



# INVESTOR'S GUIDE TO SECURITIES INDUSTRY DISPUTES

## How to Prevent and Resolve Disputes with Your Broker

PUBLISHED BY THE PACE LAW SCHOOL INVESTOR RIGHTS CLINIC

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This Investor's Guide has been authored and published by attorneys with the Pace Investor Rights Clinic (PIRC), a non-profit legal services organization affiliated with the Elisabeth Haub School of Law at Pace University (Pace Law School). PIRC acknowledges the contributions of Edward Pekarek and Alice Oshins to earlier editions. PIRC offers free legal services to eligible individual investors who have disputes with their securities brokers and brokerage firms. PIRC aims to protect the rights of individual investors, particularly investors of modest means who traditionally have been underrepresented in the legal system.

This Guide was made possible by a grant from the FINRA Investor Education Foundation. The Foundation supports innovative research and educational projects that give investors tools to better understand the markets and the basic principles of saving and investing. For details about grant programs and other Foundation initiatives, please visit [www.finrafoundation.org](http://www.finrafoundation.org).

***Caution:** The descriptions of the securities laws and rules, including FINRA rules, contained in this Guide are not intended to be comprehensive. For completeness and accuracy, please refer to the text of those laws and rules.*

*This Guide contains legal information, not legal advice. This Guide is not intended to provide, nor should it be construed as providing, legal or investment advice in any particular matter.*

*For legal advice, please consult an attorney licensed in your area or call your local bar association for a referral to an attorney. For more information on finding an attorney experienced in securities mediation or arbitration, please read the section of this Guide on "How to Find an Attorney."*

*For investment advice, please consult a licensed and registered investment professional.*

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## Introduction

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The Pace Investor Rights Clinic produced this Guide to Securities Industry Disputes for the individual investor who hopes to prevent or may already have a dispute with his or her securities broker. Our goal is for investors to learn more about their legal rights and best practices for responsible investing, before a dispute arises, and to gain an understanding of their options in case a dispute does arise. We hope that informed investors will be better able to prevent disputes with their broker as well as identify and resolve legitimate grievances.

The first section of this Guide covers investors' rights and responsibilities, tips on how to research brokerage firms and brokers, and brokers' duties to their customers. The second section takes you through the arbitration process, including when arbitration is appropriate, procedural requirements, fees, and what to expect at the hearing. The third and final section focuses on mediation, an increasingly popular alternative to arbitration.

This Guide can also assist individual investors representing themselves ("pro se" investors) by providing a foundation in the basic rules and procedures in arbitration and mediation.

**Note:** A resource available to both attorneys and parties to arbitration is the staff of the Financial Industry Regulatory Authority (FINRA). Formerly known as NASD, FINRA is the largest non-governmental regulator for all securities firms doing business in the United States. FINRA also operates the largest securities dispute resolution forum in the world and offers arbitration and mediation facilities in 71 locations around the United States and abroad.

FINRA staff attorneys are neutral. They cannot offer legal advice or opinions as to the probability of success or failure of a particular claim or defense. However, they can provide information about the procedural requirements under FINRA's arbitration and mediation codes of procedure.

To find a FINRA arbitration or mediation facility near you, please visit [www.finra.org/arbitration-and-mediation/dispute-resolution-locations-contacts](http://www.finra.org/arbitration-and-mediation/dispute-resolution-locations-contacts).

## Avoiding Disputes: Investor Rights and Responsibilities

### What are the top ten best practices for responsible investing?

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Responsible investing may help to protect you from unexpected losses and avoid disputes with your broker. This section lists and details the top ten “best practices” you can follow to avoid disputes.

#### 1 Understand that all investments involve risk.

When you invest, you take certain risks. Some of these risks include:

##### Market risk

With many types of securities, such as stocks, bonds, and mutual funds, one of the risks you face is market risk, or a risk that the investment principal will decline in value if the price falls and you sell for less than what you paid.

##### Liquidity risk

You could also be taking liquidity risk, or a risk that the investment might not be easily sold or converted to cash when you need that cash.

##### Inflation risk

Even with bank savings products that preserve your principal, such as certificates of deposit (CDs), you face inflation risk, which means investments may not earn enough over time to keep pace with the increasing cost of living.

If you want to reap the financial rewards of investing successfully, you have to be willing to take *some* risk. In general, remember that every investment carries some degree of risk—and the greater the potential for high returns or earnings on an investment, the greater the risks as well.



## 2 Research the broker and the brokerage firm before opening an account.

Doing some research about brokers and brokerage firms *before* you hand them any money can help you avoid problems later. If you are looking for a broker to work with, try to meet with several of them face-to-face to compare them before making any decisions. Learn about which products and services he or she offers and how they would meet your needs. Be wary of anyone who promotes a one-size-fits-all approach to investing or who touts only one particular product.

Once you are considering a broker or brokerage firm, there are a few more steps you should take before handing anyone your money:

**ASK** whether the broker and firm are properly registered and licensed with FINRA *and* your state's securities regulator. Ask about the broker's work experience, disciplinary history (including any past customer complaints), and financial health (including any outstanding arbitration awards or court judgments). Ask about the firm's customer complaint record.

**VERIFY** the broker's and firm's registration, licensing, and other background information by using BrokerCheck by FINRA ([www.finra.org/BrokerCheck](http://www.finra.org/BrokerCheck)), FINRA's Disciplinary Actions Online Database ([www.finra.org/industry/finra-disciplinary-actions-online](http://www.finra.org/industry/finra-disciplinary-actions-online)), *and* by calling your state's securities regulator. For more information on BrokerCheck, see the Sidebar on page 6. For the contact information of your state's securities regulator, please call the North American Securities Administrators Association at (202) 737-0900 or visit [www.nasaa.org](http://www.nasaa.org).

**VERIFY** any professional designation(s) or credential(s) by contacting the issuing organization and determining whether the broker is currently authorized to use the designation and whether he or she has been disciplined. For more information, see FINRA's "Understanding Professional Designations," at [www.finra.org/designations](http://www.finra.org/designations).

**VERIFY** that the broker is also licensed by your state's insurance commissioner, if he or she sells any insurance products. In order to sell variable annuities or variable life insurance policies, your broker must be properly licensed with both FINRA and your state's insurance commission. Look up the contact information of your state's insurance commissioner through the National Association of Insurance Commissioners at [www.naic.org](http://www.naic.org).

**VERIFY** that your brokerage firm is a member of the Securities Investor Protection Corporation (SIPC). While SIPC does not insure against losses from declines in the market value of your securities, SIPC does provide limited customer protection by replacing certain customer assets if a firm becomes insolvent or bankrupt. See [www.sipc.org](http://www.sipc.org) for more information.

**Remember, up-front research about brokers and brokerage firms you are considering can help you avoid problems later.**

### 3 Formulate investment goals and communicate them clearly to your broker.

Most people invest to achieve specific financial goals. For example, many people want to own their own home, send their children or grandchildren to college, and retire comfortably. Some investors may have other goals, such as accumulating enough money to start a business or to leave a job to pursue other interests.

Make sure to have a clear sense of *your* investment goals and when you want them to happen. Communicate this clearly to your broker *before* making any investment decision. Your broker should ask you for this information in order to make suitable investment recommendations for you and should record this information in what is called a “customer profile” or “account record.” You should ask for a copy of this document, and make sure it accurately reflects your investment objectives and risk tolerance. Also update your broker whenever your financial circumstances or goals change.

### 4 Learn about account features.

Often investors do not know about or misunderstand the features of their brokerage account until it’s too late. Here are some key account features of which you should be aware:

**Pre-dispute arbitration clause** — Virtually every brokerage customer account agreement contains a pre-dispute arbitration clause, which requires that you arbitrate all claims concerning your account in a securities arbitration forum, such as the FINRA Office of Dispute Resolution. By signing the account agreement, you may be giving up the right to sue your broker and brokerage firm in a court of law. See Part II of this Guide for more information on arbitration.

**Authority to make decisions** — Make sure you know and understand exactly who has authority to make decisions in your account. Typically, you’ll

indicate this choice in your account opening form. Having a “non-discretionary” account means that you make investing decisions. Before you consider opening a discretionary account, be sure to consider carefully whether such an arrangement is right for you. Having a “discretionary account” means your broker can make investment decisions for your account without consulting you in advance about the price, type, amount, or timing of each trade, as long as trades are consistent with your stated investment objectives.

