and Regulations - FINRA Manual Online

For Industry cases filed on or after April 16, 2007:
FINRA - Rules and Regulations - FINRA Manual Online

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.

Mediation Overview

Financial Industry Regulatory Authority

FINRA Dispute Resolution's Mediation Program

In 1995 FINRA instituted a full-scale securities industry mediation program to provide public customers, member firms, and associated persons with an effective way to resolve their disputes without going through arbitration or the court system. Mediation is a non-binding negotiation facilitated by an experienced third-party neutral. Mediation allows the parties an opportunity for early resolution of their disputes. The resulting settlement is likely to save the parties substantial time and expense.

The Mediation Process:

- **Is voluntary**. The parties decide who their mediator will be, when the mediation will take place, and how the dispute will be settled.
- **Is informal.** An impartial person, the mediator, promotes negotiations between the disputing parties.
- **Is inexpensive.** The mediation process is less expensive than arbitration or litigation.
- **Is non-binding.** Unlike other forms of dispute resolution, such as arbitration and litigation, the mediator does not impose a solution or decide your case. Instead, the mediator guides or helps the parties to reach or create their own solution. Parties may still arbitrate their dispute if they are unable to agree on a settlement.
- **Is a "win-win" solution.** The mediator's role is to help the parties find a mutually acceptable solution to their controversy. Since the inception of the program in 1995, more than 7,000 cases have been filed in mediation. Parties who mediate at FINRA Dispute Resolution resolve four out of every five disputes, an 80% settlement rate!!

More than 1,000 FINRA mediators, diverse in culture and background, have met our rigorous mediator training and mediator experience standards. Many are experienced arbitrators, attorneys, and securities industry professionals who are knowledgeable in employment and securities issues.

Consider mediating your claim! The "Request For Mediation" Form may be found on the FINRA website at http://apps.finra.org/Mediation_&_Arbitration/med_form.asp. You may also contact any FINRA Dispute Resolution Office to obtain a copy by mail.

Mediation Myths & Realities

Myth:	**Reality:**
• *Mediation can be used to compel discovery.*	• Under FINRA Dispute Resolution mediation procedures, you produce information you wish the other parties to see and review. Nothing you say or show to the mediator will be communicated to the other side without your express permission.
Myth:	**Reality:**
• *Mediation is just another step that takes more time and slows down the litigation or arbitration process.*	• The administration of the mediation runs separate from, and concurrent with, the pending arbitration or litigation. Your FINRA Dispute Resolution arbitration case will not be delayed at all unless the parties agree to stay the arbitration pending the mediation. • A mediation session can be scheduled within a few days, if necessary.
Myth:	**Reality:**
• *Mediation is just another step that is going to cost us even more time and money.*	• In surveys of parties mediating with FINRA Dispute Resolution, 80% of the survey respondents agreed that mediation resulted in time savings and 77% agreed that mediation resulted in cost savings. • Mediation fees are nominal compared to the potential savings of a settlement. An early settlement means greatly reduced discovery, lower legal costs, and less down time for parties or witnesses.
Myth:	**Reality:**
• *If I suggest mediation to my adversary, he or she will think I have a weak case. It will really be perceived as a settlement offer.*	• FINRA Dispute Resolution staff will approach the other party and seek its agreement to mediate if you wish. • Experienced litigators routinely suggest mediation on many of their cases.

Myth:	**Reality:**
• *If I offer or agree to mediate, my client or superior may think I am not confident in my own ability to negotiate a settlement or win the arbitration.*	• Business leaders and attorneys use mediation to reduce litigation costs and settle cases faster. They understand that you can mediate from a position of strength. They know a mediator can make an adversary listen to reality when he or she would refuse to listen to opposing counsel. • Moreover, having your client participate in a mediation affords your client the ability to participate in the resolution of the problem, and generates confidence in the ultimate outcome.
Myth:	**Reality:**
• *The mediator may announce a dollar value of the case that is so far off base, and so far from my own last offer, that it will only make my adversary take a more intransigent position.*	• The mediator will <u>not</u> announce his or her valuation of the claim without the express consent of the parties. • You choose the mediator based on the neutral's background, mediation experience, and style.
Myth:	**Reality:**
• *If the mediation fails to produce a settlement, I've just wasted my client's time and money.*	• Mediation works and the vast majority of cases settle. Attorneys who use mediation find it is usually productive even if the case reaches an impasse: the scope of outstanding issues is narrowed; the extent and cost of discovery are reduced; extreme and unrealistic positions are softened. • The mediator can help you identify (in confidence) weaknesses in your own case and strengths in the other side's case that you might never have spotted. • You may be better positioned to pursue your case in arbitration after a mediation.

Myth:	**Reality:**
• *There is no point in mediating if I've got a sure winner.*	• It can still take thousands of dollars, hours of legal work, and many hours of lost employee time before your adversary finally figures this out. • A mediation session can be scheduled within days or weeks of the parties' agreement to mediate, and a settlement reached before such an expenditure of time and money becomes necessary. • Arbitration or litigation can produce unexpected outcomes.
Myth:	**Reality:**
• *Mediation is really just a lot of psycho-babble. I don't believe in "win-win." I win because I can make the other side lose. Mediation is for wimps.*	• Mediation opens new opportunities to settle. Both sides will benefit from a well-crafted settlement that they help create.

Summary of Mediation Fees

Administrative Filing Fees

Pursuant to Rule 14109 (a) and (b), **Administrative Filing Fees** are charged to each party when the parties agree to mediate their case with FINRA Dispute Resolution. The Administrative Filing Fees are nonrefundable. In very limited circumstances, the Director of Mediation may grant a fee waiver based on financial hardship.

Mediation Session Deposit

Pursuant to Rule 14109 (c), parties must pay a **Mediation Session Deposit**, covering the anticipated fees for the mediator's time and expenses. Each party must submit its share of the deposit when the Mediation Submission Agreement is signed and before mediation begins. FINRA Dispute Resolution estimates the deposit based on the size and complexity of the case, the number of parties involved, and the mediator's rate. If the parties need more of the mediator's time than is covered by the Mediation Deposit, additional time is billed at the rate agreed to by the mediator and the parties.

If, after paying the mediator for his or her work and expenses, there is an unused portion of the Mediation Deposit, FINRA Dispute Resolution will refund it or apply it to outstanding FINRA arbitration balances.

Mediator Fees And Expenses

Rule 14109 (c) provides that the parties are responsible for the mediator's fees and expenses, including the mediator's travel. Parties share these charges equally unless they agree otherwise.

- **Mediator Fees**
  When the parties select their mediator, the parties and the mediator agree upon an hourly rate for the mediator's services. The parties pay the mediator this hourly rate for time spent conducting the mediation session, either by phone or in person. Mediators may also charge for preparation and travel time.
- **Mediator Fees For Small Claims**
  Many mediators on FINRA Dispute Resolution's roster have agreed to reduce their hourly rates to $50/hour for cases with an amount in controversy of $25,000 or less. FINRA Dispute Resolution staff can assist parties in selecting a neutral who charges reduced rates in small claims.
- **Expenses**
  Expenses incurred by the mediator in connection with the case are also the responsibility of the parties. These expenses might include travel, parking, telephone, and postage. In limited circumstances, the parties may be required to pay for meeting room rental fees at non-FINRA facilities.

