

What’s Inside

DRS and FINRA News	5
Mediation Update	9
Questions and Answers	10
Education and Training	12
Arbitrator Disclosure Reminder	13

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.

Follow Us on Social Media

Follow us on [Twitter \(@FINRA\)](#) and [LinkedIn](#) for the latest **FINRA and Dispute Resolution Services news**.

FINRA Dispute Resolution Services Mediation Program

By Narielle Robinson, National Mediation Administrator, FINRA Mediation



In addition to arbitration services, DRS provides cost-effective and efficient mediation services. Continue reading to get an overview of the DRS Mediation Program.

Initiating Mediation

Parties may submit a request for mediation before an arbitration has been filed (considered a “straight-in mediation”) or at any stage of an arbitration case. Because mediation is voluntary, all parties must agree before the matter can proceed. Some parties may consider mediation early in the arbitration case, while others may wait until discovery has concluded. Either way, it is important to note that parties do not give up their right to arbitrate if they cannot reach a settlement in mediation.

Arbitration and mediation can proceed on a parallel track. Arbitrators will raise the option to mediate during the Initial Prehearing Conference (IPHC). In many instances parties postpone the arbitration hearings to mediate. If parties mediate through FINRA, DRS will waive the postponement fee for the first postponement to mediate.

Mediation staff may contact the parties or counsel at different stages of the arbitration when:

- a party expresses interest;
- a case is eligible for a reduced fee program; or
- there are upcoming arbitration hearings.

Parties can also indicate interest by checking the “Mediation Interest Box” on the [DR Portal](#) when submitting documents, and a mediation staff member will reach out.

If parties decide that mediation is appropriate for their dispute, they can contact their arbitration case administrator if they have an open arbitration case. For straight-in mediations, parties can submit a [request for mediation form](#).

Why Mediate Through FINRA?

Diverse and Knowledgeable Roster

DRS has a mediator roster with more than 200 highly experienced mediators. Due to the skill and expertise of the mediators, settlement rates are consistently more than 80 percent. If parties do not pre-select a mediator, DRS will randomly generate a list of mediators for parties to choose from. Alternatively, parties can work with their mediation case administrator to create a bespoke mediator list based on the parties' specific requests.

Supportive Mediation Staff

Mediation staff is available to assist with scheduling, technology, case financials and other mediation administrative tasks, including processing payment to the mediator promptly after the mediation has concluded.

DRS offers telephonic, virtual and in-person mediations. For in-person mediations, FINRA makes its conference rooms available at no additional cost and can provide alternative options if rooms are not available.

Postponement Fee Waiver

If parties postpone their arbitration hearing to mediate through FINRA, DRS will waive the postponement fee. Parties, however, will continue to be responsible for additional fees described in FINRA Rules [12601\(b\)\(2\)](#) and [13601\(b\)\(2\)](#) for late postponement requests under the Codes of Arbitration Procedure (Codes). If parties postpone the hearing within 10 days of the first regular scheduled hearing, even if it is their first postponement to mediate or the panel waives a subsequent postponement fee, the parties will be assessed a late cancellation fee.

Occasionally, parties may need to file a second postponement to mediate. This most frequently happens when an arbitration hearing is coming up soon, but settlement negotiations are still ongoing or a settlement in principle has been reached, but the matter has not been resolved fully.

Mediation postponement fees are waived for the first postponement, but fees for subsequent postponements, even to mediate through FINRA, will be assessed unless extraordinary circumstances exist. DRS has seen an increase in second postponement requests recently and wants parties to consider potential additional fees when rescheduling hearing dates and submitting postponement requests. The arbitration panel should consider principles of equity, based on the specific circumstances for each case, when making the decision on assessing or waiving subsequent mediation postponement fees.