**Ability to borrow** — You should also know whether you have a cash account or a margin loan account (customarily known as a “margin account”). A margin account allows you to borrow funds from your broker to buy securities. In a cash account, you must pay for your securities in full when you buy them. Typically, you’ll choose whether you want a margin loan account or cash account in your account opening form. In some cases, however, you may be given a margin account by default, unless you specify otherwise. Make sure you read the account opening documents about margin accounts carefully. If you have any questions, ask your broker.

**Beware:** Borrowing money from your brokerage firm to buy securities can expose you to significant risks. For more information, visit [www.finra.org/investor/margin](http://www.finra.org/investor/margin), and read FINRA’s Investor Alert, “Investing With Borrowed Funds: No Margin for Error,” at [www.finra.org/alerts/margin](http://www.finra.org/alerts/margin).

### 5 Learn about fees you may be charged for investment services and products.

Investing with a brokerage firm costs money. To avoid surprises later, it is very important that you understand up front what services your broker provides and how much those services cost. Always ask about all the fees related to your account, such as account opening, closing, transfer, and maintenance fees, as well as any other costs. Always ask about how your broker is compensated and how that varies depending on the different

investment products you buy. This may influence your broker's investment recommendations to you.

In addition, make sure you ask about and understand all the fees and expenses you'll have to pay with regard to each investment. These can include commissions, as well as a variety of sales charges or "loads," transfer fees, surrender charges (penalties for converting an investment to cash before a permitted time), "markups," and annual management fees. If you do not fully understand them, maybe the investment is not right for you.

## 6 Understand your investments, and avoid any you do not understand.

When choosing an investment, make certain you understand what you are buying. This can help you form realistic expectations, avoid disputes with your broker, and make better buy, sell, or hold decisions. Investing in a financial product you do not fully understand that promises high returns could expose you to risks for which you are not prepared.

It is your right to ask your broker questions until you fully understand an investment. At a minimum, you should know:

- How the investment works.
- How and when the investment value grows or shrinks.
- How and when you would earn money on the investment (for example, does the investment pay interest or dividends?).
- How much and what kinds of risk you would be taking.
- How and why the investment is right for you.

## 7 Read carefully all documents relating to your account and investments.

When you open a new brokerage account, you will complete and sign a number of forms and agreements. Among the many papers you will be asked to sign is an account agreement, a legally binding contract that governs the terms of your relationship with your brokerage firm. Make sure to keep all these forms and agreements in a safe place.

As you make trades and invest in your account, you should receive a trade confirmation for each trade, which should include details about each transaction. You should also receive regular account statements which summarize your holdings and your investment activity on a monthly or quarterly basis. Promptly review your trade confirmations and account statements. This better enables you to monitor your account for any unauthorized activity, and make more informed investment decisions.

For certain investments such as mutual funds and variable annuities, you should receive documents describing the investment, called prospectuses, at or shortly after the time of purchase. If you don't receive these documents, request copies from your broker. These documents can be lengthy and complex, but try to read and understand them. Ask questions if you do not understand anything in these documents.





## 8 Keep documents and note conversations with your broker.

You may need the following documents in the future to report or pursue a problem, look up information for tax purposes, or for other reasons:

- Account opening agreement, including pre-dispute arbitration clause.
- Customer profile and/or account record.
- Any document that gives your broker discretionary authority over your account.
- Account statements.
- Trade confirmations.
- Notes of discussions with your broker.
- Correspondence with your broker.
- Prospectuses or other offering circulars for investments.

## 9 Report any problems with your account in writing immediately.

If you notice an error in any documents you receive from your broker, such as a trade confirmation that does not accurately reflect your investment decision, or if you have questions about your account, write to your broker or branch manager immediately. This may help you minimize financial losses and preserve your legal rights. Also seek independent legal advice.

## 10 Ask questions.

Asking questions is one of the best ways to invest wisely and avoid disputes between you and your broker. You are taking risk if you assume your broker will tell you everything you need to know. Remember that you are the customer and are entitled to have all your questions answered—after all, it is *your* money at stake.

### Top Ten Investor's Best Practices

1. Understand that all investments involve risk.
2. Research the broker and the brokerage firm before you select one.
3. Formulate investment goals and communicate them clearly to your broker.
4. Learn about your account's features.
5. Learn about the fees you may be charged for investment services and products.
6. Understand your investments, and avoid any you do not understand.
7. Read all documents related to your account and investments.
8. Keep documents and note conversations with your broker.
9. Report problems with your account immediately and in writing.
10. Ask questions about your money.



## BrokerCheck by FINRA

FINRA's BrokerCheck® is a free tool to help investors research the professional backgrounds of current and former FINRA-registered brokerage firms and brokers, as well as investment adviser firms and representatives.

The information about brokers and brokerage firms is derived from the Central Registration Depository (CRD®), the securities industry online registration and licensing database. The CRD includes information about approximately 1.25 million current and former FINRA-registered brokers and 20,300 current and former FINRA-registered brokerage firms.

When researching brokerage firms, you can search by the name of the firm or by CRD number, which is a locator number in the FINRA database. For each firm, BrokerCheck provides the company's profile, history, and description of operations, and discloses any arbitration awards, disciplinary or regulatory events, and bankruptcies.

You can also research brokers by name or CRD number. BrokerCheck lists the states in which a broker is licensed to sell securities, the securities qualification examinations he or she has passed, and certain information involving arbitrations, civil litigations, and customer complaints, if any, against the broker, as well as pending investigations and regulatory proceedings.

The broker's employment record may also be informative. You will be able to view the broker's employment history going back ten years. You will be able to see whether the broker has had any employment terminations for certain reasons, such as for violations of securities rules or laws.

Finally, BrokerCheck will tell you whether the broker has been involved in any bankruptcy proceedings in the past ten years, which may also affect your decision whether or not to use this particular broker for your investments.

BrokerCheck information about investment adviser firms and representatives is derived from the Securities and Exchange Commission's Investment Adviser Public Disclosure (IAPD) database. IAPD includes professional background information on approximately 504,000 current and former investment adviser representatives and 54,300 current and former investment adviser firms.

You can check the background of your broker or investment adviser by calling (800) 289-9999, a toll-free hotline operated by FINRA, or online at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

## What duties does my broker owe to me as a customer?

Brokers owe certain duties to their customers. The following list of brokers' duties to customers, while not intended to be a comprehensive restatement of all of your broker's legal duties to you, can help you prevent disputes from arising. When you know what the broker is legally obligated to do, you will be in a better position to spot a disagreement concerning your funds and/or account, as well as violations of the broker's legal duties to you. Also, you will be better equipped to ask more informed questions and take steps to correct problems right away, should any arise.

### 1 Deal fairly with customers.

Brokers have a duty to observe high standards of commercial honor and deal fairly and equitably with customers in the conduct of their business. Examples of conduct that are not considered fair dealing include trading securities in your account without your permission, excessive trading for the purpose of generating extra commissions, and the unauthorized use of your funds or securities.

### 2 Know the customer.

Brokers must use reasonable diligence to learn about their customers' financial situation, such as their income, expenses, financial goals and objectives, and their other investments, as well as their age, tax status, investment experience, investment time horizon, liquidity needs, and any other information a customer discloses, *before* making any recommendation to purchase, sell, or exchange securities. Brokers must also keep this information up to date.

### 3 Make only suitable investment recommendations.

Before recommending the purchase or sale of any investment or investment strategy, a broker must have reasonable grounds for believing that the recommendation is suitable for a customer, after considering the customer's other investments, financial situation, needs and objectives, and all other information obtained through the exercise of reasonable diligence, as described above, which are known as the "essential facts" concerning every customer.

### 4 Disclose accurate and truthful information.

Brokers must provide accurate and truthful information about investment products and strategies. Brokers must also provide to investors additional disclosures of the risks of investing in certain transactions or strategies that involve speculation such as:

- Margin trading – purchasing securities with funds borrowed in full or in part from the brokerage firm.
- Day trading – buying and selling securities within extremely short time periods.
- Penny stock investing – buying low-priced stocks of small companies that are not well established.
- Options trading – buying and selling contracts that give the purchaser the right to buy or sell a security at a fixed price which expire within a specified time period.

### 5 Trade only in accordance with the customer's instructions.

Unless you have a "discretionary account," your broker must separately obtain permission for each individual trade that he or she recommends for you and must execute any orders that you place. Note, however, that if you have borrowed funds to purchase securities in your margin account, there are

circumstances that allow your broker to sell any (or all) of your securities without first consulting you—whether your account is discretionary or non-discretionary. For more information on margin accounts, read FINRA's Investor Alert, "Investing With Borrowed Funds: No Margin for Error," at [www.finra.org/alerts/margin](http://www.finra.org/alerts/margin).

