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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.

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Arbitrator Disclosures: Requests for Additional Information

By Steven B. Caruso and Allison Patton



Arbitrator disclosure is the critical cornerstone of FINRA arbitration. As FINRA Office of Dispute Resolution (ODR) has continuously noted, an arbitrator’s failure to disclose “may result in vacated awards which undermine the efficiency and finality of our process” and “may also result in removal from the roster.” Therefore, arbitrators are reminded to disclose fully all relevant business and professional information. As part of the disclosure process, arbitrators are also encouraged to respond to parties’ requests for additional information.

Duty to Disclose

[Rule 12405\(a\)](#) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) requires “each potential arbitrator to 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.”

Year End Message

As we approach the end of 2016, we would like to extend a heartfelt thanks to 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.

A big highlight of 2016 were the arbitration appreciation events. We held eight arbitration appreciation events across the country. The events gave staff an opportunity to meet more of you personally and to thank you for your contributions to the forum. They also allowed us to hear from you about what enhancements would improve your experience in the forum.

We look forward to working with you in 2017. Have a wonderful holiday season.

Comments, Feedback and Suggestions

Please send your suggestions and comments to:

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This obligation to disclose interests, relationships or circumstances that might preclude an arbitrator from rendering an objective and impartial determination is a continuing duty. It requires an arbitrator who accepts appointment to an arbitration proceeding to disclose, at any subsequent stage of the proceeding, any such interests, relationships or circumstances that arise, are recalled or are discovered.

Request for Additional Information

Based on the facts or circumstances of a particular matter, parties may need additional information beyond the information in an arbitrator's disclosure report. [Rule 12403\(b\)\(2\)](#) states that a party may request "additional information about an arbitrator." Upon receipt of a request for additional information, FINRA will "request the additional information from the arbitrator" and will provide the arbitrator's responses "to all of the parties at the same time." Requests for additional information submitted to arbitrators should be specific and related to either the subject matter of the dispute and/or the potential witnesses who may provide testimony at the evidentiary hearing.

Parties may request information from an arbitrator prior to appointment to a case or at a subsequent stage of the proceeding. Regardless of when the request is made, arbitrators should understand that the primary purpose of the request is to solicit additional information that may affect—or even give the appearance of affecting—the arbitrator's ability to be impartial and the parties' belief that the arbitrator will be able to render a fair and objective decision. As such, arbitrators should respond promptly to a request for additional information with a response that is candid, honest and complete. In certain instances, a party may submit a questionnaire for FINRA to forward to an arbitrator.

When arbitrators respond to a request for additional information, they should also carefully consider whether to supplement their disclosure reports with the additional information that was provided to the parties.

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- * *Allison Patton has been with Morgan Stanley for over 25 years. She began her career with Dean Witter in 1986 working in various positions in Operations and later as Regional Compliance Officer for the Southeast Region. After graduating from law school, Ms. Patton joined the Atlanta law firm of Rogers & Hardin, representing brokerage firms in litigation, arbitration and regulatory matters. In 1996, she returned to Morgan Stanley as an attorney in the Florida Client Litigation Unit. She is currently Co-Head of Client Litigation for Morgan Stanley Wealth Management, responsible for handling customer complaint intake and responses, subpoenas, customer litigation and arbitration matters as well as regulatory exams, investigations and enforcement matters. Ms. Patton is a current industry member of the NAMC.*

Arbitrator Disclosures and “The Importance of Being Earnest”: Former Name Disclosures

By Sandra D. Grannum



Arbitrators are the most important factor in a party's assessment of whether the arbitration process was fair. While some litigants will inevitably perceive the process as unfair if they are not the victor, a majority of parties who practice in FINRA's forum are likely to have a more reasoned approach. They understand that their victory alone cannot be the measure of fairness. However, to all litigants, at the very least, a factor in their perception of whether the process is fair is the transparency of the forum and the arbitrators.

