

# IM-12000. Failure to Act Under Provisions of Code of Arbitration Procedure for Customer Disputes

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2010 for a member or a person associated with a member to:

(a) fail to submit a dispute for arbitration under the Code as required by the Code;

(b) fail to comply with any injunctive order issued pursuant to the Code;

(c) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the Code;

(d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the rules applicable to the arbitration of disputes before FINRA or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law; or

(e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by FINRA.

All awards shall be honored by a cash payment to the prevailing party of the exact dollar amount stated in the award. Awards may not be honored by crediting the prevailing party's account with the dollar amount of the award, unless authorized by the express terms of the award or consented to in writing by the parties. Awards shall be honored upon receipt thereof, or within such other time period as may be prescribed by the award.

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2010 for a member to require associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure.

# 12100. Definitions

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

## **(a) Arbitrator and Mediator Portal**

The term "Arbitrator and Mediator Portal" means the web-based system that allows invited arbitrators and mediators to access a secure section of FINRA's website to submit documents and information and view their arbitration and mediation case information and documents.

## **(b) Associated Person**

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

## **(c) Award**

An award is a document stating the disposition of a case.

## **(d) Board**

The term "Board" means the Board of Directors of FINRA Regulation.

## **(e) Claim**

The term "claim" means an allegation or request for relief.

## **(f) Claim Notification Letter**

The term "Claim Notification Letter" means the notice provided by the Director to respondent(s) that they have been named as a party in a statement of claim. The notice will provide information about accessing the Party Portal to obtain a copy of the statement of claim filed by the claimant(s) and information about the arbitration, including the hearing location selected by the Director and the deadline for filing a statement of answer.

## **(g) Claimant**

The term "claimant" means a party that files the statement of claim that initiates an arbitration under [Rule 12302](#).

**(h) Code**

The term "Code" means the Code of Arbitration Procedure for Customer Disputes. For disputes involving only industry parties, see the Code of Arbitration Procedure for Industry Disputes.

**(i) Counterclaim**

The term "counterclaim" means a claim asserted against a claimant by a respondent.

**(j) Cross Claim**

The term "cross claim" means a claim asserted by a respondent against another already-named respondent.

**(k) Customer**

A customer shall not include a broker or dealer.

**(l) Day**

Except as otherwise provided, the term "day" means calendar day. If a deadline specified in the Code falls on a Saturday, Sunday or any FINRA holiday, the deadline is extended until the next business day. If a party receives pleadings or other documents on a Saturday, Sunday or any FINRA holiday, the date of receipt shall be the next business day.

**(m) Director**

The term "Director" means the Director of FINRA Dispute Resolution Services. Unless the Code provides that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority.

**(n) Dispute**

The term "dispute" means a dispute, claim or controversy. A dispute may consist of one or more claims.

**(o) Hearing**

The term "hearing" means the hearing on the merits of an arbitration under [Rule 12600](#).

**(p) Hearing Session**

The term "hearing session" means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference. In one day, the next hearing session begins after four hours of hearing time has elapsed.

**(q) Inactive Member**

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

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

**(r) Inactive Associated Person**

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

**(s) Member**

For purposes of the Code, the term "member" means any broker or dealer admitted to membership in FINRA, whether or not the membership has been terminated, suspended, cancelled, revoked, the member has been expelled or barred from FINRA, or the member is otherwise defunct; and any broker or dealer admitted to membership in a self-regulatory organization that, with FINRA consent, has required its members to arbitrate pursuant to the Code and to be treated as members of FINRA for purposes of the Code, whether or not its membership has been terminated, suspended, cancelled, revoked, the member has been expelled or barred from its self-regulatory organization, or the member is otherwise defunct.

#### **(t) Non-Public Arbitrator**

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator, and is disqualified from service as a public arbitrator under paragraph (aa).

#### **(u) Panel**

The term "panel" means the arbitration panel, whether it consists of one or more arbitrators.

#### **(v) Party Portal**

The term "Party Portal" means the web-based system that is accessible by arbitration and mediation parties and their representatives. The Party Portal allows invited participants to access a secure section of FINRA's website to submit documents and view their arbitration and mediation case information and documents.

#### **(w) Person Associated with a Member**

The term "person associated with a member" means:

(1) A natural person who is registered or has applied for registration under the Rules of FINRA; or

(2) A sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not:

(A) Any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA; or

(B) Any such person's registration is revoked, cancelled, or suspended, the person has been expelled or barred from FINRA, or the person's registration has been terminated for a minimum of 365 days.

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

### **(x) Pleadings**

A pleading is 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, a separate document requesting expungement, and any replies.

### **(y) Prehearing Conference**

The term "prehearing conference" means any hearing session, including an Initial Prehearing Conference, that takes place before the hearing on the merits begins.

### **(z) Pro Se**

For purposes of the Code, the term "*pro se*" refers to a party that is not represented by an attorney or others during an arbitration or mediation.

### **(aa) Public Arbitrator**

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

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

(1) A person shall not be designated as a public arbitrator who is, or was, associated with, including registered through, under, or with (as applicable):

(A) a broker or a dealer (including a government securities broker or dealer or a municipal securities broker or dealer); or

(B) the Commodity Exchange Act or the Commodity Future Trading Commission, or a member of the National Futures Association or the Municipal Securities Rulemaking Board; or

(C) an entity that is organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisers Act of 1940; or

(D) a mutual fund or a hedge fund; or

(E) an investment adviser.

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

(3) A person shall not be designated as a public arbitrator, who was, for a total of 15 years or more, an attorney, accountant, expert witness or other professional who has devoted 20 percent or more of his or her professional time annually to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry.

(4) A person shall not be designated as a public arbitrator, who was, for a total of 15 years or more, an employee of a bank or other financial institution who effects transactions in securities, including government or municipal securities, commodities, futures, or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

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

(5) A person shall not be designated as a public arbitrator who is employed by, or is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the financial industry unless the affiliation ended more than five calendar years ago.

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

(7) A person shall not be designated as a public arbitrator who is an attorney, accountant, expert witness or other professional who has devoted 20 percent or more of his or her professional time, in any single calendar year, to representing or providing services to parties in disputes concerning investment accounts or

transactions, or employment relationships within the financial industry unless the calendar year ended more than five calendar years ago.

(8) A person shall not be designated as a public arbitrator if the person is an employee of a bank or other financial institution and the person effects transactions in securities, including government or municipal securities, commodities, futures, or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities unless the affiliation ended more than five calendar years ago.

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

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

(10) A person shall not be designated as a public arbitrator, who is an attorney, accountant, or other professional whose firm derived \$50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the course of the past two calendar years, from individual and/or institutional investors relating to securities matters. A person whom FINRA would not designate as a public arbitrator under this subparagraph shall also not be designated as a public arbitrator for two calendar years after ending employment at the firm.

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

(11) A person shall not be designated as a public arbitrator if his or her immediate family member is an individual whom FINRA would disqualify from serving on the public arbitrator roster. If the person's immediate family member



ends the disqualifying affiliation, or the person ends the relationship with the individual so that the individual is no longer the person's immediate family member, the person may, after two calendar years have passed from the end of the affiliation or relationship, be designated as a public arbitrator.

For purposes of this rule, the term immediate family member means:

(A) a person's spouse, partner in a civil union, domestic partner, parent, stepparent, child, or stepchild;

(B) a member of a person's household;

(C) an individual to whom a person provides financial support of more than 50 percent of his or her annual income; or

(D) a person who is claimed as a dependent for federal income tax purposes.

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

### **(bb) Respondent**

The term "respondent" means a party against whom a statement of claim or third party claim has been filed. A claimant against whom a counterclaim has been filed is not a respondent for purposes of the Code.

### **(cc) Statement of Claim**

The term "statement of claim" means the initial or amended claim filed by the party or parties initiating the arbitration.

### **(dd) Submission Agreement**

The term "Submission Agreement" means the FINRA Submission Agreement. The FINRA Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

### **(ee) Third Party Claim**

The term "third party claim" means a claim asserted against a party not already named in the statement of claim or any other previous pleading.

**(ff) Unnamed Person**

For purposes of Rule 12800 and Rule 12805, the term "unnamed person" means an associated person, including a formerly associated person, who is identified in a Form U4, Form U5, or Form U6 as having been the subject of an investment-related, customer-initiated arbitration that alleged that the associated person or formerly associated person was involved in one or more sales practice violations, but who is not named as a respondent in the arbitration.

## 12101. Applicability of Code and Incorporation by Reference

**(a) Applicability of Code**

The Code applies to any dispute between a customer and a member or associated person of a member that is submitted to arbitration under Rule 12200 or 12201.

**(b) Incorporation by Reference**

When a dispute is submitted to arbitration under the Code pursuant to an arbitration agreement, the Code is incorporated by reference into the agreement.

## 12102. National Arbitration and Mediation Committee

(a) Pursuant to Section II of the Plan of Allocation and Delegation of Functions by FINRA to FINRA Regulation, Inc. ("Delegation Plan"), the Board shall appoint a National Arbitration and Mediation Committee ("NAMC").

(1) The NAMC shall consist of no fewer than 10 and no more than 25 members. At least 50 percent of the NAMC shall be Non-Industry members.

(2) The Chairperson of the Board shall name the chairperson of the NAMC.

(b) Pursuant to the Delegation Plan, the NAMC shall have the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the Board. The NAMC shall also establish and maintain rosters of neutrals composed of persons from within and outside of the securities industry. All matters recommended by the NAMC to the Board must have been approved by a quorum, which shall consist of a majority of the NAMC, including at least 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that at least 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived. The NAMC has such other power and authority as is necessary to carry out the purposes of the Code.

(c) The NAMC may meet as frequently as necessary, but must meet at least once a year.

## 12103. Director of FINRA Dispute Resolution Services

(a) The Board shall appoint a Director of FINRA Dispute Resolution Services. The Director shall perform all the administrative duties relating to arbitrations submitted under the Code. The Director may delegate his or her duties when it is appropriate, unless the Code provides otherwise.

(b) The Director shall consult with the NAMC at the NAMC's request.

(c) If the Director is unable to perform his or her duties, the President of FINRA Regulation may appoint an interim Director.

## 12104. Effect of Arbitration on FINRA Regulatory Activities; Arbitrator Referral During or at Conclusion of Case

(a) Submitting a dispute to arbitration under the Code does not limit or preclude any right, action or determination by FINRA that it would otherwise be authorized to adopt, administer or enforce.

(b) During the pendency of an arbitration, any arbitrator may refer to the Director any matter or conduct that has come to the arbitrator's attention during a hearing, which the arbitrator has reason to believe poses a serious threat, whether ongoing or imminent, that is likely to harm investors unless immediate action is taken. Arbitrators should not make referrals during the pendency of an arbitration based solely on allegations in the statement of claim, counterclaim, cross claim, or third party claim. If a case is nearing completion, the arbitrator should wait until the case concludes to make the referral if, in the arbitrator's judgment, investor protection will not be materially compromised by this delay.

(c) If any arbitrator refers a matter or conduct for investigation under paragraph (b) of this rule, the Director will disclose the act of making the referral to the parties. A party may request that the referring arbitrator(s) recuse themselves, as provided in the Code, no later than three days after the Director notifies the parties of the referral. If a party does not make the recusal request within the prescribed timeframe, the party forfeits the right to request recusal of the referring arbitrator(s).

(d) The Director will evaluate the arbitrator referral to determine whether to transmit it to other divisions of FINRA. Only the Director shall have the authority to act under this paragraph (d).

(e) At the conclusion of an arbitration, any arbitrator may refer to FINRA for investigation any matter or conduct that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of the rules of FINRA, the federal securities laws, or other applicable rules or laws.

## 12105. Agreement of the Parties

(a) Except as provided in paragraph (b), if the Code provides that the parties may agree to modify a provision of the Code, or a decision of the Director or the panel, the written agreement of all named parties is required.

(b) If the Director or the panel determines that a named party is inactive in the arbitration, or has failed to respond after adequate notice has been given, the Director or the panel may determine that the written agreement of that party is not required while the party is inactive or not responsive. For purposes of this rule, an inactive party could be, but is not limited to: (1) a party that does not answer; (2) a party that answers and then fails to respond to correspondence sent by the Director; (3) a party that answers and then fails to respond to correspondence sent by the panel in cases involving direct communication under Rule 12211; or (4) a party that does not attend pre-hearing conferences.

## 12200. Arbitration Under an Arbitration Agreement or the Rules of FINRA

Parties must arbitrate a dispute under the Code if:

- Arbitration under the Code is either:
  - (1) Required by a written agreement, or
  - (2) Requested by the customer;
- The dispute is between a customer and a member or associated person of a member; and
- The dispute arises in connection with the business activities of the member or the associated person, except disputes involving the insurance business activities of a member that is also an insurance company.

## 12201. Elective Arbitration

Parties may arbitrate a dispute under the Code if:

- The parties agree in writing to submit the dispute to arbitration under the Code after the dispute arises; and
- The dispute is between a customer and a member, associated person of a member, or other related party; and
- The dispute arises in connection with the business activities of a member or an associated person, except disputes involving the insurance business activities of a member that is also an insurance company.

## 12202. Claims Against Inactive Members

(a) A claim by or against a member or an associated person who is inactive at the time the claim is filed is ineligible for arbitration under the Code unless the customer agrees in writing to arbitrate after the claim arises.

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

## 12203. Denial of FINRA Forum

(a) The Director may decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives. Only the Director may exercise the authority under this Rule.

(b) The Director shall decline the use of the FINRA arbitration forum if the Director determines that the expungement request is ineligible for arbitration under Rule 12805.

(c) The Director may decline the use of the FINRA arbitration forum if the Director determines that the expungement request was not filed under, or considered in the arbitration forum in accordance with, Rule 12805.

(d) Disputes that arise out of transactions in a readily identifiable market may be referred to the arbitration forum for that market, if the claimant agrees.

## 12204. Class Action Claims

(a) Class action claims may not be arbitrated under the Code.

(b) Any claim that is based upon the same facts and law, and involves the same defendants as in a court-certified class action or a putative class action, or that is ordered by a court for class-wide arbitration at a forum not sponsored by a self-regulatory organization, shall not be arbitrated under the Code, unless the party bringing the claim files with FINRA one of the following:

(1) a copy of a notice filed with the court in which the class action is pending that the party will not participate in the class action or in any recovery that may result from the class action, or has withdrawn from the class according to any conditions set by the court; or

(2) a notice that the party will not participate in the class action or in any recovery that may result from the class action.

(c) The Director will refer to a panel any dispute as to whether a claim is part of a class action, unless a party asks the court hearing the class action to resolve the dispute within 10 days of receiving notice that the Director has decided to refer the dispute to a panel.

(d) A member or associated person may not enforce any arbitration agreement against a member of a certified or putative class action with respect to any claim that is the subject of the certified or putative class action until:

- The class certification is denied;
- The class is decertified;

- The member of the certified or putative class is excluded from the class by the court; or

- The member of the certified or putative class elects not to participate in the class or withdraws from the class according to conditions set by the court, if any.

This paragraph does not otherwise affect the enforceability of any rights under this Code or any other agreement.

