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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 better serve parties and other participants in the FINRA forum by taking advantage of this valuable learning tool.

## Year End Message

As we end 2015, we would like to thank all of our arbitrators and mediators on the roster. We value the expertise and skill you bring to the process and we appreciate your dedicated service. Without you, we could not provide the quality of service to parties in the forum. We wish you a wonderful holiday season and look forward to working with you in 2016.

## FINRA Arbitrator Recruitment

By Kwame Dowe, FINRA Case Administrator, Northeast Regional Office



FINRA Dispute Resolution (FINRA DR) has maintained a strong focus on recruiting arbitrators with diverse backgrounds from across different industries. Our recruitment initiatives have included contacting more than 100 women and minority organizations nationwide to source and recruit individuals through onsite events, targeted advertisements (print and digital) and direct marketing campaigns.

This year, we collaborated with nine diversity-based organizations that allowed us to publicize our need for diverse arbitrators and recruit potential candidates at conferences and annual meetings. We developed targeted recruitment marketing materials that enhanced our visibility on FINRA's website. In addition, to broaden our outreach to potential arbitrators, we are developing a recruitment promotional video for our website.

We also leveraged our staff talent in the regions and they have been instrumental in local recruitment efforts. Finally, to become more flexible in how we communicate our message, we have been developing a social media recruitment strategy.

In 2016, we will continue to maximize FINRA DR's advertising and marketing efforts to add qualified arbitrators to the rosters with an emphasis on recruiting diverse arbitrator candidates. We will collaborate with 10 diversity-based organizations to recruit at their annual meetings, including:

- National Urban League;
- National Association of Women Business Owners;
- Hispanic National Bar Association;
- Minority Corporate Counsel Association;
- Military Officers Association of America; and
- National Organization of Women.

We also plan to work with the Educators Network to pilot a direct marketing campaign to target school administrators.

### Comments, Feedback and Suggestions

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Please send your suggestions and comments to:

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Moreover, in November 2015, Nicole Haynes joined FINRA's department of Neutral Management as the associate director of recruitment and training. Nicole joined FINRA (then NASD) in 2000 as a staff attorney in the Northeast Regional Office and was promoted to case assistant manager in 2009. Having more than 15 years of dispute resolution experience, she brings passion and a deep understanding of the forum and its needs going forward.

We believe new leadership as well as comprehensive marketing efforts will help us expand the rosters with qualified, diverse individuals.

## DR Portal Update

### Neutral Portal

As a reminder, we strongly encourage arbitrators and mediators to register with the DR Portal. Portal benefits include:

- viewing and updating your profile information;
- viewing and printing your disclosure report;
- accessing information about your cases, including upcoming hearings and payment information;
- scheduling hearings;
- viewing case documents; and
- filing case documents.

FINRA is actively reaching out to arbitrators serving on portal cases to encourage them to register. Portal registration will be noted on the arbitrator disclosure report that parties review during arbitrator selection.

If you have not registered with the DR Portal, please send an email to [Dispute Resolution Neutral Management](#) to request an invitation. Please include “request portal invitation” in the subject line.

### New Feature: Arbitrator List Statistics

You may now review your list selection statistics in the portal. By selecting “view my Arbitrator List Statistics” from the left hand

## Dispute Resolution and FINRA News

### Case Filings and Trends



Arbitration [case filings](#) from January through November 2015 reflect an 11 percent decrease compared to cases filed during the same 11-month period in 2014 (from 3,537 cases in 2014 to 3,134 cases in 2015). Customer initiated claims decreased by 13 percent through November 2015, as compared to the same time period in 2014.

### Dispute Resolution Task Force

The Dispute Resolution Task Force held its final in-person meeting on October 2, 2015. During the meeting, the task force reviewed its draft report. The final report has been posted on the [Dispute Resolution Task Force Web Page](#). The task force’s recommendations will be reviewed by the National Arbitration and Mediation Committee (NAMC), FINRA’s Standing Board Advisory Committee.