For this reason, both claimant's counsel and respondent's counsel spend significant time and expense on the arbitrator selection process. No advocate realistically believes he or she can forecast the decision of an arbitrator or a panel of arbitrators. However, like a jury selection, advocates hope to find an arbitrator or mix of arbitrators most likely to be open minded about their clients' facts and presentation of the case, or either most knowledgeable or least knowledgeable (depending on philosophical bent) about the subject matter of the arbitration. Whatever the advocates' strategy, the arbitration selection process gives parties some determination in their destiny. Consequently, the parties' perception of whether this particular aspect of arbitration was conducted fairly becomes significant.

FINRA provides parties a group of 30 arbitrators to rank from which three arbitrators will ultimately be appointed to their panel. In small cases and in some promissory note cases, the parties select one arbitrator from a group of 10. The party may only strike four of any group of 10 arbitrators as a matter of right.¹ Therefore, the parties cannot completely eliminate the entire list of arbitrators. The exception to this rule is a party's right to strike the entire list of non-public arbitrators in a case involving a public customer. It is unlikely that any party gets its first choice of arbitrator given the combination of ranking scores used to select the ultimate panel of arbitrators. On the other hand, given the parties' ability to strike as a matter of right and to challenge an arbitrator with a perceived conflict, it is also unlikely that any party will have to present its case to their last choice arbitrator.

The decision regarding who to strike and who to rank is often based upon the information the parties are given by FINRA and what they are able to discern on their own.

FINRA provides biographical information for each arbitrator, which includes their education, job experience, award history and the pending cases on which the arbitrators are serving. This information is culled from the disclosures FINRA requires from all arbitrators.²

The parties have the right, and arguably their advocates have the responsibility, to discover what they can about the arbitrators through publicly available information. Courts have rejected motions to vacate based upon parties’ post-award cries of failure to disclose, where the party could have discovered additional information about an arbitrator, but failed to do so.³

While the parties are given biographies and case histories for an arbitrator, the parties are not given other names by which the arbitrator was known. Because of privacy concerns, FINRA does not require arbitrators to disclose former names on their disclosure reports. At the time of application, arbitrators must undergo a Social Security number (SSN) verification. This review provides any other names associated with the SSN and allows FINRA to raise any disclosure issues with the applicant at that time. Even though former names are not provided, FINRA emphasizes that regardless of the name used, applicants must provide complete disclosures.

A party’s ability to research additional information about an arbitrator may, however, be hindered if that arbitrator was previously known by another name. For instance, an arbitrator may have written articles or tried cases under a different name, which may not be captured in the biographical information provided to the parties and which will unlikely be discerned by the parties during the investigation of the arbitrator’s background. The arbitrator may have webpages, blogs and advertisements, appearances as an expert witness or as a party under other names.

If arbitrators are comfortable providing former names, they may include them on their disclosure reports. Therefore, if an arbitrator’s former name is available to the parties and they fail to do their due diligence to discover relevant information, then the courts may be unlikely to grant a motion to vacate. On the other hand, if an arbitrator is not comfortable providing a former name, they must ensure that all disclosures, regardless of the name used, are available to parties. For example, arbitrators must disclose any

prior lawsuits or liens/judgments, any involvement with the FINRA forum, either as a representative or party, as well as any publications on topics that may be relevant to the forum. Failure to make full and complete disclosures may jeopardize the finality of the award.⁴

As with all information, the best course is disclosure, and then some more disclosure. The parties “hope you have not been leading a double life,”⁵ but if you have, they would like it to be disclosed.

** Sandra Grannum is a Partner in the Litigation Financial Services Group at Drinker Biddle & Reath LLP. Her practice is focused on securities broker/dealer litigation, arbitration, mediation and regulatory investigations, hearings and litigations. She has tried complex multimillion-dollar arbitrations for corporate clients across the country, as well as adversarial proceedings in bankruptcy courts in securities matters. She is also an experienced employment law practitioner having tried a number of employment arbitrations and administrative hearings.*

Ms. Grannum has written and lectured widely on securities and ethics issues. She also has been involved in developing compliance programs in response to the Sarbanes-Oxley legislation and the Department of Labor Fiduciary Duty Rule which will be applicable in April 2017. She has chaired the full-day PLI Securities Arbitration Seminar conducted annually in New York City for several years. Ms. Grannum was a member of the FINRA Dispute Resolution Task Force which issued its Final Report and Recommendations on December 16, 2015.