### 6 Avoid excessive trading in a customer's account.

Frequent or excessive trading in a customer's account for the purpose of generating commissions, instead of helping to achieve a customer's stated investment objectives, is called "churning." In the case of mutual funds and variable annuities, it may be called "switching." A broker who has discretionary authority over or otherwise controls your account is prohibited from churning and switching.

#### Additional resources

For more information on these and other broker duties, you can review:

The Investor Bill of Rights  
[www.nasaa.org/2715/investor-bill-of-rights/](http://www.nasaa.org/2715/investor-bill-of-rights/)

FINRA's Investor Protection literature  
[www.finra.org/investors/protect-your-money](http://www.finra.org/investors/protect-your-money)

The SEC's "Top Tips"  
[www.sec.gov/investor/links/toptips.htm](http://www.sec.gov/investor/links/toptips.htm)

The SEC's "Invest Wisely: Advice From Your Securities Industry Regulators"  
[www.sec.gov/investor/pubs/inws.htm](http://www.sec.gov/investor/pubs/inws.htm)

## How can I address problems that may arise with my investments?

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In the event that a discrepancy or dispute arises, you should take steps to notify the firm and its compliance department of the problem. The firm's compliance personnel are responsible for ensuring the firm and its employees follow all applicable securities laws and regulations.

**First:** If you suspect there has been unfair or improper conduct by a securities professional related to your account, report it to a branch manager and/or the firm's compliance department. Confirm your complaint in writing to the firm and keep written records of all communication between you, the broker, and/or the firm. Sometimes the compliance department has the authority to act quickly to rectify the problem. If it is just a misunderstanding, management intervention may be enough to resolve the issue.

If you receive a trade confirmation reflecting a transaction you did not authorize, you should complain immediately to the broker and to the broker's direct supervisor, whether it is a branch manager or compliance officer. Any complaints should be confirmed *in writing*.

**Second:** If you do not receive a satisfactory response, you can file a written complaint with the SEC (at [www.sec.gov/complaint.shtml](http://www.sec.gov/complaint.shtml)) or with the FINRA Investor Complaint Center (at [www.finra.org/complaint](http://www.finra.org/complaint)). You can also contact your state securities regulator (obtain its contact information at [www.nasaa.org](http://www.nasaa.org)). The SEC, FINRA, and state securities regulators investigate customer complaints for potential violations of securities laws or regulations, and may bring disciplinary action against a wrongdoer, but they cannot pursue a claim on your behalf for monetary damages.

**Third:** If you still are not satisfied with the response, or want to seek monetary damages, you can initiate a dispute resolution process.

- You can pursue any claim against a FINRA-registered brokerage firm and/or its registered representative (your broker) in arbitration. For more information about arbitration, see Section II of this Guide.
- If the brokerage firm and broker consent, you can pursue mediation of your claim. For more information on mediation, see Section III of this Guide.
- If you have not signed an enforceable arbitration agreement, consult an attorney to determine if you are able to bring your claim in state or federal court.



## How can I find an attorney to assist me?

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Investors often fare better in the arbitration process when represented by an attorney with experience in securities arbitration matters. You should try to locate an attorney who can help you. You should be aware that brokers and brokerage firms most likely will be represented by attorneys, and that investors without a legal background may experience difficulty with the arbitration process. An attorney can help you assess whether you have a claim that is likely to lead to a recovery of your losses and whether to bring the claim in an arbitration proceeding. If for some reason you are unable to obtain or pay for representation, a law school clinic or the FINRA Office of Dispute Resolution staff may be able to answer procedural questions.

For more information about finding an attorney experienced in securities mediation or arbitration, visit the following websites:

- FINRA’s “How to Find an Attorney,” at [www.finra.org/arbitration-and-mediation/how-find-attorney](http://www.finra.org/arbitration-and-mediation/how-find-attorney).
- The Public Investors Arbitration Bar Association’s “Find An Attorney” service, which lists attorneys who specialize in representing investors, at [www.piaba.org/find-attorney](http://www.piaba.org/find-attorney).
- The American Bar Association’s “Consumer’s Guide to Legal Help,” at [www.findlegalhelp.org](http://www.findlegalhelp.org).

**“Pro se” representation.** If you are unable to obtain legal representation, you have the option to represent yourself in a dispute—also known as proceeding with your claim *pro se*. The FINRA website has information that may be helpful for those proceeding without an attorney. Go to [www.finra.org/arbitration-and-mediation](http://www.finra.org/arbitration-and-mediation).

**Law school clinics.** If the dollar amount of your claim is modest or you cannot afford to hire a lawyer but need legal representation, you should consider consulting a law school clinic, such as the one at Pace Law School, which provides free or reduced-rate student legal services to investors in the resolution of securities disputes. Under the guidance of a supervising attorney, clinic students can represent you in a negotiation, mediation, and/or arbitration, and also gain valuable law practice experience by helping investors. Law schools currently operating clinics are listed on the following page.

### FINRA Securities Helpline for Seniors

Senior investors can call the Securities Helpline for Seniors® to get assistance from FINRA or raise concerns about issues with brokerage accounts or investments. Call 844-57-HELPS (844-574-3577), Monday to Friday, 9 to 5 Eastern Time. For more information, visit [www.finra.org/investors/highlights/finra-securities-helpline-seniors](http://www.finra.org/investors/highlights/finra-securities-helpline-seniors).

## Law School Clinics

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### California

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#### Pepperdine University School of Law

Investor Advocacy Clinic  
24255 Pacific Coast Highway  
Malibu, CA 90263  
(323) 650-6944  
[robertauhlesq@gmail.com](mailto:robertauhlesq@gmail.com)

#### University of San Francisco School of Law

Investor Justice Clinic  
2130 Fulton Street, KN211  
San Francisco, CA 94117-1080  
(415) 422-5326  
[lawclinic@usfca.edu](mailto:lawclinic@usfca.edu)

### District of Columbia

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#### Howard University School of Law

Investor Justice & Education Clinic  
2900 Van Ness Street, NW  
Room G18, Notre Dame Hall  
Washington, DC 20008  
(202) 806-8082  
[bsanders@law.howard.edu](mailto:bsanders@law.howard.edu)

### Florida

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#### University of Miami School of Law

Investor Rights Clinic  
1311 Miller Drive, Suite A312  
Miami, FL 33146  
(305) 284-8234  
[investorrights@law.miami.edu](mailto:investorrights@law.miami.edu)

### Georgia

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#### Georgia State University College of Law

Investor Advocacy Clinic  
PO Box 4037  
Atlanta, GA 30302-4037  
(404) 413-9270  
[investoradvocacy@gsu.edu](mailto:investoradvocacy@gsu.edu)

### Illinois

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#### Northwestern Pritzker School of Law

Investor Protection Center  
Bluhm Legal Clinic  
375 E. Chicago Avenue  
Chicago, IL 60611  
(312) 503-0210  
[investor-protection@nlaw.northwestern.edu](mailto:investor-protection@nlaw.northwestern.edu)

### New Jersey

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#### Seton Hall University School of Law

Investor Advocacy Project  
One Newark Center, Room 429  
Newark, NJ 07102  
(973) 642-8084  
[investoradvocacy@shu.edu](mailto:investoradvocacy@shu.edu)

### New York

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#### Benjamin N. Cardozo School of Law

Securities Arbitration Clinic  
55 Fifth Avenue, Suite 1116  
New York, NY 10003  
(212) 790-0200, x6646  
[esgoldma@yu.edu](mailto:esgoldma@yu.edu)

#### Cornell Law School

Cornell Securities Law Clinic  
G57 Myron Taylor Hall  
Ithaca, NY 14853-4901  
(607) 254-8270  
[william-jacobson@lawschool.cornell.edu](mailto:william-jacobson@lawschool.cornell.edu)

#### Elisabeth Haub School of Law

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80 North Broadway  
Preston Hall 404  
White Plains, NY 10603  
(914) 422-4333  
[jjls@law.pace.edu](mailto:jjls@law.pace.edu)

#### Fordham University School of Law

Securities Arbitration Clinic  
150 W. 62nd Street, 9th Floor  
New York, NY 10023  
(212) 636-6934  
[radvany@law.fordham.edu](mailto:radvany@law.fordham.edu)

#### New York Law School

Securities Arbitration Clinic  
New York Law School Legal Services,  
Inc.  
185 West Broadway  
New York, NY 10013  
(212) 431-2338  
[howard.meyers@nyls.edu](mailto:howard.meyers@nyls.edu)

#### St. John's University School of Law

Securities Arbitration Clinic  
St. Vincent De Paul Legal  
Program, Inc.  
8000 Utopia Parkway  
Belson Hall Room 2-26  
Queens, NY 11439  
(718) 990-6930  
[sac@stjohns.edu](mailto:sac@stjohns.edu)

