

**LOUISIANA STATE LAW INSTITUTE
ALTERNATIVE DISPUTE RESOLUTION COMMITTEE**

Supplemental Documents

3 of 3

Prepared for the
Meeting of the Committee

May 9, 2014
Baton Rouge, Louisiana

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FINRA

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- **IM-12000. Failure to Act Under Provisions of Code of Arbitration Procedure for Customer Disputes**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of [Rule 2010](#) for a member or a person associated with a member to:

- (a) fail to submit a dispute for arbitration under the Code as required by the Code;
- (b) fail to comply with any injunctive order issued pursuant to the Code;
- (c) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the Code;
- (d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the rules applicable to the arbitration of disputes before FINRA or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law; or

(e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by FINRA.

All awards shall be honored by a cash payment to the prevailing party of the exact dollar amount stated in the award. Awards may not be honored by crediting the prevailing party's account with the dollar amount of the award, unless authorized by the express terms of the award or consented to in writing by the parties. Awards shall be honored upon receipt thereof, or within such other time period as may be prescribed by the award.

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of [Rule 2010](#) for a member to require associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure.

Amended by SR-FINRA-2008-057 eff. Dec. 15, 2008.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Amended by SR-NASD-2007-026 eff. April 16, 2007.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

- **12100. Definitions**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

Unless otherwise defined in the Code, terms used in the Rules and interpretive material, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws.

(a) Associated Person

The term "associated person" or "associated person of a member" means a person associated with a member, as that term is defined in paragraph (r).

(b) Award

An award is a document stating the disposition of a case.

(c) Board

The term "Board" means the Board of Directors of FINRA Dispute Resolution, Inc.

(d) Claim

The term "claim" means an allegation or request for relief.

(e) Claimant

The term "claimant" means a party that files the statement of claim that initiates an arbitration under [Rule 12302](#).

(f) Code

The term "Code" means the Code of Arbitration Procedure for Customer Disputes. For disputes involving only industry parties, see the Code of Arbitration Procedure for Industry Disputes.

(g) Counterclaim

The term "counterclaim" means a claim asserted against a claimant by a respondent.

(h) Cross Claim

The term "cross claim" means a claim asserted by a respondent against another already-named respondent.

(i) Customer

A customer shall not include a broker or dealer.

(j) Day

Except as otherwise provided, the term "day" means calendar day. If a deadline specified in the Code falls on a Saturday, Sunday or any FINRA holiday, the deadline is extended until the next business day.

(k) Director

The term "Director" means the Director of FINRA Dispute Resolution. Unless the Code provides that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority.

(l) Dispute

The term "dispute" means a dispute, claim or controversy. A dispute may consist of one or more claims.

(m) Hearing

The term "hearing" means the hearing on the merits of an arbitration under [Rule 12600](#).

(n) Hearing Session

The term "hearing session" means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference.

(o) Member

For purposes of the Code, the term "member" means any broker or dealer admitted to membership in FINRA, whether or not the membership has been terminated or cancelled; and any broker or dealer admitted to membership in a self-regulatory organization that, with FINRA consent, has required its members to arbitrate pursuant to the Code and/or to be treated as members of FINRA for purposes of the Code, whether or not the membership has been terminated or cancelled.

(p) Non-Public Arbitrator

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(1) is, or within the past five years, was:

(A) associated with, including registered through, a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(B) registered under the Commodity Exchange Act;

(C) a member of a commodities exchange or a registered futures association; or

(D) associated with a person or firm registered under the Commodity Exchange Act;

(2) is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph (p)(1);

(3) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in paragraph (p)(1); or

(4) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

For purposes of this rule, the term "professional work" shall not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

(q) Panel

The term "panel" means the arbitration panel, whether it consists of one or more arbitrators.

(r) Person Associated with a Member

The term "person associated with a member" means:

(1) A natural person who is registered or has applied for registration under the Rules of FINRA; or

(2) A sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA.

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

(s) Pleadings

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.

(t) Prehearing Conference

The term "prehearing conference" means any hearing session, including an Initial Prehearing Conference, that takes place before the hearing on the merits begins.

(u) Public Arbitrator

The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(1) is not engaged in the conduct or activities described in paragraphs (p)(1)–(4);

(2) was not engaged in the conduct or activities described in paragraphs (p)(1)–(4) for a total of 20 years or more;

(3) is not an investment adviser, or associated with, including registered through, a mutual fund or hedge fund;

(4) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (p)(1)–(4);

(5) is not an attorney, accountant, or other professional whose firm derived \$50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in paragraph (p)(1) relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees;

(6) is not employed by, and is not the spouse or an immediate family member of a person who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business;

(7) is not a director or officer of, and is not the spouse or an immediate family member of a person who is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business; and

(8) is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (p)(1)–(4). For purposes of this rule, the term immediate family member means:

(A) a person's parent, stepparent, child, or stepchild;

(B) a member of a person's household;
(C) an individual to whom a person provides financial support of more than 50 percent of his or her annual income; or

(D) a person who is claimed as a dependent for federal income tax purposes.

A person whom FINRA would not designate as a public arbitrator because of an affiliation under subparagraphs (3)–(7) shall not be designated as a public arbitrator for two calendar years after ending the affiliation.

For purposes of this rule, the term "revenue" shall not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

(v) Respondent

The term "respondent" means a party against whom a statement of claim or third party claim has been filed. A claimant against whom a counterclaim has been filed is not a respondent for purposes of the Code.

(w) Statement of Claim

The term "statement of claim" means the initial or amended claim filed by the party or parties initiating the arbitration.

(x) Submission Agreement

The term "Submission Agreement" means the FINRA Submission Agreement. The FINRA Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

(y) Third Party Claim

The term "third party claim" means a claim asserted against a party not already named in the statement of claim or any other previous pleading.

Amended by SR-FINRA-2013-003 eff. July 1, 2013.
Amended by SR-FINRA-2009-041 eff. Jan. 18, 2010.
Amended by SR-FINRA-2008-031 eff. Feb. 9, 2009.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Amended by SR-NASD-2007-021 eff. June 9, 2008.
Amended by SR-NASD-2007-038 eff. June 14, 2007.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices to Members: [07-07](#), [08-22](#), [08-57](#), [09-04](#), [09-74](#), [13-21](#).

▪ **12101. Applicability of Code and Incorporation by Reference**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Applicability of Code

The Code applies to any dispute between a customer and a member or associated person of a member that is submitted to arbitration under [Rule 12200](#) or [12201](#).

(b) Incorporation by Reference

When a dispute is submitted to arbitration under the Code pursuant to an arbitration agreement, the Code is incorporated by reference into the agreement.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#).

▪ **12102. National Arbitration and Mediation Committee**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Pursuant to Section III of the Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries ("Delegation Plan"), the Board shall appoint a National Arbitration and Mediation Committee ("NAMC").

(1) The NAMC shall consist of no fewer than 10 and no more than 25 members. At least 50 percent of the NAMC shall be Non-Industry members.

(2) The Chairperson of the Board shall name the chairperson of the NAMC.

(b) Pursuant to the Delegation Plan, the NAMC shall have the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the Board. The NAMC shall also establish and maintain rosters of neutrals composed of persons from within and outside of the securities industry. All matters recommended by the NAMC to the Board must have been approved by a quorum, which shall consist of a majority of the NAMC, including at least 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that at least 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived. The NAMC has such other power and authority as is necessary to carry out the purposes of the Code.

(c) The NAMC may meet as frequently as necessary, but must meet at least once a year.

Amended by SR-FINRA-2009-003 eff. Jan. 8, 2009.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Amended by SR-NASD-2007-026 eff. April 16, 2007.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#).

▪ **12103. Director of Dispute Resolution**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) The Board shall appoint a Director of Dispute Resolution. The Director shall perform all the administrative duties relating to arbitrations submitted under the Code. The Director may delegate his or her duties when it is appropriate, unless the Code provides otherwise.

(b) The Director shall consult with the NAMC at the NAMC's request.

(c) The President of FINRA Dispute Resolution may perform the Director's duties. If the Director is unable to perform his or her duties, the President of FINRA Dispute Resolution may appoint an interim Director.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#).

▪ **12104. Effect of Arbitration on FINRA Regulatory Activities**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Submitting a dispute to arbitration under the Code does not limit or preclude any right, action or determination by FINRA that it would otherwise be authorized to adopt, administer or enforce.

(b) Only at the conclusion of an arbitration, any arbitrator may refer to FINRA for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of NASD or FINRA rules, the federal securities laws, or other applicable rules or laws.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#).

▪ **12105. Agreement of the Parties**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Except as provided in paragraph (b), if the Code provides that the parties may agree to modify a provision of the Code, or a decision of the Director or the panel, the written agreement of all named parties is required.

(b) If the Director or the panel determines that a named party is inactive in the arbitration, or has failed to respond after adequate notice has been given, the Director or the panel may determine that the written agreement of that party is not required while the party is inactive or not responsive. For purposes of this rule, an inactive party could be, but is not limited to: (1) a party that does not answer; (2) a party that answers and then fails to respond to correspondence sent by the Director; (3) a party that answers and then fails to respond to correspondence sent by the panel in cases involving direct communication under [Rule 12211](#); or (4) a party that does not attend pre-hearing conferences.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#).

○ **PART II GENERAL ARBITRATION RULES**

▪ **12200. Arbitration Under an Arbitration Agreement or the Rules of FINRA**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

Parties must arbitrate a dispute under the Code if:

- Arbitration under the Code is either:

- (1) Required by a written agreement, or
- (2) Requested by the customer;

- The dispute is between a customer and a member or associated person of a member; and

• The dispute arises in connection with the business activities of the member or the associated person, except disputes involving the insurance business activities of a member that is also an insurance company.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#).

▪ **12201. Elective Arbitration**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

Parties may arbitrate a dispute under the Code if:

- The parties agree in writing to submit the dispute to arbitration under the Code after the dispute arises; and
- The dispute is between a customer and a member, associated person of a member, or other related party;

and

• The dispute arises in connection with the business activities of a member or an associated person, except disputes involving the insurance business activities of a member that is also an insurance company.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: 07-07, 08-57.

▪ **12202. Claims Against Inactive Members**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

A claim by or against a member in one of the following categories is ineligible for arbitration under the Code unless the customer agrees in writing to arbitrate after the claim arises:

- A member whose membership is terminated, suspended, cancelled or revoked;
- A member that has been expelled from FINRA; or
- A member that is otherwise defunct.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: 07-07, 08-57.

▪ **12203. Denial of FINRA Forum**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) The Director may decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives. Only the Director or the President of FINRA Dispute Resolution may exercise the Director's authority under this rule.

(b) Disputes that arise out of transactions in a readily identifiable market may be referred to the arbitration forum for that market, if the claimant agrees.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: 07-07, 08-57.

▪ **12204. Class Action Claims**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the

claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Class action claims may not be arbitrated under the Code.

(b) Any claim that is based upon the same facts and law, and involves the same defendants as in a court-certified class action or a putative class action, or that is ordered by a court for class-wide arbitration at a forum not sponsored by a self-regulatory organization, shall not be arbitrated under the Code, unless the party bringing the claim files with FINRA one of the following:

(1) a copy of a notice filed with the court in which the class action is pending that the party will not participate in the class action or in any recovery that may result from the class action, or has withdrawn from the class according to any conditions set by the court; or

(2) a notice that the party will not participate in the class action or in any recovery that may result from the class action.

(c) The Director will refer to a panel any dispute as to whether a claim is part of a class action, unless a party asks the court hearing the class action to resolve the dispute within 10 days of receiving notice that the Director has decided to refer the dispute to a panel.

(d) A member or associated person may not enforce any arbitration agreement against a member of a certified or putative class action with respect to any claim that is the subject of the certified or putative class action until:

- The class certification is denied;
- The class is decertified;
- The member of the certified or putative class is excluded from the class by the court; or
- The member of the certified or putative class elects not to participate in the class or withdraws from the class according to conditions set by the court, if any.

This paragraph does not otherwise affect the enforceability of any rights under this Code or any other agreement.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12205. Shareholder Derivative Actions**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

Shareholder derivative actions may not be arbitrated under the Code.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12206. Time Limits**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Time Limitation on Submission of Claims

No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The panel will resolve any questions regarding the eligibility of a claim under this rule.

(b) Dismissal under Rule

Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(1) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(2) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 90 days before a scheduled hearing, and parties have 30 days to respond to the motion. Moving parties may reply to responses to motions. Any such reply must be made within 5 days of receipt of a response.

(3) Motions under this rule will be decided by the full panel.

(4) The panel may not grant a motion under this rule unless an in-person or telephonic prehearing conference on the motion is held or waived by the parties. Prehearing conferences to consider motions under this rule will be recorded as set forth in [Rule 12606](#).

(5) If the panel grants a motion under this rule (in whole or part), the decision must be unanimous, and must be accompanied by a written explanation.

(6) If the panel denies a motion under this rule, a party may not re-file the denied motion, unless specifically permitted by panel order.

(7) If the party moves to dismiss on multiple grounds including eligibility, the panel must decide eligibility first.

- If the panel grants the motion to dismiss the case on eligibility grounds on all claims, it shall not rule on any other grounds for the motion to dismiss.

- If the panel grants the motion to dismiss on eligibility grounds on some, but not all claims, and the party against whom the motion was granted elects to move the case to court, the panel shall not rule on any other ground for dismissal for 15 days from the date of service of the panel's decision to grant the motion to dismiss on eligibility grounds.

- If a panel dismisses any claim on eligibility grounds, the panel must record the dismissal on eligibility grounds on the face of its order and any subsequent award the panel may issue.

- If the panel denies the motion to dismiss on eligibility grounds, it shall rule on the other bases for the motion to dismiss the remaining claims in accordance with the procedures set forth in [Rule 12504\(a\)](#).

(8) If the panel denies a motion under this rule, the panel must assess forum fees associated with hearings on the motion against the moving party.