Ms. Grannum earned her law degree from Harvard Law School and her bachelor’s degree from New York University. She began her career as a litigation associate at the New York law firm of Cravath, Swaine & Moore before moving to Tenzer Greenblatt to practice securities litigation. Ms. Grannum moved in-house to be an Associate General Counsel handling securities litigation at PaineWebber (now UBS Financial Services) in 1997. In November 2001, she became Senior Vice President and Senior Associate General Counsel in PaineWebber/UBS’ Employment Law Unit. In 2003, she formed her own firm, Davidson & Grannum, with a former PaineWebber/UBS colleague. She joined Drinker in January 2016.

Endnotes

- 1 FINRA Code of Arbitration Procedure for Customer Disputes and Code of Arbitration Procedure for Industry Disputes (Codes) Rules [12400-12405](#) and [13400-13408](#). In cases that require three arbitrator lists, FINRA will increase the number of public arbitrators from 10 to 15 and the number of strikes from four to six. This revision will be effective on January 3, 2017 and will apply to all lists generated on or after that date.
- 2 Rules 12405 and 13408 of the Codes.
- 3 *See Goldman, Sachs & Co. v. Athena Venture Partners, L.P.*, 803 F.3d 144, 150 (3d Cir. 2015) (holding that a party waived its right to seek vacatur based on an arbitrator’s non-disclosure of legal troubles that were discovered during a post-award background check because due diligence would have revealed this information earlier; noting that “a party [should not] wait until it loses and then almost immediately begin scouring the internet for anything that might suggest one arbitrator or another was biased against it” (internal quotation marks and alterations omitted)).
- 4 *See id.* at 147 (challenge to FINRA arbitrator’s award where arbitrator did not disclose prior legal troubles); *Stone v. Bear, Stearns & Co.*, 872 F. Supp. 2d 435, 438 (E.D. Pa. 2012) (challenge to FINRA arbitrator’s award where the arbitrator did not disclose her husband’s ties to the security industry), *aff’d*, 538 F. App’x 169 (3d Cir. 2013); *STMicroelectronics, N.V. v. Credit Suisse Sec. (USA) LLC*, 648 F.3d 68, 73 (2d Cir. 2011) (challenge to FINRA arbitrator’s award where arbitrator with over two decades of industry experience did not disclose every individual matter in which he had testified as an expert witness in).
- 5 Oscar Wilde, *The Importance of Being Earnest*.

Office of Dispute Resolution and FINRA News

Case Filings and Trends



Arbitration [case filings](#) from January through November 2016 reflect an eight percent increase compared to cases filed during the same 11-month period in 2015 (from 3,135 cases in 2015 to 3,394 cases in 2016). Customer-initiated claims increased by nine percent through November 2016 compared to cases filed in 2015 (from 2,132 cases in 2015 to 2,326 cases in 2016).

Updated Dispute Resolution Statistics Page

FINRA has updated the Dispute Resolution Statistics page. The page now includes an interactive map displaying all hearing locations, cases per hearing location and arbitrators per hearing location. In addition, FINRA has added new charts detailing the top 15 most common case filing controversy types and security types in customer and industry cases.

FINRA Dispute Resolution Task Force Status Report

On September 30, 2016, FINRA published a [status report](#) detailing the progress on the FINRA Dispute Resolution Task Force recommendations. As of October 19, 2016, FINRA ODR staff had discussed all of the recommendations with the National Arbitration and Mediation Committee (NAMC), FINRA's Board Advisory Committee on the dispute resolution forum. ODR staff will continue to work with the NAMC to determine the best approach on those recommendations that will require additional ODR staff action.

