

## Sanction Guidelines

### FINRA Revises the Sanction Guidelines

Effective Date: June 1, 2018

#### Summary

FINRA is revising its *Sanction Guidelines* to instruct adjudicators in the disciplinary process to consider customer-initiated arbitrations that result in adverse arbitration awards or settlements when assessing sanctions. Thus, when a respondent's disciplinary history, and history of arbitration awards and arbitration settlements together with the violation found in a disciplinary case, form a pattern, the *Sanction Guidelines* advise that adjudicators should consider imposing more stringent sanctions.

These revisions to the *Sanction Guidelines* take effect for all complaints filed in FINRA's disciplinary system beginning on **June 1, 2018**. They are available on FINRA's website at [www.finra.org/Industry/Enforcement/SanctionGuidelines](http://www.finra.org/Industry/Enforcement/SanctionGuidelines).

Questions concerning this *Notice* may be directed to Alan Lawhead, Office of General Counsel, at (202) 728-8853 or [alan.lawhead@finra.org](mailto:alan.lawhead@finra.org).

#### Background & Discussion

FINRA's *Sanction Guidelines* provide both general principles that apply to the overall process of determining sanctions for every case and specific recommendations of a range of sanctions for particular rule violations. The *Sanction Guidelines* familiarize firms with a wide variety of typical securities-industry rule violations, and the range of disciplinary sanctions that may result from those rule violations. The goals of the *Sanction Guidelines* are to assist FINRA's adjudicators in determining the appropriate sanctions in disciplinary proceedings and to provide consistency in the imposition of sanctions.

May 2, 2018

#### Notice Type

- ▶ Guidance

#### Suggested Routing

- ▶ Legal
- ▶ Registered Representatives
- ▶ Senior Management

#### Key Topics

- ▶ FINRA Sanction Guidelines

## Revisions to General Principle No. 2 to Include Consideration of Customer-Initiated Disputes Resolved in Arbitration

The *Sanction Guidelines* begin with “General Principles Applicable to All Sanction Determinations.” General Principles Nos. 1 and 2 emphasize that FINRA’s disciplinary sanctions are designed to protect the investing public, deter misconduct and uphold high standards of business conduct. They also advise adjudicators to impose progressively escalating sanctions on repeat violators to deter future misconduct.

Currently, the *Sanction Guidelines* instruct that a respondent’s disciplinary history should trigger higher sanctions when that disciplinary history: (a) is similar to the misconduct in the current disciplinary case; or (b) evidences a “reckless disregard for regulatory requirements, investor protection, or market integrity.” The newly added section in General Principle No. 2 of the *Sanction Guidelines* instructs adjudicators to consider customer-initiated arbitrations that result in adverse arbitration awards or settlements when evaluating an individual respondent’s background. The revisions replace the term “disciplinary history” with “Disciplinary and Arbitration History,” which is defined as:

disciplinary history by regulators, and arbitration awards and arbitration settlements resulting from disputes between a customer and the respondent, including those when the respondent is the subject of an arbitration claim that only names a FINRA member firm.

Disciplinary and Arbitration History includes in its definition arbitrations that a customer filed involving investment-related disputes that have been resolved through an adverse award or settlement. The definition excludes customer-initiated arbitration claims that have been filed but not resolved.<sup>1</sup> It also excludes customer complaints when no arbitration claim has been filed and settlements reached with a customer when no arbitration claim was filed. Dismissals and withdrawals of customers’ arbitration claims also will not be relevant to determinations of disciplinary sanctions. The *Sanction Guidelines* revisions apply only to individual respondents; they do not apply to member firms.<sup>2</sup>

### Pattern of Causing Harm

By enabling adjudicators to consider arbitration settlements and adverse arbitration awards, in addition to the traditionally considered final disciplinary actions, the *Sanction Guidelines* will allow adjudicators to take such settlements and awards into account in appropriate cases when determining whether a pattern of harm to investors or market integrity, or disregard of regulatory requirements exists. When such a pattern is established, an adjudicator should consider imposing more severe sanctions than what would have been imposed if no pattern existed. These *Sanction Guidelines* revisions will bolster the ability of adjudicators to fulfill the goals of General Principles Nos. 1 and 2 to protect investors and deter misconduct.

FINRA is posting on its website guidance specifically for these *Sanction Guidelines* revisions. Questions and answers 19 to 22 have been added to the frequently asked questions related to the *Sanction Guidelines*, which can be found at [www.finra.org/industry/march-2006-revisions-nasd-sanction-guidelines-faq](http://www.finra.org/industry/march-2006-revisions-nasd-sanction-guidelines-faq).

## Finality

The *Sanction Guidelines* currently provide that pending investigations or ongoing regulatory proceedings prior to a final decision are not disciplinary history. There has been no change to this finality requirement for the treatment of regulatory matters. A similar finality rule will also apply to the consideration of arbitration awards and arbitration settlements. An arbitration award that a party has not moved to vacate qualifies as arbitration history, but pending arbitrations do not. If a respondent lost an arbitration award and has filed a motion to vacate, the arbitration award does not qualify as arbitration history while the motion to vacate is pending.<sup>3</sup> Arbitration settlements reflect the voluntary agreement of the parties and, accordingly, are final.

## Effective Date

These revisions will take effect for disciplinary matters on **June 1, 2018**. For disciplinary cases, the revisions will apply to all complaints filed on or after **June 1, 2018**. The revisions will not apply to cases in which the complaint is filed before **June 1, 2018**, or to cases that are currently pending before the Office of Hearing Officers or are on appeal.

## Endnotes

1. The definition of “investment-related” is the same as the definition supplied in the Form U4 or U5 Explanation of Terms (version 2014.1): “Pertains to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).”
2. Disciplinary history has been defined by case law to include, but not be limited to, final disciplinary actions and settlements by FINRA, other self-regulatory organizations, the Securities and Exchange Commission, CFTC, and state securities regulators.
3. Once a court has denied a motion to vacate the arbitration award, the award is included in the category of arbitration history. The *Sanction Guidelines* follow the same rule that FINRA does for requiring associated persons to pay arbitration awards. See *Michael Albert DiPietro*, Exchange Act Release No. 77398 (Mar. 17, 2016) (holding that FINRA may suspend or cancel an associated person’s registration for failure to pay an arbitration award when a motion to vacate the award has been denied, and need not stay its proceedings to await a decision on an appeal).