

Frequently Asked Questions for Respondents in FINRA Expedited Proceedings

FINRA is committed to ensuring that all respondents are treated fairly in expedited proceedings. Below, you will find brief answers to a number of questions frequently asked by respondents. We hope these answers will be helpful in orienting you to the process for expedited proceedings.

FINRA's expedited proceedings are governed by the Rule 9550 series of FINRA's Code of Procedure (the Code). Some rules related to disciplinary proceedings also relate to expedited proceedings. You should consult the Code to obtain a complete picture of your rights and responsibilities in an expedited proceeding. In addition, FINRA's Office of Hearing Officers has prepared a Guide to Expedited Proceedings (the Expedited Guide), which outlines the process for expedited proceedings. FINRA's rules, including the Code, are available at <http://www.finra.org/rules>. The Expedited Guide is available at <http://www.finra.org/oho>.

In addition to reading FINRA's Code and the Expedited Guide, you should read carefully the Case Management and Scheduling Order that the Hearing Officer issues at the outset of the case. The Case Management and Scheduling Order contains detailed information about the schedule and requirements specific to the case. It also provides contact information for the Case Administrator assigned to the case, who is available to answer procedural questions throughout the proceeding.

The Rule 9550 series of the Code addresses different types of expedited proceedings and their corresponding deadlines. As the name suggests, expedited proceedings move quickly. For the majority of expedited proceedings, the Office of Hearing Officers will schedule a hearing for no more than 30 days from the date it receives a hearing request. In a few types of cases, however, the Office of Hearing Officers will schedule a hearing within 5 to 14 days of receiving a hearing request. Some proceedings require that only a Hearing Officer hear the case, while others require a three-person Hearing Panel, which includes a Hearing Officer and two industry members.

I have received a notice from FINRA (Notice) stating that pursuant to a FINRA Rule I will be suspended on a certain date unless I request a hearing. How do I request a hearing?

Before the date specified in the Notice (the suspension's Effective Date), send your request for a hearing (Hearing Request) by email to OHOCASEFILINGS@FINRA.ORG. Your Hearing Request must simply state, "I request a hearing" and include the defense upon which you intend to rely at the hearing. Available defenses are listed in the Notice. A Hearing Request that doesn't identify one of the permissible defenses is not considered valid and will not be

accepted by the Office of Hearing Officers. For more information, read the Notice and the Code, including Rules 9551–9558 and Rule 9559.

What must I include in my Hearing Request?

In addition to stating your defense and specifically requesting a hearing, you must include your (or your attorney's) address, telephone number, and email address. For more information, read the Code, including Rule 9559.

How long do I have to request a hearing?

You must request a hearing by the date indicated in the Notice as the effective date of the suspension. The notice usually sets the effective date for 21 days after the date of the Notice. If you have questions about the procedures or deadline for filing, call the Office of Hearing Officers at (202) 728-8008 and ask to speak to the Expedited Proceedings Coordinator.

What happens if I do not file a Hearing Request?

If you do not file a Hearing Request, your registration will be suspended on the Effective Date identified in the Notice.

If I ask for a hearing, who will hear my case?

Depending on the Rule the Notice was issued under, your case will be heard by a FINRA Hearing Officer (Rules 9553, 9554, and 9556(h)), or by a three-person Hearing Panel (Rules 9551, 9552, 9555, 9556 (except 9556(h)), 9557, and 9558) chaired by a FINRA Hearing Officer. If the Rule requires a Hearing Panel, the Chief Hearing Officer appoints two industry panelists, drawn primarily from a pool of current and former securities industry members.

The two industry representatives must be associated with, or retired from association with, a FINRA member firm. When selecting industry panelists, the Chief Hearing Officer considers the following factors: (1) expertise; (2) the absence of any conflict of interest or bias, and any appearance thereof; (3) availability; and (4) the frequency with which a person has served as a panelist during the past two years. For more information, read the

Code, including Rules 9231–9234, which relate to disciplinary proceedings and expedited proceedings requiring a Hearing Panel.

Who is the Hearing Officer and what is his or her role in the proceeding?

Hearing Officers are attorneys employed by FINRA in FINRA’s Office of Hearing Officers, which reports directly to FINRA’s Chief Executive Officer. The only function of the Office of Hearing Officers is to serve as FINRA’s adjudicators; it is entirely independent of other departments in FINRA, including the Department of Enforcement (Enforcement), which represents the FINRA department or office that issues the Notice. The Chief Hearing Officer assigns a Hearing Officer to each expedited proceeding.

The Hearing Officer is responsible for overseeing the proceeding to ensure that it is conducted in a fair and efficient manner, much as a judge oversees cases in a court. The Hearing Officer has authority to make all rulings relating to the schedule, the procedures to be followed, and the evidence admitted. The Hearing Officer also serves as Chair of the Hearing Panel, if a Hearing Panel is required by the Rule. For more information, read the Code, including Rules 9559 and 9231–9235.

Does the Office of Hearing Officers check Hearing Panelists for conflicts?

