

## THE FINANCIAL INDUSTRY REGULATORY AUTHORITY'S DISPUTE RESOLUTION ACTIVITIES

Revised May 24, 2019

### I. BACKGROUND

The Financial Industry Regulatory Authority (FINRA) administers a dispute resolution forum for investors, brokerage firms, and their registered employees in the U.S. through its network of 70 hearing locations, including at least one in each state and Puerto Rico. FINRA administers between 4,000 and 8,500 arbitrations and numerous mediations annually. FINRA maintains a diverse roster of over 7,900 arbitrators and 270 mediators. The National Arbitration and Mediation Committee (NAMC), which is composed of investor, industry, and neutral (arbitrator and mediator) representatives, provides policy guidance to FINRA's Dispute Resolution staff. A majority of the NAMC members and its chair are public. FINRA is regulated by the United States Securities and Exchange Commission (SEC).

FINRA's Dispute Resolution program is administered out of four regional offices: Northeast, Southeast, Midwest, and West, located in New York City, Boca Raton, Chicago, and Los Angeles, respectively, with headquarters in New York City. Contact information for the regional offices, as well as for other FINRA staff, is available on FINRA's website at [www.finra.org](http://www.finra.org). Below is a map showing the hearing locations and the regional offices to which they are generally assigned:



Below are highlights on: Statistics and Trends; FINRA Dispute Resolution Task Force; Recent Significant Rule Changes; Proposed Rule Changes; Regulatory Notice on Forum Selection; Significant Initiatives; FINRA Neutrals; Office of Dispute Resolution Technology Initiatives; FINRA Investor Education Foundation; and Mediation.

## II. STATISTICS AND TRENDS

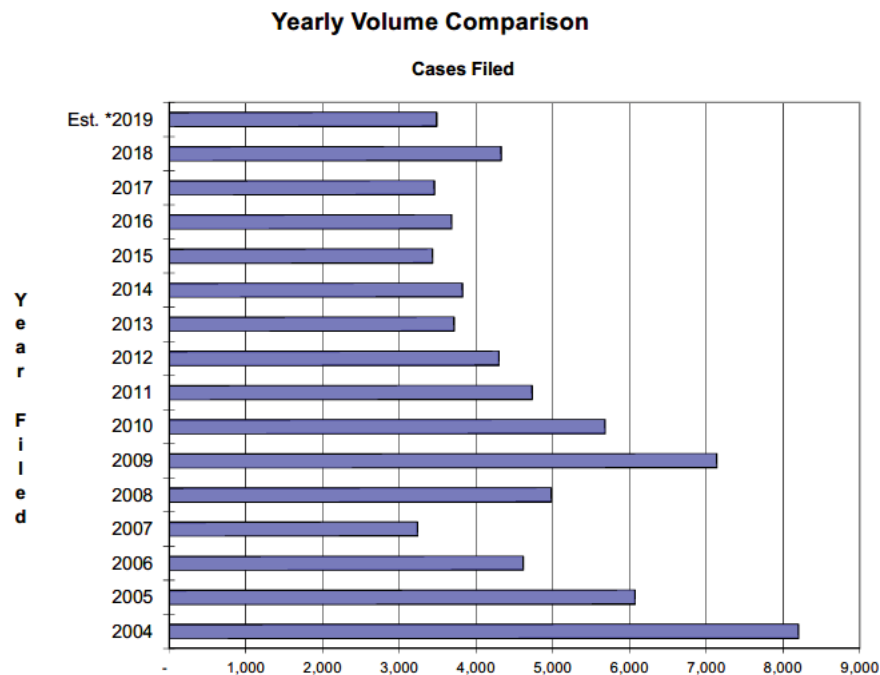
Arbitration case filings decreased in April 2019 compared to April 2018. In April 2019, parties filed 1,163 cases – a 24% decrease from the 1,539 cases filed in April of 2018. Customer claims decreased by 24% compared to April 2018. In April 2019, 38% of filed claims were intra-industry cases.

Mediation cases increased in April 2019 compared to April 2018. In April 2019, parties filed 181 mediation cases – a 5% increase compared to the 172 mediation cases filed in April 2018.

**Case Filing Statistics for 2019** - This section provides key filing data and trends.

Overall arbitration case filings:

- April 2019: 1,163 (24% decrease compared to April 2018).



### Mediation case filings

- April 2019: 181 (5% increase compared to April 2018).

### Customer Award Statistics

- Cases in which customers are awarded damages
  - 2019 through April:
    - Overall: 44% (40% in 2018, 43% in 2017, and 41% in 2016).

- Hearing cases (not including cases decided by review of documents only): 42% (42% in 2018, 45% in 2017, and 42% in 2016).

## Case Processing Statistics

Processing times from service of the claim to close of the case

➤ April 2019:

- Overall: 13.8 months (3% decrease compared to April 2018)
- Hearing cases: 17.2 months (9% increase compared to April 2018)
- Simplified cases (decided on the documents submitted without a hearing): 5.9 months (20% decrease compared to April 2018)

- Percentage of cases closed by award

- April 2019: 18% (compared to 17% in 2018, 18% in 2017, and 21% in 2016).
- In April 2019, Customer cases closed by award or settlement approximately 87% of the time.

