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## Mission Statement

We publish *The Neutral Corner* to provide arbitrators and mediators with current updates on important rules and procedures within securities dispute resolution. FINRA's dedicated neutrals serve parties and other participants in the FINRA forum by taking advantage of this valuable learning tool.

## Message from the Editor

### Enhancements to The Neutral Corner



In September 2010, FINRA emailed a survey to recipients of The Neutral Corner (TNC), seeking feedback on the publication. We sent the survey to more than 6,000 active neutrals (arbitrators and mediators) on our roster, and more than 1,600 neutrals responded—a very high response rate of 26 percent. We would like to thank you for taking the time to respond to our survey and helping us improve TNC.

While the majority of you indicated that you like TNC in its current form, we also received thoughtful feedback on ways to improve the publication. Below are some of the enhancements we have implemented, starting with this issue, based on your feedback.

### Document Layout

Many of you told us that you found the two-column format of the newsletter cumbersome to read online because you had to scroll down and back up to finish an article. To address this concern, we modified the two-column format to allow you to complete an article without the need to scroll back to the top of a page. While TNC still appears in two columns per page, one of the columns presents only highlights or facts while the wider column contains the content of the article. This adjustment allows you to read an entire article by scrolling down only.

The table of contents now contains links to take you directly to a particular news item instead of scrolling through the entire issue before finding a specific article. For example, you can skip directly to the Question and Answer column.

### Practical Information

Based on your requests to include more practical information about arbitration, we intend to publish more articles that provide guidance on particular rules. These articles will clarify and illustrate how a new rule would apply in actual arbitration situations.

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## Comments, Feedback and Suggestions

Please send your suggestions and comments to:

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

*Message from the Editor continued*

## Timely Articles

We are committed to publishing six issues of TNC each year. Some of you indicated that you were unsure of when to expect an issue and were concerned that you missed some important information. We have updated the publication schedule to deliver more regularly-timed issues. You can expect to see a new edition at the end of the month on bi-monthly intervals.

To ensure that we provide timely information, we will publish the Securities and Exchange Commission (SEC) rule filings and arbitrator training schedules in the monthly Dispute Resolution Update emails. Since these monthly email updates are extensions of TNC, all arbitrators have been added to the distribution list. Although TNC will continue to publish the SEC information—as well as more lengthy articles on the practical application of new rules—please be sure to review the monthly emails to remain current with SEC rule filings.

## Insights from Active Arbitrators

Finally, some of you expressed an interest in hearing from fellow arbitrators about their experiences, as a way to gain more practical insight into the arbitration process. To facilitate this exchange of information, we ask you to send us case-related questions to share in TNC. We will consult with experienced arbitrators on the roster, seek their thoughts on the particular issue and publish the question and response in a future issue of TNC. Note that the information you share will remain confidential, and we will redact all identifying information before publishing the question and response.

We appreciate your feedback to help us improve TNC. We look forward to working with you to continually enhance the publication and provide a more valuable resource for you.

## Rule Change to Provide Customers With the Option to Choose an All Public Arbitration Panel

By Avi Badash, Associate Director, FINRA Case Administration



On January 31, 2011, the Securities and Exchange Commission approved amendments to the Code of Arbitration Procedure for Customer Disputes (Customer Code) to give all investors with an arbitration claim the option of having an all-public panel, greatly increasing investor choice in the FINRA arbitration program.

FINRA amended the Customer Code to give customers the option to choose between two panel selection methods before FINRA sends the lists of arbitrators to the parties. The first option continues to permit parties to select a panel of one chair-qualified public arbitrator, one public arbitrator and one non-public arbitrator (majority public panel option). The new option under the amended rules allows parties to select an all-public arbitration panel (all-public panel option).

“This change will give investors an additional choice in selecting their arbitrators when they file claims,” said Richard Ketchum, FINRA Chairman and Chief Executive Officer. “We believe that giving investors the ability to have an all-public panel will increase public confidence in the fairness of our dispute resolution process.”

The rules were effective on February 1, 2011, and apply to all customer cases in which FINRA has not sent arbitrator lists to the parties by the effective date. They expand to all investor cases—involving any firm and any individual broker—FINRA’s Public Arbitrator Pilot Program (pilot program) that gave investors the option of choosing an all-public panel if they were filing an arbitration claim against certain firms. Pilot program data show that investors prefer choice when selecting arbitrators. Since the pilot program began in October 2008, 55 percent of investors eligible to participate opted in, resulting in 591 cases as of January 31, 2011, when the pilot program concluded.

