

# Regulatory Notice

## 24-03

February 6, 2024

### Notice Type

- ▶ Rule Amendment

### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Senior Management

### Key Topics

- ▶ Arbitration
- ▶ Arbitrator List Selection Process
- ▶ Claim and Case Dismissals
- ▶ Codes of Arbitration Procedure
- ▶ Dispute Resolution
- ▶ Hearing Records
- ▶ Hearing Sessions
- ▶ Initiating and Responding to Claims
- ▶ Motion Practice
- ▶ Prehearing Conferences

### Referenced Rules & Notices

- ▶ FINRA Rule 12000 Series (Customer Code)
- ▶ FINRA Rule 13000 Series (Industry Code)
- ▶ Regulatory Notice 14-27
- ▶ Regulatory Notice 20-13
- ▶ Regulatory Notice 20-32
- ▶ Regulatory Notice 21-14
- ▶ Regulatory Notice 21-18
- ▶ Regulatory Notice 22-21

## Amendments to the Arbitration Codes to Make Various Clarifying and Technical Changes

**FINRA Amends Arbitration Codes to Make Various Clarifying and Technical Changes, including to the Arbitrator List Selection Process**

**Effective Date: March 4, 2024**

### Summary

FINRA has amended its Codes of Arbitration Procedure (Codes) to make: (1) changes to the arbitrator list selection process in response to recommendations in the report of independent counsel Lowenstein Sandler LLP (Report) and (2) clarifying and technical changes to requirements in the Codes for holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record. The amendments are effective for arbitration cases filed on or after March 4, 2024.

Questions concerning this *Notice* should be directed to:

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### Background & Discussion

#### I. List Selection Process Amendments

In June 2022, FINRA published the report from Lowenstein Sandler LLP relating to an independent review and analysis of the FINRA Dispute Resolution Services (DRS) arbitrator list selection process.<sup>1</sup> The Report

made several recommendations to provide greater transparency and consistency in the arbitrator list selection process, some of which required amendments to the Code of Arbitration Procedure for Customer Disputes (Customer Code) and the Code of Arbitration Procedure for Industry Disputes (Industry Code).<sup>2</sup> In response to the recommendations in the Report, FINRA has amended the Codes to implement the Report's recommendations, as described below.

#### **(A) Conflicts of Interest**

The Codes provide that a list selection algorithm will randomly generate the lists of arbitrators from the DRS roster of arbitrators for the selected hearing location for each proceeding,<sup>3</sup> and exclude arbitrators from the lists based upon current conflicts of interest identified within the list selection algorithm.<sup>4</sup> In addition, once the lists are generated, DRS conducts a manual review for other conflicts not identified within the list selection algorithm. Prior to the amendments, this manual review was not described in the Codes.<sup>5</sup> In response to a recommendation in the Report,<sup>6</sup> the amendments codify the manual review by providing that the Director will exclude arbitrators from the list(s) based upon a review of current conflicts of interest not identified within the list selection algorithm.<sup>7</sup> In addition, the amendments provide that if an arbitrator is removed due to such conflicts, the list selection algorithm will randomly select an arbitrator to complete the list(s).<sup>8</sup>

#### **(B) Written Explanation of Director's Decision**

The Report recommended that, to improve transparency, DRS should consider amending its policies to require a written explanation whenever a challenge to remove an arbitrator is granted or denied, if a written explanation is requested by either party.<sup>9</sup> Effective September 1, 2022, DRS updated its policy to provide a written explanation whenever a party-initiated challenge to remove an arbitrator is granted or denied, regardless of whether an explanation is requested by either party.<sup>10</sup> The amendments codify this practice by providing that the Director shall provide a written explanation of the Director's decision to grant or deny a party's request to remove an arbitrator.<sup>11</sup> In addition, DRS has updated its guidance to arbitrators to include the most common reasons for granting or denying party-initiated challenges.<sup>12</sup>

#### **(C) Challenge to Remove an Arbitrator**

Although not a specific recommendation in the Report, the amendments make an additional clarifying change to the Codes relating to party-initiated challenges to remove an arbitrator for cause. While the Codes permit the Director to remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative, prior to the amendments, the Codes did not expressly specify when the Director may first initiate, or a party may first bring, such a challenge.<sup>13</sup> The amendments codify DRS's practice with respect to the timing for such challenges by providing that after the Director sends the arbitrator ranking list(s) generated by the list selection algorithm to the parties, but 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.<sup>14</sup>

## II. Procedural Amendments

The Codes include requirements for holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record. Over the years, DRS has developed practices to help implement these requirements so that arbitration cases are timely and efficiently administered in its forum. The amendments incorporate these practices into the Codes, as described below.