FINRA Office of Dispute Resolution Top 15 Controversy Types in Customer Arbitrations Through April						
Type of Controversy*		2019 Cases Served	2018	2017	2016	2015
Breach of Fiduciary Duty	Through April	606	783	534	629	493
	Year-End	--	2,290	1,899	2,002	1,807
Negligence	Through April	550	651	484	583	480
	Year-End	--	1,974	1,662	1,862	1,677
Failure to Supervise	Through April	512	635	472	571	428
	Year-End	--	1,935	1,621	1,802	1,554
Misrepresentation	Through April	462	651	440	518	394
	Year-End	--	1,775	1,663	1,670	1,499
Suitability	Through April	456	669	440	483	338
	Year-End	--	1,779	1,606	1,606	1,364
Breach of Contract	Through April	433	553	372	484	390
	Year-End	--	1,711	1,318	1,495	1,444
Fraud	Through April	419	568	375	384	250
	Year-End	--	1,707	1,389	1,301	1,089
Omission of Facts	Through April	414	561	382	408	321
	Year-End	--	1,547	1,493	1,394	1,216
Violation of Blue Sky Laws	Through April	165	262	138	106	59
	Year-End	--	810	547	344	236
Manipulation	Through April	123	76	79	81	42
	Year-End	--	302	299	236	208
Unauthorized Trading	Through April	76	88	92	110	79
	Year-End	--	245	263	362	264
Churning	Through April	72	68	88	89	79
	Year-End	--	205	219	254	247
Elder Abuse**	Through April	70	74	--	--	--
	Year-End	--	216	61	--	--
Margin Calls	Through April	37	20	18	27	29
	Year-End	--	85	62	84	97
Errors-charges	Through April	19	28	17	14	24
	Year-End	--	81	66	56	64

\* Each case can be coded to contain multiple controversy types. Therefore the columns in this table cannot be totaled to determine the number of cases served in a year.  
 \*\*These categories were not tracked for the years in which no data appears.

**FINRA Office of Dispute Resolution**  
**Top 15 Security Types in Customer Arbitrations Through April**

Type of Security *		2019 Cases Served	2018	2017	2016	2015
Municipal Bonds	Through April	187	279	94	151	104
	Year-End	--	971	565	433	559
Municipal Bond Funds	Through April	180	265	85	175	97
	Year-End	--	959	558	480	607
Common Stock	Through April	171	235	177	210	167
	Year-End	--	579	604	646	610
Mutual Funds	Through April	155	224	109	80	70
	Year-End	--	731	447	352	373
Government Securities	Through April	88	135	29	7	9
	Year-End	--	519	229	96	169
Real Estate Investment Trust	Through April	76	66	67	51	63
	Year-End	--	205	177	184	191
Options	Through April	76	64	37	42	39
	Year-End	--	150	127	124	128
Private Equities	Through April	46	39	36	43	28
	Year-End	--	111	111	114	92
Exchange-Traded Funds	Through April	39	70	46	50	47
	Year-End	--	167	131	133	127
Limited Partnerships	Through April	39	56	53	40	29
	Year-End	--	144	183	199	79
Variable Annuities	Through April	36	33	48	33	32
	Year-End	--	105	129	115	104
Annuities	Through April	34	38	38	41	25
	Year-End	--	101	115	127	81
Corporate Bonds	Through April	29	51	37	44	25
	Year-End	--	135	119	154	194
401(k)**	Through April	20	33	28	--	--
	Year-End	--	94	69	27	--
Structured Products	Through April	17	22	13	18	13
	Year-End	--	78	45	57	25

\* Each case can be coded to contain multiple security types. Therefore the columns in this table cannot be totaled to determine the number of cases served in a year.  
 \*\*These categories were not tracked for the years in which no data appears.

**FINRA Office of Dispute Resolution**  
**Top 15 Controversy Types in Intra-Industry Arbitrations Through April**

Type of Controversy*		2019 Cases Served	2018	2017	2016	2015
Breach of Contract	Through April	117	108	145	125	124
	Year-End	--	413	403	389	373
Promissory Notes	Through April	71	88	100	129	121
	Year-End	--	261	296	401	401
Libel, Slander, or Defamation	Through April	52	59	39	41	35
	Year-End	--	166	117	124	115
Compensation	Through April	50	47	55	51	42
	Year-End	--	168	161	163	140
Libel or Slander on Form U-5	Through April	40	45	40	36	43
	Year-End	--	135	136	124	119
Wrongful Termination	Through April	37	38	42	37	41
	Year-End	--	122	116	127	123
Commissions	Through April	24	24	40	19	27
	Year-End	--	95	103	60	73
Misrepresentation	Through April	21	40	6	3	7
	Year-End	--	68	54	21	17
Discrimination or Harassment**	Through April	18	13	13	21	19
	Year-End	--	38	37	58	54
Breach of Fiduciary Duty	Through April	14	21	11	6	7
	Year-End	--	39	52	18	28
Suitability	Through April	13	49	2	1	--
	Year-End	--	63	59	15	1
Negligence	Through April	13	17	7	4	8
	Year-End	--	32	25	17	21
Omission of Facts	Through April	10	8	5	2	1
	Year-End	--	18	16	7	8
Fraud	Through April	7	11	5	4	5
	Year-End	--	24	26	11	13
Raiding Disputes	Through April	6	12	8	11	14
	Year-End	--	37	33	42	40

\* Each case can be coded to contain multiple controversy types. Therefore the columns in this table cannot be totaled to determine the number of cases served in a year.  
 \*\* This category combines the following discrimination controversy types: disability, age, gender, race, sexual orientation, national origin, religion, employment discrimination, and sexual harassment. This number does not represent the number of cases served, as one case may have multiple discrimination claims.

