

MEMORANDUM

To: Investor Advisory Committee

From: Investor as Purchaser Subcommittee

Date: November 9, 2009

Re: Mandatory Arbitration Questions

The purpose of this memorandum is to inform the Committee that the Investor as Purchaser Subcommittee: (1) has identified two issues that it will address initially, fiduciary duties and mandatory arbitration, and (2) has developed a series of questions regarding mandatory arbitration that will guide its initial consideration of this issue.

No action is requested from the Committee. Comments are welcome, however, regarding these issues and questions and any others that Committee members believe should be considered by the Subcommittee. In addition, we welcome any materials you may want to provide that you believe are relevant to our deliberations.

The initial questions we will discuss regarding mandatory arbitration are as follows:

1. Should mandatory arbitration clauses be permitted?
2. How should arbitration panels be selected?
3. What should the qualifications be for public and non-public arbitrators?
4. How much guidance should be provided to panelists regarding the substantive law to be applied?
5. Should arbitration panels be required to produce written opinions?
6. Are there sufficient pro bono services to provide equal access to arbitration for small investors?
7. Is there sufficient education/information for investors to understand how the arbitration process works?

The remainder of this memorandum provides limited background information regarding each of these questions. It is introductory only and will be expanded and revised as we proceed with our evaluations. The text of the FINRA rules or parts

thereof that are relevant to this background information is provided at the Appendix.

1. Should mandatory arbitration clauses be permitted?

Brokers typically include a mandatory arbitration clause in customer agreements that require that disputes be resolved through FINRA arbitration. FINRA rules do not require arbitration or mandatory arbitration clauses, but they do require arbitration when it is: (1) required by agreement between the parties or (2) requested by the customer.

The legality of mandatory arbitration the brokerage customer context is settled law. In the seminal case on mandatory arbitration, *Shearson/American Express v. McMahon*,¹ the Supreme Court enforced a mandatory arbitration clause in an account agreement generally on the grounds that judicial review and regulatory oversight provided sufficient protection of brokerage customers' substantive rights under the federal securities laws. In addition, the Federal Arbitration Act has generally been interpreted by federal courts as evincing a national policy of favoring arbitration as an alternative dispute resolution mechanism.

The debate regarding whether mandatory arbitration should be permitted often focuses on the answers to the questions listed below. For example, some believe that arbitration cannot be fair and efficient (or will never be *perceived* as fair and efficient) as long as non-public persons are (or are required to be) included on arbitration panels. Some believe that investors should have the right to choose arbitration and that giving them that choice would provide an incentive to ensure that arbitration is fair and efficient. Another aspect of the issue is whether the SEC should be granted express authority to prohibit or restrict mandatory arbitration, which is currently being considered in the House of Representatives.² FINRA currently "do[es] not object to" this grant of authority.³

FINRA Rule 12200

¹ 482 U.S. 220 (1987).

² See Section 201, H.R. 3817.

³ Testimony of Richard Ketchum, Chairman & CEO, FINRA, before the House Financial Services Committee at 10 (Oct. 6, 2009) available at http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr_092909.shtml.

2. How should arbitration panels be selected?

Arbitration panels are comprised of one non-public arbitrator and two public arbitrators. The chairperson is required to be a public arbitrator.

FINRA provides three randomly generated lists of arbitrators as follows: public, non-public and Chairperson. Each party in the arbitration may strike up to four names from each list for any reason. The parties then rank, separately by list, the remaining arbitrators by preference and return the list to the Director of FINRA Dispute Resolution. The Director generally appoints the highest ranked arbitrator from each list to the panel.

FINRA has instituted a pilot program that permits investors to choose an all-public panel.⁴ From October 2008 to August 2009, 52 percent of investors eligible for the program had chosen this option. In 2000, FINRA instituted a two-year pilot program in which investors could choose arbitration by a non-FINRA firm (Judicial Arbitration and Mediation Service (JAMS) and the American Arbitration Association (AAA)).