Financial Industry Regulatory Authority

Request For Mediation

Please complete this form if you are interested in having your case mediated through the FINRA Dispute Resolution Mediation Program. You may file a Request for Mediation at any time, whether or not you have already filed an arbitration claim. However, mediation is a voluntary process, and no party is required to mediate a dispute. When we receive your 'Request, FINRA Dispute Resolution staff will contact the other party or parties to the dispute to explain the mediation process, and seek their agreement to mediate.

The quickest way to submit your Request for Mediation is by using the online form on our website at http://apps.finra.org/Mediation_&_Arbitration/med_form.asp. Alternatively, you may complete and submit the following form.

Note: ☐ If represented by counsel in this matter please check here and attach the name, address, and telephone number of counsel on a separate page.

Prefix	First Name	Middle Name	Last Name
Street Address			
City		State	Zip
Telephone		Fax	E-Mail Address

Securities Account Number(s) 1. 2.

1. ☐ I request that my dispute be mediated by FINRA Dispute Resolution under FINRA Mediation Rules. I request that FINRA Dispute Resolution contact the other party(ies) and seek their agreement to mediate. I ask that the mediation be held in the city of

_____

2. Check one:

☐ This dispute involves a pending FINRA arbitration case. The arbitration case is currently assigned to the regional office located in (city). _____

The case number is _____.

☐ This dispute does **not** involve a pending FINRA Dispute Resolution arbitration case.

3. Please provide a brief description of the dispute. Include a summary of what occurred, the names, account numbers, and location of any securities account(s) at issue, the date(s) on which the dispute occurred, the names and titles of all individuals involved, and the relief requested (e.g. an amount of money damages or a description of other relief you seek). Please attach additional pages if necessary.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

4. Please provide the following information for all parties to the dispute. If you list a brokerage firm, provide the name of a contact person at the brokerage firm who would have the most information about the dispute. Please attach additional pages if necessary.

_____

Name of Party Firm

_____

Contact Person Name Position/Title

_____

Address	Phone/Fax
Name of Party	Firm
Contact Person Name	Position/Title
Address	Phone/Fax

Return the Request for Mediation to the appropriate office.

Northeast, Mid-Atlantic, and Ohio

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

(212) 858-4359
Fax (301) 527-4770

Southeast, Southwest, and California

Leon de Leon
FINRA Dispute Resolution
Boca Center Tower 1
5200 Town Center Circle,
Suite 200
Boca Raton, FL 33486

(561) 447-4917
Fax (301) 527-4869

Midwest, Northwest, and Texas

Rosari Domenick
FINRA Dispute Resolution
55 West Monroe Street, Suite 2600
Chicago, IL 60603

(312) 899-4442
Fax (301) 527-4847

Common Reasons Why a Claim is Deficient

Pursuant to FINRA rules[1], FINRA Dispute Resolution will not serve deficient claims, and will notify the claimant in writing if the claim is deficient. If the claimant does not correct the deficiency within 30 days from the time the claimant receives notice, we will close the case without serving the claim, and refund any hearing session deposit fees paid by the claimant. Here is a list of ways to avoid common deficiencies:

Statement of Claim

Remember to submit a Statement of Claim, which is a written narrative that sets forth the facts of the dispute. While the Statement of Claim does not have to be in a special form, it should set forth the details of the dispute, including all relevant dates, names, and account numbers, in a clear, concise, and chronological fashion, and should conclude by indicating the requested relief (*e.g.*, the amount of money damages, specific performance, interest, etc.) that is sought. Please note that the Claim Information Sheet is NOT a Statement of Claim.

Submission Agreement

An original Submission Agreement must accompany your Statement of Claim.

- Do not alter the language of the Submission Agreement.
- The parties listed on the Submission Agreement must be identical to those appearing in your Statement of Claim.
- An attorney may not sign a Submission Agreement on your behalf unless FINRA is provided with a power of attorney giving the attorney authority to sign. Similarly, outside counsel for member firms may not sign the Submission Agreement.
- If a claimant is a corporation, partnership, or bank, the authorized person(s) must sign and date the Submission Agreement.
- If a claimant is a trust, estate, or intestate account, the person who signs the Submission Agreement on behalf of the claimant trust, estate, or intestate account must be authorized to do so and must sign in the capacity in which he or she represents the claimant.
- If a claimant is a custodial account, the custodian must sign the Submission Agreement on behalf of all minors.

[1] Customer Code: Rule 12307; Industry Code: Rule 13307

Correct Number of Copies

Remember to submit the correct number of copies of the Statement of Claim and Submission Agreement. The number depends on how many respondents you name in the Statement of Claim and the amount of monetary damages you request as outlined below. If you do not provide the correct number of copies, you will delay the processing of your claim. In order for FINRA to process your claim, you need to submit:

- an original Statement of Claim and Submission Agreement
- a copy of each document for each respondent, and
- a copy of each document for each arbitrator (claim up to $50,000 – 1 copy; claim between $50,000 and $100,000 – 1 copy unless the parties agree in writing to three arbitrators; claim over $100,000 – 3 copies).

Fees

You must submit filing fees at the time you file your Statement of Claim. The amount of this fee is based on the total amount of your claim including any punitive and treble damages but excluding interest and expenses. A check for all fees must be made payable to "FINRA Dispute Resolution." You must submit the correct filing fee for FINRA to process your claim. However, you can obtain a temporary waiver of this fee if you can demonstrate financial hardship.

In order to expedite the filing process for claims, Dispute Resolution provides a fee calculator to help parties determine the cost to file their claims. Parties should use the calculator to avoid delays in the process due to potential filing fee deficiencies.

Current Address

In order for the arbitration process to move forward, claimant must provide FINRA with the location of his/her current residence and his/her residence at the time of the dispute. Claimant's residence at the time of the dispute is a key factor in determining the hearing location. FINRA Dispute Resolution has 73 hearing locations and endeavors to set the hearing location early in the process. Claimant's current address, if different, is also needed to ensure that claimant's case can proceed in a timely and efficient manner.

Damages

One piece of information that is vital to the processing of a claim is the claimant's request for damages. FINRA will not process claims where the damages requested on the Statement of Claim do not match those listed on the Claim Information Sheet. (The Claim Information Sheet is a synopsis of the information contained in the Statement of Claim.)

Conclusion

We hope you find this information helpful. If you have any additional questions, please contact one of our Regional Offices.

Hearing Location

If an arbitration dispute involves a **public customer**, FINRA will generally select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute, unless the customer requests, in his or her initial filing a hearing location in the customer's state of residence at the time the dispute arose. For example, if a Kansas resident lives only five miles from Kansas City, Missouri (and did so at the time the dispute arose), but specifies Wichita, Kansas as his requested hearing location – a location more than five miles from his residence – FINRA would select Wichita as the hearing location. See Rule 12213.

If an arbitration involves an **employment dispute** between a member firm and an associated person, FINRA will generally select the hearing location closest to where the associated person was employed at the time of the dispute. See Rule 13213.