(9) If the panel deems frivolous a motion filed under this rule, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.

(10) The panel also may issue other sanctions under [Rule 12212](#) if it determines that a party filed a motion under this rule in bad faith.

(c) Effect of Rule on Time Limits for Filing Claim in Court

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. However, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.

(d) Effect of Filing a Claim in Court on Time Limits for Filing in Arbitration

If a party submits a claim to a court of competent jurisdiction, the six-year time limitation will not run while the court retains jurisdiction of the claim matter.

Amended by SR-FINRA-2011-006 eff. June 6, 2011.

Amended by SR-FINRA-2009-013 eff. Aug. 10, 2009.
Amended by SR-FINRA-2007-021 eff. Feb. 23, 2009.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Amended by SR-NASD-2007-026 eff. April 16, 2007.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [09-07](#), [09-36](#), [11-23](#).

▪ **12207. Extension of Deadlines**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) The parties may agree in writing to extend or modify any deadline for:

- Serving an answer;
- Returning arbitrator or chairperson lists;
- Responding to motions; or
- Exchanging documents or witness lists.

If the parties agree to extend or modify a deadline under this rule, they must notify the Director of the new deadline in writing.

(b) The panel may extend or modify any deadline listed in paragraph (a), or any other deadline set by the panel, either on its own initiative or upon motion of a party.

(c) The Director may extend or modify any deadline or time period set by the Code for good cause. The Director may also extend or modify any deadline or time period set by the panel in extraordinary circumstances.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12208. Representation of Parties**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Representation by a Party

Parties may represent themselves in an arbitration held in a United States hearing location. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association.

(b) Representation by an Attorney

At any stage of an arbitration proceeding held in a United States hearing location, all parties shall have the right to be represented by an attorney at law in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation.

(c) Representation by Others

Parties may be represented in an arbitration by a person who is not an attorney, unless:

- state law prohibits such representation, or
- the person is currently suspended or barred from the securities industry in any capacity, or
- the person is currently suspended from the practice of law or disbarred.

(d) Qualifications of Representative

Issues regarding the qualifications of a person to represent a party in arbitration are governed by applicable law and may be determined by an appropriate court or other regulatory agency. In the absence of a court order, the arbitration proceeding shall not be stayed or otherwise delayed pending resolution of such issues.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Amended by SR-NASD-2006-109 eff. Dec. 24, 2007.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [07-57](#), [08-57](#).

▪ **12209. Legal Proceedings**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

During an arbitration, no party may bring any suit, legal action, or proceeding against any other party that concerns or that would resolve any of the matters raised in the arbitration.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12210. Ex Parte Communications**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Except as provided in [Rule 12211](#), no party, or anyone acting on behalf of a party, may communicate with any arbitrator outside of a scheduled hearing or conference regarding an arbitration unless all parties or their representatives are present.

(b) No party, or anyone acting on behalf of a party, may send or give any written motion, request, submission or other materials directly to any arbitrator, unless the arbitrators and the parties agree, or the Code provides otherwise.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12211. Direct Communication Between Parties and Arbitrators**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) This rule provides procedures under which parties and arbitrators may communicate directly.

(b) Only parties that are represented by counsel may use direct communication under this rule. If, during the proceeding, a party chooses to appear *pro se* (without counsel), this rule shall no longer apply.

(c) All arbitrators and all parties must agree to the use of direct communication during the Initial Prehearing Conference or a later conference or hearing before it can be used.

(d) Parties may send the arbitrators only items that are listed in an order.

(e) Parties may send items by regular mail, overnight courier, facsimile, or email. All the arbitrators and parties must have facsimile or email capability before such a delivery method may be used.

(f) Copies of all materials sent to arbitrators must also be sent at the same time and in the same manner to all parties and the Director. Materials that exceed 15 pages, however, shall be sent to the Director only by regular mail or overnight courier.

(g) The Director must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.

(h) Parties may not communicate orally with any of the arbitrators outside the presence of all parties.

(i) Any party or arbitrator may terminate the direct communication order at any time, after giving written notice to the other arbitrators and the parties.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: 07-07, 08-57.

▪ 12212. Sanctions

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) The panel may sanction a party for failure to comply with any provision in the Code, or any order of the panel or single arbitrator authorized to act on behalf of the panel.

Unless prohibited by applicable law, sanctions may include, but are not limited to:

- Assessing monetary penalties payable to one or more parties;
- Precluding a party from presenting evidence;
- Making an adverse inference against a party;
- Assessing postponement and/or forum fees; and
- Assessing attorneys' fees, costs and expenses.

(b) The panel may initiate a disciplinary referral at the conclusion of an arbitration.

(c) The panel may dismiss a claim, defense or arbitration with prejudice as a sanction for material and intentional failure to comply with an order of the panel if prior warnings or sanctions have proven ineffective.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: 07-07, 08-57.

▪ 12213. Hearing Locations

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) U.S. Hearing Location

(1) The Director will decide which of FINRA's hearing locations will be the hearing location for the arbitration. Generally, the Director will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute, unless the hearing location closest to the customer's residence is in a different state, in which case the customer may request a hearing location in the customer's state of residence at the time of the events giving rise to the dispute.

(2) Before arbitrator lists are sent to the parties under [Rule 12402\(c\)](#) or [Rule 12403\(b\)](#), the parties may agree in writing to a hearing location other than the one selected by the Director.

(3) The Director may change the hearing location upon motion of a party, as set forth in [Rule 12503](#).

(4) After the panel is appointed, the panel may decide a motion relating to changing the hearing location.

(b) Foreign Hearing Location

(1) If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign arbitrators, provided that the foreign arbitrators have:

(A) met FINRA background qualifications for arbitrators;

(B) received training on FINRA arbitration rules and procedures; and

(C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of FINRA.

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in [Rule 12902\(c\)](#).

Amended by SR-FINRA-2013-023 eff. Sep. 30, 2013.

Amended by SR-FINRA-2011-007 eff. Feb. 16, 2011.

Amended by SR-FINRA-2009-073 eff. May 3, 2010.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [10-17](#), [13-30](#).

▪ **12214. Payment of Arbitrators**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Except as provided in paragraph (b) and in [Rule 12800](#), FINRA will pay the panel an honorarium, as follows:

- \$200 to each arbitrator for each hearing session in which he or she participates;
- an additional \$75 per day to the chairperson for each hearing on the merits;
- \$50 for travel to a hearing session that is postponed pursuant to [Rule 12601](#); and
- \$100 for each arbitrator if a hearing session other than a prehearing conference is postponed within three business days before a scheduled hearing session pursuant to Rules [12601\(a\)\(2\)](#) and (b)(2).

(b) The Director may authorize a higher or additional honorarium for the use of a foreign hearing location.

(c) Payment for Deciding Discovery-Related Motions Without a Hearing Session

(1) FINRA will pay each arbitrator an honorarium of \$200 to decide a discovery-related motion without a hearing session. This paragraph does not apply to cases administered under [Rule 12800](#).

(2) For purposes of paragraph (c)(1), a discovery-related motion and any replies or other correspondence relating to the motion shall be considered to be a single motion.

(3) The panel will allocate the cost of the honoraria under paragraph (c)(1) to the parties pursuant to [Rule 12902\(c\)](#).

(d) Payment for Deciding Contested Subpoena Requests Without a Hearing Session

(1) The honorarium for deciding one or more contested motions requesting the issuance of a subpoena without a hearing session shall be \$200. The honorarium shall be paid on a per case basis to each arbitrator who decides the contested motion(s). The parties shall not be assessed more than \$600 in fees under this paragraph in any arbitration proceeding. The honorarium shall not be paid for cases administered under [Rule 12800](#).

(2) For purposes of paragraph (d)(1), a contested motion requesting the issuance of a subpoena shall include a motion requesting the issuance of a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena, and any other documents supporting a party's position.

(3) The panel will allocate the cost of the honorarium under paragraph (d)(1) to the parties pursuant to [Rule 12902\(c\)](#).

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to [Rule 12904\(g\)](#) will receive an additional honorarium of \$400. The panel will allocate the cost of the honorarium under [Rule 12904\(g\)](#) to the parties.

(2) If the panel decides on its own to write an explained decision, then no panel member will receive the additional honorarium of \$400.

Amended by SR-FINRA-2008-051 eff. Apr. 13, 2009.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Paragraph (d) Adopted by SR-NASD-2006-101 eff. April 2, 2007.
Paragraphs (a) through (c) adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [09-16](#).

○ **PART III INITIATING AND RESPONDING TO CLAIMS**

▪ **12300. Filing and Serving Documents**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Initial statements of claim must be filed with the Director, with enough copies for each other party and each arbitrator. The number of arbitrators is determined in accordance with [Rule 12401](#). The Director will serve the statement of claim on the other parties, and send copies of the statement of claim to each arbitrator.

(b) The parties must serve all other pleadings and other documents directly on each other party. Parties must serve all pleadings on all parties at the same time and in the same manner, unless the parties agree otherwise.

(c) Unless the Code provides otherwise, parties must also file all pleadings and other documents with the Director, with additional copies for each arbitrator. Pleadings and other documents must be filed with the Director at the same time and in the same manner in which they are served on the other parties. Parties filing pleadings and other documents with the Director must include a certificate of service stating the names of the parties served, the date and method of service, and the address(es) to which service was made.

(d) Pleadings and other documents may be filed and served by: first class mail; overnight mail or delivery service; hand delivery; facsimile; or any other method, including electronic mail, that is approved or required by the panel.

(e) Filing and service are accomplished on the date of mailing either by first-class postage prepaid mail or overnight mail service, or, in the case of other means of service, on the date of delivery. Whenever pleadings and other documents must be filed with the Director and served on the other parties, filing and service must occur on the same day and in the same manner, unless the parties agree or the panel directs otherwise.

(f) A party must inform the Director and all other parties in writing of any change of address during an arbitration.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12301. Service on Associated Persons**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) The Director will serve the initial statement of claim on an associated person directly at the person's residential address or usual place of abode. If service cannot be completed at the person's residential address or usual place of abode, the Director will serve the initial statement of claim on the associated person at the person's business address.

(b) If a member and a person currently associated with the member are named as respondents to the same arbitration, and the Director cannot complete service as provided in paragraph (a), then the Director may serve the member with the initial statement of claim on behalf of the associated person. If service is made on the member, the member must serve the associated person, even if the member will not be representing the associated person in the arbitration. If the member is not representing the associated person in the arbitration, the member must notify, and provide the associated person's current address to, all parties and the Director.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: 07-07, 08-57.

▪ **12302. Filing an Initial Statement of Claim**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Filing Claim with the Director

To initiate an arbitration, a claimant must file the following with the Director:

- Signed and dated Submission Agreement; and
- A statement of claim specifying the relevant facts and remedies requested.

The claimant may include any additional documents supporting the statement of claim. The claimant may file the documents: (1) in hard copy; or (2) electronically through the Online Arbitration Claim Filing system that can be accessed at www.finra.org.

(b) Number of Copies

If not submitted electronically, the claimant must file enough copies of the statement of claim, and the signed Submission Agreement, and any additional materials, for the Director, each arbitrator and each other party.

(c) Fees

At the time the statement of claim is filed, the claimant must pay all required filing fees.

(d) Service by Director

Unless the statement of claim is deficient under [Rule 12307](#), the Director will send a copy of the Submission Agreement, the statement of claim, and any additional materials filed by the claimant, to each other party, and to each arbitrator once the panel has been appointed.

Amended by SR-FINRA-2010-050 eff. Sep. 27, 2010.

Amended by SR-FINRA-2008-031 eff. Feb. 9, 2009.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Amended by SR-FINRA-2007-042 eff. Dec. 27, 2007.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: 07-07, 08-57, 09-04.

▪ **12303. Answering the Statement of Claim**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Respondent(s) must directly serve each other party with the following documents within 45 days of receipt of the statement of claim:

- Signed and dated Submission Agreement; and
- An answer specifying the relevant facts and available defenses to the statement of claim.

The respondent may include any additional documents supporting the answer to the statement of claim. Parties that fail to answer in the time provided may be subject to default proceedings under [Rule 12801](#).

(b) The answer to the statement of claim may include any counterclaims against the claimant, cross claims against other respondents, or third party claims, specifying all relevant facts and remedies requested, as well as any additional documents supporting such claim. When serving a third party claim, the respondent must provide each new respondent with copies of all documents previously served by any party, or sent to the parties by the Director.

(c) At the same time that the answer to the statement of claim is served on the other parties, the respondent must file copies of the Submission Agreement, the answer to the statement of claim, and any additional documents, with the Director, with enough copies for the Director and each arbitrator.

(d) If the answer to the statement of claim contains any counterclaims, cross claims or third party claims, the respondent must pay all required filing fees.

Amended by SR-FINRA-2008-031. eff. Feb. 9, 2009.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [09-04](#).

▪ **12304. Answering Counterclaims**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) A claimant must directly serve any answer to a counterclaim on each other party within 20 days of receipt of the counterclaim. At the same time, the claimant must file the answer to the counterclaim with the Director with additional copies for each arbitrator.

(b) The answer must include the relevant facts and available defenses to the counterclaim. The claimant may include any additional documents supporting the answer to the counterclaim.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12305. Answering Cross Claims**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) A respondent must directly serve an answer to a cross claim on each other party within 20 days from the date that the respondent's answer to the statement of claim is due, or from the receipt of the cross claim, whichever is later. At the same time, the respondent must file the answer to the cross claim with the Director with additional copies for each arbitrator.

(b) The answer must include the relevant facts and available defenses to the cross claim. The respondent may include any additional documents supporting the answer to the cross claim.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12306. Answering Third Party Claims**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) A party responding to a third party claim must directly serve all other parties with the following documents within 45 days of receipt of the third party claim:

- Signed and dated Submission Agreement; and
- An answer specifying the relevant facts and available defenses to the third party claim.

The respondent may include any additional documents supporting the answer to the third party claim.

