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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.

## Special Proceeding for Simplified Arbitration

[Rule 12800](#) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and [Rule 13800](#) of the Code of Arbitration Procedure for Industry Disputes (Industry Code) provide two options for administering cases with claims of \$50,000 or less, excluding interest and expenses. The default option is a decision by a single arbitrator based on the parties' pleadings. The second option is a full hearing with a single arbitrator.

FINRA amended the Codes to create an additional hearing option: Special Proceeding. A Special Proceeding is an intermediate form of adjudication that allows parties to argue their cases before a single arbitrator in a shorter, limited telephonic hearing. The suggestion for an intermediate form of adjudication originated from the FINRA Dispute Resolution Task Force (Task Force). Having observed that parties whose cases were decided solely based on pleadings were the least satisfied of any group of forum users, the Task Force recommended this alternative way for parties to present their cases. The Task Force suggested that the goal of the intermediate process should be to give the claimant personal contact with the arbitrator deciding the case and to give each party the opportunity to argue its case. The Intermediate format should also allow parties to respond to assertions from the other side as well as to give the arbitrator a chance to ask questions.

## What's New?

Special Proceedings are subject to the regular provisions of the Codes relating to prehearings and hearings, including fee provisions, with several differences:

- A Special Proceeding is held by telephone unless the parties agree to another method of appearance.
- The claimants, collectively, are limited to two hours to present their case(s) and a half hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions.

- The respondents, collectively, are limited to two hours to present their case and a half hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions.
- The arbitrator has up to three hours to ask parties questions after the parties' presentations and may cede some of his or her allotted time to the parties.
- In no event can a Special Proceeding exceed two hearing sessions, exclusive of prehearing conferences.
- The parties are not permitted to question the opposing parties' witnesses.
- The customer cannot call the opposing party, a current or former associated person of a member party, or a current or former employee of a member party as a witness. Members and associated persons cannot call the customer of a member party as a witness.
- Members and associated persons cannot call an opposing party as a witness.

### Order of Special Proceedings

Special Proceedings follow the usual order of a hearing:

- Starting with the claimant, parties will present opening statements.
- They will then present their cases followed by any rebuttal.
- The arbitrator will ask the parties questions.
- The parties will then present closing statements.

With the exception of the requirements for Special Proceedings, an arbitrator may vary the hearing procedure in his or her discretion, provided all parties are allowed a full and fair opportunity to present their respective cases.

### New Resources

FINRA created a dedicated [hearing script](#) for Special Proceedings. FINRA also modified its [Initial Prehearing Conference Script](#) (IPHC Script) so parties will understand the rule's requirements and know what to expect, including the prehearing exchanges of documents and exhibits. Unlike regular hearings, parties will need to file their exhibits with FINRA before the Special Proceeding so that FINRA can send the exhibits to the arbitrator prior to the hearing. The IPHC Script also addresses the need for parties to have all exhibits available while they testify telephonically.

To help arbitrators become familiar with the Special Proceeding, we created a [training video](#). In the video, staff discusses the similarities and differences between a Special Proceeding and a regular hearing and answers common questions arbitrators might have about Special Proceedings.

The rule became effective on September 17, 2018, for cases filed on or after that date. Please review [Regulatory Notice 18-21](#) for more information.

## Office of Dispute Resolution and FINRA News



### Case Filings and Trends

[Arbitration case filings](#) from January through August 2018 reflect a 29 percent increase compared to cases filed during the same eight-month period in 2017 (from 2,288 cases in 2017 to 2,957 cases in 2018). Customer-initiated claims increased by 23 percent through August 2018, as compared to the same time period in 2017.

### DR Portal Reminder

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

- file case documents like the electronic Oath of Arbitrator and Disclosure Checklist;
- access information about assigned cases, including case documents, upcoming hearings and payment information;
- schedule hearings;
- update profile information;
- view and print the disclosure report;
- update the last affirmation date on the disclosure report; and
- 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.

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. Although the portal is not mandatory yet for arbitrators, we encourage arbitrators to register and take advantage of the benefits of the portal.

## DR Portal How-to Videos

If you need assistance updating your profile or submitting the Oath of Arbitrator in the DR Portal, the new [how-to videos](#) are here to help. These videos are quick tutorials for arbitrators on navigating to the Update Form and Oath of Arbitrator. They also include information on how to disable pop-up blockers in different Internet browsers. We will add new videos as needed. Please contact the [Neutral Management department](#) with any questions about accessing the [DR Portal](#).

## Use the Most Current Version of Scripts and Forms

Arbitrators should use the most current versions of the prehearing and hearing scripts and forms. This ensures that arbitrators provide accurate information to the parties about their obligations during the arbitration.

We know that sometimes arbitrators re-use old scripts and forms from previous cases. However, because we regularly update scripts and forms, we strongly encourage arbitrators to use the latest versions available on the [Forms and Tools](#) page for each new case. Arbitrators should contact their [regional office](#) if they have any questions about using the correct scripts and forms.