## 12205. Shareholder Derivative Actions

Shareholder derivative actions may not be arbitrated under the Code.

## 12206. Time Limits

### **(a) Time Limitation on Submission of Claims**

No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The panel will resolve any questions regarding the eligibility of a claim under this Rule.

### **(b) Dismissal under Rule**

Dismissal of a claim under this Rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this Rule, the moving party agrees that if the panel dismisses a claim under this Rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(1) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(2) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 90 days before a scheduled hearing, and parties have 30 days to respond to the motion. Moving parties may reply to responses to motions. Any such reply must be made within 5 days of receipt of a response.

(3) Motions under this rule will be decided by the full panel.



(4) The panel may not grant a motion under this Rule unless a prehearing conference on the motion is held or waived by the parties. Prehearing conferences under this Rule will be recorded as set forth in Rule 12606 and will generally be held by video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session.

(5) If the panel grants a motion under this rule (in whole or part), the decision must be unanimous, and must be accompanied by a written explanation.

(6) If the panel denies a motion under this rule, a party may not re-file the denied motion, unless specifically permitted by panel order.

(7) If the party moves to dismiss on multiple grounds including eligibility, the panel must decide eligibility first.

- If the panel grants the motion to dismiss the case on eligibility grounds on all claims, it shall not rule on any other grounds for the motion to dismiss.

- If the panel grants the motion to dismiss on eligibility grounds on some, but not all claims, and the party against whom the motion was granted elects to move the case to court, the panel shall not rule on any other ground for dismissal for 15 days from the date of service of the panel's decision to grant the motion to dismiss on eligibility grounds.

- If a panel dismisses any claim on eligibility grounds, the panel must record the dismissal on eligibility grounds on the face of its order and any subsequent award the panel may issue.

- If the panel denies the motion to dismiss on eligibility grounds, it shall rule on the other bases for the motion to dismiss the remaining claims in accordance with the procedures set forth in Rule 12504(a).

(8) If the panel denies a motion under this rule, the panel must assess forum fees associated with hearings on the motion against the moving party.

(9) If the panel deems frivolous a motion filed under this rule, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.

(10) The panel also may issue other sanctions under Rule 12212 if it determines that a party filed a motion under this rule in bad faith.

**(c) Effect of Rule on Time Limits for Filing Claim in Court**

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. However, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.

**(d) Effect of Filing a Claim in Court on Time Limits for Filing in Arbitration**

If a party submits a claim to a court of competent jurisdiction, the six-year time limitation will not run while the court retains jurisdiction of the claim matter.

## 12207. Extension of Deadlines

(a) The parties may agree in writing to extend or modify any deadline for:

- Serving an answer;
- Returning arbitrator or chairperson lists;
- Responding to motions; or
- Exchanging documents or witness lists.

If the parties agree to extend or modify a deadline under this rule, they must notify the Director of the new deadline in writing.

(b) The panel may extend or modify any deadline listed in paragraph (a), or any other deadline set by the panel, either on its own initiative or upon motion of a party.

(c) The Director may extend or modify any deadline or time period set by the Code for good cause. The Director may also extend or modify any deadline or time period set by the panel in extraordinary circumstances.

# 12208. Representation of Parties

## **(a) Representation by a Party**

Parties may represent themselves in an arbitration held in a United States hearing location. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association.

## **(b) Representation by an Attorney**

At any stage of an arbitration proceeding held in a United States hearing location, all parties shall have the right to be represented by an attorney at law in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation.

## **(c) Representation by Others**

Parties may be represented in an arbitration by a person who is not an attorney, unless:

- state law prohibits such representation, or
- the person is currently suspended or barred from the securities industry in any capacity, or
- the person is currently suspended from the practice of law or disbarred.

## **(d) Qualifications of Representative**

Issues regarding the qualifications of a person to represent a party in arbitration are governed by applicable law and may be determined by an appropriate court or other regulatory agency. In the absence of a court order, the arbitration proceeding shall not be stayed or otherwise delayed pending resolution of such issues.

## 12209. Legal Proceedings

During an arbitration, no party may bring any suit, legal action, or proceeding against any other party that concerns or that would resolve any of the matters raised in the arbitration.

## 12210. Ex Parte Communications

(a) Except as provided in Rule 12211, no party, or anyone acting on behalf of a party, may communicate with any arbitrator outside of a scheduled hearing or conference regarding an arbitration unless all parties or their representatives are present.

(b) No party, or anyone acting on behalf of a party, may send or give any written motion, request, submission or other materials directly to any arbitrator, unless the arbitrators and the parties agree, or the Code provides otherwise.

## 12211. Direct Communication Between Parties and Arbitrators

(a) This rule provides procedures under which parties and arbitrators may communicate directly.

(b) Only parties that are represented by counsel may use direct communication under this rule. If, during the proceeding, a party chooses to appear without counsel, this rule shall no longer apply.

(c) All arbitrators and all parties must agree to the use of direct communication during the Initial Prehearing Conference or a later conference or hearing before it can be used.

(d) Parties may send the arbitrators only items that are listed in an order.

(e) Parties may send items to the arbitrators by first-class mail, overnight mail service, overnight delivery service, hand delivery, email, or facsimile as specified in the Direct Communication Order. All the arbitrators and parties must have facsimile or email capability before such a delivery method may be used.

(f) Copies of all materials sent to arbitrators must also be served on all parties and filed with the Director, pursuant to Rule 12300.

(g) The parties must file with the Director, pursuant to Rule 12300, copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.

(h) Parties may not communicate orally with any of the arbitrators outside the presence of all parties.

(i) Any party or arbitrator may terminate the direct communication order at any time, after giving written notice to the other arbitrators and the parties.

## 12212. Sanctions

(a) 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.

Unless prohibited by applicable law, 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.

(b) The panel may initiate a disciplinary referral at the conclusion of an arbitration.

(c) The panel may dismiss a claim, defense or arbitration with prejudice as a sanction for material and intentional failure to comply with an order of the panel if prior warnings or sanctions have proven ineffective.

# 12213. Hearing Locations

## **(a) U.S. Hearing Location**

(1) The Director will decide which of FINRA's hearing locations will be the hearing location for the arbitration. Generally, the Director will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute, unless the hearing location closest to the customer's residence is in a different state, in which case the customer may request a hearing location in the customer's state of residence at the time of the events giving rise to the dispute.

(2) Before arbitrator lists are sent to the parties under Rule 12402(c) or Rule 12403(b), the parties may agree in writing to a hearing location other than the one selected by the Director.

(3) The Director may change the hearing location upon motion of a party, as set forth in Rule 12503.

(4) After the panel is appointed, the panel may decide a motion relating to changing the hearing location.

## **(b) Foreign Hearing Location**

(1) If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign arbitrators, provided that the foreign arbitrators have:

(A) met FINRA background qualifications for arbitrators;

(B) received training on FINRA arbitration rules and procedures; and

(C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of FINRA.

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless

they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rule 12902(c).

## 12214. Payment of Arbitrators

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

(1) \$300 to each arbitrator for each hearing session in which he or she participates;

(2) an additional \$125 to the chairperson for each prehearing conference in which he or she participates;

(3) an additional \$250 per day to the chairperson for each hearing on the merits;

(4) \$50 to each arbitrator for travel to a hearing session that is postponed pursuant to [Rule 12601](#);

(5) \$600 to each arbitrator if a hearing session other than a prehearing conference is postponed within 10 days before a scheduled hearing session pursuant to Rules 12601(a)(1)(B), (a)(2) and (b)(2); and

(6) \$100 to each arbitrator scheduled to attend a prehearing conference that is cancelled within three business days of the prehearing conference by agreement of the parties or is requested by one or more parties within three business days of the prehearing conference and granted, pursuant to Rules [12500](#)(d) and [12501](#)(d).

(b) The Director may authorize a higher or additional honorarium for the use of a foreign hearing location.

(c) Payment for Deciding Discovery-Related Motions, Contested Subpoena Requests, and Contested Orders for Production or Appearance without a Hearing Session

(1) FINRA will pay each arbitrator an honorarium of \$200 to decide without a hearing session: (i) a discovery-related motion, (ii) a motion that contains one or more contested subpoena requests or contested orders for production or appearance; or (iii) a motion that contains one or more contested subpoena

requests and contested orders for production or appearance. This paragraph does not apply to cases administered under [Rule 12800](#).

(2) For purposes of paragraph (c)(1):

i. a discovery-related motion and any replies or other correspondence relating to the motion shall be considered to be a single motion;

ii. a contested motion requesting the issuance of one or more subpoenas shall include the motion, the draft subpoena(s), a written objection from the party opposing the motion, and any other documents supporting a party's position; and

iii. a contested motion requesting the issuance of one or more orders for production or appearance shall include the motion, the draft order(s), a written objection from the party opposing the motion, and any other documents supporting a party's position.

(3) The panel will allocate the cost of the honoraria under paragraph (c)(1) to the parties pursuant to [Rule 12902\(c\)](#).

(d) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to [Rule 12904\(g\)](#) will receive an additional honorarium of \$400.

(2) If the panel decides on its own to write an explained decision, then no panel member will receive the additional honorarium of \$400.

## 12300. Filing and Serving Documents

### **(a) Party Portal**

(1) Parties must use the Party Portal to file initial statements of claim and to file and serve pleadings and any other documents on the Director or any other party except as provided in paragraphs (a)(2) and (a)(3). The Director may exercise authority to permit the use of other means of filing or service in the case of an extended Party Portal outage or in other extraordinary circumstances.



(2) *Pro Se* customers are not required to use the Party Portal to file initial statements of claim or to file and serve pleadings and any other documents on the Director or any other party. However, if a *pro se* customer files a claim using the Party Portal, the *pro se* customer must use the Party Portal for the duration of the arbitration process. If a *pro se* customer opts out of using the Party Portal the following apply:

(A) the *pro se* customer may file an arbitration claim with the Director by any method described in Rule 12300(a)(2)(C);

(B) the *pro se* customer must comply with the requirements of Rules 12302(a) and (b) when filing the claim with the Director;

(C) filing and service methods available are first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile;

(D) filing and service by first-class mail or overnight mail service is accomplished on the date of mailing, and filing or service by any other means is accomplished on the date of delivery;

(E) except for the initial statement of claim, the *pro se* customer must provide proof of service for any documents served outside of the Party Portal; and

(F) the Director will serve the Claim Notification Letter or initial statement of claim on the respondents pursuant to Rule 12302.

(3) Parties shall not file with FINRA or serve on any other party, through the Party Portal, documents produced during discovery pursuant to the Rule 12500 Series. Available service methods for such documents are first-class mail, overnight mail service, overnight delivery service, hand delivery, email, or facsimile.

#### **(b) Filing**

(1) Except as noted in Rules 12300(a)(2) and 12300(a)(3), parties must file initial statements of claim and all pleadings and other documents with the Director through the Party Portal. Parties must file with the Director any written responses relating to discovery requests under Rules 12506 and 12507, but shall not file any of the documents produced in response to discovery requests as provided in Rule 12300(a)(3).

(2) Except as noted in Rule 12300(a)(2), parties must file arbitrator ranking lists pursuant to Rules 12402(d) and 12403(c) with the Director through the Party Portal.

(3) Filing under Rule 12300(b) is accomplished on the day of submission through the Party Portal. Filing by first-class mail or overnight mail service is accomplished on the date of mailing. Filing by any other means is accomplished on the date of delivery.

### **(c) Service**

(1) The Director will serve the Claim Notification Letter or initial statement of claim on the respondent(s) pursuant to Rule 12302.

(2) Except as noted in Rules 12300(a)(2) and 12300(a)(3), parties must serve all pleadings and other documents through the Party Portal.

(3) Parties must serve all pleadings and other documents on *pro se* customers who opt out of the Party Portal pursuant to Rule 12300(a)(2), by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile.

(4) Service under Rule 12300(c) is accomplished on the day of submission through the Party Portal. Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery.

(5) For documents not served through the Party Portal, parties must file proof of service with the Director through the Party Portal. Under Rule 12300(a)(2), if a *pro se* customer opts out of using the Party Portal, the *pro se* customer is not required to use the Party Portal to serve pleadings and any other documents.

### **(d) General Rules for Filing and Serving Documents**

#### **(1) Redaction of Personal Confidential Information**

(A) In filings with the Director, a party must redact any document that contains an individual's Social Security number, taxpayer identification number or financial account number to include only the last four digits of any of these numbers. If the Director receives a claim, including supporting documents, with the full Social Security number, taxpayer identification number or financial account number, the Director will deem the filing deficient under Rule 12307 and will request that the

party refile the document in compliance with this paragraph. If a party files with the Director any document not covered by Rule 12307 that contains full numbers as referenced above, the Director will deem the filing improper and will request that the party refile the document within 30 days from the time the party receives notice. If a party refiles the document, the corrected documents will be considered filed on the date the party initially filed the documents with the Director.

(B) The requirements of paragraph (d)(1)(A) of this Rule do not apply to documents that parties exchange with each other and do not file with the Director, or to documents parties submit to a panel at a hearing on the merits.

#### (2) Update Contact Information

A party must serve any change of email or mailing address during an arbitration on all other parties and file this information with the Director.

## 12301. Service on Associated Persons

(a) The Director will serve the Claim Notification Letter on an associated person directly at the person's residential address or usual place of abode. If service cannot be completed at the person's residential address or usual place of abode, the Director will serve the Claim Notification Letter on the associated person at the person's business address.

(b) If a member and a person currently associated with the member are named as respondents to the same arbitration, and the Director cannot complete service as provided in paragraph (a), then the Director may serve the member with the Claim Notification Letter on behalf of the associated person. If service is made on the member, the member must serve the associated person, even if the member will not be representing the associated person in the arbitration. If the member is not representing the associated person in the arbitration, the member must notify, and provide the associated person's current address to, all parties and the Director.

# 12302. Filing and Serving an Initial Statement of Claim

## **(a) Filing Claim with the Director**

To initiate an arbitration, a claimant must file the following with the Director:

- (1) Signed and dated Submission Agreement; and
- (2) A statement of claim specifying the relevant facts and remedies requested.

The claimant may include any additional documents supporting the statement of claim.

## **(b) Fees**

At the time the statement of claim is filed, the claimant must pay all required filing fees by credit card or automated clearing house (ACH) through the Party Portal unless the party is a *pro se* customer who opts out of using the Party Portal as provided in Rule 12300(a).

## **(c) Service by Director**

Unless the statement of claim is deficient under Rule 12307, the Director will effect service as follows:

- (1) the Director will send the Claim Notification Letter to all non-customer respondent(s) pursuant to Rule 12302; and
- (2) the Director will send the Claim Notification Letter along with a copy of the Submission Agreement, the statement of claim, and any additional materials filed by the claimant, to each customer respondent. The Director will inform the customer that if the customer is *pro se*, the customer is not required to use the Party Portal; and
- (3) the Director will send a copy of the Submission Agreement, the statement of claim, and any additional materials filed by the claimant to each arbitrator by first-class mail, overnight mail service, overnight delivery service, hand delivery, email, facsimile, or through the Arbitrator and Mediator Portal, once the panel has been appointed.

