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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.

An Introduction to FINRA's National Arbitration and Mediation Committee

By Steven B. Caruso & Darya Geetter*



FINRA performs a vital role in the United States financial regulatory structure: overseeing securities brokerage firms and individual brokers doing business with the public. Under the supervision of the Securities and Exchange Commission, FINRA conducts a wide range of regulatory functions every day in support of its mission “to protect investors and promote market integrity in a manner that facilitates vibrant capital markets.”

In the context of FINRA's dispute resolution forum, the FINRA Board of Directors (FINRA Board) appoints the National Arbitration and Mediation Committee (NAMC). The NAMC is an advisory committee of leading practitioners that provides recommendations regarding the development and maintenance of an equitable and efficient system of dispute resolution to serve public investors and FINRA members. The NAMC's scope of responsibility also includes providing guidance to FINRA Office of Dispute Resolution (FINRA) for the recruitment, qualification, training and evaluation of arbitrators and mediators. The NAMC frequently proposes new rules and serves as a sounding board for FINRA when FINRA considers new rules and procedures governing arbitrations and mediations.

NAMC Members

FINRA [Rule 12102](#) requires the NAMC to consist of no fewer than 10 and no more than 25 members—of whom at least 50 percent must be “non-industry” or “public” members. The chairperson of the NAMC must be a public member. Currently, the NAMC has 13 members: six industry members and seven public members. A complete list of the names, business affiliations and classifications (public or industry) of the current NAMC members is available on FINRA's [website](#).

NAMC Role

Although the NAMC is required to meet at least once per year, it usually meets three times each year with additional telephonic meetings in between meetings. Meeting topics range from discussions about trends in the industry to proposed FINRA rule changes. Items can be raised for “discussion” or for “action.” FINRA prepares a meeting agenda for the NAMC and memos that analyze emerging issues.

FINRA works with the NAMC to develop rule changes for upstream consideration by the FINRA Board to consider. As practitioners, NAMC members bring their perspectives and experience to bear on the discussion. They provide insight into the strengths and weaknesses of a suggested changes and the impact the changes might have on the parties and the dispute resolution process. These discussions give FINRA an opportunity to revise proposals before submitting them to the FINRA Board. The discussions are robust but cordial. Everyone’s goal is to enhance the FINRA arbitration program and promote fairness to all participants. No one constituent is favored. Recent matters that were considered by the NAMC include recommendations by FINRA’s [Dispute Resolution Task Force](#) regarding rule changes and enhancements to case administration and FINRA’s neutral rosters.

Within the NAMC structure, all NAMC members serve on various subcommittees, which include:

- **Rules and Procedures:** considers issues associated with the rules and policies set forth in FINRA’s Codes of Arbitration Procedure.
- **Neutral Roster:** considers issues and policies associated with the establishment and maintenance of the arbitrator roster, which is an essential part of the FINRA forum. These include the review and approval of new candidates to the FINRA roster, arbitrator training materials and the removal of arbitrators from FINRA’s roster.
- **Expungement Working Group:** considers issues and policies related to expungement of customer dispute information from the Central Registration Depository (CRD) records of registered representatives.
- **Mediation:** considers issues and policies related to FINRA’s mediation program, including the roster of approved mediators.

- **Executive Committee of the NAMC:** comprised of the public chairperson of the NAMC and one senior industry member, the Executive Committee helps set the NAMC's priorities and guides FINRA when the full committee is not available.

The effective operation of the NAMC and its subcommittees depends in large part on its relationship with FINRA staff. This relationship includes working with senior staff and the regional directors of FINRA Dispute Resolution offices across the country, all of whom contribute to, and are a critical part of, the NAMC's success.

An example of this relationship is perhaps best illustrated by the limited occasions when it may become necessary to remove an arbitrator from FINRA's arbitrator roster. The process of removing an arbitrator is a collaborative effort. It requires the recommendation of various members of FINRA staff and a unanimous decision from the chairperson of the Neutral Roster subcommittee and the chairperson of the NAMC.

Conclusion

The NAMC is a unique FINRA advisory committee because of its active public members who regularly practice in FINRA's dispute resolution forum itself.