Chairperson Mentorship Program

FINRA has established a Chairperson Mentorship Program for newly-qualified chairpersons. The mentors in the program are FINRA arbitrators with substantial chairperson experience, and they have agreed to be available to new chairpersons to answer any questions they may have in their new role. Please contact [Neutral Management](#) with any questions, about the mentorship program.

Registering in the portal is more important than ever. Starting April 2017, except for pro se investors, use of the portal will be mandatory for all parties in FINRA's arbitration forum. Please see SEC Rule Approvals for more information about this new rule.

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;
- filing case documents; and
- reviewing your list selection statistics to see how often your name has appeared on arbitrator ranking lists sent to parties and how often you have been ranked or struck on those lists.

FINRA encourages all arbitrators 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.

Results of the Eighth Annual Securities Dispute Resolution Triathlon

On October 15-16, 2016, FINRA and St. John's University Hugh L. Carey Center for Dispute Resolution held the [Eighth Annual Securities Dispute Resolution Triathlon](#) in New York City. Eighteen teams of law students from 18 law schools competed and demonstrated their advocacy skills in three critical forms of alternative dispute resolution: negotiation, mediation and arbitration.

Below are the results of the competition:

- Overall Winner: South Texas College of Law
- Negotiation Round Winner: Rutgers School of Law
- Mediation Round Winner: Texas A&M University School of Law
- Arbitration Round Winner: University of Mississippi School of Law
- Advocate's Choice Winner: American University Washington School of Law

Arbitrator Recruitment Video

We are excited to announce the release of FINRA's [new arbitrator recruitment video](#). Our goal with our recruiting efforts is to attract fair-minded individuals to serve as arbitrators and to diversify our roster. We hope this new video will help us achieve this goal.

The video is posted on [FINRA's website](#) and FINRA Dispute Resolution's [LinkedIn page](#). You can also find it on [YouTube](#) and [Vimeo](#). We invite you to watch the video and encourage you to share it with your family and friends who may be interested in becoming an arbitrator. Questions about becoming a FINRA arbitrator can be sent to arbrecruitment@finra.org.

SEC Rule Approvals

Panel Selection in Customer Cases with Three Arbitrators

On September 14, 2016, the Securities and Exchange Commission (SEC) approved amendments to [Rule 12403](#) (Cases with Three Arbitrators) of the Customer Code to increase the number of public arbitrators on the list sent to parties during the panel selection process in customer cases. Specifically, FINRA will increase the number of public arbitrators on the list from 10 to 15 and the number of strikes to the public list from four to six. The revisions will become effective on January 3, 2017, and will apply to all lists generated on and after that date. Please view [Regulatory Notice 16-44](#) for more information.

Motions to Dismiss in Arbitration

On November 10, 2016, the SEC approved amendments to [Rules 12504](#) (Motions to Dismiss) of the Customer Code and [13504](#) of the Code of Arbitration Procedure for Industry Disputes (collectively referred to as the Codes) to provide that arbitrators in its forum may act upon a motion to dismiss prior to the conclusion of a party's case-in-chief if the arbitrators determine that the non-moving party previously brought the same dispute against the same party, and the dispute was fully and finally adjudicated on the merits. Please view [SR-FINRA-2016-030](#) for more information about this approval.

Use of the Dispute Resolution Party Portal

On November 14, 2016, the SEC approved a proposal to amend the Codes to require all parties, except customers who are not represented by an attorney or other person (pro se customers), to use ODR's Party Portal (Party Portal) to file initial statements of claim and to file and serve pleadings and other documents on FINRA or any other party. Under the rule change, FINRA will require parties to use the Party Portal to file and serve correspondence relating to discovery requests, but will not permit parties to file documents produced in response to discovery requests through the Party Portal. The proposal also amends the Code of Mediation Procedure (Mediation Code) to permit mediation parties to agree to use the Party Portal to submit and retrieve documents and other communications. In addition, FINRA will revise other provisions in the Codes to conform to existing practice.