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## Rule Change to Provide Customers With the Option to Choose an All Public Arbitration Panel *continued*

### The Forum Will Continue to Need Non-Public Arbitrators

The need for non-public arbitrators remains essential to the forum for a number of reasons. First, the revised rules do not apply to disputes involving only industry parties, which constitute anywhere from 25 – 30 percent of the claims filed in our forum. Second, investors who opted into the pilot program—given the power to strike all non-public arbitrators from the arbitrator list—still chose to have one or more non-public arbitrators on their panel 49 percent of the time. In other words, in 73 percent of eligible cases, investors opted for a non-public arbitrator either by choosing not to participate in the pilot program or by ranking one or more non-public arbitrators.

### Panel Selection Methods Under the Amended Rules

Under the amended rules, customers choose the panel selection method; neither firms nor associated persons choose the selection method. Customers may choose the all-public panel option in their statement of claim or accompanying documentation in instances when the customers are claimants. If the customer does not choose a method in the statement of claim or accompanying documentation, FINRA will notify the customer in writing that he or she may elect the all-public panel option within 35 days from service of the statement of claim. If the customer declines to make an affirmative election in writing by the 35-day deadline, the majority public panel option will apply.

### Striking and Ranking Arbitrators and Panel Composition Under the Amended Rules

Under either panel selection option, the parties receive three lists:

- 10 chair-qualified public arbitrators;
- 10 public arbitrators; and
- 10 non-public arbitrators.

The rules continue to permit each party to strike up to four arbitrators on the chair-qualified public and public lists, leaving at least six arbitrator names on each party's list. However, the process for striking arbitrators on the non-public list is different for each method.

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## Rule Change to Provide Customers With the Option to Choose an All Public Arbitration Panel *continued*

### Majority Public Panel Option

If the case is proceeding under the majority public panel option for selecting arbitrators, each separately represented party may exercise up to four strikes on the non-public list. FINRA will appoint the highest ranked available non-public arbitrator from the combined rankings. In cases in which the parties 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, FINRA will randomly select and appoint a non-public arbitrator using the Neutral List Selection System (NLSS). Customers who choose this method can ensure that a non-public arbitrator will serve on the case.

### All-Public Panel Option

If the case is proceeding under the all-public panel option for selecting arbitrators, any party may strike up to all names on the non-public list. FINRA will not appoint a non-public arbitrator if the parties strike all the arbitrators appearing on the non-public list or if all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason. In this instance, FINRA will select the next highest-ranked public arbitrator to complete the panel. If all public arbitrators are struck or unavailable to serve, FINRA will select the next highest-ranked arbitrator on the public chair-qualified list. If all public chair-qualified arbitrators are struck or unavailable to serve, FINRA will randomly select and appoint a public arbitrator using NLSS. Customers who choose this method can ensure that a non-public arbitrator will **not** serve on the case.

### Conclusion

FINRA believes that this important rule change will benefit investors by providing choice in the arbitrator selection process and will increase the perception of fairness in FINRA's arbitration program. Please review [Regulatory Notice 11-05](#) and the [news release](#) for more information on the amended rules.

## Dispute Resolution and FINRA News

### Updated Hearing Script



FINRA updated its [Initial Prehearing Conference Script](#) (Script) to include additional information about the direct communication rule. The rule can now be used for the limited purpose of alerting arbitrators of last minute cancellations. The arrangement would prevent unnecessary travel and inconvenience for arbitrators. Please see Section N of the Script and the related Question and Answer found on [page 11](#) of this issue.

### FINRA's Online Learning Courses for Industry Professionals

FINRA provides ongoing education to brokerage firms and its employees about new developments in the securities industry. Although these offerings are designed for individuals involved in the securities industry, on occasion we highlight trainings that arbitrators and mediators may find valuable.

- [What to Expect Webcast Series](#);
- [Electronic Communications for Registered Representatives](#);
- [Use of Social Media for Business Purposes](#); and
- [Ethical Considerations for Registered Representatives](#).