This formula has led to a proven track record for success that ensures there will continue to be an "equitable and efficient system of dispute resolution that will equally serve the needs of public investors and FINRA members."

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Office of Dispute Resolution and FINRA News



Case Filings and Trends

2017 Year-end Statistics

[Arbitration case filings](#) for 2017 reflect a six percent decrease compared to cases filed in 2016 (from 3,681 cases in 2016 to 3,456 cases in 2017). Customer-initiated claims decreased by 10 percent in 2017 compared to cases filed in 2016 (from 2,515 cases in 2016 to 2,260 cases in 2017).

In 2017, arbitration cases filed identified the following securities (listed in order of decreasing frequency): common stock, municipal bonds, municipal bond funds, mutual funds, government securities, limited partnerships, real estate investment trusts, exchange-traded funds, variable annuities, options, corporate bonds, annuities, private equities, 401(k) and preferred stock. The top two causes of action alleged were breach of fiduciary duty and misrepresentation.

Statistics Through February

Arbitration case filings from January through February 2018 reflect a 63 percent increase compared to cases filed during the same two-month period in 2017 (from 497 cases in 2017 to 809 cases in 2018). Customer-initiated claims increased by 56 percent through February 2018, as compared to the same time period in 2017.

Demographic Survey

Thank you to those who participated in the 2017 demographic survey of the neutral roster. As in previous years, the survey was administered by a third-party consulting firm and participation in the survey was voluntary.

FINRA has embarked on a [campaign](#) to recruit individuals from varied backgrounds to serve as arbitrators. The data received from this annual survey helps us track our progress in enhancing the diversity of the roster and helps to inform future recruitment events. We are not attempting to assess the quality of the roster or the awards arbitrators make. All responses are anonymous and confidential. Therefore, results cannot affect your chances of being selected to serve on cases.

The results of the 2017 demographic survey are now available on our [website](#).

Portal Reminder and Q & As

We strongly encourage arbitrators and mediators to register with the DR Portal. The portal allows users to:

- view and update profile information;
- view and print the disclosure report;
- access information about assigned cases, including upcoming hearings and payment information;
- schedule hearings;
- view case documents;
- file case documents like the electronic Oath of Arbitrator and Disclosure Checklist;
- review list selection statistics to see how often an arbitrator's name has appeared on arbitrator ranking lists sent to parties and how often an arbitrator has been ranked or struck on those lists; and
- update the last affirmation date.

Portal registration will be noted on the disclosure reports that parties review when selecting arbitrators and mediators. Use of the portal became mandatory for all parties (except for *pro se* investors) in April 2017.

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New York City Bar Association Securities Arbitration & Mediation: Hot Topics 2018

On May 15, 2018, FINRA will participate on the panel at the Securities Arbitration and Mediation Hot Topics program at the New York City Bar Association. Office of Dispute Resolution Director, Rick Berry, will join the panel of experienced practitioners to discuss rule changes, decisions and future developments. This program delivers practical suggestions on prosecuting and defending securities arbitrations and mediations.

FINRA arbitrators and mediators are invited to attend the program at the reduced rate of \$134.50 (half of the member cost). Please contact the [NYC Bar Association](#) for more information about this program.

American Bar Association Annual Arbitration Training Institute

On May 17 – 18, 2018, the [American Bar Association \(ABA\)](#) will host its 11th Annual Arbitration Training Institute in Miami, FL. The two-day training will be presented by a panel of nationally recognized arbitrators and arbitration advocates. These experts will walk attendees through the arbitration process from start to finish. FINRA is proud to be a collaborating organization for this unique program and encourage arbitrators to consider attending. Please visit the ABA's website for more information.

2018 FINRA Annual Conference

[FINRA's Annual Conference](#) will take place May 21 – 23, 2018, in Washington, D.C. This year's Annual Conference provides an opportunity for practitioners, peers and regulators to exchange ideas on today's most timely compliance and regulatory topics. The conference offers industry professionals a variety of sessions related to current trends in technology, cybersecurity, risk management and much more, including a session on dispute resolution where attendees learn about FINRA's arbitration and mediation forum.