**Comparison of Results of All-Public Panels and Majority-Public Panels in Customer Claimant Cases**

Year Decided	Cases Decided by All-Public Panels	Number of Cases Decided by All-Public Panels Where Customer Awarded Damages	Percentage of Cases Decided by All-Public Panels Where Customer Awarded Damages	Cases Decided by Majority-Public Panels	Number of Cases Decided by Majority-Public Panels Where Customer Awarded Damages	Percentage of Cases Decided by Majority-Public Panels Where Customer Awarded Damages
2014	135	59	44%	104	39	38%
2015	163	77	47%	84	38	45%
2016	145	63	43%	72	26	36%
2017	137	66	48%	71	26	37%
2018	158	67	42%	58	27	47%
YTD 2019	43	23	53%	23	8	35%

In April 2019, investors prevailed 53% of the time (23 out of 43 cases) in cases decided by all-public panels and 35% of the time (8 out of 23 cases) in cases

decided by majority-public panels. To find more information on Case Statistics and Award Outcomes please visit the [Dispute Resolution Statistics](#) page at finra.org.

### III. FINRA DISPUTE RESOLUTION TASK FORCE

In 2014, FINRA formed the [FINRA Dispute Resolution Task Force](#) to suggest strategies to enhance the transparency, impartiality, and efficiency of FINRA's securities dispute resolution forum for all participants. The Task Force brought together a diverse group of leading investor advocates, academics, regulators, and industry representatives to help ensure that FINRA's arbitration and mediation processes continue to serve the needs of the investing public. Seven Task Force members serve on FINRA's arbitrator roster.

The Task Force established an email inbox, which was available throughout the process, to solicit comments from interested parties. It also directly solicited written comments from more than 30 interested organizations and individuals. Over a period of 14 months, the Task Force held four in-person meetings, and its ten subcommittees met 57 times. On December 16, 2015, the Task Force issued its final report and recommendations [Final Report and Recommendations of the FINRA Dispute Resolution Task Force](#). The Task Force recommendations focus, among other matters, on arbitrator training and recruitment, and expanded use of explained decisions and mediation. FINRA Dispute Resolution Task Force members:

- Barbara Black – Retired Professor and Director, Corporate Law Center, University of Cincinnati College of Law (Chair);
- Philip Aidikoff – Investor attorney, Aidikoff, Uhl & Bakhtiari;
- Joseph Borg – Director, Alabama Securities Commission;
- Philip Cottone – FINRA arbitrator and mediator;
- John Cullem – FINRA arbitrator;
- Sandra Grannum – Industry attorney, Davidson & Grannum;
- Mark Maddox – Investor attorney, Maddox Hargett & Caruso;
- Kevin Miller – General Counsel, Securities America;
- Joseph Peiffer – Investor attorney, Peiffer Rosca Wolf Abdullah Carr & Kane;
- Barbara Roper – Director of Investor Protection, Consumer Federation of America;
- Lisa Roth – President, Tessera Capital Partners (formerly Principal, Keystone Capital Corporation);
- Edward Turan – Managing Director, Citigroup Global Markets; and
- Harry Walters – Managing Director, Morgan Stanley Wealth Management.

On February 15, 2019, FINRA posted its intended [Final Status Report](#) on the implementation of the Dispute Resolution Task Force's 51 recommendations.



#### IV. RECENT SIGNIFICANT RULE CHANGES

##### **Rule Change to Expand Time for Non-Parties to Respond to Arbitration Subpoenas and Orders of Appearance of Witnesses or Production of Documents**

On May 6, 2019, the SEC approved rule filing [SR-FINRA-2019-004](#) to amend FINRA Rule 12512(d) through (e) and FINRA Rule 12513(d) through (e) of the Code of Arbitration Procedure for Customer Disputes and FINRA Rule 13512(d) through (e) and FINRA Rule 13513(d) through (e) of the Code of Arbitration Procedure for Industry Disputes to expand time for non-parties to respond to arbitration subpoenas and orders of appearance of witnesses or production of documents, and to make related changes to enhance the discovery process for forum users. The amendments extend the response time for non-parties to object to an order or subpoena from within 10 calendar days of service to within 15 calendar days of receipt, exclude first-class mail as an option to serve these documents on non-parties and for non-parties to file a response, and codify the current practice that the Director send objections and responses to the panel at the same time (after the response date has passed) unless otherwise directed by the panel.

The amendments are effective for cases filed on or after July 1, 2019.

##### **Rule Change to Pay Arbitrators a \$200 Honorarium for Decisions on Contested Subpoena Requests or Contested Orders for Production or Appearance**

On October 12, 2018, the Securities and Exchange Commission approved a proposal to amend FINRA Rule 12214(c) through (e) of the Code of Arbitration Procedure for Customer Disputes and FINRA Rule 13214(c) through (e) of the Code of Arbitration Procedure for Industry Disputes to pay each arbitrator a \$200 honorarium to decide without a hearing session a contested subpoena request or a contested order for production or appearance.

The amendments are effective for cases filed on or after February 7, 2019.

See [Securities Exchange Act Release No. 34-84418](#), published in the *Federal Register* on October 18, 2018 (Vol. 83, No. 202, pp. 52857-52860).

##### **Rule Change to Create a \$100 Fee and Honorarium for Late Cancellation of a Prehearing Conference**

On July 31, 2018, the SEC approved amendments to FINRA Rules 12500 and 12501 of the Code of Arbitration Procedure for Customer Disputes and FINRA Rules 13500 and 13501 of the Code of Arbitration Procedure for Industry Disputes 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. This rule change will also amend FINRA Rules 12214(a) and 13214(a) of the Codes to create a \$100 honorarium to pay each arbitrator scheduled to attend a prehearing conference that was cancelled within three business days of the prehearing conference.