In industry disputes involving FINRA **members only**, **(or more than one associated person,)** FINRA will consider a variety of factors, including:

- ➔ The parties' signed agreement to arbitrate, if any;
- ➔ Which party initiated the transactions or business in issue; and
- ➔ The location of essential witnesses and documents.

See Rule 13213.

If all parties in any arbitration agree to one of FINRA's hearing locations, FINRA ordinarily will select that hearing location.

All requests to proceed in a hearing location that is not one of FINRA Dispute Resolution's 71 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. 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.

Arbitrator List Selection

- **Customer Cases Decided by One Arbitrator**
  FINRA will appoint a single public arbitrator in customer cases decided by one arbitrator.

- **Customer Cases Decided by Three Arbitrators**
  In customer cases decided by three arbitrators, investors have the option of choosing an arbitration panel with two public arbitrators and one non-public arbitrator (Majority-Public Panel Rule) or a panel of all public arbitrators (Optional All-Public Panel Rule). Only customers choose the panel selection method; neither firms nor associated persons choose the selection method. The rule applies to all investor disputes but not to disputes involving only industry parties.

  Customers may choose the Optional All-Public Panel Rule in their Statement of Claim or accompanying documentation. If the customer does not chose a panel selection method, FINRA will notify the customer in writing that the customer may elect the Optional All-Public Panel Rule for selecting arbitrators up to 35 days from FINRA's service of the Statement of Claim. If the customer declines to elect a panel selection method in writing by the 35-day deadline, the Majority-Public Panel Rule for selecting arbitrators will apply.

  Under either panel selection option, FINRA will send the parties three lists of arbitrators – one with 10 chair-qualified public arbitrators, one with 10 public arbitrators, and one with 10 non-public arbitrators. However, the process for striking arbitrators on the non-public list is different for the Optional All-Public Panel Rule for selecting arbitrators. Under the Optional All-Public Panel Rule, any party may strike up to all of the names on the non-public list. Customers choosing this method can ensure that a non-public arbitrator will not serve on the case.

- **Industry Cases**
  Parties in intra-industry cases should refer to the Code of Arbitration Procedure for Industry Disputes for information on arbitrator list selection.

Summary of Arbitration Fees

Filing Fee
Pursuant to Rule 12900[1] in customer disputes and Rule 13900[2] in industry disputes, a **Filing Fee** is charged at the time the claim or an answer requesting damages (e.g. counterclaim, cross claim, third party claim) is filed with FINRA Dispute Resolution. The filing fee must be paid at the time of filing of a claim. In very limited circumstances, the Director may grant a fee payment waiver based on financial hardship.

Hearing Session Fees
Pursuant to Rule 12902[3] in customer disputes, and Rule 13902[4] in industry disputes, **Hearing Session Fees** will be charged for each hearing session. The term "hearing session" means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or Prehearing conference.

The Ten[5] Day Rule[6]
FINRA's rules provide if FINRA receives a settlement or withdrawal notice 10 days or fewer prior to the date that the hearing on the merits is scheduled to begin, parties that paid a filing fee will not be entitled to any refund of the filing fee. In summary, parties must provide FINRA notice of settlement or withdrawal <u>more than</u> ten days before the first scheduled hearing on the merits.

Injunctive Relief Fees
Pursuant to Rule 13804, in an industry arbitration, a member firm or associated person who seeks a temporary injunctive order in court shall pay a total non-refundable **injunctive fee** surcharge of $2,500 at the time the party files its Statement of Claim and Request for Permanent Relief as required by Rule 13804. Where more than one party seeks such relief, all requesting parties will pay the fee. In their discretion, the arbitrator(s) may determine that a party will reimburse another party for part or all of any non-refundable injunctive fee paid to FINRA Dispute Resolution. The injunctive fee is in addition to all other filing fees or costs that may be required.

Member Surcharge Fee
Pursuant to FINRA rules[7], a **Member Surcharge fee** is assessed against each member firm that is named as a party to arbitration, or who employed an associated person at the time of the events that gave rise to the dispute. The Surcharge is nonrefundable and is assessed when FINRA Dispute Resolution serves the claim naming the member firm, or associated person. No member firm will be assessed more than one (1) Surcharge in an arbitration.

---

[1] Old Code: Rule 10332
[2] Old Code: Rule 10205
[3] Old Code: Rule 10332
[4] Old Code: Rule 10205
[5] Under old Code Rules 10332(g) and 10205(g), it was an eight business day rule, rather than 10 calendar days.
[6] Customer Code: Rule 12902(d); Industry Code: Rule 13902(d)
[7] Customer Code: Rule 12901; Industry Code: Rule 13901; Old Code: Rule 10333(a)

Amended Claim Fees
Pursuant to FINRA Rules[8], any claim that is filed and later **amended** to increase the amount is dispute will be subject to increased fees. FINRA Dispute Resolution will recalculate filing fees, surcharges, and process fees based upon the increased claim amount(s).

Pre-hearing Process Fees
Pursuant to FINRA Rules[9], in a dispute which is more than $25,000, member firms are assessed **Pre-hearing Process fees** of $750.00 at the time the parties are sent arbitrator lists. Pre-hearing Process fees are nonrefundable.

Hearing Process Fee
Pursuant to FINRA Rules[10] member firm must pay a nonrefundable **Hearing Process fee** when the parties are notified of the date and location of the first hearing session.

Postponement Fees
Pursuant to Rules[11], if a postponement of a hearing is granted after arbitrators have been appointed, the party requesting the adjournment will pay a fee equal to the hearing session fee. The arbitrators may allocate adjournment fees in their discretion.

Settlements-Forum Fee Allocation
The parties to an arbitration may settle their dispute at any time. While Dispute Resolution does not need to know the terms of a Settlement Agreement, the parties are still responsible for payment of any fees incurred, including fees for previously scheduled hearing sessions. Pursuant to FINRA rules[12], if the parties fail to agree on the allocation of outstanding fees, and the arbitrators have not allocated forum fees, the fees shall be equally divided among all parties.

Forum Fees
Pursuant to FINRA Rules[13], the arbitrators will determine the amount chargeable to the parties as Forum Fees. The arbitrator(s) may direct another party to reimburse any filing fee, hearing session deposit, adjournment fee, and interim hearing session fees paid by a party.

Fees for Compensating Arbitrators for Issuing Decisions on Discovery-Related Motions on the Papers
FINRA rules[14] approved an amendment to IM-10104 to provide a $200 honorarium for arbitrators who decide a discovery-related motion without a pre-hearing conference. Each arbitrator that participates in deciding discovery-related motions on the papers will be compensated $200. A single motion includes the motion and any opposition/replies. The panel will allocate the cost of the honoraria to the parties at the conclusion of the case.