## 12303. Answering the Statement of Claim

(a) Respondent(s) must serve each other party with the following documents within 45 days of receipt of the statement of claim:

(1) Signed and dated Submission Agreement; and

(2) An answer specifying the relevant facts and available defenses to the statement of claim.

The respondent may include any additional documents supporting the answer to the statement of claim. Parties that fail to answer in the time provided may be subject to default proceedings under Rule 12801.

(b) The answer to the statement of claim may include any counterclaims against the claimant, cross claims against other respondents, or third party claims, specifying all relevant facts and remedies requested, as well as any additional documents supporting such claim. If the answer contains a third party claim, the respondent must execute a Submission Agreement that lists the name of the third party and serve the third party with the answer containing the third party claim, the Submission Agreement, and all documents previously served by any party, or sent to the parties by the Director, by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile, and must file proof of service with the Director through the Party Portal except as provided in Rule 12300(a)(2). The respondent must file the third party claim and the Submission Agreement with the Director through the Party Portal except as provided in Rule 12300(a)(2).

(c) At the same time that the answer to the statement of claim is served on the other parties, the respondent must file copies of the Submission Agreement, the answer to the statement of claim, and any additional documents, with the Director, pursuant to Rule 12300(b).

(d) If the answer to the statement of claim contains any counterclaims, cross claims or third party claims, the respondent must pay all required filing fees.

## 12304. Answering Counterclaims

(a) Except as provided in Rule 12300(a)(2), a claimant must serve any answer to a counterclaim on each other party through the Party Portal within 20 days of receipt of the counterclaim. At the same time, the claimant must file the answer to the counterclaim with the Director.

(b) The answer must include the relevant facts and available defenses to the counterclaim. The claimant may include any additional documents supporting the answer to the counterclaim.

## 12305. Answering Cross Claims

(a) Except as provided in Rule 12300(a)(2), a respondent must serve an answer to a cross claim on each other party within 20 days from the date that the respondent's answer to the statement of claim is due, or from the receipt of the cross claim, whichever is later. At the same time, the respondent must file the answer to the cross claim with the Director.

(b) The answer must include the relevant facts and available defenses to the cross claim. The respondent may include any additional documents supporting the answer to the cross claim.

## 12306. Answering Third Party Claims

(a) A party responding to a third party claim must serve all other parties with the following documents within 45 days of receipt of the third party claim:

(1) Signed and dated Submission Agreement; and

(2) An answer specifying the relevant facts and available defenses to the third party claim.

The respondent may include any additional documents supporting the answer to the third party claim.

(b) The answer to the third party claim may also include any counterclaims, cross claims, or third party claims, specifying all relevant facts and remedies

requested. The answer may also include any additional documents supporting such claim. If the answer contains a third party claim, the respondent must serve the third party with the answer containing the third party claim and all documents previously served by any party, or sent to the parties by the Director, by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile, and must file proof of service with the Director through the Party Portal except as provided in Rule 12300(a)(2). The respondent must file the third party claim with the Director through the Party Portal except as provided in Rule 12300(a)(2).

(c) At the same time that the answer to the third party claim is served on the other parties, the third party respondent must also file copies of the Submission Agreement, the answer to the third party claim, and any additional documents, with the Director.

(d) If the answer to the third party claim contains any counterclaim, cross claim or third party claim, the party must also pay all required filing fees.

## 12307. Deficient Claims

(a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following:

- (1) A Submission Agreement was not filed by each claimant;
- (2) The Submission Agreement was not properly signed and dated;
- (3) The Submission Agreement does not name all parties named in the claim;
- (4) The claim does not specify the customer's city and state at the time of the events giving rise to the dispute;
- (5) The claim does not specify the claimant's or the claimant's representative's current address;
- (6) The claimant did not pay all required filing fees, unless the Director deferred the fees;

(7) The claim does not comply with the restrictions on filings with personal confidential information under Rule 12300(d)(1);

(8) A request to expunge customer dispute information from the CRD system does not include the CRD number of the party requesting expungement;

(9) A request to expunge customer dispute information from the CRD system does not include the CRD occurrence number that is the subject of the request;

(10) A request to expunge customer dispute information from the CRD system does not include the case name and docket number of the arbitration that is associated with the customer dispute information; or

(11) A request to expunge customer dispute information from the CRD system does not include an explanation of whether expungement of the same customer dispute information was (i) previously requested and, if so (ii) how it was decided.

(b) The Director will notify the claimant in writing if the claim is deficient. If the deficiency is corrected within 30 days from the time the claimant receives notice, the claim will be considered filed on the date the initial statement of claim was filed with the Director under Rule 12300(b). If all deficiencies are not corrected within 30 days, the Director will close the case without serving the claim, and will refund part of the filing fee in the amount indicated in the schedule under Rule 12900(c).

(c) The panel will not consider any counterclaim, cross claim or third party claim that is deficient. The reasons a counterclaim, cross claim or third party claim may be deficient include the reasons listed in paragraph (a). The Director will notify the party making the counterclaim, cross claim or third party claim of any deficiencies in writing. If the deficiency is corrected within 30 days from the time the party receives notice, the counterclaim, cross claim or third party claim will be considered filed on the date the initial counterclaim, cross claim or third party claim was filed with the Director. If all deficiencies are not corrected within 30 days from the time the party making the counterclaim, cross claim or third party claim receives notice of the deficiency, the panel will proceed with the arbitration as though the deficient counterclaim, cross claim or third party claim had not been made.



## 12308. Loss of Defenses Due to Untimely or Incomplete Answer

(a) If a party does not answer within the time period specified in the Code, the panel may, upon motion, bar that party from presenting any defenses or facts at the hearing, unless the time to answer was extended in accordance with the Code. The party may also be subject to default proceedings under Rule 12801, if the conditions of Rule 12801(a) apply.

(b) If a party answers a claim that alleges specific facts and contentions with a general denial, or fails to include defenses or relevant facts in its answer that were known to it at the time the answer was filed, the panel may bar that party from presenting the omitted defenses or facts at the hearing.

## 12309. Amending Pleadings or Filing Third Party Claims

### **(a) Before Panel Appointment**

Except as provided in paragraph (c) of this Rule, a party may amend a pleading or file a third party claim at any time before the panel has been appointed. Panel appointment occurs when the Director sends notice to the parties of the names of the arbitrators appointed to the panel.

#### **(1) Amending Statement of Claim Not Yet Served**

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. The Director will then serve the Claim Notification Letter or amended statement of claim in accordance with Rules 12300 and 12301.

#### **(2) Amending Any Other Pleading**

To amend any other pleading, a party must serve the amended pleading on each party and file the amended pleading with the Director.

### (3) Amendments to Add a Party or to File a Third Party Claim; Service on New Party

If a pleading is amended to add a party to the arbitration or to file a third party claim before ranked arbitrator lists are due to the Director, the party amending the pleading or filing a third party claim must serve the new party with the amended pleading or third party claim and all documents previously served by any party, or sent to the parties by the Director, by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile, and must file proof of service with the Director through the Party Portal except as provided in Rule 12300(a)(2). Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery. The party amending the pleading or filing a third party claim must file the amended pleading or third party claim with the Director through the Party Portal except as provided in Rule 12300(a)(2).

#### **(b) After Panel Appointment**

##### (1) Panel Grants Motion to Amend a Pleading or File a Third Party Claim

A party may amend a pleading or file a third party claim if the panel grants a motion to amend a pleading or file a third party claim in accordance with Rule 12503. Motions to amend a pleading or file a third party claim must include the proposed amended pleading or third party claim. If the panel grants the motion to amend the pleading or file the third party claim, the amended pleading or third party claim does not need to be re-served on the other parties, the Director, or the panel, unless the panel determines otherwise.

##### (2) Member or Associated Person Becomes Inactive

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

#### **(c) Amendments to Add a Party or File a Third Party Claim Once Ranked Arbitrator Lists are Due**

#### (1) Motion to Add a Party or File a Third Party Claim

Once the ranked arbitrator lists are due to the Director under Rule 12402 (d) or Rule 12403 (c), no party may amend a pleading to add a new party to the arbitration or file a third party claim until a panel has been appointed and the panel grants a motion to add the party or file the third party claim. Motions to add a party or file a third party claim after panel appointment must be served on all parties, including the party to be added. The party seeking to amend the pleading or file the third party claim may serve the party to be added by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery. The party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code. The response may be filed with the Director and served on all other parties by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile.

#### (2) Member or Associated Person Becomes Inactive

Once the ranked arbitrator lists are due to the Director under Rule 12402(d) or Rule 12403(c), a customer may amend a pleading to add a new party to the arbitration or file a third party claim if FINRA notifies a customer that a member or an associated person has become inactive as set forth in Rule 12202. The customer may amend a pleading to add a new party to the arbitration or file a third party claim within 60 days of receiving notice. The customer may serve the party to be added by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery. The customer must serve the amended pleading or third party claim on each other party and file the amended pleading or third party claim with the Director.

#### **(d) Responding to an Amended Pleading**

Except as provided in Rule 12310, 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 Director or panel determines otherwise.

## 12310. Answering Amended Claims

(a) If a claim is amended before it has been answered, the respondent's original time to answer is extended by 20 days.

(b) If a claim is amended after it has been answered, but before a panel has been appointed, the respondent has 20 days from receipt of the amended claim to serve an amended answer.

(c) If a claim is amended after a panel has been appointed, the respondent has 20 days from the time the respondent receives notice that the panel has granted the motion to amend the claim to serve an amended answer.

(d) The amended answer must be served on each other party. At the same time, the amended answer must also be filed with the Director.

(e) If the amended claim adds a new party to the arbitration, the new party's time to answer is governed by Rules 12303 or 12306.

## 12311. Amendments to Amount in Dispute

If an amended pleading increases the amount in dispute, all filing fees, surcharges and process fees required by the Code will be recalculated based on the new amount in dispute.

## 12312. Multiple Claimants

(a) One or more parties may join multiple claims together in the same arbitration if the claims contain common questions of law or fact and:

- The claims assert any right to relief jointly and severally; or
- The claims arise out of the same transaction or occurrence, or series of transactions or occurrences.

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is

appointed. A party whose claims were separated by the Director may make a motion to the panel in the lowest numbered case to reconsider the Director's decision.

## 12313. Multiple Respondents

(a) One or more parties may name one or more respondents in the same arbitration if the claims contain any questions of law or fact common to all respondents and:

- The claims are asserted against the respondents jointly and severally; or
- The claims arise out of the same transaction or occurrence, or series of transactions or occurrences.

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed. A party whose claims were separated by the Director may make a motion to the panel in the lowest numbered case to reconsider the Director's decision.

## 12314. Combining Claims

### **(a) Director's Authority to Combine Claims**

Before ranked arbitrator lists are due to the Director under Rule 12402 (d) or Rule 12403 (c), the Director may combine separate but related claims into one arbitration.

### **(b) Panel's Authority to Combine Claims**

If a panel has been appointed to one or more cases, the panel appointed to the lowest numbered case with a panel may:

- (1) combine separate but related claims into one arbitration; and
- (2) reconsider the Director's decision under paragraph (a) upon motion of a party.

# 12400. List Selection Algorithm and Arbitrator Rosters

## **(a) List Selection Algorithm**

FINRA uses a list selection algorithm that generates, on a random basis, lists of arbitrators from FINRA's rosters of arbitrators for the selected hearing location for each proceeding. The parties will select their panel through a process of striking and ranking the arbitrators on lists generated by the list selection algorithm.

## **(b) Arbitrator Rosters**

FINRA maintains the following roster of arbitrators:

- (1) A roster of non-public arbitrators as defined in [Rule 12100\(t\)](#);
- (2) A roster of public arbitrators as defined in [Rule 12100\(aa\)](#); and

(3) A roster of arbitrators who are eligible to serve as chairperson of a panel as described in paragraph (c). Arbitrators who are eligible to serve as chairperson will also be included in the roster of public arbitrators, but will only appear on one list in a case.

## **(c) Eligibility for Chairperson Roster**

In customer disputes, chairpersons must be public arbitrators. Arbitrators are eligible for the chairperson roster if they have completed chairperson training provided by FINRA and:

(1) Have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least one arbitration administered by a self-regulatory organization in which hearings were held; or

(2) Have served as an arbitrator through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held.

## 12401. Number of Arbitrators

### **(a) Claims of \$50,000 or Less**

If the amount of a claim is \$50,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800.

### **(b) Claims of More Than \$50,000 Up To \$100,000**

If the amount of a claim is more than \$50,000 but not more than \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator unless the parties agree in writing to three arbitrators.

### **(c) Claims of More Than \$100,000; Unspecified or Non-Monetary Claims**

If the amount of a claim is more than \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

## 12402. Cases with One Arbitrator

### **(a) Composition of Panels**

The arbitrator will be a public arbitrator selected from the public chairperson roster, unless the parties agree in writing otherwise.

### **(b) Generating Lists**

(1) The list selection algorithm will generate a list of 10 public arbitrators from the FINRA chairperson roster.

(2) The list selection algorithm will exclude arbitrators from the list based upon current conflicts of interest identified within the list selection algorithm.

(3) The Director will exclude arbitrators from the list based upon a review of current conflicts of interest not identified within the list selection algorithm. If an arbitrator is removed due to such conflicts, the list selection algorithm will randomly select an arbitrator to complete the list.

### **(c) Sending Lists to Parties**

(1) The Director will send the list generated by the list selection algorithm to all parties at the same time, within approximately 30 days after the last answer is due, regardless of the parties' agreement to extend any answer due date. The parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

(2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 12402(d)(3).

### **(d) Striking and Ranking Arbitrators**

(1) Each separately represented party may strike up to four of the arbitrators from the list for any reason by crossing through the names of the arbitrators. At least six names must remain on the list.

(2) Each separately represented party shall rank all remaining arbitrators on the list in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on.

(3) The ranked list must be completed via the Party Portal or, if the party is a *pro se* customer who opted out of using the Party Portal pursuant to [Rule 12300\(a\)](#), returned to the Director by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile no more than 20 days after the date upon which the Director sent the lists to the parties. If the Director does not receive a party's ranked list within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators.

(4) Parties are not required to send a copy of their ranking list to the opposing parties.

### **(e) Combining Lists**

The Director will prepare a combined ranked list of arbitrators based on the parties' numerical rankings, as follows:



(1) The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce a separate combined ranked list for the claimants and the respondents.

(2) The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.

**(f) Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List**

(1) The Director will appoint the highest-ranked available arbitrator from the combined chairperson list.

(2) If the number of arbitrators available to serve from the combined list is not sufficient to fill an initial panel, the Director will appoint a chair-qualified arbitrator to complete the panel from names generated randomly by the list selection algorithm.

(3) The Director will provide the parties information about the arbitrator as provided in Rule 12402(c) and the parties will have the right to challenge the arbitrator as provided in [Rule 12407](#).

(4) Appointment of the arbitrator occurs when the Director sends notice to the parties of the name of the arbitrator. Before making any decision as an arbitrator or attending a hearing session, the arbitrator must execute FINRA's arbitrator oath or affirmation.

**(g) Replacement of Arbitrators**

(1) If an arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule.