These amendments are effective for all cases filed on or after October 29, 2018.

See [Securities Exchange Act Release No. 34-83752](#), published in the *Federal Register* on August 6, 2018 (Vol. 83, No. 151, pp 38327-38329).

### **Rule Change Relating to Simplified Arbitration**

On May 17, 2018, the SEC approved SR-FINRA-2018-003, which amends FINRA Rules 12600 and 12800 of the Code of Arbitration Procedure for Customer Disputes and 13600 and 13800 of the Code of Arbitration Procedure for Industry Disputes to provide an additional hearing option for parties in arbitration with claims of \$50,000 or less, excluding interest and expenses. This intermediate form of adjudication will provide parties with claims of \$50,000 or less an opportunity to argue their cases before an arbitrator in a shorter, limited telephonic hearing format than a regular hearing.

There will be two options for hearings; Option One follows the regular provisions of the Codes relating to prehearings and hearings, including all fee provisions. If the customer (or claimant in industry disputes) chooses Option One, they will continue to have in-person hearings without time limits, and they would continue to be permitted to question opposing parties' witnesses.

Option Two is the new Special Proceeding subject to the regular provisions of the Code relating to prehearings and hearings, including all fee provisions, with several limiting conditions, including timing limitations for hearings, making telephonic hearings the default hearing method (unless the parties jointly agree to another method of appearance), and limiting total hearing sessions to two sessions to be completed in one day, exclusive of prehearing conferences.

If the customer or claimant does not request one of the two hearing options in a simplified case, the matter will be decided by a sole arbitrator based on documents submitted by each party.

This rule amendment is effective for cases filed on or after September 17, 2018.

See [Securities Exchange Act Release No. 34-83276](#), published in the *Federal Register* on May 23, 2018 (Vol. 83, No. 100, pp 23959-23963).

## **V. PROPOSED RULE CHANGES**

### **Proposed Amendments to the Codes of Arbitration Procedure Relating to Requests to Expunge Customer Dispute Information**

At its [December 2018 meeting](#), the FINRA Board of Governors approved proposed amendments to the Codes of Arbitration Procedure for Customer and Industry Disputes to codify the Notice to Arbitrators and Parties on Expanded Expungement Guidance and modify the fees for small claim expungement. The proposed rule would establish specific filing fees for claimants filing expungement claims, and would prevent associated persons from filing second requests to expunge the same customer dispute information that was the subject of a prior request that a panel or court denied.



### **Proposal to Prohibit Compensated Non-Attorney Representatives (NARs) in Arbitration and Mediation**

In [December 2018](#), the FINRA Board of Governors approved filing with the SEC proposed amendments to the Codes of Arbitration and Mediation Procedure to prohibit compensated non-attorney representatives from practicing in the FINRA arbitration and mediation forum. The rule proposal would also specify that a student enrolled in a law school, who is participating in a clinical program or its equivalent, and is practicing under the supervision of an attorney pursuant to state law, is allowed to represent parties in arbitration and mediation. It would also include guidelines for resolving issues regarding the qualifications of NARs or law students in the forum.

### **Regulatory Notice on Discovery of Insurance Information (Regulatory Notice 18-22)**

On July 26, 2018, FINRA published [Regulatory Notice 18-22](#) seeking comment on proposed amendments to the Discovery Guide's Firm/Associated Persons Document Production List (List 1). Specifically, the amendments would require firms and associated persons, upon request, to produce documents concerning third-party insurance coverage in customer arbitration. The proposed amendments would strictly limit the circumstances under which insurance coverage information could be presented to the arbitrators. The new list item would state that it may be prejudicial for arbitrators to be given information related to coverage or lack of coverage by liability insurance.

Any party wishing to submit insurance-related evidence at a hearing would have to demonstrate to the arbitration panel that there are extraordinary circumstances warranting admission of this information, or the existence of an insurance policy is directly related to the dispute outlined in the statement of claim.

The comment period ended September 24, 2018.

### **Regulatory Notice on Inactive Parties (Regulatory Notice 17-33)**

On October 18, 2017, FINRA published [Regulatory Notice 17-33](#) which proposes to amend the Code of Arbitration Procedure for Customer Disputes to expand a customer's option to withdraw an arbitration claim and file in court, even if a mandatory 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. The proposed amendments include changes that allow customers to amend pleadings, postpone hearings, request default proceedings and receive a refund of filing fees under such situations.

The comment period ended on December 18, 2017.

## **VI. REGULATORY NOTICE ON FORUM SELECTION PROVISIONS INVOLVING CUSTOMERS, ASSOCIATED PERSONS AND MEMBER FIRMS**

In July 2016, FINRA published [Regulatory Notice 16-25](#) to remind member firms that customers have a right to request arbitration at FINRA's arbitration forum at any time and do not forfeit that right under FINRA rules by signing any agreement with a forum selection provision specifying another dispute resolution process or an arbitration venue other than

the FINRA arbitration forum. In addition, FINRA reminded member firms that FINRA rules do not permit member firms to require associated persons to waive their right to arbitration under FINRA's rules in a pre-dispute agreement.