(b) The answer to the third party claim may also include any counterclaims, cross claims, or third party claims, specifying all relevant facts and remedies requested. The answer may also include any additional documents supporting such claim. When serving a third party claim, the respondent must provide each new respondent with copies of all documents previously served by any party, or sent to the parties by the Director.

(c) At the same time that the answer to the third party claim is served on the other parties, the third party respondent must also file copies of the Submission Agreement, the answer to the third party claim, and any additional documents, with the Director, with additional copies for each arbitrator.

(d) If the answer to the third party claim contains any counterclaim, cross claim or third party claim, the party must also pay all required filing fees.

Amended by SR-FINRA-2008-031. eff. Feb. 9, 2009.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [09-04](#).

▪ **12307. Deficient Claims**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following:

- A Submission Agreement was not filed by each claimant;
- The Submission Agreement was not properly signed and dated;
- The Submission Agreement does not name all parties named in the claim;
- The claimant did not file the correct number of copies of the Submission Agreement, statement of claim or supporting documents for service on respondents and for the arbitrators;
- The claim does not specify the customer's home address at the time of the events giving rise to the dispute;
- The claim does not specify the claimant's or the claimant's representative's current address; or
- The claimant did not pay all required filing fees, unless the Director deferred the fees.

(b) The Director will notify the claimant in writing if the claim is deficient. If the deficiency is corrected within 30 days from the time the claimant receives notice, the claim will be considered filed on the date the initial statement of

claim was filed with the Director under [Rule 12300\(a\)](#). If all deficiencies are not corrected within 30 days, the Director will close the case without serving the claim, and will refund part of the filing fee in the amount indicated in the schedule under [Rule 12900\(c\)](#).

(c) The panel will not consider any counterclaim, cross claim or third party claim that is deficient. The reasons a counterclaim, cross claim or third party claim may be deficient include the reasons listed in paragraph (a). The Director will notify the party making the counterclaim, cross claim or third party claim of the any deficiencies in writing. If all deficiencies are not corrected within 30 days from the time the party making the counterclaim, cross claim or third party claim receives notice of the deficiency, the panel will proceed with the arbitration as though the deficient counterclaim, cross claim or third party claim had not been made.

Amended by SR-FINRA-2009-072 eff. March 22, 2010.

Amended by SR-FINRA-2008-031. eff. Feb. 9, 2009.

Amended by SR-FINRA-2009-003 eff. Jan. 8, 2009.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [09-04](#), [10-11](#).

▪ **12308. Loss of Defenses Due to Untimely or Incomplete Answer**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) If a party does not answer within the time period specified in the Code, the panel may, upon motion, bar that party from presenting any defenses or facts at the hearing, unless the time to answer was extended in accordance with the Code. The party may also be subject to default proceedings under [Rule 12801](#), if the conditions of [Rule 12801\(a\)](#) apply.

(b) If a party answers a claim that alleges specific facts and contentions with a general denial, or fails to include defenses or relevant facts in its answer that were known to it at the time the answer was filed, the panel may bar that party from presenting the omitted defenses or facts at the hearing.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12309. Amending Pleadings**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Before Panel Appointment

Except as provided in paragraph (c), a party may amend a pleading at any time before the panel has been appointed.

(1) To amend a statement of claim that has been filed but not yet served by the Director, the claimant must file the amended claim with the Director, with additional copies for each arbitrator and each other party. The Director will then serve the amended claim in accordance with Rules [12300](#) and [12301](#).

(2) To amend any other pleading, a party must serve the amended pleading on each party. At the same time, the party must file the amended pleading with the Director, with additional copies for each arbitrator. If a pleading is amended to add a party to the arbitration, the party amending the pleading must provide each new party with copies of all documents previously served by any party, or sent to the parties by the Director.

(b) After Panel Appointment

Once a panel has been appointed, a party may only amend a pleading if the panel grants a motion to amend in accordance with [Rule 12503](#). Motions to amend a pleading must include a copy of the proposed amended pleading. If the panel grants the motion to amend, the amended pleading does not need to be re-served on the other parties, the Director, or the panel, unless the panel determines otherwise.

(c) Amendments to Add Parties

Once the ranked arbitrator lists are due to the Director under [Rule 12402\(d\)](#) or [Rule 12403\(c\)](#), no party may amend a pleading to add a new party to the arbitration until a panel has been appointed and the panel grants a motion to add the party. Motions to add a party after panel appointment must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with [Rule 12503](#) without waiving any rights or objections under the Code.

(d) Responding to an Amended Pleading

Any party may file a response to an amended pleading, provided the response is filed and served within 20 days of receipt of the amended pleading, unless the panel determines otherwise.

Amended by SR-FINRA-2013-023 eff. Sep. 30, 2013.

Amended by SR-FINRA-2011-007 eff. Feb. 16, 2011.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [13-30](#).

▪ **12310. Answering Amended Claims**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) If a claim is amended before it has been answered, the respondent's original time to answer is extended by 20 days.

(b) If a claim is amended after it has been answered, but before a panel has been appointed, the respondent has 20 days from the time the amended claim is served to serve an amended answer.

(c) If a claim is amended after a panel has been appointed, the respondent has 20 days from the time the respondent receives notice that the panel has granted the motion to amend the claim to serve an amended answer.

(d) The amended answer must be directly served on each other party. At the same time, the amended answer must also be filed with the Director, with additional copies for each arbitrator.

(e) If the amended claim adds a new party to the arbitration, the new party's answer is governed by [Rule 12306](#).

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12311. Amendments to Amount in Dispute**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

If an amended pleading increases the amount in dispute, all filing fees, surcharges and process fees required by the Code will be recalculated based on the new amount in dispute.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12312. Multiple Claimants**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) One or more parties may join multiple claims together in the same arbitration if the claims contain common questions of law or fact and:

- The claims assert any right to relief jointly and severally; or
- The claims arise out of the same transaction or occurrence, or series of transactions or occurrences.

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed. A party whose claims were separated by the Director may make a motion to the panel in the lowest numbered case to reconsider the Director's decision.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12313. Multiple Respondents**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) One or more parties may name one or more respondents in the same arbitration if the claims contain any questions of law or fact common to all respondents and:

- The claims are asserted against the respondents jointly and severally; or
- The claims arise out of the same transaction or occurrence, or series of transactions or occurrences.

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed. A party whose claims were separated by the Director may make a motion to the panel in the lowest numbered case to reconsider the Director's decision.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12314. Combining Claims**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

Before ranked arbitrator lists are due to the Director under [Rule 12402\(d\)](#) or [Rule 12403\(c\)](#), the Director may combine separate but related claims into one arbitration. Once a panel has been appointed, the panel may reconsider the Director's decision upon motion of a party.

Amended by SR-FINRA-2013-023 eff. Sep. 30, 2013.

Amended by SR-FINRA-2011-007 eff. Feb. 16, 2011.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [13-30](#).

○ **PART IV APPOINTMENT, DISQUALIFICATION, AND AUTHORITY OF ARBITRATORS**

▪ **12400. Neutral List Selection System and Arbitrator Rosters**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Neutral List Selection System

The Neutral List Selection System is a computer system that generates, on a random basis, lists of arbitrators from FINRA's rosters of arbitrators for the selected hearing location for each proceeding. The parties will select their panel through a process of striking and ranking the arbitrators on lists generated by the Neutral List Selection System.

(b) Arbitrator Rosters

FINRA maintains the following roster of arbitrators:

- A roster of non-public arbitrators as defined in [Rule 12100\(p\)](#);
- A roster of public arbitrators as defined in [Rule 12100\(u\)](#); and
- A roster of arbitrators who are eligible to serve as chairperson of a panel as described in paragraph (c).

Arbitrators who are eligible to serve as chairperson will also be included in the roster of public arbitrators, but will only appear on one list in a case.

(c) Eligibility for Chairperson Roster

In customer disputes, chairpersons must be public arbitrators. Arbitrators are eligible for the chairperson roster if they have completed chairperson training provided by FINRA and:

- Have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least two arbitrations administered by a self-regulatory organization in which hearings were held; or
- Have served as an arbitrator through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#).

▪ **12401. Number of Arbitrators**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Claims of \$50,000 or Less

If the amount of a claim is \$50,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under [Rule 12800](#).

(b) Claims of More Than \$50,000 Up To \$100,000

If the amount of a claim is more than \$50,000 but not more than \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator unless the parties agree in writing to three arbitrators.

(c) Claims of More Than \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

Amended by SR-FINRA-2012-012 eff. July 23, 2012.

Amended by SR-FINRA-2008-047 eff. March 30, 2009.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [09-13](#), [12-30](#).

▪ **12402. Cases with One Arbitrator**

(a) Composition of Panels

The arbitrator will be a public arbitrator selected from the public chairperson roster, unless the parties agree in writing otherwise.

(b) Generating Lists

(1) The Neutral List Selection System will generate a list of 10 public arbitrators from the FINRA chairperson roster.

(2) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(c) Sending Lists to Parties

(1) The Director will send the list generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

(2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 12402(d)(3).

(d) Striking and Ranking Arbitrators

(1) Each separately represented party may strike up to four of the arbitrators from the list for any reason by crossing through the names of the arbitrators. At least six names must remain on the list.

(2) Each separately represented party shall rank all remaining arbitrators on the list in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on.

(3) The ranked list must be returned to the Director no more than 20 days after the date upon which the Director sent the lists to the parties. If the Director does not receive a party's ranked list within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators.

(4) Parties are not required to send a copy of their ranking list to the opposing parties.

(e) Combining Lists

The Director will prepare a combined ranked list of arbitrators based on the parties' numerical rankings, as follows:

- The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce a separate combined ranked list for the claimants and the respondents.

- The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.

(f) Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

(1) The Director will appoint the highest-ranked available arbitrator from the combined chairperson list.

(2) If the number of arbitrators available to serve from the combined list is not sufficient to fill an initial panel, the Director will appoint a chair-qualified arbitrator to complete the panel from names generated randomly by the Neutral List Selection System.

(3) The Director will provide the parties information about the arbitrator as provided in Rule 12402(c) and the parties will have the right to challenge the arbitrator as provided in [Rule 12407](#).

(4) Appointment of the arbitrator occurs when the Director sends notice to the parties of the name of the arbitrator. Before making any decision as an arbitrator or attending a hearing session, the arbitrator must execute FINRA's arbitrator oath or affirmation.

(g) Replacement of Arbitrators

(1) If an arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule.

(2) The Director will appoint as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator remaining on the combined list.

(3) If there are no available arbitrators on the combined list, the Director will appoint an arbitrator from the chairperson roster to complete the panel from names generated by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12402(c) and the parties shall have the right to object to the arbitrator as provided in [Rule 12407](#).

Adopted by SR-FINRA-2010-053 eff. Feb. 1, 2011.

Selected Notice: [11-05](#).

▪ **12403. Cases with Three Arbitrators**

Composition of Panels

(a) Generating Lists

(1) The Neutral List Selection System will generate:

(A) A list of 10 arbitrators from the FINRA non-public arbitrator roster;

(B) A list of 10 arbitrators from the FINRA public arbitrator roster; and

(C) A list of 10 public arbitrators from the FINRA chairperson roster.

(2) The Neutral List Selection System will generate the chairperson list first. Chair-qualified arbitrators who were not selected for the chairperson list will be eligible for selection on the public list. An individual arbitrator cannot appear on both the chairperson list and the public list for the same case.

(3) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(b) Sending Lists to Parties

(1) The Director will send the lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

(2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 12403(c)(3).

(c) Striking and Ranking Arbitrators

(1) Non-Public Arbitrator List

(A) Each separately represented party may strike any or all of the arbitrators from the non-public arbitrator list by crossing through the names of the arbitrators.

(B) If any names remain on the non-public arbitrator list, each separately represented party shall rank all remaining arbitrators in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on.

(2) Chairperson and Public Lists

(A) Each separately represented party may strike up to four of the arbitrators from the chairperson list and up to four of the arbitrators from the public arbitrator list for any reason by crossing through the names of the arbitrators. At least six names must remain on each list.

(B) Each separately represented party shall rank all remaining arbitrators on the lists in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each list of arbitrators must be ranked separately.

(3) The ranked lists must be returned to the Director no more than 20 days after the date upon which the Director sent the lists to the parties. If the Director does not receive a party's ranked lists within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators. A party's failure to comply with the 20-day timeframe may result in the appointment of a panel consisting of two public arbitrators and one non-public arbitrator.

(4) Parties are not required to send a copy of their ranking list to the opposing parties.

(d) Combining Lists

For each arbitrator classification (public, non-public, and chairperson), the Director will prepare combined ranked lists of arbitrators based on the parties' numerical rankings, as follows:

(1) The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents.

(2) The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.

(3) The Director will create separate combined ranked lists for each arbitrator classification in cases with both public and non-public arbitrators.

(e) Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on the List

(1) The Director will appoint:

(A) The highest-ranked available non-public arbitrator from the combined non-public arbitrator list;

(B) The highest-ranked available public arbitrator from the combined public arbitrator list, and

(C) The highest-ranked available public arbitrator from the combined chairperson list, who will serve as chairperson of the panel.

(2) If the number of arbitrators available to serve from the combined public or chairperson lists is not sufficient to fill an initial panel, the Director will appoint one or more arbitrators of the required classification to complete the panel from names generated randomly by the Neutral List Selection System. The Director will provide the parties information about the arbitrators as provided in Rule 12403(b) and the parties will have the right to challenge the arbitrators as provided in [Rule 12407](#).

(3) In cases in which the parties collectively strike all of the arbitrators appearing on the non-public list or when all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason:

(A) The Director will return to the public list and select the next highest ranked available arbitrator (after the public arbitrator position has been filled) to complete the three member panel.

(B) In the event no ranked arbitrators remain on the public list or when all remaining arbitrators on the public list are unable or unwilling to serve for any reason, FINRA will select the next highest ranked arbitrator appearing on the chair-qualified list (after the chair position has been filled) to complete the three member panel.

