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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.

## Accuracy of Arbitrator Disclosure Reports



Is the information on your arbitrator disclosure report accurate and complete? Recently, in a [non-FINRA private arbitration forum](#), an arbitrator came under fire for allegedly exaggerating her professional history in an online resume. The parties reviewed the resume before selecting her as an arbitrator. After the case ended, a party moved to vacate the award based on the alleged misstatements on her resume.

To avoid a similar situation, FINRA encourages arbitrators to regularly review their disclosure reports to confirm they are accurate and ready for review by parties. When arbitrators are appointed to a case, they must review their disclosure reports, complete the Oath of Arbitrator and affirm that all information is accurate. Even if arbitrators are not currently assigned to cases, their disclosure reports may be sent to parties in their hearing locations during arbitrator selection. Arbitrators can review their disclosure reports and make updates at any time by logging into the [DR Portal](#).

Later this summer FINRA will enhance 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 will appear prominently at the top of the disclosure report parties review during the arbitrator selection process. Since parties may use this date when making decisions about their lists, arbitrators are encouraged to review and affirm the accuracy of their disclosure reports using the DR Portal. Even if there are no changes, arbitrators can affirm the information and update the affirmation date on their disclosure reports by submitting an update form through the DR Portal.

Additional information about arbitrator disclosure is available on [our website](#). Please contact [Neutral Management](#) with any questions about arbitrator disclosure.

## We Want to Hear From You

*The Neutral Corner* strives to provide useful and timely information to FINRA arbitrators as they serve in our forum. To ensure we are responsive to what you want to see in this publication, we invite you to share your suggestions and comments. Please feel free to suggest training topics and ways we can improve this publication. Please submit your suggestions to [Neutral Management](#). We look forward to hearing from you!

## Top 10 Arbitrator Disclosure Tips



Arbitrator disclosure is the cornerstone of FINRA arbitration, and the arbitrator's duty to disclose is continuous and imperative. Arbitrators must disclose new relationships as they arise and any circumstance or event that might affect their ability to serve impartially or might create an appearance of bias. Disclosures include, but are not limited to:

- lawsuits (even non-investment related lawsuits);
- any publications (even if they appear only online);
- professional memberships; and
- service on boards of directors.

To help you keep your disclosure report current, we have compiled a top 10 list of disclosure tips. By following this guidance you can help FINRA update your disclosure reports more efficiently and accurately.

1. **Use a personal email address.** We recommend using a personal rather than a work email address. Unlike work email, your personal email remains the same even if you change employment. Having a current email address helps us reach you for service on cases and to ensure you receive time sensitive documents and notifications. You can update your email address in the portal using the “Manage My Account” link.
2. **Disclose all brokerage accounts.** Brokerage accounts include 401(k)s, IRAs and 529 college savings plans. Because brokerage firms often have a banking division, it is also important to disclose checking, savings and mortgage accounts.
3. **Update outdated information.** If there is a change to any of your information, let us know and we will edit the disclosure to reflect that it is no longer current. For example, if you close an account, we will amend the information to state that you “had an account.” However, we will not remove the information entirely from your disclosure report. This procedure applies to all disclosures that become inactive such as professional memberships, business relationships, clients and board service. Keeping this information on your disclosure report allows parties to view your disclosure report historically.

4. **Disclose all lawsuits.** All cases must be disclosed regardless of the subject matter, the amount in dispute and whether they occurred many years ago. Lawsuits also include any unpaid judgments, liens and bankruptcies. When disclosing court cases or arbitrations, provide the following details:
  - whether you were the plaintiff or defendant;
  - short summary of the case;
  - outcome (*i.e.*, settled, dismissed, withdrawn or who the judgment was in favor of); and
  - year it was filed and the year it was resolved.

Even if the action occurred many years ago, it is important to disclose all litigation.

5. **Disclose all current or past litigation involving brokerage firms.** If you are currently or have in the past represented a brokerage firm or broker or a party adverse to a brokerage firm or a broker, provide information about the engagement. Provide the firm name, the nature of the action, whether it was an arbitration or a court case and the dates it was initiated and resolved.
6. **Use specific years when providing a timeframe.** When providing a timeframe for a disclosure or for information in the business background, especially for litigation or employment, provide an exact or approximate year. For example, a timeframe like “20 years ago” or “for 35 years” is not a fixed reference and becomes outdated quickly. It is better to say “around 1995,” “in the mid-1980s,” “since 1990” or “from 1985 to 2000.”
7. **Disclose information that is publicly available.** In today’s world of social media, virtually everything is in the public sphere. Regularly search for yourself online to see what information about you is on the Internet. Information online can be accessed by anyone, including the parties who review you during arbitrator selection. You should identify any information from various websites that should be disclosed on your profile. You should also let FINRA know if there is information online that is inaccurate.