## **VII. SIGNIFICANT INITIATIVES**

### **List of Member Firms and Associated Persons with Unpaid Customer Arbitration Awards**

In October 2018, FINRA posted a list on its website of firms and individuals responsible for unpaid customer arbitration awards. FINRA has provided this information in an effort to increase transparency regarding those firms and individuals with unpaid arbitration awards, and to make this information more readily accessible to investors. The list includes the names of firms and individuals whose FINRA registration has been terminated, suspended, canceled or revoked, or who have been expelled from FINRA. This information will also continue to appear on the firms' or individuals' BrokerCheck reports. FINRA updates this information monthly.

The list is available on the [Member Firms and Associated Persons with Unpaid Customer Arbitration Awards](#) page on finra.org

### **Expanded Expungement Guidance for Arbitrators and Parties**

Notice to Arbitrators and Parties: In October 2013, the forum sent to all arbitrators a notice and published on its website guidance for parties and arbitrators concerning expungement requests. The guidance emphasizes the extraordinary nature of expungement relief and advises arbitrators to consider the importance of the Central Registration Depository (CRD) information to regulators, firms, and investors (through BrokerCheck) when considering requests for expungement. The guidance encourages arbitrators to request any documentary or other evidence they believe is relevant to the expungement request, particularly in cases that settle before an evidentiary hearing or in cases where only the requesting party participates in the expungement hearing. It also suggests that arbitrators ask the broker requesting expungement to provide a current copy of his or her BrokerCheck report when determining the appropriateness of expungement. The guidance further recommends that arbitrators identify in the award the specific documentary evidence that they relied upon when recommending expungement.

On July 22, 2014, the SEC approved FINRA Rule 2081, which prohibits conditioned settlements, and it became effective on July 30, 2014. In August 2014, the forum sent to all arbitrators a notice and published on its website updated guidance wherein we addressed settlement payments and prohibited conditions relating to expungement of customer dispute information. The updated guidance reminds arbitrators to consider whether the party seeking expungement contributed to the settlement. Further, the updated guidance provides that if arbitrators learn of prohibited conditions, as described in Rule 2081, they should consult FINRA's procedures on disciplinary referrals.

In September 2014, we e-mailed to arbitrators a notice and published on our website updated guidance wherein we addressed the importance of allowing customers and their counsel to participate in the expungement hearing in settled cases. This section of the updated guidance reminds arbitrators to allow the customer, among other things, to introduce documents and evidence at the expungement hearing, cross-examine the broker

and other witnesses called by the party seeking expungement, and to present opening and closing arguments if the panel allows any party to present such arguments.

In December 2014, we published on our website updated guidance about cases in which an associated person will file an arbitration claim against a member firm solely for the purpose of seeking expungement, without naming the customer in the underlying dispute as a respondent. This section of the updated guidance reminds arbitrators to order the associated persons to provide a copy of their Statement of Claim to the customer in the underlying arbitration to ensure that the customer is aware that an expungement claim is pending regarding his or her prior dispute. This will also give the customer an opportunity to advise the arbitrators and parties (in writing or through participation in the expungement hearing) of their position on the expungement request, which may assist arbitrators in making the appropriate finding under Rule 2080.

In September 2017, we updated the guidance published on our website to discuss requests for expungement prior to the conclusion of the underlying arbitration. This section states that a broker may not file a request for expungement of customer dispute information arising from a customer arbitration claim until the underlying arbitration has concluded. If a broker files a request for expungement prior to the conclusion of the related customer arbitration, the Director will deny the forum as to the second expungement-only case. This procedure ensures that the underlying customer arbitration is resolved before any subsequent request to expunge customer dispute information from the underlying customer arbitration is considered.

The [Notice to Arbitrators and Parties on Expanded Expungement Guidance](#) can be found on the Arbitration Special Procedures page of FINRA.org.

Neutral Workshop: In February 2015, FINRA filmed a neutral workshop addressing expungement, among other matters. In May 2014, FINRA conducted a neutral workshop that provided expanded expungement guidance and an overview of the proposed new rule to address expungement of customer dispute information. In December 2013, FINRA conducted a neutral workshop that provided an overview of CRD and BrokerCheck, stressing the important role arbitrators play in safeguarding the integrity of the information in CRD in the expungement process. The recorded workshop can be found on the [Neutral Workshop page](#) on FINRA.org, along with other recorded neutral workshops, providing an additional resource for information to neutrals. FINRA pre-records the workshops to allow neutrals to pause and playback the audio file.

The Neutral Corner: The December 2013 edition (Volume 4, 2013) of the arbitrator newsletter, *The Neutral Corner*, was devoted to the topic of expungement. The issue included an article emphasizing the procedural requirements in recommending expungement and another article discussing the limitations on the types of disclosures that may be expunged from CRD through arbitration. The September 2014 edition (Volume 3, 2014) included articles about the revised Award Information Sheet, the new Rule 2081 to address prohibited conditions relating to expungement of customer dispute information, and expanded expungement guidance for arbitrators to allow customers and their counsel to participate in the expungement hearing. The October 2015 edition (Volume 3, 2015) included information on recent court decisions on expungement. The December 2015 edition (Volume 4, 2015) included information on parties making second expungement requests after a previous denial.

We also developed enhanced online training for arbitrators that expanded on and emphasized the points addressed in our expungement guidance.

The latest edition of [\*The Neutral Corner\*](#), along with previous issues, can be found on the Publications page on [finra.org](http://finra.org).

Online Arbitration Claim Filing Guide: FINRA revised the [Online Arbitration Claim Filing Guide](#) to include new information that asks claimants filing expungement claims to provide the occurrence number for the underlying disclosure and other registration information.

Award Information Sheet: To assist arbitrators with the updated expungement guidance, FINRA revised the Award Information Sheet.