FINRA Rules 12400, 12402, 12404 & 12406

3. What should the qualifications be for public and non-public arbitrators?

Arbitrators must be qualified: (1) as arbitrators and (2) as either public or non-public arbitrators. There are special qualifications for chairpersons. The qualifications for public and non-public arbitrators are summarized below.

A non-public arbitrator generally is a person who works or has spent his or her career working in the securities business as a broker or dealer, or is a non-securities professional (*e.g.*, lawyer, accountant) who has devoted at least 20 percent of his or her time to securities clients in the last two years.

A public arbitrator generally is a person who: (1) is not engaged and has not engaged for at least 20 years in securities-related activities that would make that person a non-public arbitrator; (2) is not a professional whose firm has derived more than 10 percent of revenue in the preceding two years from securities clients or received more than \$50,000 in the preceding two years representing a securities-related defendant in a customer dispute, (3) is not a director, officer or employee of a securities-related business or related to such a person.

It appears that some qualified arbitrators would not qualify as either public or non-public arbitrators and therefore would not be able to serve on a panel. For example, it appears that FINRA does not permit investment advisers who are not also brokers or dealers to serve on arbitration panels in any capacity. It also appears that certain

⁴ See The Neutral Corner: The Newsletter for FINRA Neutrals, Vol. 3 (2009).

professionals who fall between the revenue/time tests described above also would not be able to serve on arbitration panels in any capacity. In addition, some have argued that the definition of non-public arbitrator permits inclusion of individuals with extensive ties to the industry.

FINRA Rule 12100

4. How much guidance should be provided to panelists regarding the substantive law to be applied?

FINRA rules do not set forth the substantive law that should be applied by arbitrators. Some have suggested that FINRA's practice is to instruct arbitrators to seek to reach just and equitable results and that it abjures any role in providing guidance regarding substantive law.

5. Should arbitration panels be required to produce written opinions?

There is no general requirement that panels provide a written opinion that explains the basis for their decisions. Arbitration panels are required to provide their awards in writing. This writing must include, among other things: (1) an acknowledgement by the arbitrators that they have each read the pleadings and other materials filed by the parties; (2) a summary of the issues, including the type(s) of any security or product, in controversy; (3) the damages and other relief requested; (4) the damages and other relief awarded; and (5) a statement of any other issues resolved. It "may contain a rationale underlying the award," but this is not required.

The Chairperson shall provide an "explained decision" if jointly requested by all parties. An explained decision is "a fact-based award stating the general reason(s) for the arbitrators' decision." An explained decision is not required to include legal authorities or damage calculations.

FINRA Rule 12904

6. Are there sufficient pro bono services to provide equal access to arbitration for small investors?

Customers bear some of the cost of arbitration. For example, filing fees range from \$50 for disputes of up to \$1,000 to \$1,800 for disputes of over \$1 million. The Director may "defer" payment of filing fees on a showing of financial hardship. Partial refunds may be awarded for claims settled before a hearing. A panel may include reimbursement of filing fees pursuant to an award.

The arbitration panel determines the allocation of costs, expenses and hearing fees among the parties. The relevant rule does not explain what is included in "costs and

expenses.” Hearing fees range from \$50 for disputes of up to \$1,000 to \$1,200 for disputes of over \$500,000.

Arbitrations involving \$25,000 or less may be conducted pursuant to simplified arbitration. The panel includes only one arbitrator and no hearing is held unless requested by the customer. To the extent that customers who cannot afford arbitration bring claims involving small amounts, simplified arbitration presumably would be less costly than full arbitration.

There are no FINRA rules regarding *pro bono* legal services for customers. There are law school clinics that service arbitration customers. For example, Pace Law School operates an Investor Rights Clinic under which supervised students handle disputes on behalf of small investors. An SEC website lists 14 securities arbitration clinics at law schools in California, Illinois, New York and Pennsylvania.⁵ FINRA has established a grant program for law school securities arbitration clinics.⁶

FINRA Rules 12800, 12900 & 12902

7. Is there sufficient education/information for investors to understand how the arbitration process works?

There are no FINRA rules that specifically address investor education regarding arbitration. The FINRA website has substantial information regarding the arbitration process that is designed, in part, for customers who have complaints about their brokers’ services.