---

[8] Customer Code: Rule 12311; Industry Code: Rule; 13311 Old Code: Rule 10328(b)
[9] Customer Code: Rule 12903; Industry Code: Rule 13903
[10] Customer Code: Rule 12903; Industry Code: Rule 13903; Old Code: Rule 10333(b)
[11] Customer Code: Rule 12601; Industry Code: Rule 13601; For old Code postponement provisions, see Rule 10319
[12] Customer Code: Rule 12701(b); Industry Code: Rule 13701(b); Old Code: Rule 10306
[13] Customer Code: Rule 12902; Industry Code: Rule 13902; Old Code: Rules 13332(c) and 10205(c)
[14] Customer Code: Rule 12214(c); Industry Code: Rule 13214(c); Old Code: IM-10104

Fees for Compensating Arbitrators for Deciding Contested Subpoena Requests
FINRA rules[15] provide a $200 honorarium for arbitrators that decide contested subpoena requests. The honorarium shall be paid on a per case basis. The parties shall not be assessed more than $600 in fees per case. The panel will allocate the cost of the honorarium pursuant to FINRA rules[16]

[15] Customer Code: Rule 12214(d); Industry Code: Rule 13214(d); Old Code IM-10104
[16] Customer Code: Rule 12902(c); Industry Code: Rule 13902(c); Old Code 10332(c)

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.

Filing Statements of Answer

If you are a respondent, the entity or person responding to a claim, the Codes allow you 45 calendar days to serve and file answers to claims.

Your answer must specify all relevant facts and available defenses to the Statement of Claim submitted.

Filing and Serving a Statement of Answer

In contrast to the initial claim, when you answer a claim you must serve every party with copies of your executed Submission Agreement and answer. Parties include all respondents and claimants. A Submission Agreement for Respondents is included with your service letter.

At the same time, you must file an original executed Submission Agreement and answer with the FINRA Dispute Resolution office designated in the service of claim letter. You also must file with that office three copies of the Submission Agreement and answer. (File only one copy if the claim is $50,000 or less, or if the claim is under $100,000 unless the parties agree in writing to three arbitrators). The copies will be provided to the arbitrator(s) selected to hear and determine the dispute.

You should establish proof of service. (See Certificate of Service Form Information.)

Extensions

With opposing party consent, you may obtain extensions of time to answer. FINRA staff will not grant you extensions of time to answer, except upon a showing of good cause.

Filing Other Claims

With your answer, you also may serve and file claims. The types of claims include the following:

1. **counterclaims** - asserted against claimants,

2. **cross-claims -** asserted against already named co-respondents, and

3. **third-party claims** - asserted against a party not named in any previous pleading.

If you assert counterclaims, cross-claims, or third-party claims, the filing fee will be determined by the highest claim amount, excluding interest and expenses. To determine the correct fees, see Rule 12900 of the Customer Code or Rule 13900 of the Industry Rule.

Serving and Filing Counterclaims and Cross-claims

You must serve every party you list and against whom you assert a claim with a copy of your answer containing a counterclaim or cross-claim, and you should establish proof of service.

You also must send one copy of the answer containing your claim(s) and the executed Submission Agreement to all other parties for their information and review.

Serving and Filing Third-party Claims

You must serve every new party you list and against whom you assert a claim with a copy of your answer containing third-party claim(s), and you should establish proof of service.

You also must serve the new respondent with:

- ➔ the Statement of Claim and all other pleadings, and
- ➔ a copy of this booklet.

You must send one copy of the answer containing your third-party claim(s) and the executed Submission Agreement to all other parties for their information and review.

At the same time, you must file an original, executed Submission Agreement and answer with the designated FINRA Dispute Resolution office. You must also file with that office three copies of your executed Submission Agreement and answer containing any counterclaim, cross-claim, or third-party claim if the total amount in dispute is more than $100,000. File only one copy if the amount in dispute is $50,000 or less. The copies will be provided to the arbitrator(s) selected to hear and determine the dispute.

Certificate of Service Form Information

You may use the Certificate of Service Form to certify that you have served the listed party representatives (or in the case of parties who are not represented, the parties themselves). Attach the completed form to the document that was served.

Certificate of Service Form

State of _____, County of _____

I _____ do hereby certify that on _____
(Name of server) (Date)

a true and correct copy of the enclosed _____
(Title of Pleading)

was forwarded by _____ to the following
(Type of Service)

address(es):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Amendments to Pleadings

You must serve directly on all parties amendments to Statements of Claim and Statements of Answer.

- If you receive an amendment **before** the original claim was answered, your original time to answer is extended by 20 days.

- If you receive an amendment **after** the original claim was answered, but **before** a panel was appointed, you have 20 days to answer from service of the amended claim.

- If the claim was amended **after** a panel has been appointed, you have 20 days to answer from the time you received notice that the panel has granted the motion to amend the claim.

If you amend your answer to include a counterclaim, cross-claim, or third-party claim, you must serve it in accordance with the instructions regarding Filing Other Claims.

At the same time, you must file a copy of the amendment with the designated FINRA Dispute Resolution office and three additional copies of any amendment or response if the amount in dispute is more than $100,000 (or one additional copy if the amount in dispute is $50,000 or less). The copies will be provided to the selected arbitrator(s).

If you amend an initial Statement of Claim or if you amend a Statement of Answer to add a new respondent, you must serve the new respondent with:

- ➔ the amendment,

- ➔ the statement of Claim and all other pleadings, and

- ➔ a copy of this booklet.

If you are a new respondent, you have 45 calendar days to serve and file an answer and any related claim. You must also submit an executed Submission Agreement.

If you receive an amended answer containing a cross-claim, you have 20 days from the date your answer is due or from receipt of the cross-claim (whichever is later) to serve and file an answer and any related claim.

Once you receive the notice that identifies the selected arbitrator(s), no new or different pleadings may be filed without the consent of the arbitrator(s).

Rule 12309 (a) (b) (c) (d) of the Customer Code states:

(a) Before Panel Appointment

Except as provided in paragraph (c), a party may amend a pleading at any time before the panel has been appointed.

(1) To amend a statement of claim that has been filed but not yet served by the Director, the claimant must file the amended claim with the Director, with additional copies for each arbitrator and each other party. The Director will then serve the amended claim in accordance with Rules 12300 and 12301.

(2) To amend any other pleading, a party must serve the amended pleading on each party. At the same time, the party must file the amended pleading with the Director, with additional copies for each arbitrator. If a pleading is amended to add a party to the arbitration, the party amending the pleading must provide each new party with copies of all documents previously served by any party, or sent to the parties by the Director.

(b) After Panel Appointment

Once a panel has been appointed, a party may only amend a pleading 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.

(c) Amendments to Add Parties

Once the ranked arbitrator lists are due to the Director under Rule 12404(c), no party may amend a pleading to add a new party to the arbitration 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, and the party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code.

(d) Responding to an Amended Pleading

Any party may file a response to an amended pleading, provided the response is filed and served within 20 days of receipt of the amended pleading, unless the panel determines otherwise.

Correspondence with Parties and FINRA Dispute Resolution

You must serve all parties and file with FINRA Dispute Resolution any correspondence pleadings, or amendments. You do not need to serve any party with NLSS arbitrator ranking lists.

Settlement or Withdrawal of a Claim

Claimant(s) must write directly to assigned staff if any claim settles. FINRA will not close the case without receiving notice from the claimant. Failure to advise FINRA timely of a settlement of a claim may affect claimant's entitlement to a return of the refundable portion of the filing fee.