We believe the above initiatives will help arbitrators safeguard the integrity of the information in CRD.

### **Short List Option to Reduce Extended List Appointments**

Forum constituents want to select their own neutrals from the roster and thus have complained about the appointment of “extended list” arbitrators. Extended list arbitrators are not selected by the parties and may only be challenged for cause. (FINRA has virtually eliminated the appointment of extended list arbitrators in the initial appointment process.) FINRA has increased parties’ options to reduce the likelihood of extended list appointments when an arbitrator withdraws or is no longer available, no ranked arbitrators remain on the parties’ initial ranking lists, and hearing dates are scheduled in a case. Under the “short list option,” parties may stipulate to use a list of three arbitrators to select a replacement arbitrator. All parties must agree to use the short list option. Each side may strike one arbitrator’s name from the list and may rank all remaining arbitrators’ names in order of preference within a prescribed number of days.

If a hearing is scheduled within five calendar days of an arbitrator’s withdrawal, removal, or unavailability, parties need to postpone the hearing to use the short list option. The postponement allows FINRA staff time to prescreen arbitrators for conflicts and to ensure they are available for scheduled hearing dates and to provide parties with time to review the list and strike and rank arbitrators. A postponement fee is charged in accordance with current FINRA rules. An additional fee is assessed for postponements granted within ten business days of the hearing date, also in accordance with current FINRA rules. Arbitrators may allocate the fees among the parties that agreed to the postponement. Arbitrators may also waive the fees.

More information, along with an FAQ, about the Short List Procedure can be found at the [Short List Option to Reduce Extended List Appointments](#) page of [finra.org](http://finra.org).

### **Voluntary Program for Large Cases**

On July 2, 2012, FINRA implemented a voluntary program in all regional offices for large cases (i.e., cases with damages claims of at least \$10 million exclusive of interest, costs, and attorneys’ fees). FINRA Office of Dispute Resolution processes many cases that involve very substantial amounts in dispute. While the rules give the parties flexibility to agree on an

ad hoc basis to vary from the procedures in the Arbitration Codes, the large case program was introduced to provide a more formal approach to these cases.

Upon receiving written party agreement to use the program, the Regional Director and an experienced, specially trained case administrator will conduct an early administrative conference with counsel to develop a plan for the administration of the case. Areas to be discussed will include: arbitrator qualifications and the procedures for appointing arbitrators; the use of depositions and interrogatories; the form of the hearing record; and different hearing facilities (costs would be paid by the parties). Parties can use arbitrators from outside of FINRA's roster or provide FINRA with criteria/qualifications to screen arbitrators on FINRA's roster. Parties may pay additional compensation to arbitrators above the standard FINRA honorarium. There is also a non-refundable administrative fee of \$1,000 for each separately represented party to use the program. The large case program is available to eligible cases in each of our regional offices.

The program is targeted at cases involving damages claims of at least \$10 million. However, any case can participate in the program where all parties agree and are represented by counsel.

A list of frequently asked questions and the news release for the voluntary program for large cases are available on our website at the [Large Case Pilot – FAQ](#) page of finra.org

## **VIII. FINRA NEUTRALS**

### **Arbitrator Disclosure**

FINRA continually stresses to arbitrators the need to make complete and accurate disclosures. Below are recent measures we have taken to emphasize the importance of disclosing all information that may be relevant:

#### Arbitrator Disclosure Report Reviews

FINRA staff regularly conducts comprehensive reviews of arbitrators' disclosure reports to ensure accuracy and freshness of information.

- This review includes a search of legal databases such as PACER, detailed internet searches for new public information or publications, employment records, professional license records, etc.
- If new information is found, staff will contact the arbitrator for confirmation and add the information to the arbitrator's disclosure report.

#### Internet Searches

- We verify the accuracy of arbitrator disclosure by conducting internet searches of arbitrators prior to appointment to a case.

- If staff finds information during an internet search that is not disclosed in the arbitrator's disclosure report, staff contacts the arbitrator, confirms the validity of the information, and adds the information to the neutral's disclosure report.

#### Last Affirmation Dates

- FINRA displays the date that arbitrators last affirmed the accuracy of their disclosure reports at the top of the disclosure report documents.
- Arbitrators are advised to regularly review and affirm the accuracy of their disclosures on the DR Portal, as parties may consider the last affirmation date as a factor when selecting arbitrators for their cases.
- Arbitrators can confirm the accuracy of their disclosures in two ways:
  - Submitting an update through the DR Portal;
  - Submitting an Oath of Arbitrator when assigned to a case.

#### Attorney Information

- Disclosure reports feature the names of party representatives and the city and state in which the representative practices on each of the arbitrator's active cases.
- This feature helps to alert parties to potential conflicts based on legal representation.

More information on [Arbitrator Disclosure](#) can be found on the Information for Arbitrators page at [finra.org](http://finra.org),

#### **Arbitrator Recruitment**

A primary goal of FINRA's arbitrator recruitment program is to identify and train a qualified pool of potential arbitrators from which parties can choose to hear their disputes. The strategic goal has been to continue to shift the balance of the arbitrator pool to include more public arbitrators and a more diverse roster nationwide. FINRA has implemented an aggressive recruitment campaign to seek individuals from diverse backgrounds from across different industries to serve as arbitrators. Ongoing recruitment initiatives thus far have included more than 100 women and minority organizations nationwide to source and recruit all types of people through on-site events, targeted recruiting advertisement and direct marketing campaigns.