#### Syracuse University

College of Law  
Securities Arbitration & Consumer  
Law Clinic  
Office of Clinical Legal Education  
PO Box 6543  
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### Pennsylvania

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## Resolving Disputes: The Arbitration Process

### What is arbitration?

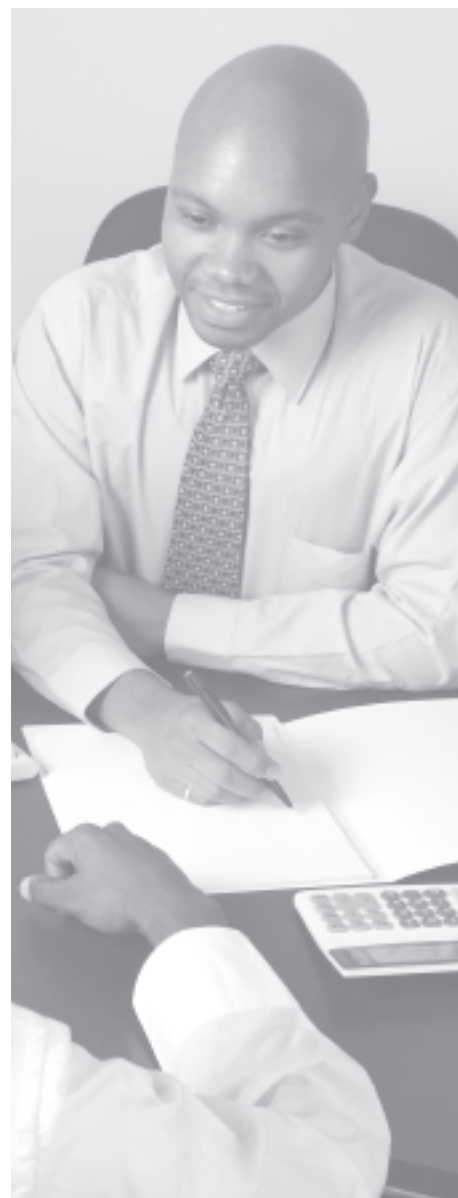
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Arbitration is a process that is an alternative to court or mediation (described in Part III) that can be used to resolve a dispute. Arbitration panels composed of one or three arbitrators read the claims filed by the party that initiates the arbitration, as well as the claims filed by other parties (if any), weigh the arguments of the parties, consider the evidence, and then decide how to resolve the dispute between the parties. The panel's decision, called an "award," is final and binding on all the parties. All parties must abide by the award, unless it is successfully challenged in court. Arbitration is private, arbitrators must keep the proceedings confidential, and, unlike court filings, documents submitted in arbitration are not publicly available.

FINRA's "plain English" Code of Arbitration Procedure for Customer Disputes applies to all arbitrations filed by customers with FINRA. Anyone can access the rules that apply to customer cases, also known as the "Customer Code," on the FINRA website at [www.finra.org/arbitration-and-mediation/arbitration-rules](http://www.finra.org/arbitration-and-mediation/arbitration-rules). Investors representing themselves should read these rules carefully.

Parties can agree to use arbitration either before or after a dispute arises. (See "Why arbitration?" on the next page.) By agreeing to arbitration, you sacrifice some features of litigating in court. For example, in arbitration, you are limited in the fact-gathering processes that you may use to build your case (called "discovery"). In addition, arbitrators are not bound by rules that govern the admission of evidence in court. In making decisions, arbitrators are guided by principles of equity (fairness) and justice, rather than by a strict application of settled legal rules to the facts. As a result, arbitration is considered by many to be a faster and less expensive method to resolve disputes than litigation.

It is very difficult to challenge an arbitration award. To do so, you must file the papers needed to ask a court to "vacate" (cancel) or "modify" (change) an award. But the circumstances under which courts are permitted to do so are very limited. If you decide to challenge an arbitration decision in federal court, the Federal Arbitration Act requires you to act quickly. You must file a motion to vacate or modify an award *within three months* of the date the arbitrator delivered the decision. Some states may have arbitration statutes that require you to file the motion in even less time.



## Why arbitration?

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There are two main reasons to use arbitration to resolve your dispute:

**You agreed to before the dispute arose.** When you opened your brokerage account, you entered into a customer account agreement. It is likely your customer agreement includes a clause that requires you to use arbitration to resolve all disputes with your broker.

FINRA CUSTOMER CODE 12200

**You want to because you prefer arbitration.**

Even without a pre-dispute arbitration agreement, all FINRA-registered brokerage firms (and their employees) must agree to arbitrate any dispute upon the demand of the customer.

FINRA CUSTOMER CODE 12201

## Is there a deadline to file an arbitration?

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**Yes.** A claim is *not eligible* for arbitration if “six years have elapsed from the occurrence or event giving rise to the claim.” There are rarely any exceptions to this rule, and you can lose the right to recover any losses if you wait too long to file. Additionally, other time limits imposed by state and federal law, called “statutes of limitation,” may also apply, so do not delay.

FINRA CUSTOMER CODE 12206



## How do you file?

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**Using the Dispute Resolution Party Portal.**

FINRA's Party Portal provides arbitration forum users with a secure, online location for claim filing and interactions relating to case administration.

All parties, except customers who are not represented by an attorney or other person (*pro se* customers), must use the Party Portal to file initial Statements of Claim and to file and serve most pleadings and other documents on FINRA and any other party. When a party submits pleadings or documents through the Party Portal, the party has accomplished both filing with FINRA and, in most instances, service on all other parties and the arbitrator(s).

**“Pro Se” Customer Exception.** If you file an arbitration *pro se* (without representation), you may elect to use the Party Portal, but you are not required to do so. If you do file a claim using the Party Portal, you must use the Party Portal for the duration of the arbitration process. If you decide not to use the Party Portal, then you can opt out by filing a Statement of Claim as well as serving subsequent pleadings and other documents through another designated method. Those methods include first-class mail, overnight mail service, overnight delivery service, hand delivery, email, or facsimile. In addition, you will have to provide proof of service for any documents served outside of the Party Portal (except for the initial Statement of Claim, which FINRA will serve on the respondent(s)).

For more information about using the Party Portal, visit [www.finra.org/arbitration-and-mediation/dispute-resolution-portal-user-guides](http://www.finra.org/arbitration-and-mediation/dispute-resolution-portal-user-guides).

FINRA CUSTOMER CODE 12300



## What do you file?

To initiate an arbitration proceeding, you must submit to FINRA the following items:

**Statement of Claim.** To begin an arbitration proceeding, the investor, or “claimant,” writes and files a Statement of Claim with FINRA, which, unlike a complaint filed in court, has no required format. You can write it as a letter or in a style more similar to a formal legal complaint. No matter what form your Statement of Claim takes, you should state the basic facts of the dispute and the remedies you seek, which should include the amount of money you believe are your “damages.” You can also attach any documents – such as account statements, prospectuses, or trade confirmations – that may help to prove your claim.

Common legal claims investors allege in Statements of Claim include claims that their broker, firm, or both:

- Breached the duty to make only suitable recommendations (a “suitability” claim).
- Misrepresented material facts or failed to disclose material facts, whether inadvertent (“negligent”) or intentional (“fraudulent”).
- Excessively traded the account for commissions (“churning” or “switching”).
- Made trades in the account without permission (“unauthorized trading”).
- Failed to execute an investor’s order.
- Failed to supervise a broker according to industry standards (“negligent supervision”).

There may be other legal claims a customer can assert against a broker or firm. If you are unsure whether you have a viable claim, you should seek the help of an attorney who is experienced in securities law.

**Submission Agreement.** Along with the Statement of Claim, you must complete, date, sign, and submit to FINRA a Submission Agreement which states that you agree to abide by the procedural rules of the arbitration forum and to be bound by the decision of the arbitrator(s). You can “sign” and submit it electronically as part of your online form in the Party Portal or you can download the form at [www.finra.org/sites/default/files/ArbMed/p009438.pdf](http://www.finra.org/sites/default/files/ArbMed/p009438.pdf).

FINRA CUSTOMER CODE 12302

**Forum Fees.** You must pay an arbitration filing fee as listed in the fee schedule in Customer Code 12900. If you do not pay the fee by credit card or Automated Clearing House (ACH) through the Party Portal or include payment for the appropriate amount with your application, FINRA will not process your claim. The Director of the Office of Dispute Resolution may defer or waive all or part of the filing fee if you can show financial hardship, but you must make a written request for a hardship waiver.