Rule 12702 of the Customer Code and Rule 13702 of the Industry Code provide for withdrawal of a claim:

- ➔ If you wish to withdraw your claim after the claim has been served and filed but before the respondent has served and filed the answer, you may withdraw the claim without prejudice[1] by informing the respondent in writing and copying the designated FINRA Dispute Resolution office and all other parties.

- ➔ If you wish to withdraw your claim after the claim has been served and filed but after the answer has been served and filed by the respondent, you may not withdraw the claim without prejudice, unless the respondent agrees to a withdrawal without prejudice.

[1] "Without prejudice" means without interfering with any existing right you may have to refile this claim at this or another forum.

Discovery Guide

Discovery Guide

FINRA provides the Discovery Guide for customer cases only, which outlines documents that the parties should exchange without arbitrator or staff intervention. The Discovery Guide contains two document production lists of presumptively discoverable documents: one for the firm/associate persons to produce and one for the customer to produce.

- **Discovery Guide (2011)** - For claims filed on or after May 16, 2011 (PDF *46 KB*)
- **Discovery Guide (2007)** - For claims filed on or after April 16, 2007 and before May 16, 2011 (PDF *41 KB*)

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.[19] 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[20] 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

---

[19] Exchange Act Release No. 59189 (December 31, 2008), 74 Federal Register 731 (January 7, 2009) (File No. SR-FINRA-2007-021).

[20] 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).

spending additional resources to defend against these motions, increasing the costs and processing times of the arbitration process.

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.[21] Motions filed after a party has concluded its case-in-chief will be referred to as a Rule 12504(b) motion.[22]

New Rule 12206(b) will govern motions to dismiss based on eligibility grounds, and will be referred to as eligibility motions.[23]

---

[21] 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.

[22] *See* note 3, the same rationale applies to Rule 13504(b) of the Industry Code.

[23] 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,[24] 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

[24] *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.[25] 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.

[25] 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.[26] The parties receiving the Rule 12504(a) motion will have 45 days to respond to the motion.[27] 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. [28] 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.[29] In addition, prehearing conferences to decide these motions will be recorded.[30]

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.[31] 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.[32] The panel decision to deny a Rule 12504(a) motion is not required to be unanimous.

---

[26] Rules 12504(a)(3) and 13504(a)(3). Under this provision, parties may agree or the panel may decide to modify this deadline.

[27] *Id*.

[28] 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.

[29] Rules 12206(b)(4) and 13206(b)(4) of the eligibility rule and Rules 12504(a)(5) and 13504(a)(5).

[30] *Id*.

[31] 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.

[32] 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.[33] 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.[34] 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.[35] 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.[36] 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.[37]

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

---

[33] 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.

[34] 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.

[35] 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.

[36] Rules 12212 and 13212 of the Codes.

[37] *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).[38] 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.[39]

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,[40]

[38] Rules 12504(b) and 13504(b) of the motion to dismiss rule.

[39] Note 18.

[40] 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,[41] 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.42 If the panel grants a mixed motion on eligibility grounds, it must not rule on any other grounds for the motion.43 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.

[41] *Id*.

[42] Rules 12206(b)(7) and 13206(b)(7) of the eligibility Rule.

[43] *Id*. The rule also contains other criteria concerning motion to dismiss based on eligibility grounds.

How to Obtain FINRA Awards

Obtain FINRA Arbitration Awards Online

It is fast, simple, and free. You can now access awards issued by arbitrators at FINRA via our website at FINRA Arbitration Awards Online.

The FINRA Arbitration Awards database enables users to perform web-based searches for FINRA Arbitration Awards free of charge, seven days a week. Users may search for awards by case number, document text, date of award (by date range), or a combination of document text and date of award. Awards can be viewed online, printed, or downloaded as text-searchable PDF files.

If you are having problems locating an Award:

- Call the Arbitration Awards Hotline at (866) 689-0849, between 8:00 a.m. and 5:00 p.m., Eastern Time (ET); or,
- Send an email directly to FINRA Awards Online with your question(s) and/or comment(s).

Initial Pre-hearing Conference Information[1]

FINRA Dispute Resolution will initiate the appointment of arbitrators after the Respondent's answer is filed or due, whichever is earlier. After the parties select a panel of arbitrators, the panel will conduct a telephonic Pre-hearing conference with all parties and their representatives. The purpose of this initial telephonic Pre-hearing conference is to schedule all relevant dates and deadlines for this matter to proceed expeditiously.

- 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.

[1] Customer Code: Rule 12500; Industry Code: Rule 13500

Updated as of February 1, 2013

Initial Pre-Hearing Conference Script

Financial Industry Regulatory Authority

Initial Pre-Hearing Conference
Arbitrator's Script

[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 Pre-hearing 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 Pre-hearing 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.*

   [Arbitrator disclosure is the cornerstone of FINRA arbitration, and the arbitrator's duty to disclose is continuous and imperative. Disclosure includes any relationship, experience and background information that may affect—or even appear to affect—the arbitrator's ability to be impartial and the parties' belief that the arbitrator will be able to render a fair decision. When making disclosures, arbitrators should consider all aspects of their professional and personal lives and disclose all ties between the

arbitrator, the parties and the matter in dispute, no matter how remote they may seem. If you need to think about whether a disclosure is appropriate, then it is: MAKE THE DISCLOSURE. 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].*

Do any of the parties and counsel to this matter know of any potential conflicts between the arbitrators and any party, counsel or witness in this matter?

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 your duty under the AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes to keep confidential all matters relating to this arbitration proceeding and decision, including but not limited to any information, documents, evidence, or testimony presented; and that your duty is continuous and does not cease at the conclusion of the arbitration or upon your withdrawal as an arbitrator?
>
> Do you 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)*.

[If one of the parties has failed to submit an answer (an unresponsive party), FINRA staff will review the service history with the panel and ask the panel to decide whether service is complete and sufficient upon the unresponsive party in order for the case to proceed to hearing].

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 pre-hearing conference. If you are interested in mediation, contact the staff member assigned to this case for more information.

[As a reminder, the 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.

Further, it is within the panel's discretion to determine the order in which the parties and arbitrators discuss scheduling hearings or setting discovery, motion, or briefing deadlines. Regardless of the order, the panel should endeavor to meet FINRA's goal of scheduling hearings within nine months or less after this conference.]

G. **Additional Guidance for Cases Involving Pro Se Parties:** Since we have parties that are appearing without counsel in this matter, I want to add some further background on the arbitration process. As arbitrators, our ultimate responsibility is to resolve all claims in a fair and just manner. To the extent ethically permissible, we will provide parties with procedural guidance and direction to ensure that all parties receive a fair hearing. However, arbitrators will not and cannot be an advocate for any party, nor can we offer legal advice or recommend a specific course of action. If you need legal advice at any time during this case, we recommend that you consult with an attorney. Please note that FINRA rules provide parties with the right to be represented by a lawyer at any time in the proceeding.

Are there any questions?

H. **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 <u>only</u> 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?

I. **Late Cancellations - Party and Arbitrator Communication:** The parties and arbitrators may also arrange for direct communication solely to alert the panel that the parties have settled the case, the claimant has withdrawn the claim, or the parties jointly agreed to postpone the hearings. This arrangement prevents arbitrators from unnecessarily traveling to a cancelled hearing. Do the parties agree to direct communication solely to alert the panel that the parties have settled the

case, the claimant has withdrawn the claim, or the parties jointly agreed to postpone the hearings?