To help maximize our resources and opportunities further, we leveraged our staff talent in the regions to assist with recruitment efforts, particularly in reaching women-focused groups, LGBT communities and other untapped diverse organizations. We also hired an additional full-time national recruiter in 2015.

FINRA began working to recruit arbitrators with the following professional organizations in 2018:

- NASPA, Black Psychiatrists of America, The Association of Junior Leagues International, National Academy of Elder Law Attorneys, American Immigration



Lawyers Association, American Library Association, Links National Assembly, National Educators Network, National Association of Blacks in Criminal Justice, The Association of LGBTQ Journalists, The Society for the Advancement of Chicanos/Hispanics and Native Americans in Science, NODA, and Society for Human Resource Management

In 2019, we are hosting recruitment events in nine mid-sized cities: Nashville, Charlotte, Oklahoma City, Kansas City, Cincinnati, Columbus, Cleveland, Portland and Seattle.

We also piloted a digital advertising campaign in 2018 Albany, Charlotte, Milwaukee and Los Angeles. The online campaign targeted administrators and lawyers on Facebook and LinkedIn. The campaign resulted in 132 leads and 23 arbitrator applications.

In March 2019, the second phase of the campaign launched in the following cities: Birmingham, Buffalo, Charlotte, Cincinnati, Cleveland, Columbus, Hartford, Indianapolis, Kansas City, Las Vegas, Milwaukee, Nashville, New Orleans, Oklahoma City, St. Louis, Salt Lake City, Seattle and Portland.

We are continuously enhancing the diversity of our arbitrator and mediator roster. In 2018, we saw increases in the number of women on the roster. We also saw increases in the number of Hispanic or Latino and LGBT arbitrators. Of the new arbitrators added to the roster in 2018, 37% were women, 8% were Hispanic or Latino, and 5% were LGBT.

Our number of mediators from diverse backgrounds also increased in 2018. We saw gains in number of women, African-American, Hispanic or Latino, Asian, and LGBT mediators. Of mediators (who may also be arbitrators) polled in 2018, 27% were women, 7% African-American, 4% Hispanic or Latino, 2% Asian, and 3% were LGBT.

To learn more about FINRA's efforts to diversify our arbitrator and mediator rosters visit [Our Commitment to Achieving Arbitrator and Mediator Diversity at FINRA](https://finra.org/commitment-to-achieving-arbitrator-and-mediator-diversity) at [finra.org](https://finra.org)

Finally, to become more effective in how we communicate our message, we have begun using social media to recruit arbitrators. All Office of Dispute Resolution Twitter updates can be found under FINRA's Twitter handle, [@FINRA](https://twitter.com/FINRA). We also released our first formal recruitment video on several social media platforms including Vimeo, LinkedIn, and YouTube in December 2016: <https://vimeo.com/188349814>.

### **Arbitrator Application and Approval**

Individuals interested in becoming an arbitrator can apply to our roster using the online arbitrator application available in the [Become an Arbitrator](#) section of our website. Applicants can complete the arbitrator application and submit it electronically along with a completed Consent to Background Search and Investigation Form and Social Security Number Verification Form. FINRA conducts a review of applications and works with applicants to ensure their submissions are complete before forwarding them to a subcommittee of the NAMC for final approval. FINRA processes applications and notifies applicants within 120 days from the date of receipt.

In 2018 we received 1,051 applications, exceeding our 2018 goal of 750 applications. The average time for application process completion was 89 days. As of May 2019, there are 3,628 public arbitrators on our roster.

### **Arbitrator Training**

Through 2018, Arbitrator applicants were required to complete the Basic Arbitrator Training program, consisting of: 1) online basic training; 2) online expungement training; and 3) classroom training. After successfully completing the online basic and expungement courses, candidates were required to attend the classroom training at one of our regional offices or by live video. FINRA offered live video training in an interactive WebEx format to allow candidates to participate remotely. In 2018, on average, arbitrators completed this training in 91 days.

As of February 2019, in an effort to streamline training, FINRA discontinued the live classroom training requirement. Instead, we now offer voluntary live Arbitrator Orientation Sessions where new arbitrators can ask questions and learn more about the forum in an informal setting. We are continuing to expand and improve our online training offerings.

To be considered for the chairperson roster, arbitrators must complete FINRA's online chairperson training and satisfy the case service requirement. FINRA staff has discretion to select arbitrators to serve on the chairperson roster from among those arbitrators who have completed the online chairperson training and: 1) have a law degree, are a member of a bar of at least one jurisdiction, and served as an arbitrator through award in at least one arbitration administered by an SRO; or 2) if not an attorney, served as an arbitrator through award in at least three arbitrations administered by an SRO (Customer Code Rule 12400(c) and Industry Code Rule 13400(c)).

In addition to the required trainings, FINRA offers advanced, subject-specific courses.

For more information on Basic and Advanced Arbitrator Training visit the [Arbitrator Training](https://www.finra.org/arbitrator-training) page at finra.org

## **IX. OFFICE OF DISPUTE RESOLUTION TECHNOLOGY INITIATIVES**

### **Online Portals**

Portal for Parties. Use of the Portal is mandatory for all parties, excluding pro se investors. This rule applies to all cases filed on or after April 3, 2017. Parties using the Portal can sign into a secure website and perform many functions online, including:

- filing a claim;
- receiving service of a claim;
- submitting an answer to a received claim;
- submitting additional case documents;
- viewing the status of a case;
- viewing case documents;
- striking and ranking arbitrators online;
- viewing and downloading disclosure reports of prospective arbitrators;

- scheduling hearing dates online; and
- paying invoiced fees.