FINRA CUSTOMER CODE 12900(a)

An easy way to calculate the fees you must pay to initiate your arbitration claim is to use FINRA’s online “Arbitration Filing Fee Calculator,” located at [www.finra.org/arbitration/feecalculator](http://www.finra.org/arbitration/feecalculator).

## Protecting personal confidential information

To protect personal confidential information, any document that a party files with FINRA that contains an individual's Social Security number, taxpayer identification number, or financial account number must be redacted to include only the last four digits of any of these numbers. This requirement does not apply to documents filed in Simplified Arbitrations under Rule 12800. (See “What is Simplified Arbitration?” on page 18.)

FINRA CUSTOMER CODE 12300(d)

**Caution:** If the application packet is incomplete, FINRA will consider your claim deficient and will require a correction within 30 calendar days. You must include all the following items to avoid having a deficient claim:

### A Statement of Claim that includes

- Your home address at the time of the events that caused the dispute.
- Your current home address or that of your legal representative.
- Your name.
- Compliance with the restrictions on filings with personal confidential information (except in Simplified Arbitrations).

### A FINRA Submission Agreement that

- Is properly signed and dated.
- Names all the parties in your Statement of Claim.
- Includes the correct filing fee or a hardship waiver request.

FINRA CUSTOMER CODE 12307

## What happens after a claim is initiated?

Once you have filed the required application materials, FINRA will serve the Statement of Claim on the respondent(s) (the party or parties named in the Statement of Claim). In turn, each respondent must file an Answer, within 45 days from the day it receives the Statement of Claim, which must specify “the relevant facts and available defenses” to the claim. In other words, it must contain the respondent’s version of what

happened and the reasons why the respondent believes the claimant is not entitled to the remedies sought.

In addition to the Answer, each respondent must file:

- A signed Submission Agreement.
- Any additional documents supporting the Answer.
- Any counterclaim(s) against the claimant, cross claim(s) against other respondents, or third party claim(s) against new parties, specifying all relevant facts and remedies requested, with all fees required for additional claims.

FINRA CUSTOMER CODE 12303

If you use the Party Portal, when you file a pleading or other document with FINRA in the Party Portal, you also accomplish service of the document on all other parties and you do not need to file proof of service with FINRA.

If you are a *pro se* customer who opts out of the Party Portal, both you and the respondent(s) must serve all pleadings or other documents filed with FINRA subsequent to the initial Statement of Claim by first-class mail, overnight mail service, overnight delivery service, hand delivery, email, or facsimile. You will need to file proof of service for any documents (subsequent to the initial Statement of Claim) served outside the Party Portal.

FINRA CUSTOMER CODE 12300(c)

“A **pleading** is a statement describing a party’s causes of action or defenses. Documents that are considered pleadings are: a statement of claim, an answer, a counterclaim, a cross claim, a third party claim, and any replies.” (See the following page for the definitions of counterclaim, cross claim, and third party claim.)

FINRA CUSTOMER CODE 12100(v)

## Can I change the Statement of Claim after it has been filed?

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You can change the original Statement of Claim submitted for the case. This is called an “amended pleading.” For instance, you may need to add a party to the claim, you may have discovered additional information that changes the type and/or number of claim(s) you assert, or you may need to change the amount of damages from those you originally requested.

Here are some rules on amended pleadings:

- A party may amend a pleading at any time before FINRA has appointed arbitrators.
- To amend a Statement of Claim that you have filed but FINRA has not yet served (sent to) the other parties, file the amended claim by submitting it to FINRA.
- To amend a Statement of Claim or any other pleading that FINRA has served on the other parties, you must send the amended pleading directly to all other parties and file a copy with FINRA. If you amend a pleading to add one or more parties to the arbitration, you must provide each new party with copies of all arbitration documents previously served by any party or sent to the parties by the Director of the Office of Dispute Resolution and file proof of service with FINRA.
- Once FINRA has appointed an arbitration panel, a party may only amend a pleading if the panel allows. This means you make a motion to amend the Statement of Claim. (See “What are motions?” on page 18.)
- A respondent must answer the amended pleading within 20 days.

FINRA CUSTOMER CODE 12309

## What are counterclaims, cross claims, and third party claims?

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Counterclaims are claims asserted by a respondent against a claimant in response to allegations in the Statement of Claim. A cross claim is a claim by one respondent against another respondent. Third party claims are any claims that a respondent files against another party who is not yet part of the arbitration case.

## What happens when a respondent does not file an Answer?

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If a broker or a firm does not file an Answer on time or files an incomplete answer, the arbitrators may, upon the claimant’s request, bar that respondent from “presenting any defenses or facts at the hearing.”

FINRA CUSTOMER CODE 12308(a)

Claimants may be able to request default proceedings against any respondent that is suspended, barred, or expelled from, or for other reasons is no longer in good standing in the securities industry, and who fails to file an Answer. It may, however, be difficult to actually collect an award from a respondent that has been barred or expelled because FINRA can no longer require that respondent pay the award.

If there is more than one claimant, any claimant(s) seeking to use default procedures must obtain agreement from all the other claimants in the case to use default proceedings against that respondent and notify all the parties remaining in the case. FINRA will then appoint a single arbitrator to consider the claim against the defaulting respondent, based on the Statement of Claim and other documents presented by the claimant(s). The arbitrator will not hold in-person hearings. Even in a default arbitration proceeding, claimants must still present a sufficient basis to support the making of an award. The default award will have no effect on any non-defaulting party.

FINRA CUSTOMER CODE 12801

## How are arbitration fees determined?

In arbitration, both sides are required to pay fees. Investors must pay a filing fee when filing the Statement of Claim. The filing fee ranges from \$50-\$2,250, depending on the amount of damages you seek. FINRA will partially refund this fee if the claim is settled or withdrawn more than 10 days before the date of the hearing – less any other fees or costs assessed against you under the Code, including any hearing session fees assessed under Customer Code 12902. However, certain surcharges and processing fees that the brokerage firms are required to pay cannot be assessed against you.

In addition to the filing fee, FINRA charges hearing session fees for each hearing session that takes place with the arbitrator(s), whether telephonic or in-person. For a panel with one arbitrator, the cost of one hearing session ranges from \$50-\$450, depending on the amount of the claim. For a panel of three arbitrators, that amount is \$600-\$1,500. The total fee depends on how many hearing sessions are conducted. A typical live hearing day consists of two sessions, because FINRA defines “hearing session” as any meeting with the arbitrators of no more than four hours. In the award, the panel decides which parties are ultimately responsible for the hearing session fees. FINRA will bill you for any fees you owe after the case is closed. For the most comprehensive and up-to-date information on fees, see Customer Code 12900 and 12902.

FINRA CUSTOMER CODE 12900 and 12902



### Agreement of the parties

Generally speaking, your case will be governed by the provisions in FINRA's Customer Code. However, the Code also allows for modifications of its provisions – if all parties agree in writing. For instance, parties can agree to remove and replace arbitrators. They can also agree to extend deadlines to complete arbitrator list selection, file answers or responses to motions, or exchange documents or witness lists.

FINRA CUSTOMER CODE 12105

## How many arbitrators serve on an arbitration?

The number of arbitrators assigned to a case generally depends on the amount of damages sought.

- If a claimant seeks \$50,000 or less in damages, excluding interest and costs, one arbitrator hears the case.
- If a claimant seeks more than \$50,000 and up to \$100,000, one arbitrator hears the case, unless the parties agree in writing to three arbitrators.
- If a claimant seeks more than \$100,000 in damages, or does not specify any amount of damages, three arbitrators hear the case, unless the parties agree in writing to one arbitrator.

FINRA CUSTOMER CODE 12401

## Who is your arbitrator?

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A one-arbitrator panel is made up of:

- one public arbitrator who does not have any significant affiliation with the securities industry (has never been employed by the industry, does not provide services to the industry or to parties engaged in securities arbitration and litigation, or does not have immediate family members or co-workers who do so) and who is qualified to be a chairperson (a "chair-qualified" arbitrator).

A three-arbitrator panel can be made up of:

- one chair-qualified public arbitrator,
- one public arbitrator, and
- one non-public arbitrator who meets FINRA's general arbitrator qualification criteria but cannot be classified as a public arbitrator;

or

- one chair-qualified public arbitrator, and
- two public arbitrators.

FINRA Customer Code 12100(r) and (y) define public and non-public arbitrators.