Reduced Fee Programs

DRS Mediation offers reduced fee programs throughout the year:

1. [Mediation Program for Small Arbitration Claims](#) is a yearlong virtual program available for arbitration cases with initial claims of \$100,000 or less. Participating mediators offer their services at a reduced rate and DRS waives the mediation administrative fee.
2. October is [Mediation Settlement Month](#). As part of Mediation Settlement Month, DRS offers a reduced fee program from September through December. All cases, including straight-in mediations, are eligible to take advantage of the program. Participating mediators offer their services at a reduced rate, and DRS administrative fees are reduced by 50 percent.

These programs succeed due to the mediators' willingness to offer services at a reduced rate. Mediators who are interested in participating in either program should email mediate@finra.org.

Resources

If you have any questions about the DRS Mediation Program, please contact our national mediation administrators:

Southeast and Midwest Regions

Narielle Robinson, National Mediation Administrator
narielle.robinson@finra.org
(561) 447-4927

Northeast and West Regions

Mara Weinstein, National Mediation Administrator
mara.weinstein@finra.org
(212) 858-4384

DRS and FINRA News

Arbitration Case Filings and Trends



Arbitration [case filings](#) from January through May 2023 reflect a 37 percent increase compared to cases filed during the same five-month period in 2022 (from 1,055 cases in 2022 to 1,444 cases in 2023). Customer-initiated claims increased by 20 percent through May 2023, as compared to the same period in 2022.

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

On April 12, 2023, the Securities and Exchange Commission (SEC) issued a notice of filing of Amendment No. 2 and order granting accelerated approval of the proposed rule change, as modified by Amendments Nos. 1 and 2, to amend the Codes to modify the current process relating to the expungement of customer dispute information. FINRA will announce the effective date of the revised rules in a Regulatory Notice.

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

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

On April 12, 2023, the SEC issued a notice of filing of Amendment No. 1 and order instituting proceedings to determine whether to approve or disapprove the proposed rule change to make various clarifying and technical changes to the Codes in response to the [Lowenstein Report](#), as modified by Amendment No. 1.

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

Virtual Arbitration Hearing Statistics

Since the postponement of in-person hearings in the spring of 2020 through May 31, 2023, 1,460 arbitration cases have conducted one or more hearings via Zoom (585 customer cases and 875 industry cases).

Through May 31, 2023, DRS received 1,426 motions for Zoom hearings:

- 651 contested motions
 - 455 customer contested motions
 - 280 granted
 - 173 denied
 - 2 open
 - 196 intra-industry contested motions
 - 146 granted
 - 50 denied
 - 0 open
- 775 joint motions (337 in customer cases and 438 in industry cases).

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

Initial Prehearing Conference (IPHC) Script Updates

The IPHC scripts were updated to clarify that DRS is primarily an in-person forum. The IPHC scripts were also updated to include information about the 20-day exchange requirement and filing the hearing exhibits on the DR Portal. The updated IPHC scripts are available on the Forms and Tools page of FINRA.org.

Arbitrator and Party Experience Survey Enhancements

DRS provides different versions of the Arbitrator and Party Experience Surveys depending on how the case closed. Participants can complete a different survey if the case:

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

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.

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. Expanding our outreach to include all case types allows DRS to receive 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.

Update to Arbitrator Travel Policy

The [Arbitrator Travel Policy](#) for “Category A and D Arbitrators” was updated to allow arbitrators to expense up to \$30 for an additional meal if a hearing day extends beyond eight hours, exclusive of breaks.

Register for the DR Portal Today

If you have not already done so, DRS strongly encourages 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 IPHC 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.

New York State Bar Association: Comprehensive Commercial Arbitration Training for Arbitrators and Counsel: July 17 – 19, 2023

The New York State Bar Association's [Comprehensive Commercial Arbitration Training for Arbitrators and Counsel](#) is for arbitrators interested in taking their skills to the next level. The training will be conducted by seasoned arbitrators, counsel, arbitration administrators and academics, focusing on best practices for conducting commercial arbitrations. In addition to interactive sessions on managing an arbitration from the preliminary conference through the hearing and award, the program will include presentations on the law of arbitration, the ethical rules relating to service as an arbitrator, e-discovery, award writing, international arbitration, arbitral decision-making and the development of an arbitration practice.

