

ATTACHMENT A to *Regulatory Notice 11-05*

New text is underlined; deleted language is in brackets.

Code of Arbitration Procedure for Customer Disputes

Customer Code

[12402. Composition of Arbitration Panels

(a) If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the public chairperson roster, unless the parties agree in writing otherwise.

(b) If the panel consists of three arbitrators, one will be a non-public arbitrator and two will be public arbitrators, one of whom will be selected from the public chairperson roster, unless the parties agree in writing otherwise.

12403. Generating and Sending Lists to the Parties

(a) Generating Lists

(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of 10 public arbitrators from the FINRA chairperson roster.

(2) If the panel consists of three arbitrators, the Neutral List Selection System will generate:

- A list of 10 arbitrators from the FINRA non-public arbitrator roster;
- A list of 10 arbitrators from the FINRA public arbitrator roster; and
- A list of 10 public arbitrators from the FINRA chairperson roster.

(3) If the panel consists of three arbitrators, the Neutral List Selection System 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.

(4) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(b) Sending Lists to Parties

(1) The Director will send the lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. 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 12404(c).

12404. Striking and Ranking Arbitrators

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

(c) The ranked lists must be returned to the Director 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.

12405. 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:

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

12406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

(a) If the panel consists of one arbitrator, the Director will appoint the highest-ranked available arbitrator from the combined chairperson list.

(b) If the panel consists of three arbitrators, the Director will appoint:

- The highest-ranked available non-public arbitrator from the combined non-public arbitrator list;
- The highest-ranked available public arbitrator from the combined public arbitrator list, and

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

(c) If the number of arbitrators available to serve from the combined list(s) 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 Neutral List Selection System. If the Director must appoint a non-public arbitrator, the Director may not appoint a non-public arbitrator as defined in Rule 12100 (p)(2) or (3), unless the parties agree otherwise. The Director will provide the parties information about the arbitrators as provided in Rule 12403 and the parties will have the right to challenge the arbitrators as provided in Rule 12410.

(d) 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.]]

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 Neutral List Selection System will generate a list of 10 public arbitrators from the FINRA chairperson roster.
- (2) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(c) Sending Lists to Parties

- (1) The Director will send the list generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. 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 returned to the Director 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:

- 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.
- 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 Neutral List Selection System.
- (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 Neutral List Selection System. 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

(a) Composition of Panels

The customer may elect to proceed with panel composition under either of the following options:

(1) Composition Rules for Majority Public Panel

Rule 12403(c) provides for limited strikes on each of the three lists. In each majority public panel case, the panel will consist of two public arbitrators and one non-public arbitrator.

(2) Composition Rules for Optional All Public Panel

Rule 12403(d) provides for limited strikes on the public and public chairperson lists and unlimited strikes on the non-public list. In optional all public panel cases, the panel may consist of three public arbitrators or two public arbitrators and one non-public arbitrator. Under this option, either party can ensure that the panel will have three public arbitrators by striking all of the arbitrators on the non-public list.

(b) Customer Election

- (1) The customer may elect in writing to proceed under either the composition rules for majority public panel or the composition rules for optional all public panel in the customer's Statement of Claim, if the customer is a claimant, or at any time up to 35 days from service of the Statement of Claim.
- (2) When FINRA serves the Statement of Claim, FINRA will notify the customer in writing that the customer may elect the composition rules for the optional all public panel within 35 days from service of the Statement of Claim .
- (3) If the customer declines to make an affirmative election in writing by the 35-day deadline, the composition rules for majority public panel will apply.

(c) Composition Rules for Majority Public Panel

(1) Generating Lists

(A) The Neutral List Selection System will generate:

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

- A list of 10 public arbitrators from the FINRA chairperson roster.

(B) The Neutral List Selection System 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.

(C) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(2) Sending Lists to Parties

(A) The Director will send the lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

(B) 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).

(3) Striking and Ranking Arbitrators

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

(C) The ranked lists must be returned to the Director 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.

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

(4) 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:

- 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.
- 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.
- The Director will create separate combined ranked lists for each arbitrator classification.

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

(A) The Director will appoint:

- The highest-ranked available non-public arbitrator from the combined non-public arbitrator list;
- The highest-ranked available public arbitrator from the combined public arbitrator list, and
- The highest-ranked available public arbitrator from the combined chairperson list, who will serve as chairperson of the panel.

(B) If the number of arbitrators available to serve from the combined 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 Neutral List Selection System. If the Director must appoint a non-public arbitrator, the Director may not appoint a non-public arbitrator as defined in Rule 12100(p)(2) or (3), unless the parties agree otherwise. The Director will provide the parties information about the arbitrators as provided in Rule 12403(c)(2) and the parties will have the right to challenge the arbitrators as provided in Rule 12407.