Portal Q&As

Q: How do I know if I'm in the correct portal?

A: The party side of the portal is accessible only to parties and counsel who are registered and are actively participating in an arbitration case. The neutral side of the portal is accessible only to registered FINRA arbitrators and mediators.

The neutral portal allows FINRA arbitrators and mediators to view and update their arbitrator profile and review their past and current cases. In the neutral side of the portal, you should see a Profile Update tab at the far end of the top header. If you do not see this tab, you are in the party side of the portal. If you need to register or re-register in the neutral portal, please contact the Department of Neutral Management at (212) 858-3999 (Option #6) or by email at finradrnm@finra.org for a portal invitation.

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SEC Filings

Simplified Arbitration

FINRA filed with the Securities and Exchange Commission (SEC) a proposed rule change to amend FINRA Rules 12600 and 12800 of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Rules 13600 and 13800 of the Code of Arbitration Procedure for Industry Disputes (Industry Code), to amend the hearing provisions to provide an additional hearing option for parties with claims of \$50,000 or less, excluding interest and expenses.

Please review [SR-FINRA-2018-003](#) for more information.

Eliminate Fee for Explained Decisions

On February 21, 2018, FINRA filed with the SEC a proposed rule change to amend FINRA Rules 12214(e)(1) and 12904(g)(5) of the Customer Code and Rules 13214(e)(1) and 13904(g)(5) of the Industry Code to eliminate the \$400 fee for an explained decision.

This rule became effective upon filing. Please review [SR-FINRA-2018-012](#) for more information.

FINRA Releases Paper Providing Perspectives on Customer Recovery

FINRA released a [paper](#) providing perspectives on customer recovery of judgments and awards in the financial services industry, with a particular focus on the arbitration forum operated by FINRA. The paper—[FINRA Perspectives on Customer Recovery](#)—is intended to encourage a continued dialogue about addressing the challenges of customer recovery across the industry while directly informing the further enhancement of recovery in FINRA's forum. As noted in the paper, FINRA plans to organize discussions with other regulators and policymakers to further address the issue of customer recovery, identify additional data or analysis that may help inform effective decision-making in this area, and consider potential courses of action.

To provide additional transparency about the FINRA dispute resolution forum regarding customer recovery, FINRA now provides on its website additional data on unpaid customer arbitration awards arising in this forum for the past five years.

Q: What do I do if I can't remember my password?

A: On the login page, click the "Forgot User ID or Password" link. A temporary password will be sent to your email. Open a new window to the [DR Portal](#) and enter your User ID and temporary password. Because the password will contain many characters that may be hard to enter correctly, it would be best to copy and paste the temporary password. A new screen will appear where you will be able to reset your password. If you have any questions, contact the Department of Neutral Management at (212) 858-3999 (Option #6).

Regulatory Notice

Proposed Amendments to Its Membership Application Program to Incentivize Payment of Arbitration Awards

FINRA is requesting comment on proposed amendments to its Membership Application Program (MAP) rules. The proposed amendments would create further incentives for the timely payment of arbitration awards by preventing an individual from switching firms, or a firm from using asset transfers or similar transactions, to avoid payment of arbitration awards while staying in business.

The amendments would address situations where: (1) a FINRA member firm hires individuals with pending arbitration claims, where there are concerns about the payment of those claims should they go to award or result in a settlement, and the supervision of those individuals; and (2) a member firm with substantial arbitration claims seeks to avoid payment of the claims should they go to award or result in a settlement by shifting its assets, which are typically customer accounts, or its managers and owners, to another firm and closing down.

The comment period expires April 9, 2018. Please review [Regulatory Notice 18-06](#) for more information.

Mediation Update



Mediation Statistics

2017 Year-End Statistics

In 2017, parties initiated 619 [mediation cases](#), an increase of four percent compared to cases filed in 2016. FINRA closed 728 cases during this time. Approximately 82 percent of these cases concluded with successful settlements, and the average case turnaround time was 105 days.

Statistics Through February

From January through February 2018, parties initiated 78 mediation cases, a decrease of 30 percent for the same period in 2017. FINRA also closed 115 cases during this time. Approximately 76 percent of these cases concluded with successful settlements.