The program will be held in person July 17 – 19, 2023 at Cardozo School of Law. Attendees will also have the option to participate virtually. CLE credit will be available.

Practising Law Institute (PLI) Securities Arbitration 2023: September 7, 2023

The [PLI Securities Arbitration 2023](#) program provides an opportunity to hear about the latest developments directly from DRS leadership, arbitrators, noted academics and experienced attorneys who represent both customers and industry parties. PLI's faculty will provide practical tips for arbitrating and mediating securities cases. They will consider ethical challenges as clients and brokers age as well as explore diversity and inclusion and the elimination of bias in the DRS forum. Finally, they will look at the latest hot topics and future trends in securities arbitration for 2023.

The program will be held in person on September 7 from 9 a.m. to 4:45 p.m. Eastern Time. Attendees can watch the program as a live broadcast or view a recorded version at a later time. CLE credit will be available. FINRA arbitrators and mediators will receive a 25 percent discount when registering with this link or by using this discount code: **PPS3 FINRA**.

Become a FINRA Mediator

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

Mediation Update

Mediation Case Filings and Trends



From January through May 2023, parties initiated 317 [mediation cases](#), a decrease of 18 percent from the same period in 2022. FINRA closed 276 cases during this time. Approximately 85 percent of these cases concluded with successful settlements.

Mediator List Process and Disclosure Updates

DRS successfully completed the mediator list pilot program 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. The bespoke option used demographics and skills information provided by mediators. Staff is currently surveying participants to determine the permanency of the program.

Mediators can update their 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—helps parties during mediator selection. References who can attest to your skills and mediation style also helps parties choose the right mediator. Remember to include your cancellation policy if you have one.

Mediator Training Opportunities

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



Questions and Answers

Completing the Oath of Arbitrator (Oath)

Question: What does the “Already on Disclosure Report” response to a question on the Oath mean?

Answer: The “Already on Disclosure Report” response informs parties reviewing the Oath that the information can be found on the arbitrators’ disclosure report (ADR). For example, an arbitrator who has disclosed a past personal bankruptcy filing on their ADR can choose “Already on Disclosure Report” in response to Question 3 of the “Financial Disclosures” section of the Oath. However, if an arbitrator had a bankruptcy filing, but the information is not on their ADR, they should respond “Yes” to Question 3 and provide information in the explanation section for the disclosure to be added to their ADR.

Question: I recently submitted the Oath by providing “Already on Disclosure Report” responses for ALL questions. I assumed that an “Already on Disclosure Report” response would cover all my bases, even if the related information is not on my ADR. Is this correct?

Answer: No, this is not correct. The “Already on Disclosure Report” response is only correct in lieu of a “Yes” response with an explanation that the information has already been added to the ADR. For example, if an arbitrator has never filed for personal bankruptcy, their response to Question 3 of the Financial Disclosures section should be “No.”

Answering “Already on Disclosure Report” can be confusing to parties who are looking for related information on the ADR. Choosing “Already on Disclosure Report” when the information is not on the ADR may serve as a basis to challenge an arbitrator’s service on the panel. If the information is not already on your ADR, please do not select the “Already on Disclosure Report” option.

Question: Can an arbitrator who has provided past “No” responses to questions on an Oath provide “Already on Disclosure Report” responses to those questions on future Oaths?

Answer: The ADR does not record previous responses to Oath questions. If an arbitrator has provided “No” responses to questions on an Oath, and they do not have any new information to disclose, they should continue to provide a “No” response.

Question: How can I correct a previously provided response on an Oath?

Answer: You can send an email to the case administrator, informing them of the error and providing the corrected response. Unless requested by the case administrator, there is no need to resubmit an Oath. You should also make any additional disclosures at the IPHC.