8. **Compare online information with your arbitrator disclosure report.** Review and compare your personal biographical information from other sites (*e.g.*, LinkedIn, company websites) with your FINRA disclosure report to confirm that the information FINRA has is correct (*e.g.*, memberships, employments, education, licenses).
9. **Review your CRD record.** If you have a CRD record, review the information to ensure employment, employment dates, registrations/licenses and disclosures (including historical disclosures) are consistent and captured accurately on your arbitrator disclosure report.
10. **Review your business background.** Whenever you make an update to your disclosure report, always review your business background to ensure it is up-to-date and is consistent with the other information on your profile. This is especially important for employment information on your profile (*e.g.*, names of employers, employment dates, positions, titles). We want to avoid any inconsistencies on your disclosure report that might create confusion for parties.

The fastest way to update your profile is by using the [DR Portal](#). If you have not registered yet, send an email to [Neutral Management](#) to request an invitation. Please include “request portal invitation” in the subject line.

We cannot emphasize enough the importance of accurate and complete disclosure. Failure to accurately and completely disclose may result in vacated awards, which undermine the efficiency and finality of the arbitration process. Failure to disclose may also result in removal from the roster. When in doubt, err on the side of disclosure.

## Office of Dispute Resolution and FINRA News

### Case Filings and Trends



[Arbitration case filings](#) from January through May 2017 reflect an 8 percent decrease compared to cases filed during the same five-month period in 2016 (from 1,487 cases in 2016 to 1,365 cases in 2017). Customer-initiated claims decreased by 15 percent through May 2017, as compared to the same time period in 2016.

### DR Portal Update

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. Registering in the portal is more important than ever. In April 2017, except for *pro se* investors, use of the portal became mandatory for all parties in FINRA's arbitration forum.

### FINRA Securities Helpline for Seniors

FINRA's [Securities Helpline for Seniors](#) has marked its second anniversary. The helpline provides a toll-free number (1-844-574-3577) that senior investors, or individuals caring for a senior, can call to raise concerns about issues with brokerage accounts and investments. To date, the helpline has fielded more than 10,000 calls from all 50 states from individuals ranging in age from 17 to 102 years old (the average age of callers is 70 years old), and callers have received more than \$4.5 million in voluntary

reimbursements from firms. Staff has referred nearly 750 matters to state, federal and foreign regulators, and made more than 140 referrals to Adult Protective Services under the mandatory reporting laws of 16 states.

### **Practising Law Institute’s Securities Arbitration 2017: September 27, 2017**

PLI’s Securities Arbitration 2017 provides an opportunity to hear about the latest developments and hot topics directly from FINRA Office of Dispute Resolution leadership, arbitrators, noted academics and experienced attorneys who represent both customers and industry parties. PLI’s distinguished faculty will provide an update on upcoming developments in FINRA arbitration and mediation, tips for preparing for expungement hearings, a discussion on litigating against *pro se* parties and a practicum on insurance issues. In addition, the faculty will discuss ethical issues in cases involving senior investors.

The program will be presented live in New York City on September 27 at 9 a.m. Eastern Time. It will also be available simultaneously via webcast, which can be accessed remotely; a recorded version may be viewed later. CLE credit is available.

FINRA arbitrators and mediators will receive a 25 percent discount off the regular registration fee. Please use this [link to PLI’s website](#), which contains the special pricing, for more information about the program.

### **SEC Filing**

#### **Proposed Rule Change to Amend the Customer and Industry Codes to Expedite List Selection in Arbitration**

FINRA filed with the Securities and Exchange Commission (SEC) a proposed rule change to amend Rules [12402](#) and [12403](#) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Rule [13403](#) of the Code of Arbitration Procedure for Industry Disputes (Industry Code, and together with the Customer Code, the Codes), to provide that the Director of FINRA’s Office of Dispute Resolution would send the list or lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The lists would be sent within this time, regardless of the parties’ agreement to extend any answer due date. Please view rule proposal [SR-FINRA-2017-009](#) for more information.

## Rulemaking Items Discussed at the FINRA Board of Governors May 2017 Meeting

### Unpaid Arbitration Awards

At the May 2017 FINRA [Board of Governors meeting](#), the Board authorized FINRA to publish a Regulatory Notice soliciting comment on proposed amendments to FINRA's Customer Code to expand a customer's option to withdraw an arbitration claim and file in court, even if a pre-dispute arbitration agreement applies to the claim, to situations where a member firm becomes inactive during a pending arbitration, or where an associated person becomes inactive either before a claim is filed or during a pending arbitration. FINRA would also seek comment on related changes to allow customers to amend pleadings, postpone hearings, request default proceedings and receive a refund of filing fees under such situations. In addition, the Board approved proposed amendments to the Uniform Application for Securities Industry Registration or Transfer (Form U4) to expand the Form U4 to elicit information from registered representatives who do not pay arbitration awards, settlements and judgments in full in accordance with their terms. The proposal is one in a series of regulatory initiatives that FINRA is considering to address the issue of unpaid arbitration awards.

## We Want to Hear From You!

Based on the success of FINRA's Mediation Program, the Dispute Resolution Task Force recommended an automatic mediation process for all cases filed in arbitration, subject to an opt-out by any party. The task force believes this approach will encourage greater participation in the mediation process at an earlier stage when the positive effects of mediation are most beneficial and cost effective to the parties. What do you think? Email us at: [mediate@finra.org](mailto:mediate@finra.org).