Portal for Neutrals. Neutrals are not required to use the portal on a mandatory basis, but arbitrators and mediators must register in the Portal to take advantage of the numerous functions it provides, such as:

- viewing and printing their disclosure reports;
- viewing and updating their personal profiles and disclosures;
- accessing information about their assigned cases, including upcoming hearings and payment information;
- viewing case documents;
- submitting documents;
- scheduling hearing dates; and
- viewing how often their names have appeared on arbitrator ranking lists sent to parties, and how often they are ranked or struck on those lists.

### **Paperless Office Initiative**

All Regional Offices have digitized their respective paper-based arbitration files (including portal and non-portal cases). Any paper documents received will be converted to an electronic format, and all case documents will be stored in electronic arbitration and mediation case files. Staff assignments and correspondence are organized and distributed using electronic mailboxes. FINRA is continuing the process of digitizing neutral files.

### **FINRA Office of Dispute Resolution Website**

FINRA Office of Dispute Resolution's website, <http://www.finra.org/arbitration-and-mediation>, provides various resources for parties and neutrals regarding FINRA's arbitration and mediation processes. On the website users can find, among other things: an overview of arbitration and mediation; information on how to file a claim; forms that parties and arbitrators need in the arbitration process; arbitrator and mediator applications; The Codes of Arbitration Procedure; and rule filing information. The website also contains a "What's New" section, where users can access case statistics and information on recent FINRA initiatives and announcements.

### **Arbitration Awards Online**

FINRA's Arbitration Awards Online database is available without charge on FINRA's website at <http://www.finra.org/arbitration-and-mediation/arbitration-awards>. Through the database, users can access FINRA arbitration awards from February 1989 through the present.

In addition, users can access all NYSE arbitration awards, as well as the awards of all arbitration programs absorbed over the years by FINRA (which include the American Stock Exchange, Chicago Board Options Exchange, International Stock Exchange, Philadelphia Stock Exchange, and Municipal Securities Rulemaking Board) and NYSE (which includes Pacific Exchange/NYSE ARCA).

The database provides users with access to awards and the ability to search for awards by using multiple criteria, such as by case number, keywords within awards, arbitrator names, date ranges set by the user, and any combination of these features. FINRA now includes in customer awards information about the panel selection method and panel composition.

### **Videoconferencing**

All four of FINRA's regional office locations have videoconferencing capabilities. With the consent of all parties or with the permission of the arbitration panel, parties or witnesses may appear at hearings by videoconference for hearings held in one of the regional office locations. There is no additional cost to use the videoconferencing equipment at FINRA. Parties are encouraged to notify their case administrator at least 30 days prior to the hearing to request videoconferencing services. All videoconferencing requests are honored in the order they are received.

In addition, the following companies offer videoconferencing services compatible with FINRA's:

- Regus  
www.regus.com  
1-800-633-4237
- Veritext  
www.veritext.com  
(contact phone numbers vary by region and are listed on the Veritext website).

Additional information on specific Regus and Veritext locations, costs, and reservations to use videoconferencing services are available by contacting these companies directly. All costs to use videoconferencing services outside of a FINRA regional office location are the responsibility of the party reserving the facilities.

## **X. MEDIATION**

Mediation remains an important service that FINRA offers. Since the program's inception in 1995, FINRA's mediation staff has administered thousands of cases involving a wide variety of securities disputes with over 80 percent resulting in settlement between the parties.

Parties interested in mediation can fill out an online [Request for Mediation Form](#) which is located on the Initiate a Mediation page of [www.finra.org](http://www.finra.org). Parties involved in current arbitration cases can also indicate their interest in mediation by checking the box on the Party Case Submission Form in the DR Portal. Both methods relay a message to mediation staff, who will follow-up with other parties regarding available mediation options.

### **FINRA Mediation Settlement Month**

In order to solicit parties' use of mediation and raise awareness of its mediation program, FINRA provides an annual "Settlement Month" program every October, which offers reduced mediation fees for smaller cases.

In 2018, we extended FINRA Mediation Settlement Month to two months. Parties were able to take advantage of cost savings with participating mediators from September 15 through November 15, 2018.

The Office of Dispute Resolution invites parties to take advantage of significantly reduced mediation prices during FINRA Mediation Settlement Month each year. Our aim is to encourage parties to experience the benefits of mediation for the first time, and to reinforce its value and effectiveness for those who have mediated already.

### **Mediation Program for Small Arbitration Claims**

Since February 2013, FINRA has offered reduced fee and pro bono telephonic mediation to parties in simplified cases. Under the program, mediators serve on a pro bono basis on cases alleging \$25,000 or less in damages. We have also offered significantly reduced fee mediation at \$50 per hour on cases alleging damages between \$25,000.01 and \$50,000. The program benefits forum users by: 1) increasing the number of cases that settle and giving parties more control over the results of their cases; 2) reducing travel and preparation costs; and 3) providing an alternative for senior, seriously ill, and physically challenged parties who may find traveling to and attending an in-person mediation especially difficult; and 4) offering parties in small cases an efficient and cost-effective option to meet their needs within our forum.

Separately, the program provides newer mediators with an opportunity to demonstrate their mediation skills. Staff has processed hundreds of requests to mediate through the Mediation Program for Small Arbitration Claims with parties settling over 80% of cases mediated. FINRA continues to communicate the opportunity for parties to mediate through this program to all eligible cases, and highlights the benefits of this affordable mediation option for small claims.

For more information on FINRA's Mediation Program visit the [Learn About Mediation](#) page at finra.org.