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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 Dispute Resolution Services' (DRS) dedicated neutrals better serve parties and other participants in the DRS forum by taking advantage of this valuable learning tool.

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Update on Lowenstein Recommendations

By Shannon Bond, Senior Director, FINRA Case Administration, Operations and Staff Training



As we previously reported, the Audit Committee of the FINRA Board of Governors [engaged Lowenstein Sandler LLP](#) (Lowenstein) to conduct an independent review of a Fulton County, Georgia Superior Court decision that vacated an arbitration award in favor of respondent Wells Fargo Clearing Services, LLC. The Court of Appeals of Georgia reversed the decision, finding no evidence of an agreement between Wells Fargo and FINRA. Furthermore, the Court found nothing that indicated Wells Fargo manipulated the arbitrator pool in the subject arbitration.

On June 29, 2022, FINRA published [Lowenstein's report](#), which found no evidence of an improper agreement to remove certain arbitrators from arbitration cases. The report also stated that FINRA personnel generally adhered to policies and procedures and that their actions were intended to be fair and reasonable at each step of the relevant arbitration. In its report, Lowenstein included recommendations to FINRA, designed to improve transparency, ensure neutrality and promote uniformity and consistency.

FINRA committed to implementing all of Lowenstein's recommendations. Three recommendations have been successfully implemented and DRS is in the process of implementing the others. For more information about the status of FINRA's efforts, please see the dashboard provided on [FINRA's website](#).

Completed Recommendations

The report recommended establishing a policy to provide a written explanation, upon request, when a party's request to remove an arbitrator is decided. Going a step further, DRS now provides a written explanation every time a challenge is decided regardless of whether a party makes the request. The new policy was implemented on September 1, 2022.

The report recommended amending FINRA rules to refer to the Mediation and Arbitration Tracking and Retrieval Interactive Case System (MATRICS) instead of the Neutral List Selection System (NLSS). On September 15, 2022, FINRA filed an immediately effective rule filing with the Securities and Exchange Commission (SEC) changing the reference in the Codes of Arbitration Procedure (Codes) from “NLSS” to “List Selection Algorithm.”

The report recommended updates to the DRS Procedures Manual (PM), including the addition of a Code of Neutrality to codify the standards that DRS personnel must maintain in their interactions with DRS participants and execution of their job duties. The updates were completed on December 6, 2022.

Recommendations in Progress

- Implement ongoing mandatory training for DRS personnel regarding the PM and interacting with DRS participants.
- Amend [FINRA Rule 12400](#) to specifically state that DRS shall conduct a manual review for conflicts of interest before sending the arbitrator list to the parties. On December 23, 2022, DRS filed a [proposed rule change](#) with the SEC to make this change.
- Adopt a procedure whereby future changes to FINRA Rules, interpretations and guidance in the PM are timely and uniformly reflected in publicly available documents.
- Add new language to the Codes to clarify that DRS will provide a written explanation every time a challenge, or a party’s request to remove an arbitrator, is decided. On December 23, 2022, DRS filed a [proposed rule change](#) with the SEC to make this change.
- Conduct an external procedural review of the List Selection Algorithm (formerly NLSS) to determine if FINRA’s current technology is still the most effective means in creating random, computer-generated arbitrator lists for the arbitration participants.

FINRA welcomed the opportunity to enhance DRS procedures and create greater transparency for users of the DRS forum.

DRS and FINRA News

Arbitration Case Filings and Trends

2022 Year-End Statistics



[Arbitration case filings](#) in 2022 reflect an eight percent decrease compared to cases filed in 2021 (from 2,893 cases in 2021 to 2,671 cases in 2022). Customer-initiated claims decreased by 11 percent in 2022 compared to cases filed in 2021.

In 2022, the following securities were most identified in customer arbitration cases (listed in order of decreasing frequency): common stock, corporate bonds, real estate investment trusts, mutual funds, options, private equities, limited partnerships, business development companies, exchange-traded funds, annuities, municipal bond funds, variable annuities, preferred stock, structured products and 401(k)s. The top two causes of action alleged in customer arbitration cases were breach of fiduciary duty and negligence.

Statistics through February 2023

[Arbitration case filings](#) from January through February 2023 reflect a 20 percent increase compared to cases filed during the same two-month period in 2022 (from 380 cases in 2022 to 457 cases in 2023). Customer-initiated claims increased by 34 percent through February 2023, as compared to the same time period in 2022.

Proposed Rule Change to Amend the Codes of Arbitration Procedure to Make Various Clarifying and Technical Changes

On December 23, 2022, FINRA filed with the SEC a proposed rule change to amend the Codes to make various clarifying and technical changes to the Codes, including in response to recommendations in the Lowenstein report. FINRA extended the time for SEC action to April 12, 2023.