(2) The Director will appoint as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator remaining on the combined list.

(3) If there are no available arbitrators on the combined list, the Director will appoint an arbitrator from the chairperson roster to complete the panel from names generated by the list selection algorithm. The Director will provide the

parties information about the arbitrator as provided in Rule 12402(c) and the parties shall have the right to object to the arbitrator as provided in [Rule 12407](#).

## 12403. Cases with Three Arbitrators

### **Composition of Panels**

#### **(a) Generating Lists**

(1) The list selection algorithm will generate:

(A) A list of 10 arbitrators from the FINRA non-public arbitrator roster;

(B) A list of 15 arbitrators from the FINRA public arbitrator roster; and

(C) A list of 10 public arbitrators from the FINRA chairperson roster.

(2) The list selection algorithm will generate the chairperson list first. Chair-qualified arbitrators who were not selected for the chairperson list will be eligible for selection on the public list. An individual arbitrator cannot appear on both the chairperson list and the public list for the same case.

(3) The list selection algorithm will exclude arbitrators from the lists based upon current conflicts of interest identified within the list selection algorithm.

(4) The Director will exclude arbitrators from the lists based upon a review of current conflicts of interest not identified within the list selection algorithm. If an arbitrator is removed due to such conflicts, the list selection algorithm will randomly select an arbitrator to complete the list.

#### **(b) Sending Lists to Parties**

(1) The Director will send the lists generated by the list selection algorithm to all parties at the same time, within approximately 30 days after the last answer is due, regardless of the parties' agreement to extend any answer due date. The parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

(2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any

response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 12403(c)(3).

### **(c) Striking and Ranking Arbitrators**

#### **(1) Non-Public Arbitrator List**

(A) Each separately represented party may strike any or all of the arbitrators from the non-public arbitrator list by crossing through the names of the arbitrators.

(B) If any names remain on the non-public arbitrator list, each separately represented party shall rank all remaining arbitrators in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on.

#### **(2) Chairperson and Public Lists**

(A) Each separately represented party may strike up to four of the arbitrators from the chairperson list and up to six of the arbitrators from the public arbitrator list for any reason by crossing through the names of the arbitrators. At least six names must remain on the chairperson list and nine names must remain on the public arbitrator list.

(B) Each separately represented party shall rank all remaining arbitrators on the lists in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each list of arbitrators must be ranked separately.

(3) The ranked lists must be completed via the Party Portal or, if the party is a *pro se* customer who opted out of using the Party Portal pursuant to [Rule 12300\(a\)](#), returned to the Director by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile no more than 20 days after the date upon which the Director sent the lists to the parties. If the Director does not receive a party's ranked lists within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators. A party's failure to comply with the 20-day timeframe

may result in the appointment of a panel consisting of two public arbitrators and one non-public arbitrator.

(4) Parties are not required to send a copy of their ranking list to the opposing parties.

#### **(d) Combining Lists**

For each arbitrator classification (public, non-public, and chairperson), the Director will prepare combined ranked lists of arbitrators based on the parties' numerical rankings, as follows:

(1) The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents.

(2) The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.

(3) The Director will create separate combined ranked lists for each arbitrator classification in cases with both public and non-public arbitrators.

#### **(e) Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on the List**

(1) The Director will appoint:

(A) The highest-ranked available non-public arbitrator from the combined non-public arbitrator list;

(B) The highest-ranked available public arbitrator from the combined public arbitrator list, and

(C) The highest-ranked available public arbitrator from the combined chairperson list, who will serve as chairperson of the panel.

(2) If the number of arbitrators available to serve from the combined public or chairperson lists is not sufficient to fill an initial panel, the Director will appoint one or more arbitrators of the required classification to complete the panel from names

generated randomly by the list selection algorithm. The Director will provide the parties information about the arbitrators as provided in Rule 12403(b) and the parties will have the right to challenge the arbitrators as provided in [Rule 12407](#).

(3) In cases in which the parties collectively strike all of the arbitrators appearing on the non-public list or when all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason:

(A) The Director will return to the public list and select the next highest ranked available arbitrator (after the public arbitrator position has been filled) to complete the three member panel.

(B) In the event no ranked arbitrators remain on the public list or when all remaining arbitrators on the public list are unable or unwilling to serve for any reason, FINRA will select the next highest ranked arbitrator appearing on the chair-qualified list (after the chair position has been filled) to complete the three member panel.

(C) If the number of arbitrators available to serve from the chair-qualified list and public list is not sufficient to fill an initial panel, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the list selection algorithm. The Director will provide the parties information about the arbitrator as provided in Rule 12403(b) and the parties will have the right to challenge the arbitrator as provided in [Rule 12407](#).

(4) Appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. Before making any decision as an arbitrator or attending a hearing session, the arbitrators must execute FINRA's arbitrator oath or affirmation.

#### **(f) Replacement of Public Arbitrators**

(1) If a public arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

(2) The Director will appoint as a replacement arbitrator the public arbitrator who is the most highly ranked available public arbitrator remaining on the combined public list.

(3) If the next highest ranked available public arbitrator from the combined list is unable or unwilling to serve for any reason, the Director will return to the initial public list and appoint the next highest ranked available arbitrator to complete the three member panel.

(4) If all remaining arbitrators on the public list are unable or unwilling to serve for any reason, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the list selection algorithm.

(5) The Director will provide the parties information about the arbitrator as provided in Rule 12403(b) and the parties shall have the right to object to the arbitrator as provided in [Rule 12407](#).

#### **(g) Replacement of a Chairperson**

(1) If a chairperson is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

(2) The Director will appoint as a replacement arbitrator the chair-qualified arbitrator who is the most highly ranked available arbitrator remaining on the combined chair-qualified list.

(3) If the next highest ranked available chair-qualified arbitrator from the combined list is unable or unwilling to serve for any reason, the Director will return to the initial chair-qualified list and appoint the next highest ranked available arbitrator to complete the three member panel.

(4) If all remaining arbitrators on the chair-qualified list are unable or unwilling to serve for any reason, the Director will appoint a chair-qualified public arbitrator to complete the panel from names generated randomly by the list selection algorithm.

(5) The Director will provide the parties information about the arbitrator as provided in Rule 12403(b) and the parties shall have the right to object to the arbitrator as provided in [Rule 12407](#).

#### **(h) Replacement of Non-Public Arbitrators**

(1) If a non-public arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

(2) In cases in which the parties collectively do not strike all of the non-public arbitrators from the initial list, the Director will appoint as a replacement arbitrator the non-public arbitrator who is the most highly ranked available non-public arbitrator remaining on the combined non-public list.

(3) If the next highest ranked available non-public arbitrator is unable or unwilling to serve for any reason, the Director will return to the initial non-public list and appoint the next highest ranked available arbitrator to complete the three member panel.

(4) In the event no ranked arbitrators remain on the non-public list or when all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason, the Director will return to the public list and select the next highest ranked available arbitrator to complete the three member panel.

(A) In the event no ranked arbitrators remain on the public list or when all remaining arbitrators on the public list are unable or unwilling to serve for any reason, FINRA will select the next highest ranked arbitrator appearing on the chair-qualified list to complete the three member panel.

(B) In the event no ranked arbitrators remain on the chair-qualified list or when all remaining arbitrators on the chair-qualified list are unable or unwilling to serve for any reason, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the list selection algorithm.

(5) The Director will provide the parties information about the arbitrator as provided in Rule 12403(b) and the parties shall have the right to object to the arbitrator as provided in [Rule 12407](#).

## 12404. Additional Parties

(a) If a party is added to an arbitration after the Director sends the lists generated by the list selection algorithm to the parties, but before the ranked lists are due to the Director, the Director will send the lists to the newly added party, with employment history for the past 10 years and other background information for each arbitrator listed. The newly added party may rank and strike the arbitrators in accordance with Rules [12402\(d\)](#) or [12403\(c\)](#). If the Director receives the ranked lists from the newly added party within 20 days after the date upon which the Director sent the lists to the party, the Director will include the new party's lists when combining rankings under Rules [12402\(e\)](#) or [12403\(d\)](#). If the Director does not receive the list(s) within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preference among the listed arbitrators.

(b) Once the ranked lists are due to the Director under Rules [12402\(d\)\(3\)](#) or [Rule 12403\(c\)\(3\)](#), no party may amend a pleading to add a new party to the arbitration until a panel is appointed and grants a motion to add the party. Motions to add a party must be served on all parties. The party amending the pleading must serve the party to be added by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Service by first-class mail or overnight mail service is accomplished on the date of mailing. Service by any other means is accomplished on the date of delivery. The party to be added may respond to the motion in accordance with [Rule 12503](#) without waiving any rights or objections under the Code. The response may be filed with the Director and served on all other parties by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. If the panel grants the motion to add the party, the newly added party may not strike and rank the arbitrators, but may challenge an arbitrator for cause in accordance with [Rule 12407](#).

## 12405. Disclosures Required of Arbitrators

(a) Before appointing arbitrators to a panel, the Director will notify the arbitrators of the nature of the dispute and the identity of the parties. Each potential arbitrator must make a reasonable effort to learn of, and must disclose to



the Director, any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, including:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration;

(2) Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any party, any party's representative, or anyone who the arbitrator is told may be a witness in the proceeding, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias;

(3) Any such relationship or circumstances involving members of the arbitrator's family or the arbitrator's current employers, partners, or business associates; and

(4) Any existing or past service as a mediator for any of the parties in the case for which the arbitrator has been selected.

(b) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in paragraph (a) is a continuing duty that requires an arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

(c) The Director will inform the parties to the arbitration of any information disclosed to the Director under this rule unless the arbitrator who disclosed the information declines appointment or voluntarily withdraws from the panel as soon as the arbitrator learns of any interest, relationship or circumstance that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator.

## 12406. Arbitrator Recusal

Any party may ask an arbitrator to recuse himself or herself from the panel for good cause. Requests for arbitrator recusal are decided by the arbitrator who is the subject of the request.

# 12407. Removal of Arbitrator by Director

## **(a) Before First Hearing Session Begins**

After the Director sends the list(s) generated by the list selection algorithm to the parties, but before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) The Director will grant a party's request 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 definite and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer under this rule will be resolved in favor of the customer.

(2) The Director must first notify the parties before removing an arbitrator on the Director's own initiative. The Director may not remove the arbitrator if the parties agree in writing to retain the arbitrator within five days of receiving notice of the Director's intent to remove the arbitrator.

## **(b) After First Hearing Session Begins**

After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under Rule 12405 that was not previously known by the parties. The Director may exercise this authority upon request of a party or on the Director's own initiative. Only the Director may exercise the authority under this paragraph (b).

## **(c) Written Explanations**

The Director shall provide to the parties a written explanation of the Director's decision to grant or deny a party's request to remove an arbitrator pursuant to paragraph (a) or (b) of this Rule.

## 12408. Director's Discretionary Authority

The Director may exercise discretionary authority and make any decision that is consistent with the purposes of the Code to facilitate the appointment of arbitrators and the resolution of arbitrations.

## 12409. Jurisdiction of Panel and Authority to Interpret the Code

The panel has the authority to interpret and determine the applicability of all provisions under the Code. Such interpretations are final and binding upon the parties.

## 12410. Determinations of Arbitration Panel

All rulings and determinations of the panel must be made by a majority of the arbitrators, unless the parties agree, or the Code or applicable law provides, otherwise.

## 12500. Initial Prehearing Conference

(a) After the panel is appointed, the Director will schedule an Initial Prehearing Conference before the panel, except as provided in paragraph (c) of this Rule.

(b) The Initial Prehearing Conference will generally be held by video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session. Unless the parties agree otherwise, the Director must notify each party of the time and place of the Initial Prehearing Conference at least 20 days before it takes place.

(c) At the Initial Prehearing Conference, the panel will set discovery, briefing, and motions deadlines, schedule subsequent hearing sessions, and address other preliminary matters. The parties may agree to forgo the Initial Prehearing Conference only if they jointly provide the Director with the following information, in writing before the Initial Prehearing Conference is scheduled to be held:

- (1) A statement that the parties accept the panel;
  - (2) Whether any other prehearing conferences will be held, and if so, for each prehearing conference, a minimum of four mutually agreeable dates and times, and whether the chairperson or the full panel will preside;
  - (3) A minimum of four sets of mutually agreeable hearing dates;
  - (4) A discovery schedule;
  - (5) A list of all anticipated motions, with filing and response due dates; and
  - (6) A determination regarding whether briefs will be submitted, and, if so, the due date for the briefs and any reply briefs.
- (d) If a cancellation request is agreed to by the parties or requested by one or more parties within three business days before a scheduled prehearing conference and granted, the party or parties shall be charged a fee of \$100 per arbitrator scheduled to attend the prehearing conference. If more than one party requests the cancellation, the arbitrator(s) may allocate the \$100 per-arbitrator fee between or among the requesting parties. If one party requests the cancellation, the arbitrator(s) shall allocate the fee to that party; provided, however, the arbitrator(s) may allocate all or a portion of the \$100 per-arbitrator fee to the non-requesting party or parties if the arbitrator(s) determine that the non-requesting party or parties caused or contributed to the need for the cancellation. In the event that an extraordinary circumstance prevents a party or parties from making a timely cancellation request, the arbitrator(s) may use their discretion to waive the fee, provided a written explanation of such circumstance is received.

## 12501. Other Prehearing Conferences

- (a) A prehearing conference may be scheduled upon the joint request of the parties or at the discretion of the Director. The Director will set the time and place of the prehearing conference and appoint a person to preside.
- (b) At a party's request, or at the discretion of the panel, the panel may schedule one or more additional prehearing conferences regarding any outstanding preliminary matters, including:

- (1) Discovery disputes;
- (2) Motions;
- (3) Witness lists and subpoenas;
- (4) Stipulations of fact;
- (5) Unresolved scheduling issues;
- (6) Contested issues on which the parties will submit briefs; and
- (7) Any other matter that will simplify or expedite the arbitration.

(c) The panel will determine the time and place of any additional prehearing conferences. Prehearing conferences will generally be held by video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session. Unless the full panel is required under Rule 12503, prehearing conferences may be held before a single arbitrator, generally the chairperson.

(d) If a cancellation request is agreed to by the parties or requested by one or more parties within three business days before a scheduled prehearing conference and granted, the party or parties shall be charged a fee of \$100 per arbitrator scheduled to attend the prehearing conference. If more than one party requests the cancellation, the arbitrator(s) may allocate the \$100 per-arbitrator fee between or among the requesting parties. If one party requests the cancellation, the arbitrator(s) shall allocate the fee to that party; provided, however, the arbitrator(s) may allocate all or a portion of the \$100 per-arbitrator fee to the non-requesting party or parties if the arbitrator(s) determine that the non-requesting party or parties caused or contributed to the need for the cancellation. In the event that an extraordinary circumstance prevents a party or parties from making a timely cancellation request, the arbitrator(s) may use their discretion to waive the fee, provided a written explanation of such circumstance is received.

## 12502. Recording Prehearing Conferences

(a) Prehearing conferences will not be recorded unless the panel determines otherwise, either on its own initiative or upon motion of a party.