## Mediation Update

### Mediation Statistics



From January through May 2017, parties initiated 295 [mediation cases](#), an increase of four percent for the same period in 2016. FINRA also closed 308 cases during this time. Approximately 85 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 \$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](mailto:mediate@finra.org) if you are interested in rejoining 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

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### No-Action Letters

**Question** Recently at a hearing, a party tried to introduce evidence that FINRA investigated the brokerage firm and issued a no-action letter. Can I permit parties to introduce no-action letters into arbitration proceedings?

**Answer** No. The fact that FINRA investigated a brokerage firm but subsequently issued a no-action letter to the brokerage firm regarding the investigation should have no evidentiary weight in a FINRA arbitration matter. A determination by FINRA not to take action against a FINRA firm or the firm's associated person has no evidentiary weight in any mediation, arbitration or judicial proceeding. More information can be found in [\*Notice to Members 02-53\*](#).

FINRA considers it inconsistent with standards of commercial honor and just and equitable principles of trade (FINRA Rule 2010) for a firm or an associated person to attempt to introduce the letter or the fact that FINRA declined further action as evidence in a subsequent legal proceeding. FINRA's decision to close an investigation without further action can result for many factors unrelated to the merits of the complaint. Therefore, FINRA considers it unethical and potentially misleading to suggest to an adjudicator or mediator that FINRA's determination is probative evidence in a dispute on the merits of a related claim.

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### Arbitrator Recruitment

**Question** I have noticed that FINRA continues to recruit arbitrators despite a declining case load. As an arbitrator, I receive very few assignments and question why FINRA continues to recruit arbitrators.

**Answer** Each year, we assess our hearing locations to make sure we have enough arbitrators to meet the case load. Although FINRA has experienced a decline in case load, we continue to recruit arbitrators, particularly public arbitrators, where there is a need. We focus our recruitment efforts primarily on public arbitrators because parties often select an all public panel, and they now receive 15 public arbitrators (an increase from 10) to choose from. We want to ensure there are

enough arbitrators to fill a list of proposed arbitrators. We also want to ensure that we are providing parties with sufficient choice in arbitrators. Especially in smaller locations, parties often complain that they see the same arbitrators repeatedly. Additionally, we have an ongoing recruitment strategy to diversify the roster. We want to be able to provide a roster of diverse arbitrators that is reflective of the parties who come before the forum. Finally, an expanded roster helps us meet the demands of any potential increase in case filings.

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### Postponement Fees and Postponements to Mediate

**Question** When is it appropriate for an arbitration panel to waive postponement fees when parties seek to adjourn an evidentiary hearing?

**Answer** Rules [12601](#) and [13601](#) provide that, “No postponement fee will be charged if a hearing is postponed:

- because the parties agree to submit the matter to mediation administered through FINRA, except that the parties shall pay the additional fees described in Rule [12601\(b\)\(2\)](#)/[13601\(b\)\(2\)](#) for late postponement requests;
- by the panel in its own discretion; or
- by the Director in extraordinary circumstances.”

These rules provide specific circumstances when postponement fees are not charged. Postponement fee waivers in other instances are at the panel’s discretion. When deciding whether to waive the postponement fee, arbitrators should be mindful of staff effort to reschedule hearings after a postponement. Further, there may be hearing room charges that FINRA remains responsible for after a hearing is cancelled. Likewise, parties should be aware that they may be assessed a late cancellation fee if they postpone the hearing within 10 days of the first regular scheduled hearing under Rules [12601](#) and [13601](#).

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**Question** Why does FINRA waive the postponement fee when parties opt to mediate their claim at FINRA?

**Answer** FINRA wants to encourage parties to try FINRA mediation and hopes that waiving the fee will provide incentive to do so. FINRA has an impressive roster of experienced mediators who have a proven track record helping parties resolve their disputes. On average, FINRA mediators have a settlement rate of 80 percent. By conducting mediations through FINRA, parties also benefit from FINRA's enforcement measures. FINRA has the authority to suspend brokerage firms and brokers from doing business, not only for unpaid awards, but also for unpaid settlement agreements. Administratively, FINRA provides scheduling assistance and free conference rooms (parties that mediate through FINRA are welcome to use FINRA conference rooms for the mediation at no charge, provided there is availability). By offering these benefits, FINRA hopes to encourage parties to try FINRA mediation.

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## Education and Training



### Spring 2017 Neutral Workshop—Promissory Notes and Requests to Amend a Broker’s Employment Information

Mignon McLemore, Assistant Chief Counsel for the Office of Dispute Resolution, [moderates a panel](#) that discusses best practice tips for serving on cases involving promissory notes and considering requests to amend a broker’s employment information in CRD. Mignon guides the discussion of these timely issues with FINRA arbitrators, Nancy Watters and Diane Ciccone, and Counsel for FINRA’s Registration and Disclosure Department, John Nachmann.

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