FINRA CUSTOMER CODE 12402 and 12403

## How are the arbitrators selected?

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FINRA's Neutral List Selection System (NLSS) holds the names of approximately 7,000 arbitrators qualified to hear cases. NLSS randomly generates lists of arbitrators for the parties, from which they can select their arbitrators. Along with the lists, FINRA will send to parties Arbitrator Disclosure Reports, which disclose education and employment history, past arbitration awards, and other background information for each of the arbitrators on the lists. You should review this information, and research past awards, to confirm that an arbitrator does not have any potential

conflicts of interest with the parties, witnesses, issues, or products in your case.

Parties select the arbitrators for their panel through a process of striking and ranking the arbitrators on their lists. For a one-arbitrator panel, FINRA will send one list of 10 public arbitrators for arbitrator selection. For a three-arbitrator panel, FINRA will send three lists:

- a list of 10 public arbitrators from the chair-qualified roster;
- a list of 10 arbitrators from the non-public arbitrator roster; and
- a list of 15 additional public arbitrators.

In cases with one arbitrator, each separately represented party can strike up to four arbitrators from the list (leaving six names on the list). In cases with three arbitrators, each separately represented party can strike up to four arbitrators from the chair-qualified list (leaving six names on the list), up to six arbitrators from the public list (leaving nine names on the list), and any and all names from the non-public list, thus guaranteeing a customer an all-public panel if the customer wants one. Each party ranks arbitrators who remain on each list in order of preference. Each list must be ranked separately. Parties may strike and rank arbitrators for any reason, including the arbitrators' educational and work experience, as well as any perceived and/or actual conflicts of interest. You must complete the ranked listed via the Party Portal unless you are a *pro se* customer who has opted out of using the Party Portal; if you have opted out, you must return the lists to FINRA by first-class mail, overnight mail service, overnight delivery service, hand delivery, email, or facsimile no more than 20 days after the date FINRA sent the lists to the parties.

Once the deadline passes to submit arbitrator rankings, FINRA consolidates the lists received and appoints the arbitrator(s) with the highest combined ranking(s) who is also available to accept the appointment. If the number of arbitrators available to serve from the consolidated list(s) is not sufficient to fill an initial panel, FINRA will appoint the required number of arbitrators from names generated randomly by FINRA's NLSS arbitrator database.

FINRA CUSTOMER CODE 12402-04

Once appointed, you can ask any arbitrator to withdraw from the case for good cause. If the arbitrator refuses to withdraw from the case, you can ask the Director of the Office of Dispute Resolution before the first hearing session begins to remove the arbitrator for conflict of interest or bias. The Director will grant your request to remove an arbitrator if it is reasonable to infer that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The Director will grant this request if you make it after the first hearing session begins only if it is based on new information that was required to be disclosed by the arbitrator earlier.

FINRA CUSTOMER CODE 12405-08

## What is Simplified Arbitration?

FINRA's Simplified Arbitration process applies if a claimant seeks damages of \$50,000 or less, excluding interest and expenses. One public arbitrator will decide the claim and issue an award based on the written submissions of the parties, unless the claimant requests a hearing. Alternatively, the parties can agree to request a telephone or videoconference hearing. The parties can request documents and information from other parties to submit in support of the claim(s) or defense(s), but discovery tends to be more limited in scope than in non-simplified arbitration. If the amount in dispute exceeds \$50,000, either because you amend the claim to increase the damages request or a respondent's claim(s) seeks damages, the case will no longer proceed as a Simplified Arbitration.

FINRA CUSTOMER CODE 12800

## Voluntary direct communication between parties and arbitrators

In general, no party or legal representative of a party may communicate with any arbitrator outside of a scheduled hearing or conference unless all parties (or their representatives) are present. If all sides have obtained legal representation, however, and all parties and arbitrators agree, you can proceed under the voluntary direct communication rules, FINRA Customer Code 12210 and 12211. These rules allow you to send items by first-class mail, overnight mail service, overnight delivery service, hand delivery, email, or facsimile directly to the arbitrator(s) and parties in your case. Copies of all materials sent to the arbitrators must also be served on all parties and filed with FINRA.

Remember: Even under these rules, parties should not communicate with the arbitrators unless all parties are participating in the communication.

## What are motions?

A motion is a request for the arbitrator(s) or Director of the Office of Dispute Resolution to direct some act, whether by issuing an order or ruling. For example, if you wish to change your hearing location or Statement of Claim after the arbitration panel is appointed, you must make a motion. A party may make motions in writing throughout most of the arbitration process, or orally during a hearing session. However, FINRA requires that a party make an effort to resolve the matter with the other parties before making a motion, and to include a description of those efforts as part of the motion. Like other arbitration filings, motions are not required to be in any particular form. Written motions generally must be served at least 20 days before a scheduled hearing. Parties have 10 days from

the receipt of a written motion to respond, unless the party making the motion agrees to an extension of time, or the panel or Director decide otherwise. Finally, the party making the motion then has five days to reply to that response. Please note that because FINRA discourages parties from filing motions to dismiss an entire claim before the hearing, Customer Code 12504 bars parties from filing motions to dismiss a claim before a party has presented its case-in-chief, except in very limited circumstances.

FINRA CUSTOMER CODE 12503, 12504

## What is the Initial Prehearing Conference?

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The Initial Prehearing Conference is the first time that the parties and arbitrators come together to set the schedule for the case. Usually this conference takes place by telephone. During this telephone conference, the arbitration panel establishes discovery deadlines, schedules any motions and/or briefs that the parties request to file, and sets dates for the arbitration hearing.

FINRA CUSTOMER CODE 12500

## What is discovery?

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Discovery allows parties to obtain facts and information from other parties (and sometimes from non-parties) in order to support their own case and prepare for hearing. FINRA has published a series of guidelines to help the parties in the discovery process, called the “Discovery Guide,” which is available at [www.finra.org/arbitration-and-mediation/discovery-guide](http://www.finra.org/arbitration-and-mediation/discovery-guide).

The Discovery Guide contains lists of documents that parties should exchange automatically. In addition, each party can request information and documents that are relevant to the case and that may be in the possession of an adverse, or opposing, party. Rules

12505 through 12511 of the Customer Code govern the discovery process, and include provisions for parties’ requests for discovery items that are outside of the document production lists, parties’ objections to discovery requests, and arbitrator authority to issue sanctions against parties for discovery abuses. If you are using the Party Portal in your case, you should not file with FINRA or serve on any other party, through the Party Portal, documents produced during discovery.

You can object to a discovery request (argue that you don’t have to respond to it) if it asks you to provide documentation and information that you believe is, for example, overly burdensome, not relevant to the case, or involves confidential or privileged information. Clearly state in writing the request to which you are objecting and why, and send the written objection to all parties in the case. There are deadlines for producing documents, requesting additional discovery items, and responding and objecting to requests. These timeframes are contained in Rules 12506 through 12508.

If the parties cannot agree on their own how to resolve any discovery dispute, the party who still wants more documents or information may make a motion to compel the reluctant party to produce the requested document(s). The requesting party should explain to the arbitrator(s) why the discovery is relevant and necessary to the case and ask the panel to issue an order compelling production. The arbitrator(s) may schedule a hearing before deciding the motion.

If a party fails to produce documents or information required by a discovery order, the arbitrators can issue sanctions against that party. Sanctions could include assessing fees or penalties, including attorneys’ fees; prohibiting a party from admitting evidence; drawing an adverse inference against the party; and even dismissing a claim, defense, or the entire case. The panel may also initiate a disciplinary referral against a registered broker or brokerage firm that is involved in the proceeding.

## Document Production Lists

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The Discovery Guide lists documents that parties should provide to each other. In general, parties must make available to the opposing parties all documents, notes, and records that each party has pertaining to the dispute. These include account opening documents, cash sweep, margin and option agreements, trading authorizations, trade confirmations, and customer account statements during the time period of and relating to the dispute. Parties must also produce correspondence between the claimant and the firm, and recordings and notes of telephone calls. The broker is expected to provide the forms filed with FINRA when employing or terminating the employment of a broker (Forms U-4 and U-5), customer complaints identified in these forms, all customer complaints of a similar nature against the broker, as well as records of disciplinary actions by a regulator or employer for conduct similar to the conduct alleged in the arbitration.

Claimants must also provide records regarding the disputed issue, including any notes and/or correspondence. They may also be asked to provide financial records, such as federal income tax returns for the three years prior to the first transaction at issue, and other financial statements showing their assets, liabilities, and/or net worth for the period covering three years prior to the first transaction at issue. Claimants are also expected to disclose any prior complaints that they have filed involving the broker or any other securities matter. For the complete list of discovery requirements, refer to FINRA's Discovery Guide, available at [www.finra.org/arbitration-and-mediation/discovery-guide](http://www.finra.org/arbitration-and-mediation/discovery-guide).