(b) If a prehearing conference is recorded, it may be recorded using any of the methods discussed under Rule 12606. The Director will provide a copy of the recording to any party upon request.

## 12503. Motions

### **(a) Motions**

(1) A party may make motions in writing, or orally during any hearing session. Before making a motion, a party must make an effort to resolve the matter that is the subject of the motion with the other parties. Every motion, whether written or oral, must include a description of the efforts made by the moving party to resolve the matter before making the motion.

(2) Written motions are not required to be in any particular form, and may take the form of a letter, legal motion, or any other form that the panel decides is acceptable. Written motions must be served on each other party. Written motions must also be filed with the Director.

(3) Written motions must be served at least 20 days before a scheduled hearing, unless the panel decides otherwise.

(4) Motions to amend a pleading after panel appointment pursuant to Rule 12309(b) must include the proposed amended pleading when the motion is served on the other parties and filed with the Director. If the panel grants the motion, the amended pleading does not have to be served again, unless the panel determines otherwise. Motions to amend a pleading to add a party are made pursuant to Rule 12309(c).

### **(b) Responding to Motions**

Parties have 10 days from the receipt of a written motion to respond to the motion, unless the moving party agrees to an extension of time, or the Director or the panel decides otherwise. Responses to written motions must be served on each other party. Responses to written motions must also be filed with the Director.

### **(c) Replying to Responses to Motions**

Parties have 5 days from the receipt of a response to a motion to reply to the response unless the responding party agrees to an extension of time, or the Director or the panel decides otherwise. Replies to responses must be served on each other party. Replies to responses must also be filed with the Director.

#### **(d) Sending Motions, Responses, and Replies and Additional Motion Submissions to the Panel**

The Director will send all motions, responses, and replies to the panel after the last reply date has elapsed, unless otherwise directed by the panel. After the last reply date has elapsed, if the Director receives additional submissions on the motion, the Director will forward the submissions to the panel upon receipt and the panel will then determine whether to accept them.

#### **(e) Authority to Decide Motions**

(1) The Director decides motions relating to use of the forum under Rule 12203 and removal of an arbitrator under Rule 12407.

(2) Motions relating to changing the hearing location, are decided by the Director before a panel is appointed, and by the panel after the panel is appointed.

(3) Motions relating to separating claims or arbitrations are decided in accordance with Rules 12312 or 12313.

(4) Motions relating to combining claims are decided in accordance with Rule 12314.

(5) Discovery-related motions are decided by one arbitrator, generally the chairperson. The arbitrator may refer such motions to the full panel either at his or her own initiative, or at the request of a party. The arbitrator must refer motions relating to privilege to the full panel at the request of a party.

(6) Motions for arbitrator recusal under Rule 12406 are decided by the arbitrator who is the subject of the request.

(7) The full panel decides all other motions, including motions relating to the eligibility of a claim under Rule 12206, unless the Code provides or the parties agree otherwise.

# 12504. Motions to Dismiss

## **(a) Motions to Dismiss Prior to Conclusion of Case in Chief**

(1) Motions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged in arbitration.

(2) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(3) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion. Moving parties may reply to responses to motions. Any such reply must be made within 5 days of receipt of a response.

(4) Motions under this rule will be decided by the full panel.

(5) The panel may not grant a motion under this Rule unless a prehearing conference on the motion is held or waived by the parties. Prehearing conferences under this Rule will be recorded as set forth in Rule 12606 and will generally be held by video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session.

(6) The panel cannot act upon a motion to dismiss a party or claim under paragraph (a) of this rule, unless the panel determines that:

(A) the non-moving party previously released the claim(s) in dispute by a signed settlement agreement and/or written release;

(B) the moving party was not associated with the account(s), security(ies), or conduct at issue; or

(C) The non-moving party previously brought a claim regarding the same dispute against the same party that was fully and finally adjudicated on the merits and memorialized in an order, judgment, award, or decision.

(7) If the panel grants a motion under this rule (in whole or part), the decision must be unanimous, and must be accompanied by a written explanation.



(8) If the panel denies a motion under this rule, the moving party may not re-file the denied motion, unless specifically permitted by panel order.

(9) If the panel denies a motion under this rule, the panel must assess forum fees associated with hearings on the motion against the moving party.

(10) If the panel deems frivolous a motion filed under this rule, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.

(11) The panel also may issue other sanctions under Rule 12212 if it determines that a party filed a motion under this rule in bad faith.

#### **(b) Motions to Dismiss After Conclusion of Case in Chief**

A motion to dismiss made after the conclusion of a party's case in chief is not subject to the procedures set forth in paragraph (a). If the panel grants a motion to dismiss all claims, the decision must contain the elements enumerated under Rule 12904(e) and must be made publicly available as an award.

#### **(c) Motions to Dismiss Based on Eligibility**

A motion to dismiss based on eligibility filed under Rule 12206 will be governed by that rule.

#### **(d) Motions to Dismiss Based on Failure to Comply with Code or Panel Order**

A motion to dismiss based on failure to comply with any provision in the Code, or any order of the panel or single arbitrator filed under Rule 12212 will be governed by that rule.

#### **(e) Motions to Dismiss Based on Discovery Abuse**

A motion to dismiss based on discovery abuse filed under Rule 12511 will be governed by that rule.

# 12505. Cooperation of Parties in Discovery

The parties must cooperate to the fullest extent practicable in the exchange of documents and information to expedite the arbitration.

## 12506. Document Production Lists

### **(a) Applicability of Document Production Lists**

The Director will notify parties of the location of the FINRA Discovery Guide and Document Production Lists on FINRA's Web site, but will provide a copy to the parties upon request. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member or associated person.

### **(b) Time for Responding to Document Production Lists**

(1) Unless the parties agree otherwise, within 60 days of the date that the answer to the statement of claim is due, or, for parties added by amendment or third party claim, within 60 days of the date that their answer is due, parties must either:

(A) Produce to all other parties all documents in their possession or control that are described in Document Production Lists 1 and 2 serving the requested documents or information by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile as provided in Rule 12300(a)(3);

(B) Identify and explain the reason that specific documents described in Document Production Lists 1 and 2 cannot be produced within the required time, and state when the documents will be produced, and serve this response on all parties and file this response with the Director; or

(C) Object as provided in Rule 12508 and serve this response on all parties and file this response with the Director.

(2) A party must act in good faith when complying with subparagraph (1) of this rule. "Good faith" means that a party must use its best efforts to produce all documents required or agreed to be produced. If a document cannot be produced

in the required time, a party must establish a reasonable timeframe to produce the document.

### **(c) Redacted Information**

For purposes of this rule and Rule 12507, if a party redacts any portion of a document prior to production, the redacted pages (or range of pages) shall be labeled "redacted."

## **12507. Other Discovery Requests**

### **(a) Making Other Discovery Requests**

(1) Parties may also request additional documents or information from any party by serving a written request on the party. Requests for information are generally limited to identification of individuals, entities, and time periods related to the dispute; such requests should be reasonable in number and not require narrative answers or fact finding. Standard interrogatories are generally not permitted in arbitration.

(2) Other discovery requests may be served:

(A) On the claimant, or any respondent named in the initial statement of claim, 45 days or more after the Director serves the statement of claim; and

(B) On any party subsequently added to the arbitration, 45 days or more after the statement of claim is served on that party.

The party must serve copies of the request on all other parties. Any request for documents or information not described in applicable Document Production Lists should be specific, and relate to the matter in controversy.

### **(b) Responding to Other Discovery Requests**

(1) Unless the parties agree otherwise, within 60 days from the date a discovery request other than the Document Production Lists is received, the party receiving the request must either:

(A) Produce the requested documents or information to all other parties by serving the requested documents or information by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile;

(B) Identify and explain the reason that specific requested documents or information cannot be produced within the required time, state when the documents will be produced, and serve this response on all parties and file this response with the Director; or

(C) Object as provided in Rule 12508 and serve this response on all parties and file this response with the Director.

(2) A party must act in good faith when complying with subparagraph (1) of this rule. "Good faith" means that a party must use its best efforts to produce all documents or information required or agreed to be produced. If a document or information cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document or information.

## 12508. Objecting to Discovery; Waiver of Objection

(a) If a party objects to producing any document described in Document Production Lists 1 or 2 or any document or information requested under Rule 12507, it must specifically identify which document or requested information it is objecting to and why. Objections must be in writing, and must be served on all other parties. Parties must produce all applicable listed documents, or other requested documents or information not specified in the objection by serving the requested documents or information under Rule 12300.

(b) Any objection not made within the required time is waived unless the panel determines that the party had substantial justification for failing to make the objection within the required time.

(c) In making any rulings on objections, arbitrators may consider the relevance of documents or discovery requests and the relevant costs and burdens to parties to produce this information.

## 12509. Motions to Compel Discovery

(a) A party may make a motion asking the panel to order another party to produce documents or information if the other party has:

- Failed to comply with Rule 12506 or 12507; or

- Objected to the production of documents or information under Rule 12508.

(b) Motions to compel discovery must be made, and will be decided, in accordance with Rule 12503. Such motions must include the disputed document request or list, a copy of any objection thereto, and a description of the efforts of the moving party to resolve the issue before making the motion.

## 12510. Depositions

Depositions are strongly discouraged in arbitration. Upon motion of a party, the panel may permit depositions, but only under very limited circumstances, including:

- To preserve the testimony of ill or dying witnesses;
- To accommodate essential witnesses who are unable or unwilling to travel long distances for a hearing and may not otherwise be required to participate in the hearing;
- To expedite large or complex cases; and
- If the panel determines that extraordinary circumstances exist.

## 12511. DiscoverySanctions

(a) Failure to cooperate in the exchange of documents and information as required under the Code may result in sanctions. The panel may issue sanctions against any party in accordance with Rule 12212(a) for:

- Failing to comply with the discovery provisions of the Code, unless the panel determines that there is substantial justification for the failure to comply; or
- Frivolously objecting to the production of requested documents or information.

(b) The panel may dismiss a claim, defense or proceeding with prejudice in accordance with Rule 12212(c) for intentional and material failure to comply with a discovery order of the panel if prior warnings or sanctions have proven ineffective.

# 12512. Subpoenas

(a) To the fullest extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas.

(1) Arbitrators shall have the authority to issue subpoenas for the production of documents or the appearance of witnesses.

(2) Unless circumstances dictate the need for a subpoena, arbitrators shall not issue subpoenas to non-party FINRA members and/or employees or associated persons of non-party FINRA members at the request of FINRA members and/or employees or associated persons of FINRA members. If the arbitrators determine that the request for the appearance of witnesses or the production of documents should be granted, the arbitrators should order the appearance of such persons or the production of documents from such persons or non-party FINRA members under Rule 12513.

(b) A party may make a written motion requesting that an arbitrator issue a subpoena to a party or a non-party. The motion must include a draft subpoena and must be filed with the Director. The requesting party must serve the motion and draft subpoena on each other party. The requesting party may not serve the motion or draft subpoena on a non-party.

(c) If a party receiving a motion and draft subpoena objects to the scope or propriety of the subpoena, that party shall, within 10 calendar days of service of the motion, file written objections with the Director, and shall serve copies on all other parties. The party that requested the subpoena may respond to the objections within 10 calendar days of receipt of the objections. After considering all objections, the arbitrator responsible for deciding discovery-related motions shall rule promptly on the issuance and scope of the subpoena.

(d) If the arbitrator issues a subpoena, the party that requested the subpoena must serve the subpoena on all parties and, if applicable, on any non-party receiving the subpoena. The party must serve the subpoena on the non-party by overnight mail service, overnight delivery service, hand delivery, email or facsimile.

(e) If a non-party receiving a subpoena objects to the scope or propriety of the subpoena, the non-party may, within 15 calendar days of receipt of the subpoena, file written objections with the Director and the requesting party. The non-party may file the objection by overnight mail service, overnight delivery service, hand delivery, email or facsimile. The Director shall forward a copy of the written objections to all other parties. The party that requested the subpoena may respond to the objections within 10 calendar days of receipt of the objections. The party must serve the response on the non-party and all other parties and file proof of service with the Director pursuant to Rule 12300(c)(5). The Director will send, at the same time, objections and responses to the panel after the reply date has elapsed, unless otherwise directed by the panel. After considering all objections, the arbitrator responsible for issuing the subpoena shall rule promptly on the objections.

(f) Any party that receives documents in response to a subpoena served on a non-party shall serve notice on all other parties within five days of receipt of the documents. Thereafter, any party may request copies of such documents and, if such a request is made, the documents must be provided within 10 calendar days following receipt of the request by serving them by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Parties must not file the documents with the Director.

(g) If the arbitrators issue a subpoena to a non-party FINRA member and/or any employee or associated person of a non-party FINRA member at the request of a FINRA member and/or employee or associated person of a FINRA member, the party requesting the subpoena shall pay the reasonable costs of the non-party's appearance and/or production, unless the panel directs otherwise.

## 12513. Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas

(a) Upon motion of a party, the panel may order the following without the use of subpoenas:

(1) The appearance of any employee or associated person of a member of FINRA; or

(2) The production of any documents in the possession or control of such persons or members.

(b) The motion must include a draft order and must be filed with the Director. The requesting party must serve the motion and draft order on each other party. The requesting party may not serve the motion or draft order on a non-party.

(c) If a party receiving a motion and draft order objects to the scope or propriety of the order, that party shall, within 10 calendar days of service of the motion, file written objections with the Director and shall serve copies on all other parties. The party that requested the order may respond to the objections within 10 calendar days of receipt of the objections. After considering all objections, the arbitrator responsible for deciding discovery-related motions shall rule promptly on the issuance and scope of the order.

(d) If the arbitrator issues an order, the party that requested the order must serve the order on all parties and, if applicable, on any non-party receiving the order. The party must serve the order on the non-party by overnight mail service, overnight delivery service, hand delivery, email or facsimile.

(e) If a non-party receiving an order objects to the scope or propriety of the order, the non-party may, within 15 calendar days of receipt of the order, file written objections with the Director and the requesting party. The non-party may file the objection by overnight mail service, overnight delivery service, hand delivery, email or facsimile. The Director shall forward a copy of the written objections to all other parties. The party that requested the order may respond to the objections within 10 calendar days of receipt of the objections. The party must serve the response on the non-party and all other parties and file proof of service with the Director pursuant to Rule 12300(c)(5). The Director will send, at the same time, objections and responses to the panel after the reply date has elapsed, unless otherwise directed by the panel. After considering all objections, the arbitrator responsible for issuing the order shall rule promptly on the objections.

(f) Any party that receives documents in response to an order served on a non-party shall serve notice on all other parties within five days of receipt of the



documents. Thereafter, any party may request copies of such documents and, if such a request is made, the documents must be provided within 10 calendar days following receipt of the request by serving them by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Parties must not file the documents with the Director.

(g) Unless the panel directs otherwise, the party requesting the appearance of witnesses by, or the production of documents from, non-parties under this rule shall pay the reasonable costs of the appearance and/or production.