Before a Hearing Officer or industry panelist is appointed to serve on a Hearing Panel, the Office of Hearing Officers evaluates each candidate to ensure that he or she is free of conflicts of interest and that there are no circumstances existing where the candidate’s fairness might reasonably be questioned. Following appointment, if a Hearing Officer or an industry panelist learns of a conflict of interest or other circumstance in which his or her fairness might reasonably be questioned, he or she must inform the Chief Hearing Officer and withdraw from the matter.

I cannot afford to pay my former firm an arbitration award or a settlement. How should I present my financial information to demonstrate my inability to pay?

Shortly after the Office of Hearing Officers receives your timely hearing request, the Hearing Officer assigned to your case will issue a document called a Notice of Hearing and Case Management and Scheduling Order. This Order sets forth the entire pre-hearing schedule and very detailed instructions for providing your financial information. Several

helpful documents will be attached to that Order. Additional forms and resources are available at www.finra.org/oho. (Note that if an arbitration award involves a customer, an inability to pay the award is not a valid defense.)

If I want a hearing, is the process complicated?

The hearing process is not complicated. When you request a hearing, the Hearing Officer will schedule the hearing and set a pre-hearing schedule, which will be explained in detail in a Notice of Hearing and Case Management and Scheduling Order.

If you want witnesses to testify at the hearing or if you want to offer documentary evidence (referred to as “exhibits”), you will be required to provide a list of your proposed witnesses and exhibits, and copies of the exhibits, to the Hearing Officer and Enforcement before the hearing. At the same time, you will receive a list of Enforcement’s proposed witnesses and exhibits and copies of its exhibits. For more information, read the Code, including Rules 9559, 9241, 9242, 9262, and 9263.

Most expedited hearings are held by telephone, and you (or your attorney, if you have one), and Enforcement must participate. Failing to appear by telephone at the hearing, or any pre-hearing conference, or failing to comply with any order of the Hearing Officer, is considered an abandonment of your defense and a waiver of an opportunity for a hearing. In this event, you will be suspended immediately, and the Notice will be deemed the final FINRA action. For more information, read the Code, including Rules 9559(f), (g), and (m).

Do I have a right to be represented by an attorney? Can I be represented by someone who is not an attorney, but is familiar with FINRA procedures?

You have the right to represent yourself, or, if you prefer, you can be represented by an attorney. Only an attorney can represent an individual, but a corporation, trust, or association may be represented by one of its officers, and a partnership may be represented by one of the partners. For more information, read the Code, including Rule 9141.

What additional rights do I have?

You have a number of rights under the Code. For example, Enforcement must provide you with documents used in determining whether to issue the Notice. To be aware of all your

rights and obligations under the Code, and the limitations on those rights, you should read the Code carefully, including Rules 9559 and 9251–9253.

What happens at the hearing?

FINRA hearings are less formal than court proceedings, but the hearing process is similar. The parties are usually allowed to make opening statements to the Hearing Officer or Hearing Panel. Opening statements should not include testimony. Rather, they are an opportunity for each party to provide a summary of his or her case. Enforcement offers its evidence, which may include the testimony of witnesses or exhibits. Respondent will have an opportunity to question every witness offered by Enforcement and raise objections to exhibits. The Hearing Officer or panel can also ask questions. When Enforcement has finished presenting its evidence, a Respondent may testify, call his or her own witnesses to testify, and offer exhibits. Enforcement may question Respondent's witnesses or object to exhibits, and the Hearing Officer or panel may also ask questions. When the parties have finished offering evidence, they will usually be allowed to offer closing arguments. A court reporter will make a transcription of the hearing. For more information, read the Code, including Rules 9559 and 9261–9267.

What happens after the hearing?

After the hearing, the Hearing Panel or the Hearing Officer considers the evidence and reaches a decision. The Hearing Officer prepares a proposed written decision, which is sent to the National Adjudicatory Council (NAC). The NAC may call a proposed decision for review in a condensed timeframe before it is issued to the parties. If the NAC does not call the proposed decision for review during that timeframe, the Office of Hearing Officers will immediately issue the decision to the parties. For more information, read the Code, including Rules 9559(o), (p), and (q).

Can I appeal the decision if I disagree with its findings?

A party may appeal an expedited decision issued by a Hearing Officer or Hearing Panel (or by the NAC, if the matter was called for review) by filing an application for review with the Securities and Exchange Commission (SEC) within 30 days of receipt of the decision. Filing an application for review does not stay the effectiveness of the decision unless the SEC orders otherwise. For more information, read the Code, including Rule 9559.

Where can I get additional information about expedited proceedings?

As explained above, you should carefully read the Code, the Expedited Guide, and the Case Management and Scheduling Order issued by the Hearing Officer for detailed answers to all your questions. You may also call the Office of Hearing Officers at (202) 728-8008 and ask to speak to the Expedited Case Coordinator. The Expedited Case Coordinator cannot give legal advice, but can answer procedural questions and tell you the status of your case.

Where can I find a sample Case Management and Scheduling Order and Expedited Decisions?

A sample Case Management and Scheduling Order for expedited proceedings is available on the Resources tab on www.finra.org/oho. Expedited Decisions are available on our website, www.finra.org/oho and on LEXIS.