Please see [SR-FINRA-2022-033](#) for more information.

Proposed Rule Change to Amend the Codes to Modify the Current Process Relating to the Expungement of Customer Dispute Information

On December 8, 2022, FINRA filed an extension for the SEC to act on the proposed rule change to amend the Codes to modify the current process relating to the expungement of customer dispute information. FINRA extended the time for SEC action to April 12, 2023.

Please see [SR-FINRA-2022-024](#) for more information.

COVID-19 Impact on Arbitration and Mediation Hearings

DRS no longer requires vaccination, COVID testing or Health Self-Assessments for in-person participants at arbitration hearings or mediation sessions, effective [January 30, 2023](#). Additionally, in-person participants are no longer required to wear face masks. However, DRS recommends that participants consider wearing a mask if the COVID-19 Community Level is High.

Virtual Arbitration Hearing Statistics

Since the postponement of in-person hearings through February 28, 2023, 1,308 arbitration cases have conducted one or more hearings via Zoom (536 customer cases and 772 industry cases).

Through February 28, 2023, DRS received 1,397 motions for Zoom hearings:

- 636 contested motions
 - 445 customer contested motions
 - 272 granted
 - 169 denied
 - 4 open
 - 191 intra-industry contested motions
 - 142 granted
 - 48 denied
 - 1 open
 - 761 joint motions (334 in customer cases and 427 in industry cases).

The virtual arbitration hearing statistics are now available on the [Dispute Resolution Statistics page](#).

Now Available: 2022 Arbitrator and Mediator Diversity Statistics

Since 2016, DRS has worked with a third-party consultant to survey annually—on an anonymous and voluntary basis—the demographics of newly added and existing neutrals and have made the survey results available on [FINRA's website](#). In sharing the findings, DRS strives to provide transparency about the current makeup of our arbitrator and mediator rosters.

Our 2022 demographic survey results show that we are on the right path and steadily diversifying the makeup of the roster. Notably, of the new arbitrators added in 2022:

- 47% were female (45% in 2021)
- 9% were LGBTQ (5% in 2021)
- 5% were Asian (4% in 2021)

While we are encouraged by these results, we recognize this is a long-term effort. There is more progress to make, and we remain fully committed toward achieving our diversity goals.

Updated Arbitrator Resource Guide for Virtual Hearings and New Pro Se User Guide for Zoom Hearings

Based on feedback and suggestions from the Zoom Task Force (ZTF), DRS updated the [Arbitrator Resource Guide for Virtual Hearings](#) to include additional best practices for arbitrators. Specifically, it was updated to require arbitrators to keep cameras turned on for the entire prehearing conference or evidentiary hearing by Zoom, absent technical difficulties or extenuating circumstances.

Additionally, the ZTF worked with DRS staff to draft a new [Resource Guide for Self-Represented Parties with Virtual \(“Zoom”\) Hearings](#) (Resource Guide). The Resource Guide is written in a user-friendly Q&A format and provides tips for pro se parties to maximize their Zoom hearing experience. The Resource Guide includes information on necessary equipment, background, audio, lighting, privacy considerations, scheduling Zoom trial-runs with DRS staff, exhibits, witnesses, recording of the Zoom hearing and general troubleshooting.

Prehearing Conferences by Zoom

After a successful pilot program, all prehearing conferences are now being held via Zoom with video, unless the parties agree or the panel orders otherwise.

Arbitrators and parties should go to the [DR Portal](#) for the link to join their prehearing conferences. More information is available on the [Prehearing Conferences web page](#), including questions and answers about using the DR Portal.

Arbitrator and Party Experience Survey Enhancements

DRS expanded the Arbitrator and Party Experience Surveys to provide different versions depending on how the case closed. This allows participants to complete a different survey based on the following case types:

- The case went to evidentiary hearing.
- The case settled or was withdrawn prior to the evidentiary hearing.
- The case was decided on the papers (simplified, default and promissory note cases).

Survey questions are tailored to the specific case type. Therefore, users only answer questions relevant to their case type, making the process easier and faster. Additionally, by expanding our outreach to include all case types, DRS looks forward to feedback from a wider range of case participants.

There are two versions of each of the three surveys noted above: one for arbitrators and one for parties. We encourage arbitrators and parties to complete an experience survey on the [DR Portal](#) after each case.

DR Portal Help

If you have any questions about logging into the DR Portal, please contact the FINRA Support Center at (301) 590-6500. If you have any other technical difficulties using the DR Portal other than issues logging in, please contact the DR Portal Help Desk at (800) 700-7065.