[If the parties agree to direct party and arbitrator communication or direct *communication solely to alert the panel that the parties have settled the case, the claimant has withdrawn the claim, or the parties jointly agreed to postpone the hearings, 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.]*

J. **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 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.**

[*Please select either K or L below, as appropriate, to schedule hearing dates.]*

K. **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.]*

L. **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.]*

M. **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 three paragraphs are for public customer cases only.]

The parties should carefully review the *FINRA Discovery Guide* and *Document Production Lists*, available for use in customer arbitrations. The *Discovery Guide* and *Document Production Lists* can be downloaded from FINRA's website at www.finra.org. Upon request, FINRA will provide the parties with a copy of the *Discovery Guide* and *Document Production Lists. [If anyone requests a copy, advise the FINRA Dispute Resolution staff to send that party a copy of 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.

We would like to hear from the parties regarding the exchange of the presumptively discoverable documents outlined in the *Discovery Guide*.

[The preceding three 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.]

Are there any issues that need to be resolved concerning the format for production of electronic discovery?

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.

N. **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 pre-hearing 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 pre-hearing motions? If so, please identify which motions you intend to file.

[If the parties indicate that they intend to file pre-hearing 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.]

O. **Canceled Conferences:** Parties are instructed to notify FINRA Dispute Resolution when scheduled pre-hearing conferences are no longer needed. FINRA Dispute Resolution should be notified at least 48 hours prior to the scheduled conference.

P. **Legal Issues and Pre-Hearing Briefs:** 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.]

Q. **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.

R. **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 71 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.]

S. **Explained Decisions:** The Codes of Arbitration Procedure require arbitrators to provide an explained decision if the parties file a joint request for one at least 20 calendar days prior to the first scheduled hearing date. The explained decision is a fact-based award stating the general reasons for the arbitrators' decision and does not need to include legal authorities or damage calculations. The panel will determine how to allocate the $400 assessment for the explained decision to the parties at the conclusion of the case.

T. **Protecting Personal Confidential Information:** FINRA is concerned about information security and identity theft. We suggest that parties and their counsel take steps to protect their confidential information. Actions parties can take include the following:

- Safeguarding personal confidential information by redacting such information from pleadings, exhibits, and other documents upon agreement of the parties;
- Asking the arbitrators to resolve any disagreement among the parties concerning the use or redacting of personal confidential information; and
- Taking all documents that are not needed for the official record when leaving the arbitration hearing.

U. **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.

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.

Opting out of the Initial Telephonic Pre-hearing Conference

FINRA Dispute Resolution allows the parties to opt out of the initial telephonic Pre-hearing conference provided all parties send in the items listed below to assigned staff.

All parties must stipulate to and provide the following at least 48 hours prior to the scheduled Initial Pre-hearing Conference:

1. A minimum of four sets of mutually agreed upon dates for the evidentiary hearing;
2. A discovery cut-off date (all discovery must be completed by this date);
3. Identify all anticipated motions with the following dates provided:
    a. Motion due date
    b. Opposition to motion due date
    c. Reply to opposition to motion due date (if applicable);
4. Identify a minimum of four mutually agreed upon dates and times for a telephonic Pre-hearing conference to hear any motions (if applicable); and
5. Indicate the due date of arbitration briefs (if applicable).

Opting out of the Initial Telephonic Pre-hearing Conference will save the parties money due to reduced forum fee assessments.

Financial Industry Regulatory Authority

The "Top Ten" Standards of Good Practice at Arbitration Hearings

1. Participants should be courteous and civil in all arbitration claims administered by FINRA Dispute Resolution.

2. Participants should treat one another with fairness and due consideration, recognizing that they can disagree without being disagreeable.

3. All participants should avoid vulgar language, disparaging personal remarks, or acrimony toward the parties, their attorneys, the arbitrators or the administrative staff.

4. All participants should conduct themselves with dignity and refrain from engaging in acts of rudeness or disrespect.

5. Parties, witnesses, and attorneys should recognize the authority and power of the arbitrators, and conduct themselves accordingly.

6. Attorneys, parties, and witnesses should – at all times – address the arbitrators and not each other. Participants should not engage in conversation with arbitrators in the absence of the other party(ies).

7. An attorney's effective representation does not require antagonistic or acrimonious behavior. Parties have no right to expect their representative to abuse anyone or to indulge in any offensive conduct.

8. Attorneys should not engage in conduct intended primarily to harass or humiliate witnesses.

9. Attorneys should advise their clients and witnesses of the proper conduct expected of them at arbitration hearings and, to the best of their ability, prevent clients and witnesses from causing disorder or disruption.

10. Respect all persons associated with the process regardless of race, color, national origin, religion, disability, age, gender, or sexual orientation.

Financial Industry Regulatory Authority

Hearing Procedure - Parties

The following provides an overview of arbitration hearing procedures. If you have any questions after reading this notice, please contact the FINRA Dispute Resolution staff member assigned to your case.

The objective of the arbitration is to provide the parties with a full, fair and expedient resolution of their dispute.

Record
The record of the hearing required by FINRA Rules[1] will be a tape recording provided by FINRA Dispute Resolution. Parties can order copies of the tape recording from FINRA Dispute Resolution for a fee.

If a party or parties wish to use a stenographic reporter, then the party or parties are responsible for making all arrangements. The cost of the stenographic reporter and of the record transcription are borne by the party or parties making the request, unless the arbitrators direct otherwise. Please notify FINRA Dispute Resolution staff member assigned to your case if you intend to hire a stenographer.

The digital recording (or stenographic record) will be the official record of the hearing, and parties and counsel should refrain from making audio or video recordings of the proceedings unless otherwise agreed by all parties and arbitrators.

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 counsel must direct all objections and motions to the arbitrators and not to each other. Parties are also encouraged to avoid repetitive arguments.

Starting the Hearing
The hearing will commence with the introduction and swearing in of the arbitrators.

After a brief introductory statement by the Chairperson of the arbitration panel, all parties and witnesses will be sworn in and asked to identify themselves by name and address for the record.

Any person who is not a party may be excused from the hearing room, including witnesses who will be brought back to testify at the appropriate time. However, all parties are permitted to remain throughout the proceeding. Corporations are entitled to have a corporate representative present during the hearing.

[1] Customer Code: Rule 12606; Industry Code: Rule 13606; Old Code: Rule 10326

The executed submission agreements and the pleadings filed with FINRA Dispute Resolution by the parties are marked and received into evidence as Arbitrator's Exhibit One.

Opening Statement
The Chairperson of the panel will advise the parties that they may make an opening statement. If a party decides to make an opening statement, he/she will be asked by the panel to keep it as brief as possible and to limit the statement to that which the party intends to prove. This is **not** the time for a party to present evidence.

Presentation of Evidence
After any opening statements, the Chairperson will call upon the parties to present their respective cases. Starting with the claimant, the parties will question witnesses and present documents in support of their position. All opposing parties may cross-examine each witness.