Discontinuation of Mediator Annual Fee

We remind FINRA mediators that the Office of Dispute Resolution discontinued the annual fee requirement. We encourage mediators who are unavailable because of non-payment of the annual fee, to become active again. We also ask arbitrators with mediator experience to consider joining the FINRA mediator roster. Send an email request to mediate@finra.org if you are interested in joining the mediator roster.

Mediation Program for Small Arbitration Claims

The telephonic mediation program remains 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 who 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.



Questions and Answers

Importance of Completing the Oath of Arbitrator and Disclosure Checklist Promptly and Completely

Question FINRA staff recently reminded me to submit my Oath of Arbitrator (Oath) and Disclosure Checklist (Checklist). If my profile and individual circumstances have not changed, why do I need to keep submitting separate Oaths? Why does it matter when I submit my Oath?

Answer Once you accept an appointment, FINRA staff will advise you to submit the Oath for that case, which includes the Disclosure Checklist. You should review carefully the pleadings and your co-panelists' arbitrator disclosure reports before signing and submitting your Oath and Checklist. You must complete a new Oath and Checklist for every case to which you are assigned.

Each case has its own particular facts and circumstances. There are different parties and attorneys in each case that may prompt additional disclosures. If a potential conflict exists, you must advise staff immediately. Timely submission of Oaths and Checklists is necessary to ensure that arbitrators fulfill their continuing disclosure obligations. Arbitrators should submit their Oaths and Checklists to FINRA as soon as possible before the Initial Prehearing Conference (IPHC). Timely submission helps to ensure that the parties have sufficient time to review any new disclosures before the IPHC. Late submission of an Oath and Checklist may result in delays in the case if the Checklist contains additional disclosures that must be shared with the parties. As a reminder, failure to disclose may result in vacated awards which undermine the efficiency and finality of arbitration and may result in an arbitrator's removal from the roster.

As a reminder, you can easily complete and submit your Oath and Checklist through the [DR Portal](#).

Direct Deposit

Question How do I enroll in direct deposit for payment of arbitrator honorarium and reimbursement of expenses?

Answer You can enroll in FINRA's Non-Employee Direct Deposit program by completing the [Direct Deposit \(Non-Employee\)](#) form. You can send the completed form with a voided check to the department of Neutral Management. Note that direct deposit is available only for personal checking accounts. We cannot deposit funds directly into a business or corporate account. Direct deposit usually takes effect within seven business days from receipt of the completed form.

Education and Training



Arbitrator Trainings

FINRA offers advanced arbitration training courses free of charge. We encourage arbitrators to complete them to ensure that they are aware of the most current information about these topics. The training materials are also provided as a resource to all arbitration participants that include parties, parties' representatives and arbitrators.

Online Advanced Trainings Available Through FINRA Learning Management System

FINRA offers most of its [advanced trainings](#) through FINRA's Learning Management System (LMS). Arbitrators must register in the LMS before they can access the courses. After arbitrators complete a course, FINRA will add the completed training information to the arbitrator's disclosure report. The advanced training courses available to arbitrators are:

- Chairperson Training
- Civility in Arbitration
- Direct Communication Rule
- Discovery, Abuses & Sanctions
- Expungement
- Understanding the Prehearing Stage
- Your Duty to Disclose

FINRA provides PDF (printable and searchable) versions of all of its arbitrator trainings, offered through the LMS, on the [Written Materials for Arbitrator Training](#) web page of our website.

Video Training Available Through FINRA's Advanced Arbitrator Training Page

Arbitrators may access video training courses directly from FINRA's Advanced Arbitrator Training web page, with no registration required. After arbitrators complete a course, they may send an email to FINRA to confirm completion and request that FINRA include the training on their disclosure report. In addition to viewing a training video, arbitrators may download the accompanying training documents.

Compliance and Regulatory Trainings

In addition to arbitrator training, FINRA offers [compliance and regulatory courses online](#). Arbitrators may review the course catalog on FINRA’s website and register—with any of the vendors listed on our website—for courses, such as “Retail Supervision: Sales to Senior Investors” and “Municipal Bonds: Regulatory Considerations.” Individual courses are available to arbitrators at a discounted rate of \$12.50. Arbitrators may also purchase the entire library of courses for \$45.