## **12514. Prehearing Exchange of Documents and Witness Lists, and Explained Decision Requests**

### **(a) Documents and Other Materials**

At least 20 days before the first scheduled hearing date, all parties must provide all other parties with copies of all documents and other materials in their possession or control that they intend to use at the hearing that have not already been produced. The parties should not file the documents with the Director or the arbitrators before the hearing. If the parties create lists of documents and other materials in their possession or control that they intend to use at the hearing and have not already been produced, the parties may serve the lists on all other parties, but shall not combine the lists with the witness lists filed with the Director pursuant to Rule 12514(b).

### **(b) Witness Lists**

At least 20 days before the first scheduled hearing date, all parties must provide each other party with the names and business affiliations of all witnesses they intend to present at the hearing. All parties must file their witness lists with the Director.

### **(c) Exclusion of Documents or Witnesses**

Parties may not present any documents or other materials not produced and or any witnesses not identified in accordance with this rule 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.

**(d) Explained Decision Request**

At least 20 days before the first scheduled hearing date, all parties must file with the Director any joint request for an explained decision under Rule 12904(g).

## 12600. Required Hearings

(a) Hearings will be held, unless:

(1) The arbitration is administered under Rule 12800(c) or Rule 12801;

(2) The parties agree otherwise in writing; or

(3) The arbitration has been settled, withdrawn or dismissed.

(b) The hearing will generally be held in person unless the parties agree to, or the panel grants a motion for, another type of hearing session.

(c) The panel will decide the time and date of the hearing at the initial prehearing conference or otherwise in another manner.

(d) The Director will notify the parties of the time and place at least 20 days before the hearing begins, unless the parties agree to a shorter time.

## 12601. Postponement of Hearings

**(a) Postponement of Hearings**

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

A hearing shall be postponed:

(A) by agreement of the parties; or

(B) if FINRA notifies a customer that a member or an associated person has become inactive as set forth in Rule 12202, the scheduled hearing date is within 60

days of the date the customer receives the notice from FINRA, and the customer chooses to postpone the hearing date.

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

A hearing may be postponed:

(A) By the Director, in extraordinary circumstances;

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

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

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

## **(b) Postponement Fees**

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

(2) If a postponement request is made by one or more parties within 10 days before a scheduled hearing session and granted, the party or parties making the request shall pay an additional fee of \$600 per arbitrator. If more than one party requests the postponement, the arbitrators shall allocate the \$600 per arbitrator fee among the requesting parties. The arbitrators may allocate all or a portion of the \$600 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the postponement. In the event that a request results in the postponement of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from

making a timely postponement request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

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

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

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

(C) By the Director in extraordinary circumstances.

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

### **(c) Dismissal of Arbitration Due to Multiple Postponements**

If all parties jointly request, or agree to, more than two postponements, the panel may dismiss the arbitration without prejudice.

## **12602. Attendance at Hearings**

(a) The parties and their representatives are entitled to attend all hearings. Absent persuasive reasons to the contrary, expert witnesses should be permitted to attend all hearings.

(b) An attorney for a non-party witness may attend a hearing while that non-party witness is testifying. Unless otherwise authorized by the panel, the attorney's role is limited to the assertion of recognized privileges, such as the attorney client and work product privileges, and the privilege against self-incrimination. The attorney must be in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation.

(c) The panel will decide who else may attend any or all of the hearings.

## 12603. Failure to Appear

If a party fails to appear at a hearing after having been notified of the time, date and place of the hearing, the panel may determine that the hearing may go forward, and may render an award as though all parties had been present.

## 12604. Evidence

(a) The panel will decide what evidence to admit. The panel is not required to follow state or federal rules of evidence.

(b) Production of documents in discovery does not create a presumption that the documents are admissible at the hearing. A party may state objections to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

(c) Notwithstanding paragraph (a) of this Rule, a prior expungement award shall not be admissible.

## 12605. Witness Oath

All witnesses must testify under oath or affirmation.

## 12606. Record of Proceedings

### **(a) Digital or Other Recording**

(1) Except as provided in paragraph (b) of this Rule, the Director will make a digital or other recording of every hearing. Executive sessions (i.e., discussions among arbitrators outside the presence of the parties and their representatives, witnesses, and stenographers) held by the panel will not be recorded. The Director will provide a copy of the recording to any party upon request.

(2) The panel may order the parties to provide a transcription of the recording. If the panel orders a transcription, copies of the transcription must be provided to each arbitrator, served on each party, and filed with the Director pursuant to Rule 12300 by the party or parties ordered to make the transcription. The panel will determine which party or parties must pay the cost of making the transcription and copies.

(3) The recording is the official record of the proceeding, even if it is transcribed.

### **(b) Stenographic Record**

(1) Any party may make a stenographic record of the hearing. Even if a stenographic record is made, the digital or other recording will be the official record of the proceeding, unless the panel determines otherwise. If the panel determines in advance that the stenographic record will be the official record, the Director will not record the hearing.

(2) If the stenographic record is the official record of the proceeding, a copy must be provided by the party or parties that elected to make the stenographic record to each arbitrator, served on each other party, and filed with the Director pursuant to Rule 12300 in an electronic format. The cost of making and copying the stenographic record will be borne by the party electing to make the stenographic record, unless the panel decides that one or more other parties should bear all or part of the costs.

## **12607. Order of Presentation of Evidence and Arguments**

Generally, the claimant shall present its case, followed by the respondent's defense. The panel has the discretion to vary the order in which the hearing is conducted, provided that each party is given a fair opportunity to present its case.

## **12608. Closing the Record**

(a) The panel will decide when the record is closed. Once the record is closed, no further submissions will be accepted from any party.

(b) In cases in which no hearing is held, the record is presumed to be closed when the Director sends the pleadings to the panel, unless the panel requests, or agrees to accept, additional submissions from any party. If so, the record is presumed to be closed when the last such submission is due.

(c) In cases in which a hearing is held, the panel will generally close the record at the end of the last hearing session, unless the panel requests, or agrees to accept, additional submissions from any party. If so, the panel will inform the parties when the submissions are due and when the record will close.

## **12609. Reopening the Record**

The panel may reopen the record on its own initiative or upon motion of any party at any time before the award is rendered, unless prohibited by applicable law.

## 12700. Dismissal of Proceedings Prior to Award

(a) The panel must dismiss an arbitration or a claim at the joint request of the parties to that arbitration or claim. The dismissal will be with or without prejudice, depending on the request of the parties.

(b) The panel may dismiss a claim or an arbitration:

(1) Upon motion of a party under Rule 12206 or Rule 12504; or

(2) On its own initiative under Rule 12212(c) or Rule 12601(c).

(c) The panel may dismiss without prejudice a claim or an arbitration for lack of sufficient service upon a respondent.

## 12701. Settlement

(a) Parties to an arbitration may agree to settle their dispute at any time. Parties who settle must file notice with the Director. The Director will continue to administer the arbitration, and fees may continue to accrue, until the Director receives written notice of the settlement. The parties do not need to disclose the terms of the settlement agreement to the Director or to FINRA Dispute Resolution Services, but members and associated persons may have reporting obligations under the rules of FINRA.

(b) Settling parties will remain responsible for fees incurred under the Code. If parties to a settlement fail to agree on the allocation of any outstanding fees, those fees will be divided equally among the settling parties, except member surcharges and prehearing and hearing process fees required by the Code, which will remain the responsibility of the member party or parties.

## 12702. Withdrawal of Claims

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

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

(1) the panel decides otherwise;

(2) the claimant and that party agree otherwise; or

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

## 12800. Simplified Arbitration

### **(a) Applicability of Rule**

This rule applies to arbitrations involving \$50,000 or less, exclusive of interest and expenses. All arbitrations administered under this rule will be decided on the pleadings and other materials submitted by the parties unless the customer requests a hearing under paragraph (c) of this rule. Except as otherwise provided in this rule, all provisions of the Code apply to such arbitrations.

### **(b) Single Arbitrator**

All arbitrations administered under this Rule will be decided by a single public arbitrator appointed from the FINRA chairperson roster in accordance with the list selection algorithm, unless the parties agree in writing otherwise. An arbitrator must evidence successful completion of, and agreement with, enhanced expungement training provided by FINRA Dispute Resolution Services prior to



considering a request to expunge customer dispute information in an arbitration administered under this Rule.

### **(c) Hearings**

(1) No hearing will be held in arbitrations administered under this rule unless the customer requests a hearing.

(2) If no hearing is requested, no initial prehearing conference or other prehearing conference will be held, and the arbitrator will render an award based on the pleadings and other materials submitted by the parties.

(3) If the customer requests a hearing, the customer must select between one of two hearing options under this Rule.

(A) Option One — the regular provisions of the Code relating to prehearings and hearings, including all fee provisions.

(B) Option Two — a special proceeding, subject to the regular provisions of the Code relating to prehearings and hearings, including all fee provisions, except as modified by subparagraphs (i) through (viii) of this paragraph:

(i) a special proceeding will be held by video conference, unless the customer requests at least 60 days before the first scheduled hearing that it be held by telephone, or the parties agree to another type of hearing session;

(ii) the claimants, collectively, are limited to two hours to present their case and ½ hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions;

(iii) the respondents, collectively, are limited to two hours to present their case and ½ hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions;

(iv) notwithstanding subparagraphs (ii) and (iii) above, the arbitrator has the discretion to cede his or her allotted time to the parties;

(v) in no event shall a special proceeding exceed two hearing sessions, exclusive of prehearing conferences, to be completed in one day;

(vi) the parties may not question the opposing parties' witnesses;

(vii) a customer may not call an opposing party, a current or former associated person of a member party or a current or former employee of a member party as a witness; and

(viii) members and associated persons may not call a customer of a member party as a witness.

#### **(d) Requests to Expunge Customer Dispute Information**

##### **(1) When an Associated Person is Named as a Respondent**

(A) An associated person named as a respondent in a simplified investment-related, customer-initiated arbitration may request expungement during the arbitration of the customer dispute information associated with the customer's statement of claim, provided the request is not barred pursuant to Rule 12805(a)(1)(B).

(B) If an associated person named as a respondent requests expungement during the simplified investment-related, customer-initiated arbitration:

(i) the request must be filed in the answer or a separate pleading requesting expungement and meet the requirements of Rule 12805(a)(1)(C)(ii). If the associated person requests expungement in a pleading other than an answer, the request must be filed within 30 days after the date FINRA notifies the associated person of the appointment of the arbitrator; and

(ii) the arbitrator from the simplified arbitration shall consider and decide the expungement request in accordance with Rule 12805(c).

(C) If the associated person named as a respondent withdraws or does not pursue an expungement request after filing the request during the simplified investment-related, customer-initiated arbitration, the arbitrator shall deny the expungement request with prejudice.

##### **(2) On Behalf of an Unnamed Person**

(A) A party to a simplified investment-related, customer-initiated arbitration may request expungement on behalf of an unnamed person during the arbitration

of the customer dispute information associated with the customer's statement of claim with the written consent of the unnamed person, provided the request is not barred pursuant to Rule 12805(a)(1)(B).

(B) If a party requests expungement on behalf of an unnamed person during a simplified investment-related, customer-initiated arbitration:

(i) the request must be filed: (a) in compliance with Rules 12805(a)(1)(C)(ii), 12805(a)(2)(C)(ii), and 12805(a)(2)(D); and (b) within 30 days after the date FINRA notifies the parties of the appointment of the arbitrator; and

(ii) the arbitrator from the simplified arbitration shall consider and decide the expungement request in accordance with Rule 12805(c).

(C) If the requesting party withdraws or does not pursue an expungement request after filing the request during a simplified investment-related, customer-initiated arbitration, the arbitrator shall deny the expungement request with prejudice.

(D) If a party to the simplified investment-related, customer-initiated arbitration does not request expungement on behalf of the unnamed person, the unnamed person shall not file a motion to intervene in the simplified arbitration to request expungement of customer dispute information associated with the customer's statement of claim.

### **(e) Deciding Expungement Requests**

(1) If an associated person named as a respondent, or a party on behalf of an unnamed person, requests expungement during a simplified investment-related, customer-initiated arbitration, the expungement request shall be decided by the arbitrator from the simplified arbitration, as follows:

(A) No Hearing or Option Two Special Proceeding. If a customer requests no hearing pursuant to Rule 12800(c)(2), or an Option Two special proceeding pursuant to Rule 12800(c)(3)(B), the arbitrator shall hold a separate expungement hearing pursuant to Rule 12805(c) to consider and decide the expungement request and issue the decision on the expungement request in a separate, subsequent award in accordance with Rule 12805(c)(8).

(B) Option One Hearing. If a customer requests an Option One hearing pursuant to Rule 12800(c)(3)(A), the arbitrator shall consider and decide the expungement request, as follows:

(i) If the simplified arbitration closes by award after a hearing, the arbitrator shall consider and decide the expungement request during the Option One hearing in accordance with Rule 12805(c), and issue the decision on the expungement request in the same award in accordance with Rule 12805(c)(8).

(ii) If the simplified arbitration closes other than by award or by award without a hearing, the arbitrator shall hold a separate expungement hearing, pursuant to Rule 12805(c), to consider and decide the expungement request. At the conclusion of the expungement hearing, the arbitrator shall issue a separate award in accordance with Rule 12805(c)(8).

(2) If an associated person named as a respondent, or a party on behalf of an unnamed person, does not request expungement of the customer dispute information associated with the customer's statement of claim during the simplified investment-related, customer-initiated arbitration, the associated person may request expungement pursuant to Rule 13805 after the simplified arbitration has closed, provided that the request is not barred by Rule 13805(a)(2).

#### **(f) Notifications**

##### **(1) Notification to State Securities Regulators**

The Director shall notify state securities regulators, in the manner determined by the Director in collaboration with state securities regulators, of an expungement request within 15 days of receiving an expungement request that includes all the elements described in Rule 12805(a)(1)(C)(ii).

##### **(2) Notification to Customers**

The Director shall notify all customers from the simplified arbitration of an expungement hearing conducted pursuant to Rule 12800(e)(1) or Rule 13805, and the customers shall be permitted to attend and participate in the hearing in accordance with Rule 12805(c) or Rule 13805(c), as applicable.

#### **(g) Discovery and Additional Evidence**

(1) Document Production Lists, described in Rule 12506, do not apply to arbitrations subject to this rule. However, the arbitrator may, in his or her discretion, choose to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified proceedings.

(2) The parties may request documents and other information from each other. All requests for the production of documents and other information must be served on all other parties, and filed with the Director, within 30 days from the date that the last answer is due. Any response or objection to a discovery request must be served on all other parties and filed with the Director within 10 days of the receipt of the requests. The parties receiving the request must produce the requested documents or information to all other parties by serving the requested documents or information by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile. Parties must not file the documents with the Director. The arbitrator will resolve any discovery disputes.

#### **(h) Increases in Amount in Dispute**

If any pleading increases the amount in dispute to more than \$50,000, the arbitration will no longer be administered under this Rule, and the regular provisions of the Code will apply. If an arbitrator has been appointed, that arbitrator will remain on the panel. If a three-arbitrator panel is required or requested under [Rule 12401](#), the remaining arbitrators will be appointed by the Director in accordance with [Rule 12403](#). If no arbitrator has been appointed, the entire panel will be appointed in accordance with the list selection algorithm.