## What are orders of production or appearance from members?

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If a FINRA-registered broker or firm that is not a party to an arbitration case has access to or possesses information a party believes is relevant to the case, the panel may order the production of documents or appearance of witnesses, upon a motion of a party, without the use of subpoenas. The panel may order the appearance of any employee or broker of a member of FINRA or the production of any documents in the possession or control of such persons or members. Generally, the party requesting the appearance of witnesses by, or the production of documents from, non-parties must pay the reasonable costs of the appearance and/or production.

FINRA CUSTOMER CODE 12513

## Where does the hearing take place?

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The hearing takes place in a conference room either at a regional FINRA office or in an office building arranged by FINRA in the city where the hearing will take place. Generally, the Director of the Office of Dispute Resolution decides the hearing location based on the claimant's residence at the time of the disputed transactions. You may seek to change the hearing location through agreement of the parties or by writing to FINRA and requesting a change in location.

FINRA CUSTOMER CODE 12213



## Subpoenas

A subpoena is a legal document that compels a person or an entity to show up at the specified date, time, and place to testify under oath. A *subpoena duces tecum* compels a person or an entity to produce the listed documents to the requesting party at a particular time and place. Parties to arbitration can use subpoenas to gather information that is relevant to the case.

In a FINRA arbitration, only arbitrators – not attorneys or the parties – can issue a subpoena to third parties (persons or entities that are not claimants or respondents in the arbitration). If you believe that your case requires information from third parties and want the arbitrators to issue a subpoena, you must make a written motion for the arbitrators to do so. The arbitrators will then determine whether the subpoena should be issued and how costs will be assessed to the parties.

FINRA CUSTOMER CODE 12512



## What happens at the hearing?

The law requires arbitrators to provide parties a full and fair opportunity to be heard. Thus, in all arbitrations, except for those subject to Simplified Arbitration procedures, and those settled or dismissed before a hearing under FINRA's rules, the arbitrators will conduct a live hearing.

FINRA CUSTOMER CODE 12600

### Testimony and Evidence

The arbitration hearing is the proceeding in which a claimant seeks to prove the claims alleged in the Statement of Claim, and respondents try to establish any defenses to those claims and seek to prove any counterclaims. Arbitrators usually accept two types of proof: oral testimony by witnesses and documentary evidence. Customer Code 12514 requires that parties identify for other parties the witnesses they intend to call and provide copies of any documents or other materials that they plan to use at the hearing as evidence, all not less than 20 calendar days before the start of the hearing. Also, parties need to arrange for witnesses and all documentary evidence to be available for presentation at the hearing.

During the hearing, all parties will be present in the room, along with the arbitrators, who are known as the "panel." The panel begins the hearing by reading from a script prepared by FINRA to cover administrative matters. Each party then has the option to give an opening statement outlining what it intends to prove during the hearing.

### Direct and Cross Examination

Generally, each claimant then calls witnesses to testify on his or her behalf as to facts within that witness' personal knowledge. In addition, each claimant can ask expert witnesses who have specialized education, training, and/or knowledge to testify as to their opinion to help the panel draw conclusions and render a decision. The claimant conducts a direct examination,

asking questions of any witness(es) called to testify on claimant’s behalf. Each respondent can ask questions of claimant’s witnesses, too, during what is known as “cross examination,” and the panel can also question any witness during the hearing.

### Exhibits

Parties should offer into the record as exhibits (a paper or document produced and shown to an arbitration panel during a hearing) any documents they would like the arbitrators to consider as evidence. Parties can argue that any evidence presented by another party shouldn’t be considered in the arbitrators’ decision by objecting orally at the hearing. After considering the objecting party’s reasons why the evidence should not be allowed, the arbitrators will examine the documents presented to determine if they will be admitted into evidence (considered as part of your case or disregarded) and into the case record. Arbitrators generally will accept any authentic document into the record, provided it is relevant and necessary to prove claims or defenses, and it is not unfair to another party.

### Rebuttal Evidence

Once each claimant has presented his or her case, each respondent has the right to call fact and expert witnesses, too, and offer relevant exhibits. Once all parties have presented their evidence on any claims, counterclaims, and/or defenses, including rebuttal evidence to contradict the other side’s arguments or evidence, each party typically makes a closing statement, summing up the evidence and arguing to the panel what it believes it has proven and what it contends the other side has not proven. Claimants should be certain to repeat their request for damages and any other relief, and to provide specific calculations supporting their request for a damages amount, whether with or without expert testimony, before concluding their case.

### An arbitration hearing in brief

Arbitration hearings generally take place in this order, although the arbitrators have authority to change the order:

- Swearing in of arbitrators, parties, and witnesses
- Opening statement from each party (optional)
- Presentation of facts of the case to arbitrators, including documents and live or written testimony – claimant(s)
- Presentation of facts of the case to arbitrators, including documents and live or written testimony – respondent(s)
- Presentation of any counterclaims, cross claims, or third party claims
- Rebuttal evidence
- Closing statements (claimant can choose to go last)
- Arbitration panel closes the record

After the panel has heard all testimony, received all documentary evidence, and closed the record, it then deliberates and issues an award.



## When do the arbitrators decide the case?

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After closing the hearing, the arbitration panel considers all of the evidence, deliberates together, and decides what relief to award the claimant, if any. In a three-arbitrator panel, an award is based on a majority vote of the arbitrators; a unanimous decision is not required. Within 30 days of the date the record is closed, FINRA will mail to the parties the award describing the determination of the panel.

FINRA CUSTOMER CODE 12904

## What is contained in an arbitration award?

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Awards must be in writing, but arbitrators are not required to write opinions or provide explanations or reasons for their decision unless the parties jointly request an explained decision at least 20 days before the first scheduled hearing date. Decisions made in FINRA arbitrations are final; even if new evidence later surfaces, arbitrators cannot reconsider their decisions. In the award, the panel must also decide whether to assess any costs and forum fees against any party, and how to allocate those costs and fees among the parties. Past arbitration awards are available online at [www.finra.org/arbitration-and-mediation/arbitration-awards](http://www.finra.org/arbitration-and-mediation/arbitration-awards).



The award contains the following information:

- Names of the parties
- Names of the parties' representatives, if any
- An acknowledgement by the arbitrators that they have each read the pleadings and other materials filed by the parties
- A summary of the issues, including the type(s) of any security or product in controversy
- Damages and other relief requested
- Damages and other relief awarded
- A statement of any other issues resolved
- Allocation of forum fees and any other fees allocable by the panel
- Name(s) of the arbitrator(s)
- Dates the claim was filed and the award rendered
- The number and dates of hearing session(s)
- Location of the hearings
- Arbitrator signatures

FINRA CUSTOMER CODE 12904

## How do I collect an award or settlement?

Many arbitration cases end with a settlement between the parties, either through direct negotiation or through mediation. Others are withdrawn or closed before the process begins. Roughly one-half of claimants historically have received some type of monetary award in arbitration claims that go to a final decision each year, although that statistic has varied substantially over the years. If you are awarded damages, you can expect to be paid within 30 days of receiving the written award, unless the losing party files a motion to vacate (overturn) or modify the award in court.

If a broker or firm does not pay an award within 30 days after it is issued and received by both parties or does not pay an agreed-upon settlement, you should

notify FINRA. FINRA can suspend or cancel the registration of a brokerage firm or broker who does not comply with an arbitration award or settlement related to an arbitration or mediation. As a result, brokerage firms and brokers who remain in the business generally pay arbitration awards or amounts under settlements that they owe. The broker or firm can legitimately delay paying an award, however, if it has filed a motion to vacate or modify the award in court.

Alternatively, if the broker or firm is no longer registered with FINRA, you may have to go to state or federal court to enforce the award or settlement. If your broker or brokerage firm goes out of business or declares bankruptcy, you might not be able to recover your money – even if the arbitrator or a court has ruled in your favor. Being able to collect once an award is rendered or a settlement is signed is one of the most important reasons to carefully select your broker and brokerage firm by thoroughly checking their history and longevity in the securities industry.

### Party's Reference Guide

FINRA's Office of Dispute Resolution consolidated into a single packet important information that parties need in the arbitration process. The packet contains general information about FINRA and the arbitration process, tips for contacting staff in the four regional offices, and mediation. You can find the Party's Reference Guide at [www.finra.org/arbitration-and-mediation/partys-reference-guide](http://www.finra.org/arbitration-and-mediation/partys-reference-guide).