There has been some discussion of how the public’s perception of arbitration has been influenced by publicly available information. For example, Jill Gross and Barbara Black conducted an extensive survey of perceptions of arbitration that reached the following conclusions: “(1) investors have a far more negative perception of securities arbitration than all other participants, (2) investors have a strong negative perception of the bias of arbitrators in the securities arbitration forum, and (3) investors lack knowledge of the securities arbitration process.”⁷

⁵ See <http://www.sec.gov/answers/arbclin.htm> (modified 11/25/2008); see also FINRA Website at <http://www.finra.org/ArbitrationMediation/Parties/Overview/HowToFindAnAttorney/p013695> (listing 10 New York securities arbitration clinics); Jill Gross & Ronald Filante, *Developing a Law/Business Collaboration through Pace’s Securities Arbitration Clinic* (2005) available at <http://ssrn.com/abstract=1032301> (reporting that there are 12 securities arbitration clinics nationally, some of which were funded through settlements negotiated by the New York Attorney General).

⁶ See Investor Advocacy Clinic Program, <http://www.finrafoundation.org/grants/advocacy/>.

⁷ *When Perception Changes Reality: An Empirical Study Of Investors’ Views of the Fairness of Securities Arbitration*, 24 Ohio St. J. on Disp. Resol. 349 (2008) available at SSRN: <http://ssrn.com/abstract=1118430>.

Michael Perino had previously conducted a study for the SEC in which he found evidence of public perceptions of a pro-industry bias in arbitrations.⁸

There also has been research on arbitration outcomes, some of which may have influenced (justifiably or not) public perception. For example, some studies have found that customer win rates have declined over time and that arbitration favors repeat players (*i.e.*, brokers). It is clear that public understanding of the arbitration is an integral aspect of the questions raised above.

⁸ Michael Perino, *Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitration* (Nov. 4, 2002), available at <http://www.sec.gov/pdf/arbconflict.pdf>.

APPENDIX

FINRA Rules: 12000. Code of Arbitration Procedure for Customer Disputes

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12100: Definitions

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(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.

...

(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;

(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. 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.

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

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.

12400. Neutral List Selection System and Arbitrator Rosters

(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.

12402. Composition of Arbitration Panels

(a) If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the public chairperson roster, unless the parties agree in writing otherwise.

(b) If the panel consists of three arbitrators, one will be a non-public arbitrator and two will be public arbitrators, one of whom will be selected from the public chairperson roster, unless the parties agree in writing otherwise.

12404. Striking and Ranking Arbitrators

(a) Each separately represented party may strike up to four of the arbitrators from each list for any reason by crossing through the names of the arbitrators. At least four 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.

(c) 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.

12406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

(a) If the panel consists of one arbitrator, the Director will appoint the highest-ranked available arbitrator from the combined chairperson list.

(b) If the panel consists of three arbitrators, the Director will appoint:

- The highest-ranked available non-public arbitrator from the combined non-public arbitrator list;
- The highest-ranked available public arbitrator from the combined public arbitrator list, and
- The highest-ranked available public arbitrator from the combined chairperson list, who will serve as chairperson of the panel.

(c) If the number of arbitrators available to serve from the combined list(s) 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. If the Director must appoint a non-public arbitrator, the Director may not appoint a non-public arbitrator as defined in [Rule 12100\(p\)\(2\)](#) or (3), unless the parties agree otherwise. The Director will provide the

parties information about the arbitrators as provided in [Rule 12403](#) and the parties will have the right to challenge the arbitrators as provided in [Rule 12410](#).

(d) 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.

12800. Simplified Arbitration

(a) Applicability of Rule

This rule applies to arbitrations involving \$25,000 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 \$25,000, 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 12406\(b\)](#). 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.

12900. Fees Due When a Claim Is Filed

(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 (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

Amount of Claim (exclusive of interest and expenses)	Filing Fee
\$.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.

12902. Hearing Session Fees, and Other Costs and Expenses

(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	N/A	\$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.

(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.

12904. Awards

(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).