### Seventh Annual Securities Dispute Resolution Triathlon

#### Results of the Seventh Annual Securities Dispute Resolution Triathlon

On October 17-18, 2015, FINRA and St. John’s University Hugh L. Carey Center for Dispute Resolution held the Seventh Annual Securities Dispute Resolution Triathlon in New York City. Twenty teams of law students from 19 law schools competed and demonstrated their advocacy skills in three critical forms of alternative dispute resolution: negotiation, mediation and arbitration.

The results of the competition follow:

<b>Overall Winner:</b>	University of Mississippi School of Law
<b>Negotiation Round Winner:</b>	Pace University School of Law
<b>Mediation Round Winner:</b>	Benjamin N. Cardozo School of Law
<b>Arbitration Round Winner:</b>	Cornell Law School
<b>Advocate’s Choice Winner:</b>	Syracuse University College of Law

*(Advocate’s Choice is based on votes by competitors for the team that demonstrated skill, competence and professionalism.)*

menu, you can see how often your name has appeared on arbitrator ranking lists sent to parties and how often you are ranked or struck on those lists.

### Updating Email Addresses in the Portal

FINRA has simplified email maintenance by removing the ability to store multiple email addresses in a neutral's profile. Therefore, each neutral will have only one email address on file, which is the same email address used to register in the DR Portal. All other email addresses have been deleted.

FINRA staff cannot make any changes to a neutral's email address after the neutral has registered in the portal. If you have already registered in the portal and need to update your email address, you must update it by logging into the [portal](#). From the homepage, select the "manage my account" link from the left-hand navigation panel. After you update your email address, press the "save" button and confirm that your data has been saved.

Please contact the Neutral Management department by [email](#) or by telephone (855-209-1620) if you have any questions. You may also review the [User Guide](#) for any help with the portal.

Fifty-five FINRA neutrals donated their time to engage in critical roles during the contest as judges, mediators, and arbitrators. Your participation was essential to the success of this year's triathlon. We invite you to send us any comments or suggestions for future competitions. Thank you for contributing your time and expertise. Please consider joining us next year.

### FINRA and the American Bar Association (ABA) Program on E-Discovery

On February 3, 2016, FINRA and the ABA will host "[Utilizing Mediation to Navigate the Perils of Electronic Discovery in Arbitration](#)." This program will address the challenge of a rapidly expanding volume of electronically stored information (ESI) to the discovery process in arbitrations. Expert panelists will discuss guidelines and strategies to manage electronic discovery issues and help the parties to resolve this aspect of their disputes.

FINRA neutrals are eligible to receive free registration. The discount code for FINRA neutrals is FINRA16. To use this code, registrants should enter it in the "Add Coupon or Promo Code" box on the payment page.

### Rulemaking Items Approved at the September 2015 FINRA Board of Governors Meeting

#### Dispute Resolution Party Portal

At the [September Board of Governors Meeting](#), the Board authorized FINRA to file with the SEC proposed amendments to the Customer and Industry Codes of Arbitration Procedure to require all parties, except customers who are not represented by an attorney or other person (*pro se* customers), to use the Dispute Resolution Party Portal. Specifically, the amendments would: (1) define the party portal to mean the Office of Dispute Resolution's online claim filing system and the DR Portal that is accessible by arbitration and mediation parties and their representatives; (2) exempt *pro se* customers if they opt out of the party portal; (3) require parties, except *pro se* customers who opt out, to exchange pleadings and other documents through the party portal; and (4) require all parties, except *pro se* customers who opt out, to use the party portal to file with FINRA all pleadings and other documents, except documents and information produced in response to discovery requests, which the forum does not currently receive.

The amendments would also add a Ground Rule to the Code of Mediation Procedure to permit the mediator and the parties to agree to use the party portal to submit all documents and other communications to each other, retrieve all documents and other communications and view mediation case information.

### Expungement of Customer Information

The Board authorized FINRA to file with the SEC proposed amendments to Rules 12805 and 13805 (Expungement of Customer Dispute Information under Rule 2080) of the Codes of Arbitration Procedure. The proposed amendments would codify the best practices from the Expanded Expungement Guidance document that was issued as a notice to parties and arbitrators in 2013.