You may review the full list of [online courses](#) that FINRA offers, including e-learning courses, webinars, webcasts and podcasts. Webcasts and podcasts are free to participants. FINRA charges a registration fee for its e-learning courses and webinars.

### SEC Rule Filings

#### Panel Composition for Promissory Note Proceedings

On February 4, 2011, FINRA filed SR-FINRA-2011-005 with the SEC to amend Rule 13806 of the Code of Arbitration Procedure for Industry Disputes (Industry Code) to provide that FINRA will appoint a chair-qualified public arbitrator to a panel resolving a promissory note dispute instead of appointing a chair-qualified public arbitrator also qualified to

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## Case Filings and Trends

In 2010, case filings reflect a 20 percent decrease compared to 2009 (5,680 cases in 2010 and 7,137 cases in 2009). Customer-initiated claims decreased by 28 percent in 2010 from 2009.

In 2010, arbitration cases filed identified the following securities (listed in order of decreasing frequency): mutual funds, common stock, variable annuities, corporate bonds, preferred stock, derivative securities, annuities, options, auction rate securities, limited partnerships and certificates of deposit. The top two causes of action alleged were breach of fiduciary duty and negligence.

Arbitration case filings in January 2011 reflect an eight percent decrease compared to cases filed during the same one-month period in 2010 (from 456 cases in 2010 to 419 cases in 2011). Customer-initiated claims decreased by 26 percent in 2011 from 2010.

## Dispute Resolution and FINRA News *continued*

resolve a statutory discrimination claim. If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster described in Rule 12400(c) of the Customer Code, unless the parties agree in writing otherwise. If the panel consists of three arbitrators, one arbitrator will be a public arbitrator selected from the chairperson roster described in Rule 12400(c) of the Customer Code, unless the parties agree in writing otherwise; one arbitrator will be selected from the roster of public arbitrators; and one arbitrator will be selected from the roster of non-public arbitrators.

Please visit our website for more information about [SR-FINRA-2011-05](#).

## Replying to Responses to Motions

On February 4, 2011, FINRA filed SR-FINRA-2011-006 with the SEC to amend Rules 12206, 12503 and 12504 of the Customer Code and Rules 13206, 13503 and 13504 of the Industry Code to provide moving parties with a five-day period to reply to responses to motions. Parties would have five 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.

Please visit our website for more information about [SR-FINRA-2011-06](#).

## Update to Proposed Rule Change to the Discovery Guide

On February 8, 2011, FINRA responded to the 55 comments that the SEC received with respect to the proposed rule changes to the Discovery Guide. FINRA also extended the time, until March 11, 2011, for the SEC to act on the proposed rule change to expand the guidance that FINRA provides parties and arbitrators on the discovery process and to update the Document Production Lists. FINRA filed the proposed rule change (SR-FINRA-2010-035) with the SEC on July 12, 2010. The proposed rule change would amend the Discovery Guide, which includes Document Production Lists, and make conforming changes to Rules 12506 and 12508 of the Customer Code.

Please visit our website for more information about [SR-FINRA-2010-035](#).

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## FINRA Annual Conference

The FINRA Annual Conference will take place May 23 – 25, 2011, in Washington, DC. Each year, FINRA hosts this conference to give compliance professionals, securities attorneys and other industry professionals the opportunity to compare regulatory and compliance solutions with financial services firm experts, peers, regulators, policymakers and other key industry mainstays. This year's event will feature more than 25 sessions that address the impact of regulatory reform and compliance with rules and regulations.

[Register early](#) for discounted rates to FINRA's Annual Conference.

Dispute Resolution and FINRA News *continued*

### Update to the Proposed Rule Change Relating to Disciplinary Referrals Made During an Arbitration Proceeding

FINRA extended the time, until March 18, 2011, for SEC action on the proposed rule change to broaden the arbitrators' authority to make referrals during an arbitration proceeding. FINRA filed the proposed rule change with the SEC on July 12, 2010 (SR-FINRA-2010-036). The proposal would amend Rule 12104 of the Customer Code and Rule 13104 of the Industry Code to permit arbitrators to make a disciplinary referral during the pendency of an arbitration when they have reason to believe that conduct poses a serious, ongoing, imminent threat to investors that requires immediate action.