Mandatory use of the Party Portal will become effective on April 3, 2017. Please view [SR-FINRA-2016-029](#) for more information about this approval.

Broadening Chairperson Eligibility in Arbitration

On December 2, 2016, the SEC approved amendments to [Rules 12400](#) and [13400](#) (Neutral List Selection System and Arbitrator Rosters) to revise the chairperson eligibility requirements. Specifically, an attorney arbitrator will be eligible for the chairperson roster if he or she completes chairperson training and serves as an arbitrator through award on at least one arbitration, instead of two arbitrations, administered by a self-regulatory organization in which hearings were held. Please view [SR-FINRA-2016-033](#) for more information about this approval.

Rulemaking Items Discussed at the FINRA Board of Governors September 2016 and December 2016 Meetings

Non-public Arbitrator Definition

The Board authorized FINRA to [file](#) with the SEC proposed amendments to [Rules 12100](#) and [13100](#) (Definitions) to revise the non-public arbitrator definition. In June 2015, FINRA revised the arbitrator classification definitions. One consequence of the definition changes left a significant number of otherwise qualified public arbitrators ineligible for service. The proposed amendment would simplify the arbitrator classifications by removing the ineligibility gap such that an arbitrator who no longer qualifies as a public arbitrator will be deemed a non-public arbitrator.

Sending Arbitrator Selection Lists to Parties

The Board authorized FINRA to file with the SEC proposed amendments to [Rules 12402](#), [12403](#) and [13403](#) (Sending Lists to Parties) to expedite sending arbitrator selection lists to parties. Specifically, the amendments would provide that the Director of Arbitration will send the list or lists that the Neutral List Selection System generates to all parties at the same time, within approximately 30 days after the last answer is due, regardless of the parties' agreement to extend any answer due date.

Simplified Arbitration

The Board authorized FINRA to file with the SEC proposed amendments to [Rules 12800](#) and [13800](#) (Simplified Arbitration) to amend the hearing provisions to provide an additional shorter telephonic hearing option for parties in arbitration.

Guidance on Causal Challenges of Arbitrators

FINRA recently published guidance relating to challenges to arbitrators for cause on its [website](#), the [Arbitrator's Guide](#) and the [Party's Reference Guide](#). The guidance provides examples of challenges for cause that would likely be granted by staff. A similar version of this guidance previously appeared in the Securities Industry Committee on Arbitration (SICA) Arbitrator's Manual, a precursor to the Arbitrator's Guide. The guidance expands on conflicts involving:

- opinion and bias;
- personal relationships;
- business relationships;
- current involvement;
- previous involvement;
- financial interests; and
- expert witnesses.

The expanded guidance also addresses a party's ability to challenge an arbitrator(s) if the challenge was not timely filed. Generally, absent good cause, a party's ability to challenge an arbitrator(s) may be deemed waived if the challenge is not timely filed after a new disclosure is discovered by a party. The guidance aims to add transparency and consistency to the process while providing a flexible framework for determinations based on the unique fact patterns of each challenge for cause.

Option for an Explained Decision at No Additional Cost

Starting January 3, 2017, if the parties jointly request an explained decision, FINRA will waive the \$400 fee to the parties for an explained decision. An explained decision is a fact-based award stating the general reason(s) for the arbitrators' decision. (See [Rules 12904\(g\)](#) and [13904\(g\)](#).) Legal authorities and damage calculations are not required.

Parties must make the joint request for an explained decision 20 days before the date of the first scheduled hearing. (See [Rules 12514\(d\)](#) and [13514\(d\)](#).) The panel chairperson will write the explained decision and receive an additional honorarium of \$400 for doing so. (See [Rules 12214\(e\)](#) and [13214\(e\)](#).) Under [Rules 12904\(g\)](#) and [13904\(g\)](#), the panel is permitted to allocate the cost of the chairperson's \$400 honorarium for writing the explained decision to the parties as part of the final award. Under this initiative, therefore, if the parties jointly request an explained decision, the panel chairperson will receive the \$400 honorarium for writing the explained decision but the parties will not be charged.