Education and Training

Enhanced Expungement Training



DRS has released a new enhanced expungement training that provides an overview of [recently approved](#) revisions to the Codes to modify the process relating to the expungement of customer dispute information. The revised rules require that all expungement requests filed under the Industry Code be decided by a three-person panel randomly selected from a roster of experienced public chair arbitrators who have completed the enhanced expungement training (Special Arbitrator Roster). The revised rules also require that expungement requests made during simplified customer arbitrations be considered by public chair arbitrators who have completed the enhanced expungement training. FINRA will announce the effective date of the revised rules in a Regulatory Notice.

The enhanced expungement training is now available for arbitrators on the [DRS learning system](#).

Upon completion of the training, eligible arbitrators will automatically be added to the Special Arbitrator Roster. Public chairs who complete the enhanced expungement training will also be able to consider expungement requests during simplified customer arbitrations. We encourage all public chairs to complete this training.

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. Providing 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 is displayed 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 asks 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 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.

Directory

Richard W. Berry
Executive Vice President and
Director of Dispute Resolution
Services

Todd Saltzman
Vice President of
Dispute Resolution Services

James Schroder
Associate Vice President
DR Product Management

Katherine M. Bayer
Regional Director
Northeast Region

Carolann Gemski
Regional Director
Midwest Region

Laura D. McNamire
Regional Director
West Region

Manly Ray
Regional Director
Southeast Region

Jisook Lee
Associate Director of
Neutral Management and
Editor of *The Neutral Corner*

FINRA Dispute Resolution Services Offices

Northeast Region
FINRA Dispute Resolution Services
Brookfield Place
200 Liberty Street
New York, NY 10281
Phone: (212) 858-4200
Fax: (301) 527-4873
neprocessingcenter@finra.org

West Region
FINRA Dispute Resolution Services
300 S. Grand Avenue, Suite 1700
Los Angeles, CA 90071
Phone: (213) 613-2680
Fax: (301) 527-4766
westernprocessingcenter@finra.org

Southeast Region
FINRA Dispute Resolution Services
Boca Center Tower 1
5200 Town Center Circle, Suite 200
Boca Raton, FL 33486
Phone: (561) 416-0277
Fax: (301) 527-4868
fl-main@finra.org

Midwest Region
FINRA Dispute Resolution Services
55 West Monroe Street, Suite 2600
Chicago, IL 60603-1002
Phone: (312) 899-4440
Fax: (301) 527-4851
midwestprocessingcenter@finra.org

Editorial Board

Erin Jett	Northeast Region
Shannon Bond	Case Administration
Jennifer LaMont	Case Administration
Nora Sassounian	Case Administration
Narielle Robinson	Mediation
Terresa Byrd	Midwest Region
Carissa Laughlin	Office of General Counsel

© Volume 1 – 2023 FINRA.
All rights reserved.

FINRA is a registered trademark
of Financial Industry Regulatory
Authority. MediaSource is a service
mark of FINRA.

The Neutral Corner is published
by FINRA Dispute Resolution
Services in conjunction with FINRA
Corporate Communications.
Send all correspondence to Jisook
Lee, Associate Director of Neutral
Management and Editor of
The Neutral Corner:

FINRA Dispute Resolution Services
Brookfield Place
200 Liberty Street
New York, NY 10281

Or call (212) 858-3999.

No part of this publication may be
copied, photocopied or duplicated
in any form or by any means
without prior written consent from
FINRA. Unauthorized copying of this
publication is a violation of the
federal copyright law.

FINRA®

Investor protection. Market integrity.

FINRA
Brookfield Place
200 Liberty Street
New York, NY 10281

www.finra.org
© 2023 FINRA. All rights reserved.
FINRA and other trademarks of the
Financial Industry Regulatory Authority, Inc.
may not be used without permission.
CCSD-6106-06/23