Parties should be aware that FINRA Rules provide that:

Parties may not present any documents or other materials not produced and or any witnesses not identified in accordance with FINRA Rules[2] at the hearing, unless the panel determines that good cause exists for the failure to produce the document or identify the witness. Good cause includes the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments during the hearing. Documents and lists of witnesses in defense of a claim are not considered rebuttal or impeachment information and, therefore, must be exchanged by the parties.

At the hearing, each party must provide a copy of the documents they intend to use at the hearing to FINRA Dispute Resolution staff, each arbitrator, and all opposing parties.

Closing Arguments
After all presentations of evidence are completed, the Chairperson will advise the parties that they may make a closing argument. If a party decides to make a closing argument, it must be limited to a summation of what each party proved.

It is the practice in these proceedings to allow claimant to proceed first in closing argument with rebuttal argument being permitted. Claimant may reserve their entire closing for rebuttal.

Procedural Flexibility
The hearing procedures may be varied at the discretion of the arbitrators provided all parties are allowed a full and fair opportunity to present their respective cases.

Awards
To expedite 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.

All awards are final and are not subject to review by FINRA Dispute Resolution. Any party wishing to challenge the award by filing a motion to vacate or modify in a court should consult federal or state law before doing so.

[2] Customer Code: Rule 12514(c); Industry Code: Rule 13514(c); For Old Code Provisions, see Rule 10321

FINRA Dispute Resolution is not a proper party to any post-award motion made by a party and should, therefore, not be named as a party to such proceeding.

Evaluations

Prior to the close of the last hearing, each party or representative will be asked to voluntarily complete a questionnaire concerning the arbitration.

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.

Please be advised that 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. 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.

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

Financial Industry Regulatory Authority

FINRA Dispute Resolution Arbitration Evaluation Form

As a service organization, the primary goals of FINRA Dispute Resolution are the integrity of its process and the satisfaction of its clients. Although no one welcomes disputes in their lives – and no one wins every time – we strive to make the process for resolving these inevitable disputes understandable, efficient, and fair. To ensure that we are meeting your needs and satisfying our commitment to you, we need to hear from you. Please take the time to complete the following evaluation of our services, the process, and the arbitrator(s) assigned to your case. Your responses to this survey will be kept confidential. Your feedback is a valuable and necessary component in our efforts to serve you better.

Barbara Brady
Vice President
Director of Neutral Management

Richard W. Berry
Senior Vice President
Director of Case Administration and Regional Office Services

Party Information

Party Name: _____ ❑ Individual ❑ Other

Case Number: _____

Date: _____

1. In the above-referenced case, were you:

❑ Claimant ❑ Claimant's Representative
❑ Respondent ❑ Respondent's Representative

1a. In what hearing location was your hearing held, if any? _____

About the Administrative Process

(Instructions: Please mark the most appropriate response. If a question is not applicable, please mark 'No Response'.)

2. I was pleased with the case administrative services provided by FINRA Dispute Resolution

❑ Strongly Agree ❑ Agree ❑ Neutral
❑ Disagree ❑ Strongly Disagree ❑ No Response

3. The FINRA Dispute Resolution staff with whom I dealt were knowledgeable about the process and able to answer my questions.

❑ Strongly Agree ❑ Agree ❑ Neutral
❑ Disagree ❑ Strongly Disagree ❑ No Response

4. My needs were addressed in a timely manner by the FINRA Dispute Resolution staff with whom I dealt.

❑ Strongly Agree ❑ Agree ❑ Neutral
❑ Disagree ❑ Strongly Disagree ❑ No Response

5. I believe my case was handled fairly and without bias by the FINRA Dispute Resolution staff with whom I dealt.

❑ Strongly Agree ❑ Agree ❑ Neutral
❑ Disagree ❑ Strongly Disagree ❑ No Response

6. I was pleased with the process by which the arbitrator(s) was (were) appointed to my case.

❑ Strongly Agree ❑ Agree ❑ Neutral
❑ Disagree ❑ Strongly Disagree ❑ No Response

7. I believe the arbitrator appointment process was fair.

❑ Strongly Agree ❑ Agree ❑ Neutral
❑ Disagree ❑ Strongly Disagree ❑ No Response

8. I believe that I (or my representative) had sufficient input regarding arbitrator selection.

❑ Strongly Agree ❑ Agree ❑ Neutral
❑ Disagree ❑ Strongly Disagree ❑ No Response

9. Please provide the name of any FINRA Dispute Resolution staff member with whom you were especially pleased or displeased. Please explain why.

_____

_____
_____
_____

About the Arbitrators

(Instructions: Print the last name of each arbitrator in the space provided and record your evaluations below their names.)

Please rate each individual arbitrator who served on your case with respect to the following:

	First Arbitrator	Second Arbitrator	Third Arbitrator
First Name:	_____	_____	_____
Last Name:	_____	_____	_____

10. **Professionalism:**

10a. The named arbitrator displayed a professional demeanor.

a) Strongly Agree	❑	❑	❑
b) Agree	❑	❑	❑
c) Neutral	❑	❑	❑
d) Disagree	❑	❑	❑
e) Strongly disagree	❑	❑	❑
f) No Response	❑	❑	❑

10b. The named arbitrator listened attentively.

a) Strongly Agree	❑	❑	❑
b) Agree	❑	❑	❑
c) Neutral	❑	❑	❑
d) Disagree	❑	❑	❑
e) Strongly disagree	❑	❑	❑
f) No Response	❑	❑	❑

10c. The named arbitrator used clear, understandable language.

a) Strongly Agree	❑	❑	❑
b) Agree	❑	❑	❑
c) Neutral	❑	❑	❑
d) Disagree	❑	❑	❑
e) Strongly disagree	❑	❑	❑
f) No Response	❑	❑	❑

10d. The named arbitrator appeared unbiased, treating both parties fairly and impartially.

a) Strongly Agree	❑	❑	❑
b) Agree	❑	❑	❑
c) Neutral	❑	❑	❑
d) Disagree	❑	❑	❑
e) Strongly disagree	❑	❑	❑
f) No Response	❑	❑	❑

10e. The named arbitrator showed sensitivity to gender, ethnicity, and cultural differences.

a) Strongly Agree	❑	❑	❑
b) Agree	❑	❑	❑
c) Neutral	❑	❑	❑
d) Disagree	❑	❑	❑
e) Strongly disagree	❑	❑	❑
f) No Response	❑	❑	❑

10f. The named arbitrator was sufficiently responsive to additional questions posed by the parties, pursuant to Rule 12403(b)(2). (If not applicable, please indicate 'No Response'.)

a) Strongly Agree	❑	❑	❑
b) Agree	❑	❑	❑
c) Neutral	❑	❑	❑
d) Disagree	❑	❑	❑
e) Strongly disagree	❑	❑	❑
f) No Response	❑	❑	❑

11. **Ability / Knowledge:**

11a. The named arbitrator displayed an ability to understand the material presented.

a) Strongly Agree	❑	❑	❑
b) Agree	❑	❑	❑
c) Neutral	❑	❑	❑
d) Disagree	❑	❑	❑
e) Strongly disagree	❑	❑	❑
f) No Response	❑	❑	❑

11b. The named arbitrator displayed an ability to analyze problems/identify key issues.