## Mediation Update

### Mediation Statistics



From January to November 2015, parties initiated 485 [mediation cases](#), an increase of 19 percent compared to cases filed during the same 11-month period in 2014. FINRA closed 441 cases during this time. Approximately 79 percent of these cases concluded with successful settlements, and the average case turnaround time was 82 days.

### Annual Mediator Fee Reminder

December 31, 2015, is the deadline for FINRA mediators to submit their \$200 annual mediator fee and remain available to mediate on FINRA's roster. Mediators who have not submitted payment by that date will be made unavailable to serve. If you have not submitted your \$200 mediator fee, and are interested in remaining on the roster, please contact [Marilyn Molena](#).

### Mediation Settlement Month—October 2015

During [Mediation Settlement Month](#), FINRA mediators offered mediation services at reduced rates. The reduced costs encouraged many parties to mediate and attracted parties, who had not tried mediation, to participate in the program. The parties appreciated resolving their disputes quickly and efficiently. We would like to thank the participating mediators for contributing their skill and expertise to make this year's Mediation Settlement Month another great success.

### Mediation Program for Small Arbitration Claims

As a reminder, the [telephonic mediation program](#) is available to parties in active arbitration cases with claims of \$50,000 or less.

The program offers free or low cost mediation (depending on the claim amount) with a FINRA mediator. It provides parties, many of whom find it difficult to obtain legal representation due to their claim size, an informal process to resolve their dispute. Parties and mediators report satisfaction with the process, and the settlement rate for cases in the program has averaged 80 percent, which is consistent with the settlement rate for all cases over the lifetime of FINRA's Mediation Program.

## Education and Training

### Neutral Workshop: November 11, 2015 – Best Practice Tips for Arbitrators



Rick Berry, Executive Vice President of FINRA Dispute Resolution, discusses tips for arbitrators with Case Administrators Kwame Dowe and Joanna Lam, and Stefanie Herrera from our Neutral Management Department. The panelists review best practices for arbitrator disclosure, using the Dispute Resolution Portal, and conducting a successful hearing.

Please note that FINRA's neutral workshops are pre-recorded, which allows neutrals to pause and playback the audio file.



## Question and Answers

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### Product Cases

**Question:** What is a product case?

**Answer:** Product cases feature claims that involve allegations of a firm's widespread mis-marketing or defective development of a specific security or group of securities.

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**Question:** How are product cases different from other customer cases?

**Answer:** Product cases differ from other customer cases in several ways. The following is a list of some characteristics that tend to distinguish product cases from other customer cases:

- A greater volume of documents.
- Multiple investor claimants may seek the same documents.
- The same documents may have been produced to parties in other cases involving the same product.
- Documents may not be client specific.
- The product at issue is more likely to be the subject of a regulatory investigation.
- The cases are more likely to involve a class action with documents subject to a mandatory hold.
- The documents are more likely to relate to due diligence analyses performed by persons who did not handle the claimant's account.

Since product cases are different from other customer cases, arbitrators may see unique discovery-related issues, which may not be included in the Document Production Lists in [FINRA's Discovery Guide](#). For example, in a product case, parties may request documents relating to a firm's:

- creation of a product;
- due diligence reviews of a product;
- training or marketing of a product; or
- post-approval review of a product.

Parties may ask arbitrators to resolve disputes concerning which additional documents they must produce and the scope of discovery. Under the Discovery Guide, parties are not limited to the documents in the Document Production Lists. Where additional documents may be relevant in a particular case, parties may seek them in accordance with the time frames provided in the [12500](#) series of rules in the Customer Code.

**Question:** What should the panel consider if asked to make a determination on whether a case is a product case?

**Answer:** Parties do not always agree on whether a claim centers around a product as defined above and may ask the arbitrators to decide. The arbitrators may ask the parties to explain their positions on the issue. FINRA rules do not define a product case, so arbitrators have discretion when deciding the issue.