You may review [Regulatory Notice 09-16](#) for more information about explained decisions.

FINRA's Rulemaking Process: How You Can Participate

By *Rushelle Bailey*



FINRA Office of Dispute Resolution (ODR) proposes rule changes with the Securities and Exchange Commission (SEC) to ensure that the forum meets the evolving needs of its constituents. Arbitrators and mediators (collectively referred to as neutrals) can participate in the rulemaking process by commenting during the public comment period. This article is an overview of the rulemaking process and explains how neutrals can participate.

Overview of Proposed Rule Changes

Ideas

ODR staff receives ideas for rule changes from several sources. In addition to ODR staff, frequent users of the forum including investors, brokerage firms and attorneys who represent parties in FINRA arbitrations, arbitrators and mediators often suggest ideas. Ideas also come from FINRA committees, such as the National Arbitration and Mediation Committee (NAMC). The NAMC includes investors, representatives, securities industry professionals and FINRA arbitrators. Constituent groups such as the Public Investors Arbitration Bar Association (PIABA) and the Securities Industry and Financial Markets Association (SIFMA) suggest rule changes as well. As part of its final report last year, the FINRA Dispute Resolution Task Force made several rule recommendations.

Staff Review and Discussion

ODR considers which ideas would most benefit the forum. Staff researches issues related to potential rule changes including operational impact, costs and benefits and ease of implementation. Based on these considerations, ODR develops a working proposal.

Committee Feedback

ODR submits the proposal, or discussion item, to the NAMC for consideration. The NAMC, in turn, will often refer the item to a subcommittee for feedback. Based on the subcommittee's feedback, staff will prepare an action item to present to the NAMC. The NAMC may suggest additional changes or signal its support of the proposal as drafted.

Submission to FINRA Board

ODR submits the proposed rule change to the FINRA Board of Governors (Board). Staff describes the details of the proposed rule, as well as the views of the NAMC and various other FINRA Board Committees. The Board may authorize ODR to file the proposed rule change with the SEC.

SEC Filing

ODR files all rule changes with the SEC. The proposed rules are available on FINRA's website two business days after the filing and appear on the [Dispute Resolution Rule Filings webpage](#). The rule filing explains the new or amended rule and procedures for SEC approval and effectiveness. The filing also states the purpose and statutory basis for the proposed change. Consideration is given to whether the proposed change will result in any burden on competition. The filing also includes an exhibit with the proposed rule language.

The SEC reviews the proposed rule change to determine if it is consistent with the Securities Exchange Act of 1934 (the Act). The SEC may ask ODR staff to make amendments to the rule.

SEC Publishes Rule for Comment

After its review, the SEC publishes the rule for public comment in the Federal Register for a specified period, usually between 30 and 60 days. The Federal Register Notice is also posted on the Dispute Resolution Rule Filings webpage and includes the substance of the changed rule text, the purpose and statutory basis for the change. The SEC solicits public comments on the proposal.

FINRA files responses to the comments. FINRA will address any concerns raised by the comments and either request that the SEC approve the rule change as written or amend the proposal. FINRA's response to comments will be posted on the Office of Dispute Resolution Rule Filings webpage. If the SEC approves the proposed rule, it issues an Approval Order in the Federal Register describing the rule change, comment letters and FINRA's Response to the comments.

ODR Announces Approval

To communicate a rule change to the forum's constituents, ODR will publish a Regulatory Notice announcing the SEC's approval of the rule change. The notice includes information about the new rule and the effective date. Regulatory Notices are posted on the [Arbitration and Mediation Notices webpage](#).

Comment on the Rule

Neutrals have valuable first-hand insight in the dispute resolution process and should consider offering their views during the public comment period. Comments are posted on the SEC's website and provide more information about the rule's development.