(C) If the number of arbitrators available to serve from the chair-qualified list and public list is not sufficient to fill an initial panel, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12403(b) and the parties will have the right to challenge the arbitrator as provided in [Rule 12407](#).

(4) Appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. Before making any decision as an arbitrator or attending a hearing session, the arbitrators must execute FINRA's arbitrator oath or affirmation.

(f) Replacement of Public Arbitrators

(1) If a public arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

(2) The Director will appoint as a replacement arbitrator the public arbitrator who is the most highly ranked available public arbitrator remaining on the combined public list.

(3) If the next highest ranked available public arbitrator from the combined list is unable or unwilling to serve for any reason, the Director will return to the initial public list and appoint the next highest ranked available arbitrator to complete the three member panel.

(4) If all remaining arbitrators on the public list are unable or unwilling to serve for any reason, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System.

(5) The Director will provide the parties information about the arbitrator as provided in Rule 12403(b) and the parties shall have the right to object to the arbitrator as provided in [Rule 12407](#).

(g) Replacement of a Chairperson

(1) If a chairperson is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

(2) The Director will appoint as a replacement arbitrator the chair-qualified arbitrator who is the most highly ranked available arbitrator remaining on the combined chair-qualified list.

(3) If the next highest ranked available chair-qualified arbitrator from the combined list is unable or unwilling to serve for any reason, the Director will return to the initial chair-qualified list and appoint the next highest ranked available arbitrator to complete the three member panel.

(4) If all remaining arbitrators on the chair-qualified list are unable or unwilling to serve for any reason, the Director will appoint a chair-qualified public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System.

(5) The Director will provide the parties information about the arbitrator as provided in Rule 12403(b) and the parties shall have the right to object to the arbitrator as provided in [Rule 12407](#).

(h) Replacement of Non-Public Arbitrators

(1) If a non-public arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

(2) In cases in which the parties collectively do not strike all of the non-public arbitrators from the initial list, the Director will appoint as a replacement arbitrator the non-public arbitrator who is the most highly ranked available non-public arbitrator remaining on the combined non-public list.

(3) If the next highest ranked available non-public arbitrator is unable or unwilling to serve for any reason, the Director will return to the initial non-public list and appoint the next highest ranked available arbitrator to complete the three member panel.

(4) In the event no ranked arbitrators remain on the non-public list or when all remaining arbitrators on the non-public list are unable or unwilling to serve for any reason, the Director will return to the public list and select the next highest ranked available arbitrator to complete the three member panel.

(A) In the event no ranked arbitrators remain on the public list or when all remaining arbitrators on the public list are unable or unwilling to serve for any reason, FINRA will select the next highest ranked arbitrator appearing on the chair-qualified list to complete the three member panel.

(B) In the event no ranked arbitrators remain on the chair-qualified list or when all remaining arbitrators on the chair-qualified list are unable or unwilling to serve for any reason, the Director will appoint a public arbitrator to complete the panel from names generated randomly by the Neutral List Selection System.

(5) The Director will provide the parties information about the arbitrator as provided in Rule 12403(b) and the parties shall have the right to object to the arbitrator as provided in [Rule 12407](#).

Amended by SR-FINRA-2013-023 eff. Sep. 30, 2013.
Adopted by SR-FINRA-2010-053 eff. Feb. 1, 2011.

Selected Notice: [11-05](#), [13-30](#).

▪ **12404. Additional Parties**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) If a party is added to an arbitration after the Director sends the lists generated by the Neutral List Selection System to the parties, but before parties must return the ranked lists to the Director, the Director will send the lists to the newly added party, with employment history for the past 10 years and other background information for each arbitrator listed. The newly added party may rank and strike the arbitrators in accordance with Rules [12402\(d\)](#) or [12403\(c\)](#). If the newly added party returns the lists within 20 days after the date upon which the Director sent the lists to the party, the Director will include the new party's lists when combining rankings under Rules [12402\(e\)](#) or [12403\(d\)](#). If the Director does not receive the list within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preference among the listed arbitrators.

(b) Once the ranked lists are due to the Director under Rules [12402\(d\)\(3\)](#) or [Rule 12403\(c\)\(3\)](#), no party may amend a pleading to add a new party to the arbitration until a panel is appointed and grants a motion to add the party. Motions to add a party must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with [Rule 12503](#) without waiving any rights or objections under the Code. If the panel grants the motion to add the party, the newly added party may not strike and rank the arbitrators, but may challenge an arbitrator for cause in accordance with [Rule 12407](#).

Amended by SR-FINRA-2013-023 eff. Sep. 30, 2013.
Amended by SR-FINRA-2010-053 eff. Feb. 1, 2011.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [11-05](#), [13-30](#).

▪ **12405. Disclosures Required of Arbitrators**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Before appointing arbitrators to a panel, the Director will notify the arbitrators of the nature of the dispute and the identity of the parties. Each potential arbitrator must make a reasonable effort to learn of, and must disclose to the Director, any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, including:

- (1) Any direct or indirect financial or personal interest in the outcome of the arbitration;
- (2) Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any party, any party's representative, or anyone who the arbitrator is told may be a witness in the proceeding, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias;
- (3) Any such relationship or circumstances involving members of the arbitrator's family or the arbitrator's current employers, partners, or business associates; and
- (4) Any existing or past service as a mediator for any of the parties in the case for which the arbitrator has been selected.

(b) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in paragraph (a) is a continuing duty that requires an arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

(c) The Director will inform the parties to the arbitration of any information disclosed to the Director under this rule unless the arbitrator who disclosed the information declines appointment or voluntarily withdraws from the panel as soon as the arbitrator learns of any interest, relationship or circumstance that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator.

Amended by SR-FINRA-2010-053 eff. Feb. 1, 2011.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [11-05](#).

▪ **12406. Arbitrator Recusal**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

Any party may ask an arbitrator to recuse himself or herself from the panel for good cause. Requests for arbitrator recusal are decided by the arbitrator who is the subject of the request.

Amended by SR-FINRA-2010-053 eff. Feb. 1, 2011.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [11-05](#).

▪ **12407. Removal of Arbitrator by Director**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Before First Hearing Session Begins

Before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be definite and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer under this rule will be resolved in favor of the customer.

(2) The Director must first notify the parties before removing an arbitrator on the Director's own initiative. The Director may not remove the arbitrator if the parties agree in writing to retain the arbitrator within five days of receiving notice of the Director's intent to remove the arbitrator.

(b) After First Hearing Session Begins

After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under [Rule 12405](#) that was not previously known by the parties. The Director may exercise this authority upon request of a party or on the Director's own initiative. Only the Director or the President of FINRA Dispute Resolution may exercise the Director's authority under this paragraph (b).

Amended by SR-FINRA-2010-053 eff. Feb. 1, 2011.

Amended by SR-FINRA-2009-003 eff. Jan. 8, 2009.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [11-05](#).

▪ **12408. Director's Discretionary Authority**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

The Director may exercise discretionary authority and make any decision that is consistent with the purposes of the Code to facilitate the appointment of arbitrators and the resolution of arbitrations.

Amended by SR-FINRA-2010-053 eff. Feb. 1, 2011.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [11-05](#).

▪ **12409. Jurisdiction of Panel and Authority to Interpret the Code**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

The panel has the authority to interpret and determine the applicability of all provisions under the Code. Such interpretations are final and binding upon the parties.

Amended by SR-FINRA-2010-053 eff. Feb. 1, 2011.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [11-05](#).

▪ **12410. Determinations of Arbitration Panel**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

All rulings and determinations of the panel must be made by a majority of the arbitrators, unless the parties agree, or the Code or applicable law provides, otherwise.

Amended by SR-FINRA-2010-053 eff. Feb. 1, 2011.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [11-05](#).

○ **PART V PREHEARING PROCEDURES AND DISCOVERY**

▪ **12500. Initial Prehearing Conference**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the

claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) After the panel is appointed, the Director will schedule an Initial Prehearing Conference before the panel, except as provided in paragraph (c) of this rule.

(b) The Initial Prehearing Conference will generally be held by telephone. Unless the parties agree otherwise, the Director must notify each party of the time and place of the Initial Prehearing Conference at least 20 days before it takes place.

(c) At the Initial Prehearing Conference, the panel will set discovery, briefing, and motions deadlines, schedule subsequent hearing sessions, and address other preliminary matters. The parties may agree to forgo the Initial Prehearing Conference only if they jointly provide the Director with the following information, in writing, with additional copies for each arbitrator, before the Initial Prehearing Conference is scheduled to be held:

- A statement that the parties accept the panel;
- Whether any other prehearing conferences will be held, and if so, for each prehearing conference, a minimum of four mutually agreeable dates and times, and whether the chairperson or the full panel will preside;
- A minimum of four sets of mutually agreeable hearing dates;
- A discovery schedule;
- A list of all anticipated motions, with filing and response due dates; and
- A determination regarding whether briefs will be submitted, and, if so, the due date for the briefs and any reply briefs.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12501. Other Prehearing Conferences**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) A prehearing conference may be scheduled upon the joint request of the parties or at the discretion of the Director. The Director will set the time and place of the prehearing conference and appoint a person to preside.

(b) At a party's request, or at the discretion of the panel, the panel may schedule one or more additional prehearing conferences regarding any outstanding preliminary matters, including:

- Discovery disputes;
- Motions;
- Witness lists and subpoenas;
- Stipulations of fact;
- Unresolved scheduling issues;
- Contested issues on which the parties will submit briefs; and
- Any other matter that will simplify or expedite the arbitration.

(c) The panel will determine the time and place of any additional prehearing conferences. Prehearing conferences will generally be held by telephone. Unless the full panel is required under [Rule 12503](#), prehearing conferences may be held before a single arbitrator, generally the chairperson.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12502. Recording Prehearing Conferences**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Prehearing conferences will not be recorded unless the panel determines otherwise, either on its own initiative or upon motion of a party.

(b) If a prehearing conference is recorded, it may be recorded using any of the methods discussed under [Rule 12606](#). The Director will provide a copy of the recording to any party upon request for a nominal fee.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12503. Motions**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Motions

(1) A party may make motions in writing, or orally during any hearing session. Before making a motion, a party must make an effort to resolve the matter that is the subject of the motion with the other parties. Every motion, whether written or oral, must include a description of the efforts made by the moving party to resolve the matter before making the motion.

(2) Written motions are not required to be in any particular form, and may take the form of a letter, legal motion, or any other form that the panel decides is acceptable. Written motions must be served directly on each other party, at the same time and in the same manner. Written motions must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

(3) Written motions must be served at least 20 days before a scheduled hearing, unless the panel decides otherwise.

(4) Motions to amend a pleading after panel appointment pursuant to [Rule 12309\(b\)](#) must be accompanied by copies of the proposed amended pleading when the motion is served on the other parties and filed with the Director. If the panel grants the motion, the amended pleading does not have to be served again, unless the panel determines otherwise. If a party moves to amend a pleading to add a party, the motion must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with [Rule 12309\(c\)](#) without waiving any rights or objections under the Code.

(b) Responding to Motions

Parties have 10 days from the receipt of a written motion to respond to the motion, unless the moving party agrees to an extension of time, or the Director or the panel decides otherwise. Responses to written motions must be served directly on each other party, at the same time and in the same manner. Responses to written motions must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

(c) Replying to Responses to Motions

Parties have 5 days from the receipt of a response to a motion to reply to the response unless the responding party agrees to an extension of time, or the Director or the panel decides otherwise. Replies to responses must be served directly on each other party, at the same time and in the same manner. Replies to responses must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

(d) Authority to Decide Motions

(1) The Director decides motions relating to use of the forum under [Rule 12203](#) and removal of an arbitrator under [Rule 12407](#).

(2) Motions relating to combining or separating claims or arbitrations, or changing the hearing location, are decided by the Director before a panel is appointed, and by the panel after the panel is appointed.

(3) Discovery-related motions are decided by one arbitrator, generally the chairperson. The arbitrator may refer such motions to the full panel either at his or her own initiative, or at the request of a party. The arbitrator must refer motions relating to privilege to the full panel at the request of a party.

(4) Motions for arbitrator recusal under [Rule 12406](#) are decided by the arbitrator who is the subject of the request.

(5) The full panel decides all other motions, including motions relating to the eligibility of a claim under [Rule 12206](#), unless the Code provides or the parties agree otherwise.

Amended by SR-FINRA-2011-006 eff. June 6, 2011.

Amended by SR-FINRA-2011-007 eff. Feb. 16, 2011.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [11-23](#).

▪ **12504. Motions to Dismiss**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Motions to Dismiss Prior to Conclusion of Case in Chief

(1) Motions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged in arbitration.

(2) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(3) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion. Moving parties may reply to responses to motions. Any such reply must be made within 5 days of receipt of a response.

(4) Motions under this rule will be decided by the full panel.

(5) The panel may not grant a motion under this rule unless an in-person or telephonic prehearing conference on the motion is held or waived by the parties. Prehearing conferences to consider motions under this rule will be recorded as set forth in [Rule 12606](#).

(6) The panel cannot act upon a motion to dismiss a party or claim under paragraph (a) of this rule, unless the panel determines that:

(A) the non-moving party previously released the claim(s) in dispute by a signed settlement agreement and/or written release; or

(B) the moving party was not associated with the account(s), security(ies), or conduct at issue.

(7) If the panel grants a motion under this rule (in whole or part), the decision must be unanimous, and must be accompanied by a written explanation.

(8) If the panel denies a motion under this rule, the moving party may not re-file the denied motion, unless specifically permitted by panel order.

(9) If the panel denies a motion under this rule, the panel must assess forum fees associated with hearings on the motion against the moving party.

(10) If the panel deems frivolous a motion filed under this rule, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.

(11) The panel also may issue other sanctions under [Rule 12212](#) if it determines that a party filed a motion under this rule in bad faith.