(C) 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.

(6) Replacement of Arbitrators

- (A) 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, unless the parties agree in writing to proceed with only the remaining arbitrators.
- (B) The Director will appoint as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator of the required classification remaining on the combined list.
- (C) If there are no available arbitrators of the required classification on the consolidated list, the Director will appoint an arbitrator of the require classification.

to complete the panel from names generated by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12403(c)(2) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

- (D) If the Director must appoint a non-public arbitrator under Rule 12403(c)(6)(C), the Director may not appoint a non-public arbitrator as defined in Rule 12100(p)(2) or (3), unless the parties agree otherwise.

(d) Composition Rules for Optional All Public Panel

(1) Generating Lists

(A) The Neutral List Selection System will generate:

- A list of 10 arbitrators from the FINRA non-public arbitrator roster;
- A list of 10 arbitrators from the FINRA public arbitrator roster; and
- A list of 10 public arbitrators from the FINRA chairperson roster.

(B) The Neutral List Selection System 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.

(C) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(2) Sending Lists to Parties

(A) The Director will send the lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

(B) 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(d)(3)(C).

(3) Striking and Ranking Arbitrators

(A) Non-Public Arbitrator List

- i. 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.
- ii. 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.

(B) Chairperson and Public Lists

- i. Each separately represented party may strike up to four of the arbitrators from the chairperson and public arbitrator lists for any reason by crossing through the names of the arbitrators. At least six names must remain on each list.
- ii. 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.

(C) The ranked lists must be returned to the Director 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.

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

(4) 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:

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

(5) Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on the List

(A) The Director will appoint:

- The highest-ranked available non-public arbitrator from the combined non-public arbitrator list;
- The highest-ranked available public arbitrator from the combined public arbitrator list, and

- The highest-ranked available public arbitrator from the combined chairperson list, who will serve as chairperson of the panel.
- (B) 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 Neutral List Selection System. The Director will provide the parties information about the arbitrators as provided in Rule 12403(d)(2) and the parties will have the right to challenge the arbitrators as provided in Rule 12407.
- (C) 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:
- i. 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.
 - ii. 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.
 - iii. 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 Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12403(d)(2) and the parties will have the right to challenge the arbitrator as provided in Rule 12407.
- (D) 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.

(6) Replacement of Public Arbitrators

- (A) 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.
- (B) 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.
- (C) 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.

- (D) 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 Neutral List Selection System.
- (E) The Director will provide the parties information about the arbitrator as provided in Rule 12403(d)(2) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

(7) Replacement of a Chairperson

- (A) 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.
- (B) 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.
- (C) 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.
- (D) 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 Neutral List Selection System.
- (E) The Director will provide the parties information about the arbitrator as provided in Rule 12403(d)(2) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

(8) Replacement of Non-Public Arbitrators

- (A) 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.
- (B) 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.
- (C) 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.
- (D) 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.

- i. 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.
- ii. 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 Neutral List Selection System.

(E) The Director will provide the parties information about the arbitrator as provided in Rule 12403(d)(2) and the parties shall have the right to object to the arbitrator as provided in Rule 12407.

[12407] 12404. Additional Parties

(a) If a party is added to an arbitration after the Director sends the lists generated by the Neutral List Selection System to the parties, but before parties must return the ranked lists 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 [12404] 12402(d), 12403(c)(3), or 12403(d)(3). If the newly added party returns the lists 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 [12405] 12402(e), 12403(c)(4), or 12403(d)(4). If the Director does not receive the list 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 [12404] 12402(d)(3), 12403(c)(3)(C), or 12403(d)(3)(C), 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, including the party to be added, and the party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code. 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 [12410] 12407.

[12408] 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.

[12409] 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.

[12410] 12407. Removal of Arbitrator by Director

(a) Before First Hearing Session Begins

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 [12408] 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 or the President of FINRA Dispute Resolution may exercise the Director's authority under this paragraph (b).

[12411. Replacement of Arbitrators

(a) 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, unless the parties agree in writing to proceed with only the remaining arbitrators.

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

(c) If there are no available arbitrators of the required classification on the consolidated list, the Director will appoint an arbitrator of the required classification to complete the panel from names generated by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12403 and the parties shall have the right to object to the arbitrator as provided in Rule 12410.

(d) If the Director must appoint a non-public arbitrator under paragraph (c), the Director may not appoint a non-public arbitrator as defined in Rule 12100(p)(2) or (3), unless the parties agree otherwise.]

[12412] 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.

[12413] 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.

[12414] 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.