ODR notifies neutrals when proposals are open for comment through its monthly email and in this publication. Neutrals can also check the ["What's New" section](#) on FINRA's Arbitration and Mediation webpage.

Neutrals may submit comments on FINRA's proposed rule changes to the SEC in one of the following ways:

Electronic Comments

- Use the SEC's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include the file number on the subject line. (For example, the file number for the Motion to Dismiss rule proposal is SR-FINRA-2016-030.)

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090

Conclusion

FINRA strives to enhance the dispute resolution process by making appropriate rule changes. FINRA encourages neutrals to participate in the rulemaking process by commenting on rule proposals at the SEC.

** Rushelle Bailey was a FINRA Corporate Intern for the Summer 2016 Program. She is a student at the Benjamin N. Cardozo School of Law, J.D. Candidate 2017.*

Mediation Update

Mediation Statistics



From January through November 2016, parties initiated 555 mediation cases, an increase of 14 percent compared to cases filed in 2015. FINRA closed 558 cases during this time. Approximately 79 percent of these cases concluded with successful settlements, and the average case turnaround time was 109 days.

Discontinuation of Mediator Annual Fee

We remind FINRA mediators that the Office of Dispute Resolution discontinued the annual \$200 fee requirement. This is a good opportunity for mediators, who are unavailable because of non-payment, to become active again. Send an email request to mediate@finra.org if you are interested in rejoining the mediator roster.

Mediation Settlement Month—October 2016

During this year's [Mediation Settlement Month](#), FINRA mediators offered their services at reduced rates. The reduced costs encouraged many parties to mediate and attracted parties, who have 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 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 the Mediation Program.



Questions and Answers

Serving on Multiple Related Cases

Question I am currently serving on several cases involving the same parties, which I've disclosed on the Oath of Arbitrator (Oath) and Disclosure Checklist for each case. Recently, I was asked to serve on a new case that involves the same product as a case I'm already serving on. Do I also need to disclose that I'm serving on multiple related cases involving the same product?

Answer Yes. If you are appointed to a case that involves the same parties or same product, you must disclose that information on your Oath and Disclosure Checklist for each case. For example, if you are serving on multiple cases involving a particular bond fund, you should disclose this on your Oath and Disclosure Checklist for all of your cases.

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

Question Staff recently reminded me to submit my Oath and Disclosure Checklist on one of my assigned cases. 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, staff will send you the Oath for that case, which includes the Disclosure Checklist. You should review carefully the pleadings and your co-panelists' arbitrator disclosure reports, and promptly sign and return the Oath and Disclosure Checklist. You must complete a new Oath and Disclosure Checklist for every case you are assigned to.

Each case has its own particular circumstances, including the different attorneys involved or the dispute itself that may prompt additional disclosures. If a potential conflict exists, you must advise staff immediately. Timely submission of Oaths and Disclosure Checklists is necessary to ensure that arbitrators fulfill their continuing disclosure obligations. Arbitrators should submit their Oaths and Disclosure Checklists to FINRA well in advance of the Initial Prehearing Conference (IPHC). Timely submission helps to ensure that

the parties have sufficient time to review any new information in order to accept the panel's composition at the IPHC. Late submission of an Oath and Disclosure Checklist may result in delays if the Disclosure Checklist contains additional information that must be shared with the parties for their consideration. As a reminder, failure to disclose may result in vacated awards which undermine the efficiency and finality of our process, and may also result in removal from the roster.

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.

Education and Training

Fall 2016 Neutral Workshop—Best Practice Tips for Chairpersons

FINRA's latest [Neutral Workshop video](#) features guidance for chairpersons. In this workshop, Christina Gates, Case Administrator in the Office of Dispute Resolution's West Regional Office, discusses best practice tips for chairpersons with FINRA arbitrators: Jill Gross, Karimu Hill-Harvey and Philip Tymon. They bring years of experience conducting FINRA arbitrations to provide practical guidance on addressing motions, handling expedited cases and managing efficient and fair hearings.

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