Other Training Resources

FINRA’s Website: FINRA regularly updates its [website](#) to provide up-to-date information. Among other things, the website provides information about rule changes, updated arbitration procedures and new training opportunities.

Neutral Workshops: [Neutral workshops](#) provide information about developments within FINRA’s dispute resolution program and best practice tips for arbitrators and mediators. FINRA pre-records neutral workshops and posts them as video files on FINRA’s website for arbitrators and mediators to view at any time.

DR Monthly Email: FINRA distributes a monthly email that highlights new developments in FINRA’s dispute resolution program. For example, the email includes information about SEC rule filings and approvals and arbitrator training. The email is sent at the beginning of each month to all available arbitrators and mediators on the roster, as well as to individual subscribers.

Arbitrator Tip: Scheduling Hearings Within Nine Months From the Initial Prehearing Conference



Arbitrators schedule dates for the evidentiary hearing during the Initial Prehearing Conference (IPHC) with the parties. The [IPHC script](#) encourages parties and arbitrators to schedule evidentiary hearings within nine months of the IPHC. The script asks arbitrators to remind parties that the expeditious resolution of disputes is one of the goals of arbitration. In light of this guidance, arbitrators have asked FINRA what they should do when parties agree to hearing dates that are more than nine months after the IPHC.

Party Agreement on Hearing Dates

If the parties agree on hearing dates before the IPHC is held, the arbitrators should accept the parties' agreed hearing dates (even if the dates are more than nine months after the IPHC), if appropriate. The arbitration process belongs to the parties and the arbitrators should defer to the parties' agreement on scheduling.

Parties Disagree on Hearing Dates

In many cases, however, the parties do not agree on hearing dates prior to the IPHC. If the parties disagree on hearing dates proposed during the IPHC, arbitrators should work with the parties to schedule evidentiary hearings within nine months after the IPHC. There may be times when this is not feasible. However, starting the arbitration hearings nine months or more after the IPHC should be the exception.

Scheduling Tips

If one party or the party's counsel is unavailable to attend evidentiary hearings within nine months of the IPHC, arbitrators may consider the following options:

- Ask the parties or their counsel to provide specific reasons why they are unavailable to schedule a hearing on specific days. For example, a response such as "I'm booked all of July" should be considered unacceptable. During the IPHC, arbitrators can require the parties

and/or their counsel to go through their calendars on a week-by-week basis (day-by-day, in some instances) and describe the prior commitments that make them unavailable to schedule additional arbitration hearings.

- Suggest that the representative with the scheduling conflict consider asking a colleague in his or her firm to handle the conflicting event, which would allow the representative to schedule the case in a timely manner.
- Schedule back-up hearing dates in case hearings need to be postponed for unforeseen circumstances. Arbitrators will save valuable time if they pre-select back-up dates.
- Consider scheduling non-consecutive hearing dates if doing so will prevent excessive delays.
- Suggest that hearings be scheduled in the evenings or on weekends.
- A significant goal of arbitration is the quick resolution of disputes. During the IPHC, arbitrators should do everything within reason to schedule hearings promptly, and still provide parties with a reasonable amount of time to prepare for the case.

Arbitrator Disclosure Reminder



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. Arbitrators should log into the [DR Portal](#) to update their disclosure reports.

In September 2017, FINRA enhanced arbitrator disclosure reports by publishing the date arbitrators last affirmed the accuracy of their disclosure reports. Arbitrators can affirm the accuracy of their disclosure reports and refresh the affirmation date by submitting an update through the DR Portal.

The affirmation date appears prominently at the top of the disclosure report that parties review during the arbitrator selection process. Parties may consider the last affirmation date as a factor when choosing arbitrators. Therefore, arbitrators are encouraged to review and affirm regularly the accuracy of their disclosure reports using the DR Portal. Even if arbitrators have no changes to their profile, they can affirm the information is current and update the affirmation date on their disclosure reports by submitting an update through the DR Portal.

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