(b) Motions to Dismiss After Conclusion of Case in Chief

A motion to dismiss made after the conclusion of a party's case in chief is not subject to the procedures set forth in paragraph (a).

(c) Motions to Dismiss Based on Eligibility

A motion to dismiss based on eligibility filed under [Rule 12206](#) will be governed by that rule.

(d) Motions to Dismiss Based on Failure to Comply with Code or Panel Order

A motion to dismiss based on failure to comply with any provision in the Code, or any order of the panel or single arbitrator filed under [Rule 12212](#) will be governed by that rule.

(e) Motions to Dismiss Based on Discovery Abuse

A motion to dismiss based on discovery abuse filed under [Rule 12511](#) will be governed by that rule.

Amended by SR-FINRA-2011-006 eff. June 6, 2011.
Amended by SR-FINRA-2009-026 eff. Apr. 17, 2009.
Adopted by SR-FINRA-2007-021 eff. Feb. 23, 2009.

Selected Notices: [09-07](#), [11-23](#).

▪ **12505. Cooperation of Parties in Discovery**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

The parties must cooperate to the fullest extent practicable in the exchange of documents and information to expedite the arbitration.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12506. Document Production Lists**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Applicability of Document Production Lists

When the Director serves the statement of claim, the Director will notify parties of the location of the FINRA Discovery Guide and Document Production Lists on FINRA's Web site, but will provide a copy to the parties upon request. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member or associated person.

(b) Time for Responding to Document Production Lists

(1) Unless the parties agree otherwise, within 60 days of the date that the answer to the statement of claim is due, or, for parties added by amendment or third party claim, within 60 days of the date that their answer is due, parties must either:

- Produce to all other parties all documents in their possession or control that are described in Document Production Lists 1 and 2;
- Identify and explain the reason that specific documents described in Document Production Lists 1 and 2 cannot be produced within the required time, and state when the documents will be produced; or

- Object as provided in [Rule 12508](#).

(2) A party must act in good faith when complying with subparagraph (1) of this rule. "Good faith" means that a party must use its best efforts to produce all documents required or agreed to be produced. If a document cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document.

(c) Redacted Information

For purposes of this rule and [Rule 12507](#), if a party redacts any portion of a document prior to production, the redacted pages (or range of pages) shall be labeled "redacted."

Amended by SR-FINRA-2010-035 eff. May 16, 2011.
Amended by SR-FINRA-2009-041 eff. Jan. 18, 2010.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [09-74](#), [11-17](#), [13-40](#).

▪ **12507. Other Discovery Requests**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Making Other Discovery Requests

(1) Parties may also request additional documents or information from any party by serving a written request directly on the party. Requests for information are generally limited to identification of individuals, entities, and time periods related to the dispute; such requests should be reasonable in number and not require narrative answers or fact finding. Standard interrogatories are generally not permitted in arbitration.

(2) Other discovery requests may be served:

- On the claimant, or any respondent named in the initial statement of claim, 45 days or more after the Director serves the statement of claim; and
- On any party subsequently added to the arbitration, 45 days or more after the statement of claim is served on that party.

At the same time, the party must serve copies of the request on all other parties. Any request for documents or information not described in applicable Document Production Lists should be specific, and relate to the matter in controversy.

(b) Responding to Other Discovery Requests

(1) Unless the parties agree otherwise, within 60 days from the date a discovery request other than the Document Production Lists is received, the party receiving the request must either:

- Produce the requested documents or information to all other parties;
- Identify and explain the reason that specific requested documents or information cannot be produced within the required time, and state when the documents will be produced; or
- Object as provided in [Rule 12508](#).

(2) A party must act in good faith when complying with subparagraph (1) of this rule. "Good faith" means that a party must use its best efforts to produce all documents or information required or agreed to be produced. If a document or information cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document or information.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12508. Objecting to Discovery; Waiver of Objection**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) If a party objects to producing any document described in Document Production Lists 1 or 2 or any document or information requested under Rule 12507, it must specifically identify which document or requested information it is objecting to and why. Objections must be in writing, and must be served on all other parties at the same time and in the same manner. Objections should not be filed with the Director. Parties must produce all applicable listed documents, or other requested documents or information not specified in the objection.

(b) Any objection not made within the required time is waived unless the panel determines that the party had substantial justification for failing to make the objection within the required time.

(c) In making any rulings on objections, arbitrators may consider the relevance of documents or discovery requests and the relevant costs and burdens to parties to produce this information.

Amended by SR-FINRA-2010-035 eff. May 16, 2011.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: 07-07, 08-57, 11-17.

▪ **12509. Motions to Compel Discovery**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) A party may make a motion asking the panel to order another party to produce documents or information if the other party has:

- Failed to comply with Rule 12506 or 12507; or
- Objected to the production of documents or information under Rule 12508.

(b) Motions to compel discovery must be made, and will be decided, in accordance with Rule 12503. Such motions must include the disputed document request or list, a copy of any objection thereto, and a description of the efforts of the moving party to resolve the issue before making the motion.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: 07-07, 08-57.

▪ **12510. Depositions**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

Depositions are strongly discouraged in arbitration. Upon motion of a party, the panel may permit depositions, but only under very limited circumstances, including:

- To preserve the testimony of ill or dying witnesses;
- To accommodate essential witnesses who are unable or unwilling to travel long distances for a hearing and may not otherwise be required to participate in the hearing;
- To expedite large or complex cases; and
- If the panel determines that extraordinary circumstances exist.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12511. Discovery Sanctions**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Failure to cooperate in the exchange of documents and information as required under the Code may result in sanctions. The panel may issue sanctions against any party in accordance with [Rule 12212\(a\)](#) for:

- Failing to comply with the discovery provisions of the Code, unless the panel determines that there is substantial justification for the failure to comply; or
- Frivolously objecting to the production of requested documents or information.

(b) The panel may dismiss a claim, defense or proceeding with prejudice in accordance with [Rule 12212\(c\)](#) for intentional and material failure to comply with a discovery order of the panel if prior warnings or sanctions have proven ineffective.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12512. Subpoenas**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) To the fullest extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas. Arbitrators shall have the authority to issue subpoenas for the production of documents or the appearance of witnesses.

(1) Arbitrators shall have the authority to issue subpoenas for the production of documents or the appearance of witnesses.

(2) Unless circumstances dictate the need for a subpoena, arbitrators shall not issue subpoenas to non-party FINRA members and/or employees or associated persons of non-party FINRA members at the request of FINRA members and/or employees or associated persons of FINRA members. If the arbitrators determine that the request for the appearance of witnesses or the production of documents should be granted, the arbitrators should order the appearance of such persons or the production of documents from such persons or non-party FINRA members under [Rule 12513](#).

(b) A party may make a written motion requesting that an arbitrator issue a subpoena to a party or a non-party. The motion must include a draft subpoena and must be filed with the Director, with an additional copy for the arbitrator. The requesting party must serve the motion and draft subpoena on each other party, at the same time and in the same manner as on the Director. The requesting party may not serve the motion or draft subpoena on a non-party.

(c) If a party receiving a motion and draft subpoena objects to the scope or propriety of the subpoena, that party shall, within 10 calendar days of service of the motion, file written objections with the Director, with an additional copy for the arbitrator, and shall serve copies on all other parties at the same time and in the same manner as on the Director. The party that requested the subpoena may respond to the objections within 10 calendar days of receipt of the objections. After considering all objections, the arbitrator responsible for deciding discovery-related motions shall rule promptly on the issuance and scope of the subpoena.

(d) If the arbitrator issues a subpoena, the party that requested the subpoena must serve the subpoena at the same time and in the same manner on all parties and, if applicable, on any non-party receiving the subpoena.

(e) If a non-party receiving a subpoena objects to the scope or propriety of the subpoena, the non-party may, within 10 calendar days of service of the subpoena, file written objections with the Director. The Director shall forward a copy of the written objections to the arbitrator and all other parties. The party that requested the subpoena may respond to the objections within 10 calendar days of receipt of the objections. After considering all objections, the arbitrator responsible for issuing the subpoena shall rule promptly on the objections.

(f) Any party that receives documents in response to a subpoena served on a non-party shall provide notice to all other parties within five days of receipt of the documents. Thereafter, any party may request copies of such documents and, if such a request is made, the documents must be provided within 10 calendar days following receipt of the request.

(g) If the arbitrators issue a subpoena to a non-party FINRA member and/or any employee or associated person of a non-party FINRA member at the request of a FINRA member and/or employee or associated person of a FINRA member, the party requesting the subpoena shall pay the reasonable costs of the non-party's appearance and/or production, unless the panel directs otherwise.

Amended by SR-FINRA-2012-041 eff. Feb. 18, 2013.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 2, 2007.

Selected Notices: [07-07](#), [07-13](#), [08-57](#), [13-04](#).

▪ **12513. Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Upon motion of a party, the panel may order the following without the use of subpoenas:

- The appearance of any employee or associated person of a member of FINRA; or
- The production of any documents in the possession or control of such persons or members.

(b) The motion must include a draft order and must be filed with the Director, with an additional copy for the arbitrator. The requesting party must serve the motion and draft order on each other party, at the same time and in the same manner as on the Director. The requesting party may not serve the motion or draft order on a non-party.

(c) If a party receiving a motion and draft order objects to the scope or propriety of the order, that party shall, within 10 calendar days of service of the motion, file written objections with the Director, with an additional copy for the arbitrator, and shall serve copies on all other parties at the same time and in the same manner as on the Director. The party that requested the order may respond to the objections within 10 calendar days of receipt of the objections. After considering all objections, the arbitrator responsible for deciding discovery-related motions shall rule promptly on the issuance and scope of the order.

(d) If the arbitrator issues an order, the party that requested the order must serve the order at the same time and in the same manner on all parties and, if applicable, on any non-party receiving the order.

(e) If a non-party receiving an order objects to the scope or propriety of the order, the non-party may, within 10 calendar days of service of the order, file written objections with the Director. The Director shall forward a copy of the written objections to the arbitrator and all other parties. The party that requested the order may respond to the objections within 10 calendar days of receipt of the objections. After considering all objections, the arbitrator responsible for issuing the order shall rule promptly on the objections.

(f) Any party that receives documents in response to an order served on a nonparty shall provide notice to all other parties within five days of receipt of the documents. Thereafter, any party may request copies of such

documents and, if such a request is made, the documents must be provided within 10 calendar days following receipt of the request.

(g) Unless the panel directs otherwise, the party requesting the appearance of witnesses by, or the production of documents from, non-parties under this rule shall pay the reasonable costs of the appearance and/or production.

Amended by SR-FINRA-2012-041 eff. Feb 18, 2013.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [13-04](#).

▪ **12514. Prehearing Exchange of Documents and Witness Lists, and Explained Decision Requests**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Documents and Other Materials

At least 20 days before the first scheduled hearing date, all parties must provide all other parties with copies of all documents and other materials in their possession or control that they intend to use at the hearing that have not already been produced. The parties should not file the documents with the Director or the arbitrators before the hearing.

(b) Witness Lists

At least 20 days before the first scheduled hearing date, all parties must provide each other party with the names and business affiliations of all witnesses they intend to present at the hearing. At the same time, all parties must file their witness lists with the Director, with enough copies for each arbitrator.

(c) Exclusion of Documents or Witnesses

Parties may not present any documents or other materials not produced and or any witnesses not identified in accordance with this rule at the hearing, unless the panel determines that good cause exists for the failure to produce the document or identify the witness. Good cause includes the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments during the hearing. Documents and lists of witnesses in defense of a claim are not considered rebuttal or impeachment information and, therefore, must be exchanged by the parties.

(d) Explained Decision Request

At least 20 days before the first scheduled hearing date, all parties must submit to the panel any joint request for an explained decision under [Rule 12904\(g\)](#).

Amended by SR-FINRA-2009-026 eff. Apr. 17, 2009.

Amended by SR-FINRA-2008-051 eff. Apr. 13, 2009.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [09-16](#).

○ **PART VI HEARINGS; EVIDENCE; CLOSING THE RECORD**

▪ **12600. Required Hearings**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Hearings will be held, unless:

- The arbitration is administered under [Rule 12800](#) or [Rule 12801](#);

- The parties agree otherwise in writing; or
- The arbitration has been settled, withdrawn or dismissed.

(b) The panel will decide the time and date of the hearing at the initial prehearing conference or otherwise in another manner.

(c) The Director will notify the parties of the time and place at least 20 days before the hearing begins, unless the parties agree to a shorter time.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12601. Postponement of Hearings**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Postponement of Hearings

(1) When a Hearing Shall Be Postponed

A hearing shall be postponed by agreement of the parties.

(2) When a Hearing May Be Postponed

A hearing may be postponed:

- By the Director, in extraordinary circumstances;
- By the panel, in its own discretion; or
- By the panel, upon motion of a party.

The panel may not grant a motion to postpone a hearing made within 10 days of the date that the hearing is scheduled to begin, unless the panel determines that good cause exists.

(b) Postponement Fees

(1) Except as otherwise provided, a postponement fee will be charged for each postponement agreed to by the parties, or granted upon request of one or more parties. The fee will equal the applicable hearing session fee under [Rule 12902](#). The panel may allocate the fee among the party or parties that agreed to or requested the postponement. The panel may also assess part or all of any postponement fees against a party that did not request the postponement, if the panel determines that the non-requesting party caused or contributed to the need for the postponement. The panel may waive the fees.

(2) If a postponement request is made by one or more parties and granted within three business days before a scheduled hearing session, the party or parties making the request shall pay an additional fee of \$100 per arbitrator. If more than one party requests the postponement, the arbitrators shall allocate the \$100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or portion of the \$100 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the postponement. In the event that a request results in the postponement of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely postponement request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

(3) No postponement fee will be charged if a hearing is postponed:

- Because the parties agree to submit the matter to mediation administered through FINRA, except that the parties shall pay the additional fees described in Rule 12601(b)(2) for late postponement requests;
- By the panel in its own discretion; or
- By the Director in extraordinary circumstances.