#### **(i) Arbitrator Honoraria**

FINRA will pay the arbitrator an honorarium of \$350 for each arbitration decided on the pleadings and other materials submitted by the parties. In cases where the customer requests a hearing, the regular provisions of the Code relating to arbitrator honoraria will apply.

# 12801. Default Proceedings

## **(a) Applicability of Rule**

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

(1) A member whose membership has been terminated, suspended, canceled, or revoked;

(2) A member that has been expelled or barred from FINRA;

(3) A member that is otherwise defunct; or

(4) An associated person whose registration is revoked, cancelled, or suspended, who has been expelled or barred from FINRA, or whose registration has been terminated, regardless of the number of days since termination.

## **(b) Initiating Default Proceedings**

(1) To initiate default proceedings against one or more respondents that fail to file a timely answer, the claimant must serve the notification on all other parties and file a written notification with the Director. If there is more than one claimant, all claimants must agree in writing to proceed under this rule against a defaulting respondent before this rule may be used.

(2) If the Director receives written notice from the claimant and determines that the requirements for proceeding under this Rule have been met, the Director will:

(A) Notify all parties that the claim against the defaulting respondent will proceed under this rule; and

(B) Appoint a single arbitrator in accordance with the list selection algorithm to consider the statement of claim and other documents presented by the claimant.

## **(c) Hearings**

No hearing shall be held. The arbitrator may request additional information from the claimant before rendering an award.

**(d) Amendments to Increase Relief Requested**

Claimants may not amend a claim to increase the relief requested from the defaulting respondent after the Director has notified the parties that the claim will proceed under this rule.

**(e) Awards**

(1) The arbitrator may not issue an award based solely on the nonappearance of a party. Claimants must present a sufficient basis to support the making of an award. The arbitrator may not award damages in an amount greater than the damages requested in the statement of claim, and may not award any other relief that was not requested in the statement of claim.

(2) The default award shall have no effect on any non-defaulting party.

**(f) Respondent's Answer**

If a defaulting respondent files an answer after the Director has notified the parties that the claim against that respondent will proceed under this rule but before an award has been issued, the proceedings against that respondent under this rule will be terminated and the claim against that respondent will proceed under the regular provisions in the Code.

## **12805. Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System**

This Rule applies to all requests to expunge customer dispute information from the CRD system, except that when a party requests expungement of customer dispute information during a simplified arbitration pursuant to Rule 12800(d), only those sections of this Rule that are specifically referenced in Rule 12800(d) through (f) shall apply. Except as otherwise provided in this Rule, all other provisions of the Code apply to such expungement requests.

## **(a) Requesting Expungement Under the Customer Code**

### **(1) Requesting Expungement When Named as a Respondent**

#### **(A) Applicability**

An associated person named as a respondent in an investment-related, customer-initiated arbitration may request expungement during the arbitration of the customer dispute information associated with the customer's statement of claim, unless barred by Rule 12805(a)(1)(B). If the associated person does not request expungement in the arbitration, the associated person shall be prohibited from seeking to expunge the customer dispute information associated with the customer's statement of claim in any subsequent proceeding.

#### **(B) Limitations**

An associated person shall not file a request for expungement of customer dispute information if:

- (i) a panel held a hearing to consider the merits of the associated person's request for expungement of the same customer dispute information; or
- (ii) a court of competent jurisdiction previously denied the associated person's request to expunge the same customer dispute information.

#### **(C) Expungement Request**

(i) An associated person must include the expungement request in the answer or a separate pleading requesting expungement. If the associated person requests expungement in a pleading other than an answer, the request must be filed no later than 60 days before the first scheduled hearing; otherwise, the associated person must file a motion pursuant to Rule 12503 requesting an extension to file the expungement request.

- (ii) The expungement request must include:
  - a. the applicable filing fee;
  - b. the CRD number of the party requesting expungement;
  - c. each CRD occurrence number that is the subject of the request;
  - d. the case name and docket number associated with the customer dispute information; and



e. an explanation of whether expungement of the same customer dispute information was (i) previously requested and, if so (ii) how it was decided.

#### **(D) Panel Decides Expungement Request**

##### **(i) During Investment-Related, Customer-Initiated Arbitration**

If an associated person requests expungement pursuant to Rule 12805(a)(1)(C) and the investment-related, customer-initiated arbitration closes by award after a hearing, the panel shall consider and decide the expungement request during the arbitration in accordance with Rule 12805(c), and issue its decision on the expungement request in the same award in accordance with Rule 12805(c)(8). If the associated person withdraws or does not pursue the expungement request, the panel shall deny the expungement request with prejudice.

##### **(ii) Investment-Related, Customer-Initiated Arbitration Closes Other Than by Award or by Award Without a Hearing**

If an associated person requests expungement pursuant to Rule 12805(a)(1)(C) and the investment-related, customer-initiated arbitration closes other than by award or by award without a hearing:

a. the panel shall not consider the associated person's request for expungement of customer dispute information; and

b. the associated person may file a request for expungement of the customer dispute information as a new claim under Rule 13805(a) against the member firm at which the person was associated at the time the customer dispute arose, provided the expungement request is not barred pursuant to Rule 13805(a)(2).

#### **(2) Requesting Expungement on Behalf of an Unnamed Person**

##### **(A) Applicability**

With the written consent of the unnamed person, a party to an investment-related, customer-initiated arbitration may request expungement on behalf of the unnamed person during the arbitration of the customer dispute information associated with the customer's statement of claim.

##### **(B) Limitations**

A party to an investment-related, customer-initiated arbitration shall not request expungement on behalf of an unnamed person if the request is barred pursuant to Rule 12805(a)(1)(B).

**(C) Expungement Request**

(i) A party requesting expungement on behalf of an unnamed person must file the request with the Director in accordance with Rule 12805(a)(1)(C)(ii).

(ii) The request must include the Form Requesting Expungement on Behalf of an Unnamed Person, signed by the unnamed person and the party that is seeking expungement of customer dispute information on the unnamed person's behalf.

(iii) The request must be filed as soon as practicable, but no later than 60 days before the first scheduled hearing; otherwise, the requesting party must file a motion pursuant to Rule 12503 requesting an extension to file the expungement request.

**(D) Form Requesting Expungement on Behalf of an Unnamed Person**

(i) By signing the Form Requesting Expungement on Behalf of an Unnamed Person, the unnamed person agrees that the person shall be bound by the panel's decision on the expungement request.

(ii) By signing the Form Requesting Expungement on Behalf of an Unnamed Person, the unnamed person agrees to maintain the confidentiality of any documents and information from the investment-related, customer-initiated arbitration to which the unnamed person is given access and to adhere to any confidentiality agreements or orders associated with the arbitration.

(iii) By filing and serving an expungement request, the requesting party agrees to represent the unnamed person and the unnamed person's interests and to pursue the request for expungement on behalf of the unnamed person during the investment-related, customer-initiated arbitration.

**(E) Deciding Expungement Request**

(i) Investment-Related, Customer-Initiated Arbitration Closes by Award After a Hearing

If the investment-related, customer-initiated arbitration closes by award after a hearing, the panel shall consider and decide the expungement request during the

arbitration in accordance with Rule 12805(c), and issue its decision on the expungement request in the same award in accordance with Rule 12805(c)(8). If the requesting party withdraws or does not pursue the expungement request, the panel shall deny the expungement request with prejudice.

(ii) Investment-Related, Customer-Initiated Arbitration Closes Other than by Award or by Award Without a Hearing

If the investment-related, customer-initiated arbitration closes other than by award or by award without a hearing:

a. the panel shall not consider the party's request for expungement of customer dispute information on behalf of the unnamed person; and

b. the unnamed person may file a request for expungement of the customer dispute information as a new claim under Rule 13805(a) against the member firm at which the person was associated at the time the customer dispute arose, provided the expungement request is not barred pursuant to Rule 13805(a)(2).

(iii) Unnamed Person May Not Intervene in the Investment-Related, Customer-Initiated Arbitration

a. If a party to the investment-related, customer-initiated arbitration does not request expungement on behalf of the unnamed person, the unnamed person shall not file a motion to intervene in the arbitration to request expungement of customer dispute information associated with the customer's statement of claim.

b. The unnamed person may file a request for expungement of the customer dispute information as a new claim under Rule 13805(a) against the member firm at which the person was associated at the time the customer dispute arose, provided the filing of the request is not barred pursuant to Rule 13805(a)(2).

### **(3) No Separate Requests For Expungement Filed Against a Customer**

An associated person shall not file a request for expungement of the customer dispute information as a new claim against a customer separate from the investment-related, customer-initiated arbitration.

### **(b) Notification to State Securities Regulators**

The Director shall notify state securities regulators, in the manner determined by the Director in collaboration with state securities regulators, of an expungement

request within 15 days of receiving an expungement request that includes all the elements described in Rule 12805(a)(1)(C)(ii).

### **(c) Expungement Hearing**

In order to issue an award containing expungement of customer dispute information, the panel must comply with the following requirements.

#### **(1) Recorded Hearing Sessions**

The panel must hold one or more separate recorded hearing sessions regarding the expungement request.

#### **(2) Appearance by Associated Person and Party Requesting Expungement**

The associated person whose information in the CRD system is the subject of the request to expunge customer dispute information must appear in person or by video conference at the expungement hearing. A party requesting expungement on behalf of an unnamed person or the party's representative must also appear in person or by video conference at the expungement hearing. The panel shall decide the method of appearance.

#### **(3) Customer's Attendance and Participation**

##### **(A) Entitled to Attend and Participate**

All customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request are entitled to attend and participate in all aspects of the expungement hearing. The customer may provide the customer's position on the expungement request in writing.

##### **(B) Method of Attendance and Participation**

All customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request may attend and participate in the expungement hearing by telephone, in person, or by video conference.

#### **(4) Customer Representation**

All customers whose investment-related, customer-initiated arbitrations, civil litigations, or customer complaints are a subject of the expungement request are entitled to representation at the expungement hearing pursuant to Rule 12208.

## **(5) Customer and Customer's Representative Participation during the Expungement Hearing**

### **(A) Customer Introduces Evidence**

The panel must allow the customer or customer's representative to introduce evidence during the expungement hearing. If the customer or customer's representative introduces evidence during the expungement hearing, a party may state objections to the introduction of the evidence.

### **(B) Customer's Testimony**

The panel must allow the customer and witnesses called by the customer or the customer's representative to testify at the expungement hearing and be questioned by the customer or customer's representative. If a customer or witnesses called by the customer or customer's representative testify during the expungement hearing, the associated person or party requesting expungement on behalf of an unnamed person may cross-examine them.

### **(C) Associated Person's or Others' Testimony and Evidence**

The panel must allow the customer or the customer's representative to state objections to evidence presented during the expungement hearing. The panel must also allow the customer or the customer's representative to cross-examine the associated person, the party requesting expungement on behalf of an unnamed person and any other witnesses called during the expungement hearing.

### **(D) Opening and Closing Arguments by Customer or Customer's Representative**

The panel must allow the customer or the customer's representative to present opening and closing arguments if the panel allows any party to present such arguments.

## **(6) Panel Requests Additional Documents or Evidence**

The panel may request from the associated person, or party requesting expungement on behalf of an unnamed person, any documentary, testimonial or other evidence that it deems relevant to the expungement request.

#### **(7) Review Settlement Documents**

The panel shall review any settlement documents related to customer dispute information that is the subject of the expungement request and consider the amount of payments made to any party and any other terms and conditions of the settlement. In addition, the panel shall inquire and fully consider whether a party conditioned a settlement of the arbitration upon any agreement, written or otherwise, not to oppose the request for expungement in cases in which the customer does not participate in the expungement hearing or the requesting party states that a customer has indicated that the customer will not oppose the expungement request.

#### **(8) Award**

##### **(A) Unanimous Decision Required to Issue Award Containing Expungement Relief**

(i) In order to issue an award containing expungement relief, the panel must find unanimously that one or more of the following grounds for expungement has been established:

- a. the claim, allegation or information is factually impossible or clearly erroneous;
- b. the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or
- c. the claim, allegation or information is false.

(ii) The panel shall not issue, and the Director shall not serve, an award containing expungement relief based on grounds other than those specified in paragraph (c)(8)(A)(i) of this Rule.

##### **(B) Required Contents of Award Containing Expungement Relief**

The panel must indicate in the arbitration award which of the grounds for expungement identified in paragraph (c)(8)(A)(i) of this Rule serve(s) as the basis for its expungement order, provide a written explanation of the reason(s) for its finding

that one or more of those grounds apply to the facts of the request, and identify any specific documentary, testimonial or other evidence on which the panel relied in awarding expungement relief.

### **(C) Evidentiary Weight of Customer's Decision Not to Attend or Participate**

The panel shall not give any evidentiary weight to a customer's decision not to attend or participate in an expungement hearing when making a determination of whether expungement is appropriate.

### **(9) Forum Fees**

The panel must assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the party or parties requesting expungement.

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

### **(a) Fees for Claims Filed by Customers, Associated Persons and Other Non-Members**

(1) Customers, associated persons, and other non-members who file a claim, counterclaim, cross claim or third party claim must pay a filing fee in the amount indicated in the schedule below.

#### **Filing Fees for Claims Filed by Customers, Associated Persons, and Other Non-Members**

<b><u>Amount of Claim</u></b> <b>(exclusive of interest and expenses)</b>	<b><u>Filing Fee</u></b>
\$0.01 to \$1,000	\$50
\$1,000.01 to \$2,500	\$75
\$2,500.01 to \$5,000	\$175
\$5,000.01 to \$10,000	\$325
\$10,000.01 to \$25,000	\$425

\$25,000.01 to \$50,000	\$600
\$50,000.01 to \$100,000	\$975
\$100,000.01 to \$500,000	\$1,790
\$500,000.01 to \$1,000,000	\$2,175
\$1,000,000.01 to \$5,000,000	\$2,540
Over \$5,000,000	\$2,875
Non-Monetary/Not Specified	\$2,000

(2) If the claim does not request or specify money damages, the Director may determine that the filing fee should be more or less than the amount specified in the schedule above, but in any event, the amount of the filing fee may not be less than \$50 or more than \$2,875.

(3) The Non-Monetary/Not Specified filing fee under Rule 12900(a)(1) must be paid by an associated person who requests expungement of customer dispute information under the Code; or a party to an investment-related, customer-initiated arbitration who requests expungement of customer dispute information on-behalf-of an associated person during the arbitration case. If the associated person or other party requesting expungement adds a monetary claim to the expungement request, the filing fee shall be the Non-Monetary/Not Specified filing fee or the applicable filing fee provided in Rule 12900(a)(1), whichever is greater.

(4) The Director may defer payment of all or part of the filing fee on a showing of financial hardship. If payment of the fee is not deferred, failure to pay the required amount will result in a deficiency under Rule 12307.

#### **(b) Fees for Claims Filed by Members**

(1) Members filing a claim, counterclaim, cross claim, or third party claim must pay a filing fee in the amount indicated in the schedule below. Failure to pay the required amount will result in a deficiency under [Rule 12307](#).