When considering discovery issues in product cases, parties may advise arbitrators that other panels have considered and decided similar disputes. Arbitrators are reminded that prior arbitration decisions are not binding on other panels.

If the panel needs additional information, it may request briefs or oral argument from the parties. The panel may also consult the Arbitrator's Guide and the Discovery Guide for further guidance on discovery issues in product cases. Please note that the Codes of Arbitration Procedure otherwise apply to product cases.

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### Parties Making Second Expungement Requests After Previous Denial

**Question:** I reviewed the [Award Information Sheet](#) from the FINRA website and noticed the following new question in the Expungement Section:

#### Parties Making Second Requests for Expungement

When an arbitration panel has issued an award denying a broker's expungement request, the broker may not request expungement in another arbitration case. Therefore, arbitrators should ask a party requesting expungement whether an arbitration panel previously denied expungement of the customer dispute information at issue. If there has been a prior denial, the arbitration panel must deny the expungement request and contact FINRA staff for assistance.

Did the Associated Person previously file a claim requesting to expunge the same disclosure in the Central Registration Depository (CRD)?  Yes  No

Why was this question added?

**Answer:** This question was added to the Award Information Sheet in October 2015 to address the concern that brokers, who were previously denied expungement of customer dispute information, might try to make a second expungement request for the same information from a different panel. The new question informs arbitrators that parties are prohibited from seeking expungement if the same request was previously denied in another arbitration case.

When arbitrators consider a request for expungement, they should ask the requesting party if the request was previously denied by another arbitration panel. An arbitration panel may not vacate or change an earlier panel's decision to deny expungement. Only a court of competent jurisdiction can vacate an arbitration award. If the request was denied previously, the arbitrators must deny the current expungement request and contact FINRA staff for assistance.

This issue would likely arise in cases filed by a broker solely for the purpose of obtaining expungement of customer dispute information. It may also arise in cases where a party is requesting expungement of information unrelated to the underlying case, or where a party is requesting expungement of customer dispute information related to multiple cases.

### Dissenting Opinions

**Question:** Do awards have to be unanimous?

**Answer:** No. Awards do not have to be unanimous. [Rules 12410 and 13410](#) of the Codes provide that rulings and determinations of the panel must be made by a majority of the arbitrators. An arbitrator who disagrees with the majority will be identified in the award as a dissenting arbitrator and have the opportunity to provide a dissenting opinion with the final award.

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**Question:** I am not in agreement with my co-panelists about the award. Do I need to write a dissenting opinion in the award?

**Answer:** No. You do not need to write a dissenting opinion when you disagree with the majority ruling. If you would like to include an explanation, please remember to be respectful, professional and focused on the substantive issues that are the bases for your dissent. Legal citations are not required. A dissent should identify the points where you disagree with your co-panelists and explain your perspective on these substantive issues. For instance, if you disagree with the majority's decision on the finding of liability, an appropriate dissent would include your rationale, based on the facts of the case, as to why you disagree with the finding.

The dissent should not comment on the performance or behavior of the other arbitrators; nor should it disclose private discussions that occurred during the deliberation. FINRA expects arbitrators to be respectful of each other, even when they disagree, and to maintain decorum and professionalism in the forum when rendering their award.

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## Arbitrator Disclosure Reminder

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As a reminder, arbitrators should review their disclosure reports regularly to ensure that all information is accurate and current. Even if arbitrators are not currently assigned to cases, their disclosure reports may be sent to parties in their hearing locations during arbitrator selection. Parties should have the most current and complete information about an arbitrator to make an informed decision when selecting arbitrators.

## Arbitrator Tip: Direct Communication for Late Cancellations



As a general rule, FINRA does not provide parties with arbitrators' contact information. However, if parties and the panel agree during the initial prehearing conference to use direct communication for the purpose of communicating late cancellations, arbitrators should provide the parties with their preferred method of direct communication. Arbitrators should memorialize the use of direct communication for late cancellations in the [Initial Prehearing Conference Scheduling Order](#) (page 3) and provide their contact information directly in the order.

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