(c) Dismissal of Arbitration Due to Multiple Postponements

If all parties jointly request, or agree to, more than two postponements, the panel may dismiss the arbitration without prejudice.

Amended by SR-FINRA-2009-075 eff. May 3, 2010.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [10-16](#).

▪ **12602. Attendance at Hearings**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) The parties and their representatives are entitled to attend all hearings. Absent persuasive reasons to the contrary, expert witnesses should be permitted to attend all hearings.

(b) An attorney for a non-party witness may attend a hearing while that non-party witness is testifying. Unless otherwise authorized by the panel, the attorney's role is limited to the assertion of recognized privileges, such as the attorney client and work product privileges, and the privilege against self-incrimination. The attorney must be in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation.

(c) The panel will decide who else may attend any or all of the hearings.

Amended by SR-FINRA-2010-006 eff. Oct. 14, 2010.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [10-40](#).

▪ **12603. Failure to Appear**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

If a party fails to appear at a hearing after having been notified of the time, date and place of the hearing, the panel may determine that the hearing may go forward, and may render an award as though all parties had been present.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12604. Evidence**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) The panel will decide what evidence to admit. The panel is not required to follow state or federal rules of evidence.

(b) Production of documents in discovery does not create a presumption that the documents are admissible at the hearing. A party may state objections to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12605. Witness Oath**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

All witnesses must testify under oath or affirmation.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12606. Record of Proceedings**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Tape, Digital, or Other Recording

(1) Except as provided in paragraph (b), the Director will make a tape, digital, or other recording of every hearing. The Director will provide a copy of the recording to any party upon request for a nominal fee.

(2) The panel may order the parties to provide a transcription of the recording. If the panel orders a transcription, copies of the transcription must be provided to each arbitrator and each party. The panel will determine which party or parties must pay the cost of making the transcription and copies.

(3) The recording is the official record of the proceeding, even if it is transcribed.

(b) Stenographic Record

(1) Any party may make a stenographic record of the hearing. Even if a stenographic record is made, the tape, digital, or other recording will be the official record of the proceeding, unless the panel determines otherwise. If the panel determines in advance that the stenographic record will be the official record, the Director will not record the hearing.

(2) If the stenographic record is the official record of the proceeding, a copy must be provided to the Director, each arbitrator, and each other party. The cost of making and copying the stenographic record will be borne by the party electing to make the stenographic record, unless the panel decides that one or more other parties should bear all or part of the costs.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12607. Order of Presentation of Evidence and Arguments**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

Generally, the claimant shall present its case, followed by the respondent's defense. The panel has the discretion to vary the order in which the hearing is conducted, provided that each party is given a fair opportunity to present its case.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12608. Closing the Record**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) The panel will decide when the record is closed. Once the record is closed, no further submissions will be accepted from any party.

(b) In cases in which no hearing is held, the record is presumed to be closed when the Director sends the pleadings to the panel, unless the panel requests, or agrees to accept, additional submissions from any party. If so, the record is presumed to be closed when the last such submission is due.

(c) In cases in which a hearing is held, the panel will generally close the record at the end of the last hearing session, unless the panel requests, or agrees to accept, additional submissions from any party. If so, the panel will inform the parties when the submissions are due and when the record will close.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12609. Reopening the Record**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

The panel may reopen the record on its own initiative or upon motion of any party at any time before the award is rendered, unless prohibited by applicable law.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

○ **PART VII TERMINATION OF AN ARBITRATION BEFORE AWARD**

▪ **12700. Dismissal of Proceedings Prior to Award**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) The panel must dismiss an arbitration or a claim at the joint request of the parties to that arbitration or claim. The dismissal will be with or without prejudice, depending on the request of the parties.

(b) The panel may dismiss a claim or an arbitration:

- Upon motion of a party under [Rule 12206](#); or
- On its own initiative under [Rule 12212\(c\)](#) or [Rule 12601\(c\)](#).

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12701. Settlement**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Parties to an arbitration may agree to settle their dispute at any time. Parties who settle must notify the Director. The Director will continue to administer the arbitration, and fees may continue to accrue, until the Director receives written notice of the settlement. The parties do not need to disclose the terms of the settlement agreement to the Director or to FINRA Dispute Resolution, but members and associated persons may have reporting obligations under the rules of FINRA.

(b) Settling parties will remain responsible for fees incurred under the Code. If parties to a settlement fail to agree on the allocation of any outstanding fees, those fees will be divided equally among the settling parties, except member surcharges and prehearing and hearing process fees required by the Code, which will remain the responsibility of the member party or parties.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12702. Withdrawal of Claims**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Before a claim has been answered by a party, the claimant may withdraw the claim against that party with or without prejudice.

(b) After a claim has been answered by a party, the claimant may only withdraw it against that party with prejudice unless the panel decides, or the claimant and that party agree, otherwise.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

○ **PART VIII SIMPLIFIED ARBITRATION AND DEFAULT PROCEEDINGS**

▪ **12800. Simplified Arbitration**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Applicability of Rule

This rule applies to arbitrations involving \$50,000 or less, exclusive of interest and expenses. Except as otherwise provided in this rule, all provisions of the Code apply to such arbitrations.

(b) Single Arbitrator

All arbitrations administered under this rule will be decided by a single public arbitrator appointed from the FINRA chairperson roster in accordance with the Neutral List Selection System, unless the parties agree in writing otherwise.

(c) Hearings

(1) No hearing will be held in arbitrations administered under this rule unless the customer requests a hearing.

(2) If no hearing is held, no initial prehearing conference or other prehearing conference will be held, and the arbitrator will render an award based on the pleadings and other materials submitted by the parties. If a hearing is held, the regular provisions of the Code relating to prehearings and hearings, including fee provisions, will apply.

(d) Discovery and Additional Evidence

(1) Document Production Lists, described in Rule 12506, do not apply to arbitrations subject to this rule. However, the arbitrator may, in his or her discretion, choose to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified proceedings.

(2) The parties may request documents and other information from each other. All requests for the production of documents and other information must be served on all other parties, and filed with the Director, within 30 days from the date that the last answer is due. Any response or objection to a discovery request must be served on all other parties and filed with the Director within 10 days of the receipt of the requests. The arbitrator will resolve any discovery disputes.

(e) Increases in Amount in Dispute

If any pleading increases the amount in dispute to more than \$50,000, the arbitration will no longer be administered under this rule, and the regular provisions of the Code will apply. If an arbitrator has been appointed, that arbitrator will remain on the panel. If a three-arbitrator panel is required or requested under [Rule 12401](#), the remaining arbitrators will be appointed by the Director in accordance with [Rule 12403](#). If no arbitrator has been appointed, the entire panel will be appointed in accordance with the Neutral List Selection System.

(f) Arbitrator Honoraria

FINRA will pay the arbitrator an honorarium of \$125 for each arbitration administered under this rule.

Amended by SR-FINRA-2013-023 eff. Sep. 30, 2013.
Amended by SR-FINRA-2012-012 eff. July 23, 2012.
Amended by SR-FINRA-2011-007 eff. Feb. 16, 2011.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [12-30](#), [13-30](#).

▪ **12801. Default Proceedings**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Applicability of Rule

A claimant may request default proceedings against any respondent that falls within one of the following categories and fails to file an answer within the time provided by the Code.

- A member whose membership has been terminated, suspended, canceled, or revoked;
- A member that has been expelled from the FINRA;
- A member that is otherwise defunct; or
- An associated person whose registration is terminated, revoked, or suspended.

(b) Initiating Default Proceedings

(1) To initiate default proceedings against one or more respondents that fail to file a timely answer, the claimant must notify the Director in writing and must send a copy of the notification to all other parties at the same

time and in the same manner as the notification was sent to the Director. If there is more than one claimant, all claimants must agree in writing to proceed under this rule against a defaulting respondent before this rule may be used.

(2) If the Director receives written notice from the claimant and determines that the requirements for proceeding under this rule have been met, the Director will:

- Notify all parties that the claim against the defaulting respondent will proceed under this rule; and
- Appoint a single arbitrator in accordance with the Neutral List Selection System to consider the statement of claim and other documents presented by the claimant.

(c) Hearings

No hearing shall be held. The arbitrator may request additional information from the claimant before rendering an award.

(d) Amendments to Increase Relief Requested

Claimants may not amend a claim to increase the relief requested from the defaulting respondent after the Director has notified the parties that the claim will proceed under this rule.

(e) Awards

(1) The arbitrator may not issue an award based solely on the nonappearance of a party. Claimants must present a sufficient basis to support the making of an award. The arbitrator may not award damages in an amount greater than the damages requested in the statement of claim, and may not award any other relief that was not requested in the statement of claim.

(2) The default award shall have no effect on any non-defaulting party.

(f) Respondent's Answer

If a defaulting respondent files an answer after the Director has notified the parties that the claim against that respondent will proceed under this rule but before an award has been issued, the proceedings against that respondent under this rule will be terminated and the claim against that respondent will proceed under the regular provisions in the Code.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12805. Expungement of Customer Dispute Information under Rule 2080**

In order to grant expungement of customer dispute information under [Rule 2080](#), the panel must:

(a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under [Rule 12800](#) even if a customer did not request a hearing on the merits.

(b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.

(c) Indicate in the arbitration award which of the [Rule 2080](#) grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more [Rule 2080](#) grounds for expungement applies to the facts of the case.

(d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.

Amended by SR-FINRA-2009-046 eff. Aug. 17, 2009.
Adopted by FINRA-2008-010 and amended by FINRA-2008-063 eff. Dec. 15, 2008.

Selected Notice: [08-79](#).

○ **PART IX FEES AND AWARDS**

▪ **12900. Fees Due When a Claim Is Filed**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Fees for Claims Filed by Customers, Associated Persons and Other Non-Members

(1) Customers, associated persons, and other non-members who file a claim, counterclaim, cross claim or third party claim must pay a filing fee in the amount indicated in the schedule below. The Director may defer payment of all or part of the filing fee on a showing of financial hardship. If payment of the fee is not deferred, failure to pay the required amount will result in a deficiency under [Rule 12307](#).

Filing Fees for Claims Filed by Customers, Associated Persons, and Other Non-Members

<u>Amount of Claim</u> <u>(exclusive of interest and expenses)</u>	<u>Filing Fee</u>
\$.01 to \$1,000	\$50
\$1,000.01 to \$2,500	\$75
\$2,500.01 to \$5,000	\$175
\$5,000.01 to \$10,000	\$325
\$10,000.01 to \$25,000	\$425
\$25,000.01 to \$50,000	\$600
\$50,000.01 to \$100,000	\$975
\$100,000.01 to \$500,000	\$1,425
\$500,000.01 to \$1 million	\$1,575
Over \$ 1 million	\$1,800
Non-Monetary/Not Specified	\$1,250

(2) If the claim does not request or specify money damages, the Director may determine that the filing fee should be more or less than the amount specified in the schedule above, but in any event, the amount of the filing fee may not be less than \$50 or more than \$1,800.

(b) Fees for Claims Filed by Members

(1) Members filing a claim, counterclaim, cross claim, or third party claim must pay a filing fee in the amount indicated in the schedule below. Failure to pay the required amount will result in a deficiency under [Rule 12307](#).

Fees for Claims Filed by Members

<u>Amount of Claim</u> <u>(exclusive of interest and expenses)</u>	<u>Filing Fee</u>
\$.01 to \$1,000	\$225
\$1,000.01 to \$2,500	\$350
\$2,500.01 to \$5,000	\$525
\$5,000.01 to \$10,000	\$750
\$10,000.01 to \$25,000	\$1,050
\$25,000.01 to \$50,000	\$1,450
\$50,000.01 to \$100,000	\$1,750
\$100,000.01 to \$500,000	\$2,125

\$500,000.01 to \$1,000,000	\$2,450
\$1,000,000.01 to \$5,000,000	\$3,200
Over \$5,000,000	\$3,700
Non-Monetary/Not Specified	\$1,500

(2) If the claim does not request or specify money damages, the Director may determine that the filing fee should be more or less than the amount specified in the schedule above, but in any event, the filing fee may not be less than \$225 or more than \$3,700.

(c) Partial Refund of Filing Fee

(1) If a claim is settled or withdrawn more than 10 days before the date that the hearing on the merits under [Rule 12600](#) is scheduled to begin, a party paying a filing fee will receive a partial refund of the filing fee in the amount indicated in the schedule below, less any other fees or costs assessed against the party under the Code, including any hearing session fees assessed under [Rule 12902](#). No refund will be paid if FINRA receives notice that a claim is settled or withdrawn within 10 days of the date that the hearing on the merits under [Rule 12600](#) is scheduled to begin.

**Partial Refund for Settlement or Withdrawal
More Than 10 Days Before Hearing on the Merits**

<u>Amount of Claim (exclusive of interest and expenses)</u>	<u>Refund</u>
\$.01 to \$1,000	\$25
\$1,000.01 to \$2,500	\$50
\$2,500.01 to \$5,000	\$125
\$5,000.01 to \$10,000	\$250
\$10,000.01 to \$25,000	\$300
\$25,000.01 to \$50,000	\$450
\$50,000.01 to \$100,000	\$750
\$100,000.01 to \$500,000	\$1,125
Over \$500,000	\$1,200
Non-monetary/Not specified	\$1,000

(2) If the claim does not request or specify money damages, and the Director determines that the hearing session fee should be a different amount than the amount specified in the schedule in [Rule 12902](#), the amount of the refund will be the amount of the hearing session fee determined by the Director, less any fees or costs assessed against the party under the Code, including any hearing session fees assessed under [Rule 12902](#).

(d) Reimbursement of Filing Fees

In the award, the panel may order a party to reimburse another party for all or part of any filing fee paid.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12901. Member Surcharge**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Member Surcharge

- (1) A surcharge in the amount indicated in the schedule below will be assessed against each member that:
- Files a claim, counterclaim, cross claim, or third party claim under the Code;
 - Is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Code; or
 - Employed, at the time the dispute arose, an associated person who is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Code.