Register for the DR Portal Today

If you have not already done so, we strongly encourage arbitrators and mediators to register for the [DR Portal](#). It allows you to:

- file case documents including the electronic Oath of Arbitrator and Checklist, the Initial Prehearing Conference Scheduling Order, general, dismissal and postponement orders, the Award Information Sheet and the Arbitrator Experience Survey;
- access information about assigned cases, including case documents, upcoming hearings and arbitrator 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 your name has appeared on arbitrator ranking lists sent to parties and how often you have been ranked or struck on those lists.

DR Portal registration is reflected on the disclosure reports that parties review when selecting arbitrators and mediators.

Update to Business Mileage Rate

Effective January 1, the business standard mileage rate increased from \$.625 per mile rate to \$.655 per mile. Please review the [Expense Reimbursement](#) page for more information about FINRA's reimbursement policy.

2023 American Bar Association (ABA) Dispute Resolution Spring Conference: May 10 – 13, 2023

The ABA will hold its [Dispute Resolution Spring Conference](#) in Las Vegas, NV. This year, the Spring Conference will examine how alternative dispute resolution (ADR) professionals can navigate a climate of divisiveness and lead the way towards empowerment and self-advocacy to positively influence the ADR landscape. FINRA is proud to be a partnering organization for this event and encourages arbitrators and mediators to attend. Please use the following discount code to receive the ABA member rate: **SPECLV23**.

2023 FINRA Annual Conference: May 16 – 18, 2023

The [2023 FINRA Annual Conference](#) will be held in person in Washington, DC. The Annual Conference provides an opportunity for practitioners, peers and regulators to exchange ideas on today's most timely compliance and regulatory topics. The conference offers industry professionals a variety of sessions related to current trends in technology, cybersecurity, risk management and much more.

Mediation Update

Mediation Case Filings and Trends

2022 Year-End Statistics



In 2022, parties initiated 746 [mediation cases](#), an increase of 21 percent from 2021. DRS also closed 803 cases during this time. Approximately 91 percent of these cases concluded with successful settlements.

Statistics through February 2023

From January through February 2023, parties initiated 118 mediation cases, a decrease of 23 percent from the same period in 2022. FINRA closed 103 cases during this time. Approximately 83 percent of these cases concluded with successful settlements.

Mediator List Process and Disclosure Updates

DRS successfully completed the mediator list pilot program (list pilot) that began in August 2022. Parties who did not choose a pre-selected mediator were provided three list options: the randomized virtual option (new default), the in-person option (old default) and the bespoke request option. Staff processed 25 cases under this pilot through the end of 2022, with most cases proceeding with the default virtual option. Staff will follow up with participants in 2023 for any feedback as we move towards making the list pilot a permanent feature of DRS Mediation.

In early 2022, staff sent a survey to all mediators on the roster seeking information, on a voluntary basis, related to their demographics and skills. This information helped us inform the bespoke list options and will continue to be used when offering bespoke lists. Staff plans to reach out to mediators annually to confirm updates or changes to their disclosure reports.

We remind mediators that you can update your mediator profile anytime through the [DR Portal](#). Keeping your mediator disclosure report up to date—including the number of times you have mediated cases, your success rate and the types of cases you have mediated—matters to parties when selecting a mediator. References who can attest to your skill and mediation style help

Become a DRS Mediator

Do you have experience working as a mediator? Consider joining the DRS mediator roster. Please email the [Mediation Department](#) for more information.

parties select the right mediator for their case. Please add references to your disclosure report, so parties may consider them during mediator selection. If you have a cancellation policy, please include it in your disclosure report.

FINRA's Mediation Program for Small Arbitration Claims

FINRA expanded the [Mediation Program for Small Arbitration Claims](#) by increasing the maximum amount in controversy from \$50,000 to \$100,000 and making available all virtual platforms (telephonic and video) for these mediations. With these changes, the program provides more parties the benefit of an expedient and cost-effective option for resolving small claims while also introducing parties to qualified, but underutilized, diverse mediators on our roster.

The program offers virtual mediation at these costs:

- no cost for arbitration claims of \$25,000 or less;
- \$50 per hour for cases with claims between \$25,000 and \$50,000 to cover reduced mediator fees. (FINRA collects this fee and divides it equally between the parties); and
- \$100 per hour for cases with claims between \$50,000 and \$100,000 to cover reduced mediator fees. (FINRA collects this fee and divides it equally between the parties).