### **Fees for Claims Filed by Members**

<b>Amount of Claim (exclusive of interest and expenses)</b>	<b>Filing Fee</b>
\$.01 to \$1,000	\$225
\$1,000.01 to \$2,500	\$350
\$2,500.01 to \$5,000	\$525
\$5,000.01 to \$10,000	\$750
\$10,000.01 to \$25,000	\$1,050
\$25,000.01 to \$50,000	\$1,450
\$50,000.01 to \$100,000	\$1,750
\$100,000.01 to \$500,000	\$2,660
\$500,000.01 to \$1,000,000	\$3,320
\$1,000,000.01 to \$5,000,000	\$4,440
Over \$5,000,000	\$5,250
Non-Monetary/Not Specified	\$2,250

(2) If the claim does not request or specify money damages, the Director may determine that the filing fee should be more or less than the amount specified in the schedule above, but in any event, the filing fee may not be less than \$225 or more than \$5,250.

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

(1) If a claim is settled or withdrawn more than 10 days before the date that the hearing on the merits under [Rule 12600](#) is scheduled to begin, a party paying a filing fee will receive a partial refund of the filing fee in the amount indicated in the schedule below, less any other fees or costs assessed against the party under the Code, including any hearing session fees assessed under [Rule 12902](#). Except as set forth in Rule

12900(c)(3), no refund will be paid if FINRA receives notice that a claim is settled or withdrawn within 10 days of the date that the hearing on the merits under [Rule 12600](#) is scheduled to begin.

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

<b><u>Amount of Claim</u></b> <b>(exclusive of interest and expenses)</b>	<b><u>Refund</u></b>
\$.01 to \$1,000	\$25
\$1,000.01 to \$2,500	\$50
\$2,500.01 to \$5,000	\$125
\$5,000.01 to \$10,000	\$250
\$10,000.01 to \$25,000	\$300
\$25,000.01 to \$50,000	\$450
\$50,000.01 to \$100,000	\$750
\$100,000.01 to \$500,000	\$1,410
\$500,000.01 to \$1,000,000	\$1,625
\$1,000,000.01 to \$5,000,000	\$1,750
Over \$5,000,000	\$1,875
Non-Monetary/Not specified	\$1,500

(2) If the claim does not request or specify money damages, and the Director determines that the hearing session fee should be a different amount than the amount specified in the schedule in [Rule 12902](#), the amount of the refund will be the amount of the hearing session fee determined by the Director, less any fees or costs assessed against the party under the Code, including any hearing session fees assessed under [Rule 12902](#).

(3) If FINRA notifies a customer that a member or an associated person has become inactive during a pending arbitration, as set forth in Rule 12202, and the customer withdraws the claim(s) against such member or associated person within the 60-day time period specified in the rule, FINRA will remit a full refund per the schedule

in Rule 12900(a) to the customer even if the customer withdraws the claim(s) within 10 days of the date that the hearing on the merits under Rule 12600 is scheduled to begin.

**(d) Reimbursement of Filing Fees**

In the award, the panel may order a party to reimburse another party for all or part of any filing fee paid.

# 12901. Member Surcharge

**(a) Member Surcharge**

(1) A surcharge in the amount indicated in the schedule below will be assessed against each member that:

- (A) Files a claim, counterclaim, cross claim, or third party claim under the Code;
- (B) Is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Code; or
- (C) Employed, at the time the dispute arose, an associated person who is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Code.

<b><u>Member Surcharge</u></b>	
<b><u>Amount of Claim</u></b> <b>(exclusive of interest and expenses)</b>	<b><u>Surcharge</u></b>
\$.01 to \$5,000	\$165
\$5,000.01–\$10,000	\$360
\$10,000.01–\$25,000	\$495
\$25,000.01–\$50,000	\$975
\$50,000.01–\$100,000	\$1,430
\$100,000.01–\$250,000	\$2,210
\$250,000.01–\$500,000	\$2,640

\$500,000.01–\$1,000,000	\$3,420
\$1,000,000.01–\$5,000,000	\$4,800
\$5,000,000.01–\$10,000,000	\$5,775
Over \$10,000,000	\$6,490
Non-Monetary/Not Specified	\$2,600

(2) If the claim does not request or specify money damages, the Director may determine that the member surcharge should be more or less than the amount specified in the schedule above, but in any event the amount of the member surcharge may not be less than \$165 or more than \$6,490.

(3) If an associated person files a request for expungement of customer dispute information against the customer pursuant to Rule 12302, the Non-Monetary/Not Specified member surcharge under Rule 12901(a)(1) shall be assessed against each member that employed the associated person at the time the customer dispute arose. If the associated person adds a monetary claim to the expungement request, the Non-Monetary/Not Specified member surcharge or the applicable surcharge provided in Rule 12901(a)(1), whichever is greater, shall be assessed against each member that employed the associated person at the time the customer dispute arose.

(4) If the claim is filed by the member, the surcharge is due when the claim is filed. If the claim is filed against the member, or against an associated person employed by the member at the time of the events giving rise to the dispute, the surcharge is due when the Director serves the Claim Notification Letter or the initial statement of claim in accordance with [Rule 12300](#).

(5) If a claim is filed by an associated person pursuant to paragraph (a)(3), the surcharge is due when the Director serves the Claim Notification Letter or the initial statement of claim in accordance with Rule 12300.

(6) No member shall be assessed more than a single surcharge in any arbitration. The panel may not reallocate a surcharge paid by a member to any other party.

### **(b) Refund of Member Surcharge**

(1) The Director will refund the surcharge paid by a member in an arbitration filed by a customer if the panel:

- (A) Denies all of a customer's claims against the member or associated person; and
- (B) Allocates all fees assessed pursuant to [Rule 12902](#)(a) against the customer.

(2) The Director may also refund or waive the member surcharge in extraordinary circumstances.

## 12902. Hearing Session Fees, and Other Costs and Expenses

### (a) Hearing Session Fees

(1) Hearing session fees will be charged for each hearing session. The total amount chargeable to the parties for each hearing session is based on the amount in dispute, as specified in the schedule below. In the award, the panel will determine the amount of each hearing session fee that each party must pay.

#### Hearing Session Fees

Amount of Claim (exclusive of interest and expenses)	Hearing Session W/ One Arbitrator	Hearing Session W/ Three Arbitrators
Up to \$2,500	\$50	N/A
\$2,500.01 to \$5,000	\$125	N/A
\$5,000.01 to \$10,000	\$250	N/A
\$10,000.01 to \$25,000	\$450	N/A
\$25,000.01 to \$50,000	\$450	\$600
\$50,000.01 to \$100,000	\$450	\$750
\$100,000.01 to \$500,000	\$675	\$1,690

\$500,000.01 to \$1,000,000	\$675	\$1,990
\$1,000,000.01 to \$5,000,000	\$675	\$2,160
Over \$5,000,000	\$675	\$2,370
Non-Monetary / Not Specified	\$675	\$1,725

(2) If the claim does not request or specify money damages, the Director may determine that the hearing session fee should be more or less than the amount specified in the schedule above, but in any event the hearing session fee shall not be less than \$50 or more than \$2,370 for each hearing session.

(3) If there is more than one claim in a proceeding, the amount of hearing session fees will be based on the largest claim in the proceeding. If any claims are joined or combined under Rules [12312](#), [12313](#), or [12314](#), the amount of those claims will be aggregated and they will be treated as one claim for purposes of this paragraph.

(4) If hearing session fees are allocated against a customer in connection with a claim filed by a member or associated person, the amount of hearing session fees the customer must pay must be based on the amount actually awarded to the member or associated person, rather than on the amount claimed by the member or associated person. No hearing session fees may be assessed against a customer in connection with a claim filed by a member that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed a filing fee under [Rule 12900\(a\)](#), and may be subject to hearing session fees.

(5) The fee for each hearing session in which the sole topic is the determination of a request for expungement of customer dispute information shall be the Non-Monetary/Not Specified fee under Rule 12902(a)(1) for a hearing session with three arbitrators. If a request for expungement of customer dispute information includes a monetary claim, the hearing session fee shall be the Non-Monetary/Not Specified fee for a hearing session with three arbitrators or the applicable hearing session fee provided in Rule 12902(a)(1), whichever is greater. The arbitrator or panel shall assess the hearing session fees against the party or parties requesting expungement.

## **(b) Payment of Hearing Session Fees**

(1) The panel may assess the hearing session fees in the award, or may require the parties to pay hearing session fees during the course of the arbitration. The total amount that the panel may require the parties to pay for each hearing session during the course of an arbitration may not exceed the total amount chargeable to the parties for each hearing session under the schedule to paragraph (a) of this rule.

(2) Any interim hearing session fee payments made by a party under this rule will be deducted from the total amount of hearing session fees assessed against that party in the award. If the amount of interim payments is more than the amount assessed against the party in the award, the balance will be refunded to that party.

(3) In the award, the amount of one hearing session fee will be deducted from the total amount of hearing session fees assessed against the party who paid the filing fee. If this amount is more than any fees, costs, and expenses assessed against this party under the Code, the balance will be refunded to the party.

## **(c) Assessment of Other Costs and Expenses in Award**

In its award, the panel must also determine the amount of any costs and expenses incurred by the parties under the Code or that are within the scope of the agreement of the parties, and which party or parties will pay those costs and expenses.

## **(d) Assessment of Hearing Session Fees, Costs, and Expenses in Case of Settlement or Withdrawal**

If a claim is settled or withdrawn:

- The parties will be subject to an assessment of hearing session fees for hearing sessions already held.
- If FINRA receives a settlement or withdrawal notice 10 days or fewer prior to the date that the hearing on the merits under [Rule 12600](#) is scheduled to begin, parties that paid a filing fee under [Rule 12900](#) will not be entitled to any refund of the filing fee.
- The parties will also be responsible for any fee or costs incurred under Rules [12502](#), [12513](#), [12601](#), or [12606](#) in connection with such hearings. If a case is settled or withdrawn and the parties' agreement fails to allocate such fees and costs, the fees and costs will be allocated as provided by [Rule 12701\(b\)](#).

### **(e) Refund Payments**

Any refunds of fees or costs incurred under the Code will be paid directly to the named parties, even if a non-party made a payment on behalf of the named parties.

## **12903. Process Fees Paid by Members**

- (a) Each member that is a party to an arbitration in which more than \$25,000, exclusive of interest and expenses, is in dispute must pay a non-refundable process fee, due at the time the parties are sent arbitrator lists in accordance with [Rule 12402\(c\)](#) or [Rule 12403\(b\)](#), as set forth in the schedule below.

### **Process Fee Schedule**

<b><u>Amount of Claim</u></b> <b>(exclusive of interest and expenses)</b>	<b><u>Process Fee</u></b>
\$ .01–\$25,000	\$ 0
\$25,000.01–\$50,000	\$2,275
\$50,000.01–\$100,000	\$2,925
\$100,000.01–\$250,000	\$4,225
\$250,000.01–\$500,000	\$5,040
\$500,000.01–\$1,000,000	\$6,800
\$1,000,000.01–\$5,000,000	\$9,570
\$5,000,000.01–\$10,000,000	\$10,575
Over \$10,000,000	\$10,950
Non-Monetary/Not Specified	\$5,005

- (b) If an associated person of a member is a party, the member that employed the associated person at the time the dispute arose will be charged the process fees, even if the member is not a party.



(c) If an associated person files a request for expungement of customer dispute information against the customer pursuant to Rule 12302, the process fee for the member that employed the associated person at the time the customer dispute arose shall be the Non-Monetary/Not Specified fee under Rule 12903(a)(1). If the associated person adds a monetary claim to the expungement request, the process fee for the member that employed the associated person at the time the customer dispute arose shall be the Non-Monetary/Not Specified fee or the applicable process fee provided in Rule 12903(a)(1), whichever is greater.

(d) The panel may not reallocate to any other party any process fees paid by a member.

(e) No member shall be assessed more than one process fee in any arbitration.

## 12904. Awards

(a) All awards shall be in writing and signed by a majority of the arbitrators or as required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction.

(b) Unless the applicable law directs otherwise, all awards rendered under the Code are final and are not subject to review or appeal.

(c) The Director will serve the award on each party, or the representative of the party.

(d) The panel shall endeavor to render an award within 30 business days from the date the record is closed.

(e) The award shall contain the following:

(1) The names of the parties;

(2) The name of the parties' representatives, if any;

(3) An acknowledgement by the arbitrators that they have each read the pleadings and other materials filed by the parties;

(4) A summary of the issues, including the type(s) of any security or product, in

controversy;

- (5) The damages and other relief requested;
- (6) The damages and other relief awarded;
- (7) A statement of any other issues resolved;
- (8) The allocation of forum fees and any other fees allocable by the panel;
- (9) The names of the arbitrators;
- (10) The dates the claim was filed and the award rendered;
- (11) The number and dates of hearing sessions;
- (12) The location of the hearings; and
- (13) The signatures of the arbitrators.

(f) The award may contain a rationale underlying the award.

(g) Explained Decisions

(1) This paragraph (g) applies only when all parties jointly request an explained decision.

(2) An explained decision is a fact-based award stating the general reason(s) for the arbitrators' decision. Inclusion of legal authorities and damage calculations is not required.

(3) Parties must make any request for an explained decision no later than the time for the prehearing exchange of documents and witness lists under Rule 12514(d).

(4) The chairperson of the panel will be responsible for writing the explained decision.

(5) The chairperson will receive an additional honorarium of \$400 for writing the explained decision, as required by this paragraph (g).

(6) This paragraph (g) will not apply to simplified cases decided without a hearing under Rule 12800 or to default cases conducted under Rule 12801.

(h) All awards shall be made publicly available.

(i) Fees and assessments imposed by the arbitrators under the Code shall be paid immediately upon the receipt of the award by the parties. Payment of such fees shall not be deemed ratification of the award by the parties.

(j) All monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. Absent specification to the contrary in the award, when arbitrators order opposing parties to make payments to one another, the monetary awards shall offset, and the party assessed the larger amount shall pay the net difference. An award shall bear interest from the date of the award:

- (1) If not paid within 30 days of receipt;
- (2) If the award is the subject of a motion to vacate which is denied; or
- (3) As specified by the panel in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

## 12905. Submissions After a Case Has Closed

(a) Parties may not submit documents to arbitrator(s) in cases that have been closed except under the following limited circumstances:

- (1) as ordered by a court;
- (2) at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or
- (3) if all parties agree and submit documents within 10 days of (1) service of an award or (2) notice that a matter has been closed.

(b) Parties must make requests under this rule in writing to the Director and must include the basis relied on under this rule for the request. The Director will forward documents submitted pursuant to paragraph (a)(1), along with any responses from other parties, to the arbitrators. The Director will determine if submissions made pursuant to paragraphs (a)(2) and (a)(3) comply with the grounds enumerated in the rule. If the Director determines that the request

complies with paragraphs (a)(2) and (a)(3), the Director will forward the documents, along with any responses from other parties, to the arbitrators. The arbitrators may decline to consider requests that the Director forwards to them under paragraphs (a)(2) and (a)(3).

(c) Unless the arbitrators rule within 10 days after the Director forwards the documents to the arbitrators pursuant to a request made under paragraphs (a)(2) and (a)(3), the request shall be deemed considered and denied.

(d) Requests under this rule do not extend the time period for payment of any award pursuant to Rule 12904.