Member Surcharge

<u>Amount in Dispute</u> <u>(exclusive of interest and expenses)</u>	<u>Surcharge</u>
Up to \$2,500	\$150
\$2,500.01–\$5,000	\$200
\$5,000.01–\$10,000	\$325
\$10,000.01–\$25,000	\$425
\$25,000.01–\$30,000	\$600
\$30,000.01–\$50,000	\$875
\$50,000.01–\$100,000	\$1,100
\$100,000.01–\$500,000	\$1,700
\$500,000.01–\$1,000,000	\$2,250
\$1,000,000.01–\$5,000,000	\$2,800
\$5,000,000.01–\$10,000,000	\$3,350
Over \$10,000,000	\$3,750
Non-Monetary/Not Specified	\$1,500

(2) If the claim does not request or specify money damages, the Director may determine that the member surcharge should be more or less than the amount specified in the schedule above, but in any event the amount of the member surcharge may not be less than \$150 or more than \$3,750.

(3) If the claim is filed by the member, the surcharge is due when the claim is filed. If the claim is filed against the member, or against an associated person employed by the member at the time of the events giving rise to the dispute, the surcharge is due when the claim is served in accordance with [Rule 12300](#).

(4) No member shall be assessed more than a single surcharge in any arbitration. The panel may not reallocate a surcharge paid by a member to any other party.

(b) Refund of Member Surcharge

(1) The Director will refund the surcharge paid by a member in an arbitration filed by a customer if the panel:

- Denies all of a customer's claims against the member or associated person; and
- Allocates all fees assessed pursuant to [Rule 12902\(a\)](#) against the customer.

(2) The Director may also refund or waive the member surcharge in extraordinary circumstances.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.

Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#).

▪ **12902. Hearing Session Fees, and Other Costs and Expenses**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Hearing Session Fees

(1) Hearing session fees will be charged for each hearing session. The total amount chargeable to the parties for each hearing session is based on the amount in dispute, as specified in the schedule below. In the award, the panel will determine the amount of each hearing session fee that each party must pay.

Hearing Session Fees

Amount of Claim	Hearing Session W/ One Arbitrator	Hearing Session W/ Three Arbitrators
Up to \$2,500	\$50	N/A
\$2,500.01 to \$5,000	\$125	N/A
\$5,000.01 to \$10,000	\$250	N/A
\$10,000.01 to \$25,000	\$450	N/A
\$25,000.01 to \$50,000	\$450	\$600
\$50,000.01 to \$100,000	\$450	\$750
\$100,000.01 to \$500,000	\$450	\$1,125
Over \$500,000	\$450	\$1,200
Unspecified Damages	\$450	\$1,000

(2) If the claim does not request or specify money damages, the Director may determine that the hearing session fee should be more or less than the amount specified in the schedule above, but in any event the hearing session fee shall not be less than \$50 or more than \$1,200 for each hearing session.

(3) If there is more than one claim in a proceeding, the amount of hearing session fees will be based on the largest claim in the proceeding. If any claims are joined or combined under Rules [12312](#), [12313](#), or [12314](#), the amount of those claims will be aggregated and they will be treated as one claim for purposes of this paragraph.

(4) If hearing session fees are allocated against a customer in connection with a claim filed by a member or associated person, the amount of hearing session fees the customer must pay must be based on the amount actually awarded to the member or associated person, rather than on the amount claimed by the member or associated person. No hearing session fees may be assessed against a customer in connection with a claim filed by a member that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed a filing fee under [Rule 12900\(a\)](#), and may be subject to hearing session fees.

(b) Payment of Hearing Session Fees

(1) The panel may assess the hearing session fees in the award, or may require the parties to pay hearing session fees during the course of the arbitration. The total amount that the panel may require the parties to pay for each hearing session during the course of an arbitration may not exceed the total amount chargeable to the parties for each hearing session under the schedule to paragraph (a) of this rule.

(2) Any interim hearing session fee payments made by a party under this rule will be deducted from the total amount of hearing session fees assessed against that party in the award. If the amount of interim payments is more than the amount assessed against the party in the award, the balance will be refunded to that party.

(3) In the award, the amount of one hearing session fee will be deducted from the total amount of hearing session fees assessed against the party who paid the filing fee. If this amount is more than any fees, costs, and expenses assessed against this party under the Code, the balance will be refunded to the party.

(c) Assessment of Other Costs and Expenses in Award

In its award, the panel must also determine the amount of any costs and expenses incurred by the parties under the Code or that are within the scope of the agreement of the parties, and which party or parties will pay those costs and expenses.

(d) Assessment of Hearing Session Fees, Costs, and Expenses in Case of Settlement or Withdrawal

If a claim is settled or withdrawn:

- The parties will be subject to an assessment of hearing session fees for hearing sessions already held.
- If FINRA receives a settlement or withdrawal notice 10 days or fewer prior to the date that the hearing on the merits under [Rule 12600](#) is scheduled to begin, parties that paid a filing fee under [Rule 12900](#) will not be entitled to any refund of the filing fee.
- The parties will also be responsible for any fee or costs incurred under Rules [12502](#), [12513](#), [12601](#), or [12606](#) in connection with such hearings. If a case is settled or withdrawn and the parties' agreement fails to allocate such fees and costs, the fees and costs will be allocated as provided by [Rule 12701\(b\)](#).

(e) Refund Payments

Any refunds of fees or costs incurred under the Code will be paid directly to the named parties, even if a non-party made a payment on behalf of the named parties.

Amended by SR-FINRA-2009-075 eff. May 3, 2010.
Amended by SR-FINRA-2009-041 eff. Jan. 18, 2010.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notices: [07-07](#), [08-57](#), [09-74](#), [10-16](#).

▪ **12903. Process Fees Paid by Members**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Each member that is a party to an arbitration in which more than \$25,000, exclusive of interest and expenses, is in dispute must pay:

- A non-refundable prehearing process fee of \$750, due at the time the parties are sent arbitrator lists in accordance with [Rule 12402\(c\)](#) or [Rule 12403\(b\)](#); and
- A non-refundable hearing process fee, due when the parties are notified of the date and location of the hearing on the merits under [Rule 12600](#), as set forth in the schedule below.

Hearing Process Fee Schedule

<u>Amount of Claim</u> <u>(exclusive of interest and expenses)</u>	<u>Hearing Process Fee</u>
\$1–\$25,000	\$ 0
\$25,000.01–\$50,000	\$1,000
\$50,000.01–\$100,000	\$1,700
\$100,000.01–\$500,000	\$2,750
\$500,000.01–\$1,000,000	\$4,000
\$1,000,000.01–\$5,000,000	\$5,000
More than \$5,000,000	\$5,500
Non-Monetary/Not Specified	\$2,200

(b) If an associated person of a member is a party, the member that employed the associated person at the time the dispute arose will be charged the process fees, even if the member is not a party. No member shall be assessed more than one prehearing and one hearing process fee in any arbitration.

(c) The panel may not reallocate to any other party any prehearing and hearing process fees paid by a member.

Amended by SR-FINRA-2013-023 eff. Sep. 30, 2013.
Amended by SR-FINRA-2011-007 eff. Feb. 16, 2011.

Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [13-30](#).

▪ **12904. Awards**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) All awards shall be in writing and signed by a majority of the arbitrators or as required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction.

(b) Unless the applicable law directs otherwise, all awards rendered under the Code are final and are not subject to review or appeal.

(c) The Director will serve a copy of the award on each party, or the representative of the party. The Director will serve the award by using any method available and convenient to the parties and the Director, and that is reasonably expected to cause the award to be delivered to all parties, or their representative, on the same day. Methods the Director may use include, but are not limited to, first class, registered or certified mail, hand delivery, and facsimile or other electronic transmission.

(d) The panel shall endeavor to render an award within 30 business days from the date the record is closed.

(e) The award shall contain the following:

- The names of the parties;
- The name 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;
- The damages and other relief requested;
- The damages and other relief awarded;
- A statement of any other issues resolved;
- The allocation of forum fees and any other fees allocable by the panel;
- The names of the arbitrators;
- The dates the claim was filed and the award rendered;
- The number and dates of hearing sessions;
- The location of the hearings; and
- The signatures of the arbitrators.

(f) The award may contain a rationale underlying the award.

(g) Explained Decisions

(1) This paragraph (g) applies only when all parties jointly request an explained decision.

(2) An explained decision is a fact-based award stating the general reason(s) for the arbitrators' decision. Inclusion of legal authorities and damage calculations is not required.

(3) Parties must make any request for an explained decision no later than the time for the prehearing exchange of documents and witness lists under [Rule 12514\(d\)](#).

(4) The chairperson of the panel will be responsible for writing the explained decision.

(5) The chairperson will receive an additional honorarium of \$400 for writing the explained decision, as required by this paragraph (g). The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.

(6) This paragraph (g) will not apply to simplified cases decided without a hearing under [Rule 12800](#) or to default cases conducted under [Rule 12801](#).

(h) All awards shall be made publicly available.

(i) Fees and assessments imposed by the arbitrators under the Code shall be paid immediately upon the receipt of the award by the parties. Payment of such fees shall not be deemed ratification of the award by the parties.

(j) All monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award:

- If not paid within 30 days of receipt;
- If the award is the subject of a motion to vacate which is denied; or
- As specified by the panel in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

Amended by SR-FINRA-2009-026 eff. Apr. 17, 2009.
Amended by SR-FINRA-2008-051 eff. Apr. 13, 2009.
Amended by SR-FINRA-2008-021 eff. Dec. 15, 2008.
Adopted by SR-NASD-2003-158 eff. April 16, 2007.

Selected Notice: [07-07](#), [08-57](#), [09-16](#).

▪ **12905. Submissions After a Case Has Closed**

The Customer Code applies to claims filed on or after April 16, 2007. In addition, the list selection provisions of the Customer Code apply to previously filed claims in which a list of arbitrators must be generated after April 16, 2007; in these cases, however, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

(a) Parties may not submit documents to arbitrator(s) in cases that have been closed except under the following limited circumstances:

(1) as ordered by a court;

(2) at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or

(3) if all parties agree and submit documents within 10 days of (1) service of an award or (2) notice that a matter has been closed.

(b) Parties must make requests under this rule in writing to the Director and must include the basis relied on under this rule for the request. The Director will forward documents submitted pursuant to paragraph (a)(1), along with any responses from other parties, to the arbitrators. The Director will determine if submissions made pursuant to paragraphs (a)(2) and (a)(3) comply with the grounds enumerated in the rule. If the Director determines that the request complies with paragraphs (a)(2) and (a)(3), the Director will forward the documents, along with any responses from other parties, to the arbitrators. The arbitrators may decline to consider requests that the Director forwards to them under paragraphs (a)(2) and (a)(3).

(c) Unless the arbitrators rule within 10 days after the Director forwards the documents to the arbitrators pursuant to a request made under paragraphs (a)(2) and (a)(3), the request shall be deemed considered and denied.

(d) Requests under this rule do not extend the time period for payment of any award pursuant to [Rule 12904](#).

Amended by SR-FINRA-2008-057 eff. Dec. 15, 2008.
Adopted by SR-FINRA-2008-005 eff. Nov. 24, 2008.

Selected Notice: [08-62](#).

TRUSTS AND ESTATES

ESTATE PLANNING

WILL CONTESTS (STATUTES)

Thomson Reuters October 2013

Many states have passed laws that set forth procedures by which an interested party may challenge the validity of a will in probate court. This table contains state statutes that address all aspects of instituting and maintaining a will contest action, including basic jurisdictional and venue issues, procedural provisions, the enforceability of penalty clauses in wills intended to dissuade will contests, and bond requirements for instituting a will contest action. The table does not include statutes that set forth the basic requirements for proving the validity of an uncontested will. Instead, it focuses on will contests. Consult the Thomson Reuters “Proving the Validity of Wills” survey and table for statutes that address basic requirements for proving the validity of a will.