## Resolving Disputes: The Mediation Alternative

### What is mediation?

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Mediation is an informal, voluntary, and non-binding dispute resolution process in which all parties agree to present their claims to a neutral third party, called a mediator, who will then help the parties try to reach a mutually consensual resolution of the dispute. The mediator does not decide who is right or wrong, or how much the parties pay.

FINRA administers a securities mediation forum. Its rules of procedure are contained in the Code of Mediation Procedure. Information about FINRA's mediation forum, including its Mediation Code, is available online at [www.finra.org/arbitration-and-mediation](http://www.finra.org/arbitration-and-mediation).

In addition, parties can agree among themselves to use any other mediation forum to which they consent, or they can even hire a private mediator. Because mediation is an entirely consensual process within the parties' control, any forum and/or mediator could facilitate a successful settlement of the dispute.

### Why should I agree to use mediation?

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There are a number of reasons why parties consider mediation as an alternative to litigation or arbitration.

Mediation generally costs less than arbitration or litigation. The fees and expenses associated with mediation are relatively modest because the process takes less time and involves fewer formal procedures. For example, there is no formal discovery process, so parties do not incur attorneys' fees for that process. Instead, before mediation sessions begin, the mediator generally asks the parties to submit information that will help the mediator understand the dispute and their respective positions and interests.

The mediation process is non-binding, which means that parties may, but are not required to, settle. Because parties control the outcome, settlement potential tends to be higher. The mediator facilitates negotiations as opposed to handing down an award. Parties can enter mediation without jeopardizing their option to arbitrate or litigate. The emphasis is on reaching a satisfactory solution for both sides. Once a settlement agreement is signed, of course, it is enforceable, just like any other contract.



Mediation typically achieves a faster resolution, with less financial strain on either party. Parties don't have the right to appeal a mediator's recommendation, because it is not binding, so the process can begin and end in a matter of days or weeks, rather than months or years.

The more flexible and less adversarial nature of mediation maximizes the chances for preserving professional relationships.

Mediation can narrow the issues in dispute, leading to a more efficient resolution in arbitration or court. Therefore, mediation is valuable even when parties do not reach a settlement.

Mediation is confidential in most states and under FINRA rules, so you can disclose facts to a mediator without worrying that the mediator will disclose them publicly.

If these factors are important to you, you should consider initiating your claim in mediation before pursuing arbitration or litigation.

Of course, mediation is not always the best option for everyone. For those who seek an outcome that has the potential to publicize the broker's and/or firm's behavior, perhaps to warn other investors of the conduct, arbitration or litigation (if available) may be better alternatives.

## What is the Small Claims Mediation Program?

FINRA offers parties in active arbitration cases free or low-cost telephone mediation with initial claim amounts of \$50,000 or less. More information is available at [www.finra.org/arbitration-and-mediation/finras-small-claims-mediation-program-and-mediation-submission-agreement](http://www.finra.org/arbitration-and-mediation/finras-small-claims-mediation-program-and-mediation-submission-agreement).

Mediation may not be right for everyone. Consider its features and decide whether it is right for you.

## Can parties agree to mediate and arbitrate the same dispute?

Parties may mediate before an arbitration is filed, instead of pursuing arbitration, or they can initiate mediation of all or some of the issues in dispute at any stage of a pending arbitration matter. Parties also can choose whether or not to have the mediation run separate from, but concurrent with, a pending arbitration or litigation. Unless the parties agree, a pending arbitration will not be delayed if there is a concurrent mediation. If the two procedures run concurrently, then the parties incur the costs of both, but do not risk prolonging the arbitration process. Alternatively, if the parties agree to postpone arbitration, they avoid potentially unnecessary arbitration costs if the mediation is successful but do not delay the arbitration process if the mediation is unsuccessful.

If cost is an important factor to you, you probably should not pursue both mediation and arbitration at the same time. On the other hand, if time is the most important factor to you, then you should pursue them both at the same time.



## What fees must I pay?

FINRA CODE OF MEDIATION PROCEDURE 14110

### FINRA Mediation Forum Fees\*

Type of Fee	When due	Amount Due From Customer**		
Administrative Filing Fee	When all parties to the dispute agree to mediate	Amount in controversy	Fee if case directly filed in mediation	Fee if case initially filed in arbitration
		\$.01 – 25,000	\$50	\$0
		\$25,000.01 – 100,000	\$150	\$100
		Over \$100,000	\$300	\$250
		Respondents pay higher fees		
Mediation Session Deposit	When parties have signed submission agreement and before mediation begins	Depends on size and complexity of case, number of parties involved, mediator's rate. Split between parties equally, unless they agree otherwise.		
Mediator Fee	When parties select their mediator	Hourly rate + preparation + travel + other (e.g., parking, etc.) Note: if amount in controversy is \$25,000 or less, some mediators will reduce hourly rates.		

\* This table does not apply to telephone mediation administered through the Small Claims Mediation Program.

\*\* This table does NOT include attorney's fees.

## What takes place during the mediation process?

### 1 Parties agree to mediate.

Mediation is a voluntary process. While no party can be compelled to mediate, investors who are interested in initiating mediation and using a case administrator must alert a mediation forum of their intent to mediate. For example, FINRA requires a “Request for Mediation” form, available at [www.finra.org/sites/default/files/request-mediation.pdf](http://www.finra.org/sites/default/files/request-mediation.pdf), or, if your dispute is already in arbitration with FINRA, you may contact your case administrator for a referral to mediation.

### 2 Parties submit the matter to mediation.

Once all parties to the dispute have agreed to mediate, they must sign a written agreement which indicates that all parties agree to submit to the mediation process. FINRA calls this a “Submission Agreement.”



### 3 Parties agree to a mediator.

#### Who are the mediators?

Mediators are independent neutral third parties, many of whom have extensive knowledge of securities law and industry practices. FINRA will provide the parties with information relating to the mediator’s employment, education, and professional background if the mediator is assigned or selected from a list provided by FINRA. In addition, FINRA will describe the mediator’s experience, training, and credentials.

#### How are the mediators selected?

- By the parties from a list supplied by the Director of Mediation;
- By a joint request of the parties from a list or other source of their own choosing with the Director’s approval; or
- By the Director if the parties do not select a mediator after submitting a matter to mediation.

#### What is the mediator’s role?

The mediator’s role is to help disputing parties resolve their differences and reach an agreement that is acceptable to all parties. Depending on the parties’ needs, the mediator may have the parties meet face-to-face to discuss all of the issues surrounding the dispute. The mediator may also hold private meetings with each party separately, known as caucuses. It is the mediator’s job to help the parties communicate in a constructive manner. Therefore, the mediator may assist parties by clarifying issues, addressing questions, and offering creative solutions.



## 4 Parties schedule mediation sessions.

The mediator and parties select a mutually convenient date, time, and location for the mediation session(s). After scheduling the session(s), meetings may be conducted in person or by telephone, videoconference, or any other agreed-upon method. Both joint and private sessions may be appropriate. Parties may present facts, address liability and damages, provide background information, and vent key concerns and/or needs. However, participants do not provide sworn testimony and are not subject to cross examination.

Mediators facilitate the exchange of settlement offers and help the parties reach a negotiated solution. Efforts to reach a settlement through mediation will continue until:

- The parties achieve a resolution and execute a written settlement agreement;
- The parties conclude that further efforts to mediate would be useless; or
- The mediator or any party withdraws from the mediation process for any reason.

## 5 Parties may reach a settlement.

Historically, parties have reached a settlement in about 80% of FINRA mediations.

If the parties reach a mutually acceptable resolution, they (or their lawyers) will draft a document detailing all terms of the settlement. At the close of mediation, once all parties have agreed to its terms, the parties sign and execute the written settlement agreement. This agreement is final and binding on the parties.

Even if the parties do not fully settle their dispute during mediation, the process of mediation may improve communication between parties so that they may be in a better position to settle the case at a later stage.



## Conclusion

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We hope this Guide has been helpful to you in learning about some of your rights and responsibilities as an investor and customer of a brokerage firm, how to avoid disputes with your securities broker, and how to resolve those disputes in arbitration or mediation if they do arise. If a dispute does occur, we hope you will consider the factors we identified in Section II about arbitration and in Section III about mediation before selecting the appropriate dispute resolution process to resolve your claim.

For additional information or assistance in finding an attorney to represent you, please contact the Pace Investor Rights Clinic:

**Investor Rights Clinic**  
**John Jay Legal Services, Inc.**  
**Elisabeth Haub School of Law**  
**Pace University**  
**80 North Broadway**  
**Preston Hall 404**  
**White Plains, NY 10603**  
**(914) 422-4333**  
**(914) 422-4391 (fax)**  
**[jjls@law.pace.edu](mailto:jjls@law.pace.edu)**





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