## Tenth Annual Securities Dispute Resolution Triathlon

The [Tenth Annual Securities Dispute Resolution Triathlon](#) (DR Triathlon) will take place October 13 – 14, 2018, at the St. John's University School of Law, Manhattan Campus. The DR Triathlon provides student teams from participating law schools an opportunity to demonstrate their advocacy skills in negotiation, mediation and arbitration of a securities dispute. Judges for these rounds observe the students and score their performances. CLE credit is available for participation. Please email [stefanie.herrera@finra.org](mailto:stefanie.herrera@finra.org) if you would like to volunteer.

## 2018 Demographic Survey

In November, we will once again conduct a demographic survey of the neutral roster. As in previous years, the survey will be administered by a third-party consultant, Alight Solutions. Participation in the survey is voluntary and all responses will be confidential.

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.

The results of past demographic surveys are published on our [website](#). Thank you to those who have previously participated in the survey. In 2017, 37 percent of the roster participated in the survey and we are hoping to meet or surpass this participation rate with your help!

Please look out for an email from Alight Solutions in November with instructions to complete the 2018 survey.

## New York State Bar Association: Securities Arbitration & Mediation 2018

On November 29, 2018, the New York State Bar Association (NYSBA) will present Securities Arbitration and Mediation 2018: Evolution. FINRA Office of Dispute Resolution Executive Vice President, Richard Berry, will participate on a panel to discuss the evolution of mandatory arbitration, including the changing nature of cases and how FINRA has responded to these changes. The program will also feature experienced practitioners to speak on topics ranging from prehearing motions, elder abuse cases, mediation and expungement.

The program will be presented live in New York City on November 29 from 9 a.m. to 4:45 p.m. Eastern Time. CLE will be available. FINRA arbitrators and mediators may register at the reduced member rate (\$195). Please visit the [NYSBA website](#) for more information.

## SEC Rule Filing

### **Amendment to Provide Arbitrators a \$200 Honorarium to Decide Without a Hearing a Contested Subpoena Request or a Contested Order for Production or Appearance**

On July 13, 2018, FINRA filed a proposed rule change with the Securities and Exchange Commission (SEC) to amend FINRA [Rule 12214\(c\) through \(e\)](#) of the Customer Code and [Rule 13214\(c\) through \(e\)](#) of the Industry Code to provide each arbitrator a \$200 honorarium to decide, without a hearing session, a contested subpoena request or a contested order for production or appearance.

Please review [SR-FINRA-2018-026](#) for additional information on the proposal.

## Regulatory Notice Seeking Comment

### **Amendments to Discovery Guide to Require Production of Insurance Information in Arbitration**

FINRA is requesting comment on proposed amendments to the Discovery Guide's Firm/Associated Persons Document Production List to require firms and associated persons, upon request, to produce documents concerning third-party insurance coverage in a customer arbitration. The proposed amendments would strictly limit the circumstances under which insurance coverage information could be presented to the arbitrators.

The proposal is described in [Regulatory Notice 18-22](#). The comment period ended on September 24, 2018.

## SEC Rule Approval

### Late Cancellation Fee for Prehearing Conferences

On July 31, 2018, the SEC approved amendments to FINRA [Rules 12500](#) and [12501](#) of the Customer Code and Rules [13500](#) and [13501](#) of the Industry Code, to charge a \$100 per-arbitrator fee to parties who request cancellation of a prehearing conference within three business days before a scheduled prehearing conference. The proposal amended FINRA [Rules 12214\(a\)](#) and [13214\(a\)](#) to create a \$100 honorarium for each arbitrator scheduled to attend a prehearing conference that was cancelled within three business days of the prehearing conference.

The *Regulatory Notice* will be posted shortly, and the rule will become effective on October 29, 2018, for cases filed on or after that date. Please review [SR-FINRA-2018-019](#) for more information.

## Mediation Update



### Mediation Statistics

From January through August 2018, parties initiated 352 [mediation cases](#), a decrease of 17 percent for the same period in 2017. FINRA also closed 504 cases during this time. Approximately 77 percent of these cases concluded with successful settlements.

### Mediation Settlement Month

Due to popular demand, this year's [Mediation Settlement Month](#) has been extended. The promotion is running from September 15, 2018, through November 15, 2018. During this period, parties must agree to participate in order to take advantage of special rates for mediation services. However, parties have until January 15, 2019 to conduct their mediation.

FINRA invites all active mediators on the roster to participate in this event to help promote mediation. During this annual event, mediators reduce their rates to encourage parties to explore FINRA's mediation program. At the same time, parties who are familiar with FINRA's mediation services may be encouraged to try new FINRA mediators. We are looking forward to your participation.