The SEC received 10 comments on the proposal. Based on the comments, FINRA staff will propose amendments to the rule proposal filed with the SEC that will address the concerns raised by the commenters.

Please visit our website for more information about [SR-FINRA-2010-036](#).

## SEC Rule Approval

### Option to Choose an All-Public Arbitration Panel in All Cases

For further information about the amended rules, see our article, "Rule Change to Provide Customers With the Option to Choose an All Public Arbitration Panel" on [page 3](#).

## Refer an Arbitrator

FINRA is seeking fair-minded individuals to serve as arbitrators in specific geographical areas.

If you know someone who may be interested in becoming an arbitrator, please forward this message and ask the candidate to email us. We look forward to hearing from your colleague.

## FINRA Dispute Resolution Arbitrator Recruitment Program

*By Erroll Angara, Arbitrator Recruitment Manager, FINRA Dispute Resolution*



FINRA Dispute Resolution operates the largest dispute resolution forum in the securities industry and conducts arbitrations in more than 70 hearing locations in the United States (with at least one hearing location in each state), London and Puerto Rico. To provide efficient resolution of disputes, FINRA maintains a cadre of arbitrators and regularly recruits new arbitrators to meet its caseload demands.

FINRA relies on its roster of arbitrators to render fair, impartial and efficient securities dispute resolution services. We recruit individuals who have demonstrated a high level of integrity and expertise in their professional careers. We also strive to recruit arbitrators from a broad cross-section of people, diverse in culture, profession and background. We believe that individuals who meet these criteria are vital to FINRA's mission of delivering fair and equitable resolutions to securities disputes.

### How We Recruit

FINRA considers geographic locations, the balance of public and non-public arbitrators and the need for a diverse roster. Using information and data analysis relating to case filings and the number of arbitrators in each hearing location, FINRA plans initiatives and campaigns to best meet those needs.

We use several different recruitment methods to target appropriate candidates around the country to serve as FINRA arbitrators. Some examples of our recruitment initiatives include:

- placing print and internet advertisements in law journals, professional publications and news websites;
- attending business conferences of key target groups such as national and regional bar associations, other professional groups, and women's and minority organizations around the country; and
- speaking publicly to educate organizations about FINRA's arbitration program.

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## Arbitrator Recruitment: Forum Still Needs Non-Public Arbitrators *continued*

We also receive applications and inquiries from individuals who have learned about FINRA and its arbitration program through our website and through referrals made by existing arbitrators.

FINRA Dispute Resolution has had the benefit of being able to partner with other departments to enhance our recruitment efforts. For example, Dispute Resolution effectively collaborated with FINRA's Office of Investor Education to attend and be one of the sponsors of AARP's annual convention in October of 2010. Another example is our work with FINRA's Human Resources (HR) Department, which introduces FINRA to women's and minority organizations, such as the National Association of Black Accountants, the National Urban League and the American Society of Women Accountants. Teaming with HR on these diversity initiatives allows us to reach key members of diverse groups and offer them opportunities to join the arbitrator roster.

### Conclusion

Using a variety of recruitment methods, FINRA works to reach a broad spectrum of potential arbitrators to serve on FINRA's roster and to meet its caseload needs across the country. FINRA remains committed to recruiting fair-minded professionals to resolve securities disputes—a role that is vital to a fair dispute resolution forum. If you know someone who may be interested in becoming a FINRA arbitrator, please contact our [recruitment manager](#).



## Questions and Answers

### Question and Answer: Using the Direct Communication Rule to Ensure Prompt Notice of Last Minute Cancellations

**Question:** Arbitrators occasionally do not receive notice of cancelled hearings until they arrive at the hearing location. What can arbitrators do to ensure that they receive prompt notice of last minute cancellations?

**Answer:** FINRA's direct communication rule can be used to ensure that parties promptly notify arbitrators of last minute cancellations, which will save arbitrators from unnecessary travel and inconvenience. Parties sometimes submit a joint adjournment request or notify FINRA of a settlement on the eve of the hearing. If FINRA does not receive notice until after the close of business or during a weekend or holiday, the staff is not always able to notify promptly arbitrators of the cancelled hearings. To avoid this inconvenience, arbitrators should consider using the direct communication rule. If the arbitrators prefer, they can limit the use of the direct communication rule to address notification about late hearing cancellations.