Virtual mediation offers parties the option to participate in mediation from their own homes. It also provides mediators with additional opportunities to mediate in hearing locations across the country, regardless of the mediator's home base. To help facilitate efficient virtual mediations, FINRA developed the [Guide for Using Breakout Rooms in Mediation](#).

When parties mediate through this program, FINRA waives all mediation filing fees. Please contact the [Mediation Department](#) if you have any questions about this program.

Mediator Training Opportunities

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



Questions and Answers

Dissenting Arbitrators

Question How does DRS define a dissenting arbitrator?

Answer A dissenting arbitrator is an arbitrator who has a differing opinion on the ruling(s) of a case from those of their co-panelists.

Under FINRA [Rules 12410](#) and [13414](#) of the Codes, “[a]ll rulings and determinations of the panel must be made by a majority of the arbitrators, unless the parties agree, or the Code or applicable law provides, otherwise.” The Codes do not require unanimity with regard to arbitrator rulings. A panel member may dissent.

The dissenting panelist can dissent from some or all rulings in the arbitration award. For instance, if a case included evidentiary and expungement issues, the entire panel could have the same opinion when ruling on the expungement issue in the case, but one panelist could dissent from the majority’s view on the evidentiary portion.

A dissenting arbitrator will be identified as such in the final award.

Question What should an arbitrator do if they want to dissent in the arbitration award?

Answer The dissenting arbitrator should make their position and opinions known to the other panelists. The dissenting arbitrator should feel free to express their view without fear of judgment or pressure to conform to the majority if they disagree.

If the dissenting arbitrator is not the chairperson, they should let the chairperson know that they should be identified as the “dissenting arbitrator” in the Award Information Sheet (AIS). If the chairperson dissents, they should note that in the AIS.

Question Is the dissenting arbitrator required to provide a written, dissenting opinion in the award?

Answer The dissenting arbitrator is not required to provide a dissenting opinion in the award but is welcome to write one. It may be helpful for the parties, counsel and other readers reviewing the award (*i.e.*, on [FINRA's Arbitration Awards Online database](#)) to have additional context and rationale as to why the dissenting arbitrator did not agree with the majority ruling. If a dissenting opinion is written, it should not disclose confidential information about the deliberation and may be brief.

Question What does the arbitration award look like when a member of the panel dissents?

Answer Under the "Award" heading of the award, language will be included to specify whether the entire panel agreed, or if the majority of the panel agreed, on the full and final resolution of the various issues submitted for determination. The Dissenting Arbitrator's Signature and Concurring Arbitrators' Signatures will be labelled as such. Further, if the dissenting arbitrator provides a written opinion for the award, the dissenting opinion is generally provided before the dissenting Arbitrator's Signature.

Education and Training

2022 Neutral Workshop: DR Portal and Tips for Efficient Hearings



In this [workshop](#), DRS Principal Analyst Stephen Fletcher moderates a discussion on using the DR Portal effectively with arbitrator Kim Kirn and DRS Case Administrator Janae Monroe. They also discuss safety protocols for in-person hearings and share best practices on attending prehearing conferences by Zoom and ruling on motions.

Expungement Training Link

In 2020, DRS updated the Basic Arbitrator and Expungement trainings to combine them into one learning program: Modules 1-15 are the Basic Arbitrator Training, and Module 16 is the Expungement Training. The program requires users to go through each module before moving on to the next one. Some arbitrators have asked about accessing the expungement material as a refresher but do not want to go through each module. Arbitrators who wish to review the online Expungement Module only may request the dedicated hyperlink by sending an email to [Arbitrator Training](#).

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 during the arbitrator selection process. Giving parties the most current and complete information helps them make informed decisions when selecting their panel. Arbitrators should log in to the [DR Portal](#) to update their disclosure reports.

Last Affirmation Dates on Arbitrator Disclosure Reports

In 2017, FINRA enhanced arbitrator disclosure reports by publishing the date that arbitrators last affirmed the accuracy of their disclosure reports. The affirmation date appears prominently at the top of the disclosure report that parties review during the arbitrator selection process. Parties may consider the affirmation date when making decisions about ranking and striking arbitrators.

To provide parties with the most current arbitrator information, FINRA is asking arbitrators to review their disclosure reports regularly and affirm the information in the disclosure report. Arbitrators can affirm their disclosures and refresh the affirmation date by submitting an update through the DR Portal or by submitting an Oath of Arbitrator when assigned to a case. Even if you do not have any changes, you can update the affirmation date by affirming the information on your disclosure report and submitting an update form through the DR Portal. If you would like to register in the DR Portal or need to reactivate a dormant account, please send an email to the Department of [Neutral Management](#) to request an invitation. Please include “request portal invitation” in the subject line.

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