a) Strongly Agree	❑	❑	❑
b) Agree	❑	❑	❑

c) Neutral	❑	❑	❑
d) Disagree	❑	❑	❑
e) Strongly disagree	❑	❑	❑
f) No Response	❑	❑	❑

11c. The named arbitrator displayed knowledge of the rules and procedures.

a) Strongly Agree	❑	❑	❑
b) Agree	❑	❑	❑
c) Neutral	❑	❑	❑
d) Disagree	❑	❑	❑
e) Strongly disagree	❑	❑	❑
f) No Response	❑	❑	❑

12. **Hearing Conduct:**

12a. The named arbitrator decided discovery issues and motions in a timely manner.

a) Strongly Agree	❑	❑	❑
b) Agree	❑	❑	❑
c) Neutral	❑	❑	❑
d) Disagree	❑	❑	❑
e) Strongly disagree	❑	❑	❑
f) No Response	❑	❑	❑

12b. The named arbitrator had control of the hearings (for example, starting on time, maintaining order, etc.).

a) Strongly Agree	❑	❑	❑
b) Agree	❑	❑	❑
c) Neutral	❑	❑	❑
d) Disagree	❑	❑	❑
e) Strongly disagree	❑	❑	❑
f) No Response	❑	❑	❑

FINRA Dispute Resolution welcomes your suggestions and strives to improve the arbitration process. We thank you for taking the time to complete this evaluation.

Award Payment Information

Award Payment Deadline
Liable parties must pay arbitration awards within 30 days of receipt, unless a motion to vacate is filed in court. Interest is due from the date of the award, if:

- the liable parties do not pay the award within the 30-day period; or
- the liable parties file a motion to vacate the award and the motion is denied.

The arbitrators may direct another interest arrangement. For example, the arbitrators may decide that interest is due from an earlier or later date. Unless the arbitrators set a different rate in the award, the interest rate is the legal rate in the state where the award was made (usually where the arbitration was held).

Contact FINRA Dispute Resolution
Parties who have not been paid within 30 days of receipt of the award should notify their case administrator at FINRA Dispute Resolution in writing of the failure to pay the award.

Suspension of Membership or Registration
Under FINRA's by-laws and rules, the membership or registration of a member firm or associated person can be suspended or canceled for failure to comply with an arbitration award, unless:

- the member firm or associated person made full payment; or
- claimants agreed to installment payments of the amount awarded or have otherwise agreed to settle the action; or
- the award has been modified or vacated by a court; or
- a motion to vacate or modify the award is pending in, and has not been denied by, a court; or
- the member firm or associated person has a bankruptcy petition pending in U.S. Bankruptcy Court pursuant to Title 11 of the United States Code (the Federal Bankruptcy Code) or the award in the action has been discharged by a U.S. Bankruptcy Court.

If a member firm or associated person is out of business, FINRA Dispute Resolution may not be able to use the threat of suspension of membership to enforce payment of the award. FINRA Dispute Resolution will prevent any member firm or associated person from re-registering until the award is satisfied.

Member Firm and Associated Person Award Payment Reporting Requirements
Member firms and associated persons are required to notify FINRA Dispute Resolution in writing within 30 days of receipt of an award that they have paid or otherwise complied with the award, or to identify a valid basis for non-payment.

Confirming An Award In Court
Arbitration awards are also enforceable under federal and state laws. For example, under the Federal Arbitration Act (9 U.S.C. sec. 1 et seq.) a party has one year from when the award was issued to move to confirm the arbitration award. By this summary process, an award is turned into a court judgment that can be enforced like any other judgment.

Motions To Vacate
Arbitration statutes provide very limited grounds for challenging arbitration awards, such as fraud, arbitrator misconduct, arbitrators exceeding their authority, manifest disregard of the law, or arbitrator bias. It is usually difficult to overturn an award. Although some state laws vary, the typical time frame to challenge an award is three months from when the award was issued. Parties should consult with an attorney regarding Motions to Vacate.

Procedure for Ordering Copies of Tapes and Documents

Parties or their counsel may request copies of tapes of the arbitration proceedings or copies of documents from their case. If you would like copies of either, please send a request in writing to the case administrator handling your case. The request should indicate the case number and name, and the number of copies that you would like. You will be charged $15.00 per tape and $.25 per page for copies of documents. Please do not send to the case administrator a check to cover the costs of the tapes or documents, a vendor will bill and collect the fee from you. The vendor will also provide the tape or document copies to you. To determine the number of tapes which make up the complete record of the case, please call the staff member handling your case.

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/Appearance: 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 Cour**t, 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;[1]
  - 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;[2] 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 website of the State Bar of California at 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.

[1] 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.

[2] 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 an FINRA arbitration proceeding in California. The Certificate also can be found on the website of the State Bar of California at 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 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 • osacc@calbar.ca.gov

FOR OFFICAL USE ONLY

File No. _____

9.43

Certificate of Out-Of-State Arbitration Counsel (OSAAC) California CCP § 1282.4 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 (or name of arbitrator(s)): _____

2. Address of Arbitral Forum (or arbitrator(s)): _____

City: _____State: _____ Zip: _____ + _____

3. a) Arbitration Case Number:_____; and

b) Arbitration Name (or names of parties): _____

4. Street Address of Arbitration Hearing Site in California: _____

City: _____ State: _____ Zip: _____+ _____

5.. Name of Out-of-State Attorney ("Applicant"): _____

6.. Applicant's Firm Name: _____

Applicant's Office Address:_____

City: _____ State: _____ Zip: _____ + _____

Phone: (_____) _____- _____ Fax: (_____)_____-_____ E-mail:_____

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 and is in good standing. 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 of this application. Attach additional sheets if necessary.

Date	Case Name (or Names of Parties)	Court or Forum	Application (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.

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.[1] 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.[2]

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

[1] 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.

[2] 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.

representative is a Florida citizen or resident. Representation includes, but is not limited 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.[3]

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.

[3] 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.

Attorney’s Fees in Florida Arbitrations

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 the 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[4], 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[5]. 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. 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

[4] 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.”

[5] The defense expert testified that he had seen some awards that did specify the basis for recovery.

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[6]. 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 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

[6] 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.

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[7]. See Air Conditioning Equipment, Inc. v. Rogers,

[7] §§ 682.09, 682.10, 682.12- 682.15, Fla. Stat. (1997).

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[8]. 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 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

---

[8] 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).

"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)[9]. 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 of entitlement to attorney's fees, and remand this case to the district court for further proceedings consistent herewith.

---

[9] 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.

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

Guidelines for Attorneys Who Are Not Admitted to Practice in New Jersey

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 or mediation proceeding held in an FINRA, New Jersey forum, provided that the out-of-state attorneys comply with the requirements of New Jersey RPC 5.5.The New Jersey Rules of Professional Conduct can be found on the website of the New Jersey Judiciary at http://www.judiciary.state.nj.us/rules/apprpc.htm#x5dot5.

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 and Mediation Proceedings

- **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 an arbitration or mediation proceeding.
- **Question: Do the Guidelines apply to mediation cases?**
  Answer: Yes. RPC 5.5 permits out-of-state attorneys to represent a client in mediation in New Jersey, under certain circumstances.
- **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 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.