Arbitrators and parties can agree to direct communication solely to alert the panel that the parties settled the case, the claimant withdrew the claim or the parties jointly agreed to postpone the hearings. [Rule 12211](#) of the Code of Arbitration Procedure for Customer Disputes and [Rule 13211](#) of the Code of Arbitration Procedure for Industry Disputes allow direct communication only in cases in which parties are represented by counsel. This requirement that parties be represented by counsel also applies when arbitrators and parties agree to direct communication solely to alert the panel about last minute cancellations.

FINRA's [Initial Prehearing Conference Script](#) has been revised to prompt arbitrators to discuss this limited use of the direct communication rule. As with the direct communication rule, this limited use of the rule prohibits parties from direct verbal communication with panel members except in the presence of all parties or representatives.

*continued*

## Editor's Note

For more information on direct communication, please see the article, "Reintroducing the Direct Communication Rule," in *The Neutral Corner—Volume 4, 2010*.

## Questions and Answers *continued*

We encourage arbitrators to learn more about the direct communication rule by taking FINRA's online arbitrator training course: [Direct Communication Rule](#). The course discusses the benefits of proceeding under the direct communication rule, outlines the types of communication that are not permitted and provides practical guidance in applying the rule in arbitration.

### Question and Answer: Calculating Hearing Sessions and Fees

**Question:** How does FINRA calculate hearing sessions to determine arbitrator honorarium and the forum fees assessed to the parties?

**Answer:** Pursuant to [Rules 12100\(n\)](#) and [13100\(n\)](#) of the Codes of Arbitration Procedure, a "hearing session" is a meeting between the parties and arbitrators of four hours or less, including a hearing or a prehearing conference. FINRA calculates the number of hearing sessions per day based upon the **total amount of time** the parties and arbitrators meet.

For example, if the parties and arbitrators meet in the morning for two and one-half hours (2 ½), break for lunch for one hour (1) and return after lunch to meet for another one and one-half hours (1 ½), the parties will be assessed for one hearing session, and the arbitrators will be paid for one hearing session. FINRA does not calculate the one-hour lunch as part of the hearing session. Although the parties and arbitrators met twice, once before and once after lunch, the total amount of time spent does not equal two hearing sessions pursuant to [Rules 12100\(n\)](#) and [13100\(n\)](#). Instead, the controlling factor in determining the number of hearing sessions is the total amount of time the parties and arbitrators met, which, in this example, equals one hearing session.

## Mediation and Business Strategy Update

### Mediation Case Statistics

Mediation case filings increased in 2010. In 2010, parties initiated 823 mediation cases, a 46 percent increase from 2009. During this same time, FINRA closed 954 cases, a 39 percent increase from 2009. Approximately 81 percent of these cases concluded with successful settlements, and the average case turnaround time of 99 days.

In January 2011, parties initiated 61 mediation cases, a 20 percent decrease from the same one-month period in 2010. Approximately 80 percent of these cases concluded with successful settlements, and the average case turnaround time during this one-month period was 127 days.

## Arbitrator Training

### Neutral Workshop: Arbitrator Feedback Review—The Top 10



FINRA Dispute Resolution's [December 20, 2010 Neutral Workshop](#) discusses how peer, party and staff evaluations help FINRA determine areas where arbitrators are performing well and where they may need to improve. FINRA also looks back at key rule filings in 2010 and discusses legislative developments.

Workshop faculty:

- George Friedman, Executive Vice President and Director of FINRA Dispute Resolution
- Richard Berry, Senior Vice President and Director of Case Administration and Regional Office Services
- Katherine Bayer, Regional Director, Northeast Region

Please send any questions or comments to the [FINRA DR Call-in Workshop mailbox](#).

**Note:** FINRA's neutral workshops are pre-recorded, which allows listeners to pause and playback the audio file.

### Operating the Digital Recorder for Offsite Hearings

Our new instructional video shows arbitrators how to operate the digital recorder for offsite hearings, to ensure that they make a clear recording of every hearing.

You may access this training immediately, without prior registration, on the [Arbitration Case Guidance and Resources](#) page and the [Advanced Arbitrator Training](#) page of our website. This training is offered on a voluntary basis, and is available at no cost.

### Basic Arbitrator Training

Please visit our [website](#) for information about the Basic Arbitrator Training Program.

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