The following special rates will apply during Mediation Settlement Month:

| Amount of Claim         | Length of Mediation | Mediation Session Fee Paid to Mediator* |
|-------------------------|---------------------|---|
| \$25,000 and under      | 4 hours             | \$200                                   |
| \$25,000.01 - \$100,000 | 4 hours             | \$400                                   |
| Over \$100,000          | 8 hours             | \$1,000                                 |

Here are some additional guidelines for participating in Mediation Settlement Month:

- Parties can mediate telephonically or in-person.
- Unspecified claim amounts will be assessed at the \$25,000.01 – \$100,000 mediation session bracket.
- \*Parties pay mediators at their regular hourly rates for any time spent beyond the above listed hours.

### Mediation Program for Small Arbitration Claims

This [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 have been pleased with the process. 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. If you are not already participating and you wish to do so, email us at: [mediate@finra.org](mailto:mediate@finra.org).

### Keep It Current

Keeping your mediator disclosure report up-to-date—including the number of times you have mediated cases, your success rate and types of cases mediated—matters to parties when selecting a mediator. Parties have also requested references from mediators who do not list them on their disclosure report. Please add references to your disclosure report, so parties may consider them when selecting a mediator. You can update your mediator profile anytime through the [DR Portal](#).

### Mediator Training Opportunities

Occasionally, FINRA receives information about mediator training that we think our mediators would be interested in. We will post information and links to these training opportunities on the [Administrative Resources for Mediators](#) page of our website.

### Become a FINRA Mediator

Do you have mediator experience? Consider joining the FINRA mediator roster! Please email the [mediation department](#) for more information.



## Questions and Answers

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### Arbitrator Selection

**Question** How do parties select arbitrators in customer cases with three arbitrators?

**Answer** Customers in cases with three arbitrators have had the option to have three public arbitrators decide their cases (Optional All-Public Panel Rule) since 2011. In these cases, FINRA's Neutral List Selection System (NLSS), using a computer algorithm, randomly generates three lists of arbitrators from FINRA's roster to send to parties. The three lists separately have:

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

Each separately represented party in the case may strike up to:

- four arbitrators on the chair-qualified public list for any reason (at least six names must remain on the list);
- six arbitrators on the public list for any reason (at least nine names must remain on the list); and
- all 10 arbitrators on the non-public list for any reason.

After exercising their strikes, parties rank the remaining arbitrators in order of preference with a "1" indicating the party's first choice, a "2" indicating the party's second choice and so on. The parties rank each list of arbitrators separately. FINRA then consolidates the parties' lists to appoint the panelists based on the parties' rankings.

If there are no arbitrators available to serve on the combined public chairperson or public arbitrator lists, FINRA will appoint an arbitrator(s) of the required classification from names generated randomly by NLSS.

If the parties strike all of the non-public arbitrators, or if none of the ranked non-public arbitrators are available to serve, FINRA will select the next highest-ranked public arbitrator to complete the panel. If the public list is exhausted, FINRA will select the next highest-ranked arbitrator on the chair-qualified list. If the chair-qualified list is exhausted, FINRA will randomly appoint a public arbitrator using NLSS. If the parties do not select a non-public arbitrator, FINRA will not appoint a non-public arbitrator to the panel. Please visit our [website](#) for more information about the arbitrator selection process.

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### Completing the Oath of Arbitrator and Arbitrator Disclosure Checklist

**Question** Do arbitrators need to provide an explanation if they answer a question on the Oath and Arbitrator Disclosure Checklist as “Already on Disclosure Report”?

**Answer** Arbitrators do not need to provide an explanation. However, before selecting the option “already on disclosure report” they should make sure that related corresponding information appears on their arbitrator disclosure report. This option should be selected only if the information already appears on the disclosure report. For example, if the “already on disclosure report” is selected to indicate that a bankruptcy was previously disclosed, the bankruptcy information should be listed on the disclosure report. When FINRA receives an Oath and Checklist, staff will review the responses and compare them with the information on the disclosure report. If there is a discrepancy, staff will contact the arbitrator for clarification.

If arbitrators are not sure whether the information is on their disclosure report, they can choose the “yes” option and provide a detailed explanation.

If arbitrators realize that they made an error after submitting the Oath and Checklist, they should re-submit them with the corrected information. Arbitrators can easily submit another Oath and Checklist through the portal. Please include a note in the revised Oath and Checklist to advise recipients that the new form is corrected and should supersede prior submissions.

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## Education and Training

### Spring 2018 Neutral Workshop: Tips From Practitioners



What are common issues that come up in arbitration?

Dan Zailskas, a case administrator in FINRA Office of Dispute Resolution's Southeast Regional Office, [moderates a discussion](#) with practitioners, Darya Geetter and Sam Edwards.

They provide tips to alleviate common issues related to ex parte communications, discovery, scheduling hearings, last minute arbitrator withdrawals and managing the hearing.

#### Video: Special Proceeding for Simplified Arbitration

To help arbitrators become familiar with the Special Proceeding, we created a [training video](#). In the video, staff discusses the similarities and differences between a Special Proceeding and a regular hearing and answers questions about Special Proceedings.

## 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.

FINRA enhanced arbitrator disclosure reports by publishing the date arbitrators last affirmed the accuracy of their entire 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 update the affirmation date by affirming the information on their disclosure reports through the DR Portal.

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