Table 1: Will Contests

State	Does the State have Statutes that Set Forth Procedural Requirements for Contesting the Validity of a Will?	Burden of Proof in Will Contest Actions	Bond Requirement for Will Contest	Are “No Contest Clauses” or “Penalty for Will Contest” Clauses in Wills Enforceable?
Alabama	Yes AL ST § 43-8-190 AL ST § 43-8-191 AL ST § 43-8-192	None	None	None

	AL ST § 43-8-193 AL ST § 43-8-194 AL ST § 43-8-195 AL ST § 43-8-196 AL ST § 43-8-197 AL ST § 43-8-198 AL ST § 43-8-199 AL ST § 43-8-200 AL ST § 43-8-201 AL ST § 43-8-202			
Alaska	Yes AK ST § 13.16.040 AK ST § 13.16.165	Petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters	None	Penalty clause generally unenforceable AK ST § 13.12.517 AK ST § 13.16.555

		<p>with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.</p> <p>AK ST § 13.16.170</p>		
Arizona	<p>Yes</p> <p>AZ ST § 14-3108</p> <p>AZ ST § 14-3306</p> <p>AZ ST § 14-3406</p> <p>AZ ST § 14-3408</p>	<p>In contested cases, petitioners seeking to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will, if they are also petitioners, have the burden of establishing prima facie proof of death and venue. If a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled</p>	None	<p>Penalty clause generally unenforceable</p> <p>AZ ST § 14-2517</p>

		to probate. AZ ST § 14-3407		
Arkansas	Yes AR ST § 28-40-113 AR ST § 28-40-114 AR ST § 28-40-118	None	None	None
California	Yes CA PROBATE § 7220 CA PROBATE § 8250 CA PROBATE § 8251 CA PROBATE § 8253 CA PROBATE § 8254	Proponents of the will: due execution. Contestants of the will: lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. CA PROBATE § 8252	None	Only in certain defined circumstances CA PROBATE § 21311
Colorado	Yes CO ST § 15-12-108 CO ST § 15-12-404 CO ST § 15-12-406 CO ST § 15-12-408	In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent	None	Penalty clause generally unenforceable CO ST § 15-11-517 CO ST § 15-12-905

		<p>or capacity, undue influence, fraud, duress, mistake, or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and, if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.</p> <p>CO ST § 15-12-407</p>		
Connecticut	<p>Yes</p> <p>CT ST § 45a-134</p>	None	None	None
Delaware	<p>Yes</p> <p>DE ST TI 12 § 1310</p>	None	None	None
District of Columbia	<p>Yes</p> <p>DC CODE § 20-305</p>	None	None	None
Florida	<p>Yes</p> <p>FL ST § 732.518</p> <p>FL ST § 733.212</p>	In all proceedings contesting the validity of a will, the burden shall be	None	<p>Penalty clause generally unenforceable</p> <p>FL ST § 732.517</p>

		<p>upon the proponent of the will to establish prima facie its formal execution and attestation. A self-proving affidavit or an oath of an attesting witness executed as required by statute is admissible and establishes prima facie the will's formal execution and attestation. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation is sought. The presumption of undue influence implements public policy against abuse of fiduciary or confidential relationships and is therefore a presumption shifting the burden of proof under FL ST §§ 90.301-90.304.</p> <p>FL ST § 733.107</p> <p>FL ST PROB Rule 5.275</p>		
Georgia	<p>Yes</p> <p>GA ST § 53-5-6</p>	None	None	None

	GA ST § 53-11-10			
Hawaii	<p>Yes</p> <p>HI ST § 560:3-108</p> <p>HI ST § 560:3-404</p> <p>HI ST § 560:3-406</p> <p>HI ST § 560:3-408</p>	<p>In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Unless the burden of proof is changed by other provisions of law, parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will</p>	None	<p>Penalty clause generally unenforceable</p> <p>HI ST § 560:2-517</p>

		<p>revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.</p> <p>HI ST § 560:3-407</p>		
Idaho	<p>Yes</p> <p>ID ST § 15-3-108</p> <p>ID ST § 15-3-404</p> <p>ID ST § 15-3-406</p> <p>ID ST § 15-3-408</p>	<p>In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation.</p>	None	None

		<p>Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.</p> <p>ID ST § 15-3-407</p>		
Illinois	<p>Yes</p> <p>IL ST CH 755 § 5/8-1</p> <p>IL ST CH 755 § 5/8-2</p>	None	None	None
Indiana	<p>Yes</p> <p>IN ST 29-1-7-16</p> <p>IN ST 29-1-7-17</p> <p>IN ST 29-1-7-18</p>	<p>The burden of proof is upon the contestor.</p> <p>IN ST 29-1-7-20</p>	<p>The plaintiff in the action, or some other person on the plaintiff's behalf, shall file a bond with sufficient sureties in an amount approved by the court, conditioned for the due prosecution of the proceedings and for the</p>	<p>Penalty clause generally unenforceable</p> <p>IN ST 29-1-6-2</p>

			payment of all costs if in the proceedings judgment is rendered against the plaintiff. IN ST 29-1-7-19	
Iowa	Yes IA ST § 633.33 IA ST § 633.308 IA ST § 633.309 IA ST § 633.310 IA ST § 633.311 IA ST § 633.312 IA ST § 633.313 IA ST § 633.314 IA ST § 633.315 IA ST § 633.316 IA ST § 633.317 IA ST § 633.318 IA ST § 633.319 IA ST § 633.320	None	None	None
Kansas	Yes KS ST 59-2225	None	None	None
Kentucky	Yes KY ST § 394.240 KY ST § 394.250	None	None	None
Louisiana	Yes LA C.C.P. Art. 2901 LA C.C.P. Art. 2902	At the contradictory trial to probate a testament, its proponent bears the burden of proving the authenticity of the	None	None

		<p>testament, and its compliance with all of the formal requirements of law; The plaintiff in an action to annul a probated testament has the burden of proving the invalidity thereof, unless the action was instituted within three months of the date the testament was probated. In the latter event, the defendants have the burden of proving the authenticity of the testament, and its compliance with all of the formal requirements of the law.</p> <p>LA C.C.P. Art. 2903</p>		
Maine	<p>Yes</p> <p>ME ST T. 18-A § 3-108</p> <p>ME ST T. 18-A § 3-404</p> <p>ME ST T. 18-A § 3-406</p> <p>ME ST T. 18-A § 3-408</p>	<p>In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases,</p>	None	None

		<p>and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.</p> <p>ME ST T. 18-A § 3-407</p>		
Maryland	<p>Yes</p> <p>MD EST & TRST § 5-207</p> <p>MD EST & TRST § 5-304</p>	None	None	<p>Penalty clause generally unenforceable</p> <p>MD EST & TRST § 4-413</p>

Massachusetts	Yes MA ST 190B § 3-108 MA ST 190B § 3-406 MA ST 190B § 3-408 MA GEN PROB CT Rule 16	None	None	Penalty clause is enforceable MA ST 190B § 2-517
Michigan	Yes MI ST 700.3404 MI ST 700.3406 MI ST 700.3408	(a) A petitioner who seeks to establish intestacy has the burden of establishing prima facie proof of death, venue, and heirship. (b) A proponent of a will has the burden of establishing prima facie proof of due execution in all cases and, if the proponent is also a petitioner, prima facie proof of death and venue. (c) A contestant of a will has the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. (d) A party has the ultimate burden of persuasion as to a matter with respect to which the party has the initial burden of proof. If a will is	None	Penalty clause generally unenforceable MI ST 700.2518

		opposed by a petition for probate of a later will revoking the former, the court shall first determine whether the later will is entitled to probate. If a will is opposed by a petition for a declaration of intestacy, the court shall first determine whether the will is entitled to probate. MI ST 700.3407		
Minnesota	Yes MN ST § 524.3-404 MN ST § 524.3-406 MN ST § 524.3-408	In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress,	None	Penalty clause generally unenforceable MN ST § 524.2-517

		<p>mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.</p> <p>MN ST § 524.3-407</p>		
Mississippi	<p>Yes</p> <p>MS ST § 91-7-21</p> <p>MS ST § 91-7-23</p> <p>MS ST § 91-7-25</p>	None	None	None
Missouri	<p>Yes</p> <p>MO ST 473.065</p> <p>MO ST 473.083</p> <p>MO ST 474.390</p>	None	None	None
Montana	<p>Yes</p> <p>MT ST 72-3-122</p> <p>MT ST 72-3-131</p>	In contested cases, petitioners who seek to establish intestacy have	None	<p>Penalty clause generally unenforceable</p> <p>MT ST 72-2-537</p>

	MT ST 72-3-308 MT ST 72-3-309 MT ST 72-3-311	the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. MT ST 72-3-310		
Nebraska	Yes NE ST § 30-2408 NE ST § 30-2428 NE ST § 30-2430 NE ST § 30-2432	In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing	None	None

		<p>prima facie proof of due execution, death, testamentary capacity, and venue. Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.</p> <p>NE ST § 30-2431</p>		
Nevada	<p>Yes</p> <p>NV ST 137.010</p> <p>NV ST 137.020</p> <p>NV ST 137.030</p>	None	None	<p>A "no contest" clause is generally enforceable.</p> <p>NV ST 137.005</p>

	NV ST 137.040 NV ST 137.050 NV ST 137.060 NV ST 137.070 NV ST 137.080 NV ST 137.090 NV ST 137.100 NV ST 137.110 NV ST 137.120 NV ST 137.130 NV ST 137.140			
New Hampshire	None	None	None	"No contest" clause generally unenforceable. Some exceptions apply. NH ST § 551:22
New Jersey	Yes NJ ST 3B:3-23	None	None	Penalty clause generally unenforceable NJ ST 3B:3-47
New Mexico	Yes NM ST § 45-3-108 NM ST § 45-3-404 NM ST § 45-3-406 NM ST § 45-3-408	In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and if they are also petitioners, prima facie proof of death	None	Penalty clause generally unenforceable NM ST § 45-2-517

		and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate. If a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate. NM ST § 45-3-407		
New York	Yes NY SURR CT PRO § 1404	None	None	Penalty clause enforceable NY EST POW & TRST § 3-3.5
North Carolina	Yes NC ST § 28A-2A-7	None	None	None

	NC ST § 31-37.1			
North Dakota	<p>Yes</p> <p>ND ST 30.1-12-08</p> <p>ND ST 30.1-15-04</p> <p>ND ST 30.1-15-06</p> <p>ND ST 30.1-15-08</p>	<p>In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, revocation, or other cause affecting its validity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be</p>	None	None

		determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate. ND ST 30.1-15-07		
Ohio	Yes OH ST § 2107.71 OH ST § 2107.72 OH ST § 2107.73 OH ST § 2107.74 OH ST § 2107.75 OH ST § 2107.76 OH ST § 2107.77	None	None	None
Oklahoma	Yes OK ST T. 58 § 29 OK ST T. 58 § 41 OK ST T. 58 § 42 OK ST T. 58 § 43 OK ST T. 58 § 44 OK ST T. 58 § 61 OK ST T. 58 § 62 OK ST T. 58 § 63 OK ST T. 58 § 64 OK ST T. 58 § 65 OK ST T. 58 § 66 OK ST T. 58 § 67	None	None	None

Oregon	Yes OR ST § 113.075	None	None	None
Pennsylvania	None	None	None	Penalty clause generally unenforceable 20 Pa.C.S.A. § 2521
Rhode Island	Yes RI ST § 33-22-19.2	None	None	None
South Carolina	Yes SC ST § 62-3-404 SC ST § 62-3-406 SC ST § 62-3-408	In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of	None	A penalty clause is unenforceable if probable cause exists to bring the proceedings SC ST § 62-3-905

		proof. If a will is opposed by the petition for probate of a later will revoking the former, it must be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it must be determined first whether the will is entitled to probate. SC ST § 62-3-407		
South Dakota	Yes SD ST § 29A-3-108 SD ST § 29A-3-404 SD ST § 29A-3-406 SD ST § 29A-3-408	In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue	None	Penalty clause generally unenforceable SD ST § 29A-2-517

		<p>influence, fraud, duress, mistake, or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate. If a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.</p> <p>SD ST § 29A-3-407</p>		
Tennessee	<p>Yes</p> <p>TN ST § 32-4-101</p> <p>TN ST § 32-4-103</p> <p>TN ST § 32-4-104</p> <p>TN ST § 32-4-105</p> <p>TN ST § 32-4-106</p> <p>TN ST § 32-4-107</p> <p>TN ST § 32-4-108</p> <p>TN ST § 32-4-109</p> <p>TN ST § 32-5-106</p>	None	<p>If the validity of any last will or testament, written or nuncupative, is contested, then the court having probate jurisdiction over such last will or testament must enter an order sustaining or denying the contestant's right to contest the will. If the right to contest the will</p>	None

			is sustained, then the court must: Require the contestant to enter into bond, with surety, in the penal sum of five hundred dollars (\$500), payable to the executor mentioned in the will, conditioned for the faithful prosecution of the suit, and in case of failure therein, to pay all costs that may accrue thereon. Legatees and devisees must similarly enter into a bond when they receive notice of a will contest. TN ST § 32-4-101 TN ST § 32-4-102	
Texas	Yes TX PROBATE § 93 TX PROBATE § 100 TX PROBATE § 101	None	None	A "no contest" clause is unenforceable if just cause exists for the contest and the action is brought and maintained in good faith TX PROBATE § 64
Utah	Yes UT ST § 75-3-107 UT ST § 75-3-404 UT ST § 75-3-406	(1) In contested cases, petitioners who seek to establish intestacy have the burden of establishing	None	Penalty clause generally unenforceable UT ST § 75-2-515

	UT ST § 75-3-408 UT ST § 75-3-719	prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Except in cases where a presumption is operable, parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. Where one or more presumptions are operable, the ultimate burden of persuasion shall be determined in accordance with the Utah Rules of Evidence. (2) If a will is opposed by the petition for probate of a		
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		<p>later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.</p> <p>UT ST § 75-3-407</p>		
Vermont	None	None	None	None
Virginia	<p>Yes</p> <p>VA ST § 64.2-443</p> <p>VA ST § 64.2-451</p> <p>VA ST § 64.2-454</p>	None	None	None
Washington	<p>Yes</p> <p>WA ST 11.24.010</p> <p>WA ST 11.24.020</p> <p>WA ST 11.24.040</p> <p>WA ST 11.24.050</p>	<p>In any such contest proceedings the previous order of the court probating, or refusing to probate, such will shall be prima facie evidence of the legality of such will, if probated, or its illegality, if rejected, and the burden of proving the illegality of such will, if probated, or the legality of such will, if rejected by the court, shall rest upon the person</p>	None	None

		contesting such probaton or rejection of the will. WA ST 11.24.030		
West Virginia	Yes WV ST § 41-5-11 WV ST § 41-5-12 WV ST § 41-5-16	None	None	None
Wisconsin	Yes WI ST 868.01	None	None	None
Wyoming	Yes WY ST § 2-6-301 WY ST § 2-6-302 WY ST § 2-6-303 WY ST § 2-6-304 WY ST § 2-6-305 WY ST § 2-6-306	None	None	None
United States	None	None	None	None
Guam	Yes 15 G.C.A. § 1531 15 G.C.A. § 1601 15 G.C.A. § 1603 15 G.C.A. § 1605 15 G.C.A. § 1607 15 G.C.A. § 1609 15 G.C.A. § 1611 15 G.C.A. § 1613 15 G.C.A. § 1615 15 G.C.A. § 1617 15 G.C.A. § 1619 15 G.C.A. § 1621	None	None	None

Puerto Rico	Yes 32 L.P.R.A. § 2591 32 L.P.R.A. § 2592	None	None	None
Virgin Islands	Yes VI ST R SUPERIOR CT Rule 193	None	None	None