### (A) Number of Hearing Sessions Per Day

Arbitrators are paid for each hearing session in which they participate.<sup>15</sup> Under the Codes, a “hearing session” is any meeting between the parties and arbitrators of four hours or less, including a hearing or a prehearing conference.<sup>16</sup> To address a misunderstanding among some arbitrators that they may be compensated for time spent outside of the hearing session, such as on lunch breaks, the amendments revise the definition of “hearing session” in the Codes to indicate that, in one day, the next hearing session begins after four hours of hearing time has elapsed.<sup>17</sup> In addition, DRS has updated its arbitrator guidance to encourage arbitrators to be efficient in managing the time during hearings to minimize, whenever possible, the number of hearing sessions held.<sup>18</sup>

### (B) Redacting Confidential Information

Under the Codes, when parties submit pleadings and supporting documents to DRS, the parties must redact personal confidential information (PCI) such as an individual’s Social Security number, taxpayer identification number or financial account number to include only the last four digits of such numbers.<sup>19</sup> Prior to the amendments, this requirement did not apply to claims administered under FINRA’s simplified arbitration rules.<sup>20</sup> FINRA had not applied the redaction requirement to simplified arbitrations due to concerns that the requirement may prove difficult for *pro se* customers, in particular.<sup>21</sup> To address increasing concerns with customers’ identities being used for fraudulent purposes in the securities industry,<sup>22</sup> the amendments apply the requirement to redact PCI to parties in simplified arbitrations.<sup>23</sup> In addition, FINRA has updated guidance on its website regarding the steps parties can take to protect PCI to include guidance to investors who represent themselves.<sup>24</sup> The updated guidance describes the importance of safeguarding PCI and provides clear, plain English instructions on how to redact PCI from documents filed with DRS.<sup>25</sup>

### (C) Update Submission Agreement When Filing a Third Party Claim

The 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 Codes.<sup>26</sup> Under the Codes, a claim is deficient if the Submission Agreement does not name all parties named in the claim.<sup>27</sup> Prior to the amendments, the Codes did not expressly require

the respondent to file an updated Submission Agreement with a third party claim. Thus, respondents would often file deficient claims because they would neglect to add the third party to the Submission Agreement.<sup>28</sup> To clarify that respondents must file an updated Submission Agreement with a third party claim, the amendments require that if the answer contains a third party claim, the respondent must execute a Submission Agreement that lists the name of the third party and serve the third party with the answer and the Submission Agreement,<sup>29</sup> and must file the Submission Agreement with the Director.<sup>30</sup>

#### **(D) Amending Pleadings or Filing Third Party Claims**

Prior to the amendments, the Codes did not include express procedures related to the filing of third party claims other than those filed in an answer to a statement of claim.<sup>31</sup> Rather, FINRA rules relating to amended pleadings governed the filing of third party claims.<sup>32</sup> The amendments add the procedures that apply to amended pleadings to the filing and serving of third party claims.<sup>33</sup>

Further, the amendments update the Customer Code to expressly authorize a customer in an arbitration to file a third party claim if FINRA notifies a customer that a member or associated person has become inactive after a panel is appointed, as well as after the ranked arbitrator lists are due.<sup>34</sup>

#### **(E) Combining Claims**

Before ranked arbitrator lists are due to the Director, the Codes permit the Director to combine separate but related claims into one arbitration.<sup>35</sup> The Codes also provide that once a panel has been appointed, the panel may reconsider the Director's decision upon motion of a party.<sup>36</sup> Prior to the amendments, the Codes did not address if a panel has authority to combine separate but related claims into one arbitration, or which panel (if more than one had been appointed to hear the separate but related claims) may reconsider the Director's decision upon motion of a party.

The amendments codify DRS's practice that if a panel has been appointed to one or more cases, the panel appointed to the lowest numbered case with a panel may: (1) combine separate but related claims into one arbitration and (2) reconsider the Director's decision upon motion of a party.<sup>37</sup>

#### **(F) Motion Practice**

Prior to the amendments, the Codes did not address the timing of DRS's delivery of motions, responses, and replies to the panel. In practice, DRS sends all motions, along with all related responses and replies to that motion to the panel after the last reply date has elapsed, unless otherwise directed by the panel. This practice helps

ensure that the arbitrators have the complete set of motion papers before they begin considering the motion. The amendments codify this practice by providing that the Director will send all motions, responses, and replies to the panel after the last reply date has elapsed, unless otherwise directed by the panel.<sup>38</sup> If the Director receives additional submissions on the motion after the last reply date has elapsed,<sup>39</sup> the amendments provide that the Director will forward the submissions to the panel upon receipt and the panel will then determine whether to accept them.<sup>40</sup>

#### **(G) Virtual Prehearing Conferences**

Under the Codes, prehearing conferences are generally held by telephone.<sup>41</sup> Based on forum users' experiences during the COVID-19 pandemic, they expressed a preference for holding prehearing conferences by video conference. To accommodate this preference, effective July 1, 2022, DRS updated its policy so that all prehearing conferences are held by video conference. The amendments codify this policy by providing that prehearing conferences will generally be held by video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session.<sup>42</sup> In addition, DRS updated its guidance on virtual prehearing conferences to help ensure that all participants have the information they need to participate fully in virtual prehearing conferences.<sup>43</sup>

#### **(H) In-Person Hearings**

In comparison to prehearing conferences, hearings are generally held in person. Forum users have not similarly expressed a preference for making video conference the default for hearings. Accordingly, the amendments clarify that hearings will generally be held in person unless the parties agree to, or the panel grants a motion for, another type of hearing session.<sup>44</sup>

#### **(I) Virtual Option for Special Proceeding**

As noted above, simplified arbitrations are generally decided by a single arbitrator based on the parties' written submissions, unless the customer requests a hearing.<sup>45</sup> In some cases, however, customers want an opportunity to present their case to the arbitrator without the travel and expenses associated with a full hearing. Such an abbreviated telephonic hearing is called a "special proceeding" under the Codes.<sup>46</sup> The amendments reflect customers' suggestions that they have the option to conduct a special proceeding by video conference. Specifically, the amendments provide that a special proceeding will be held by video conference, unless the customer requests at least 60 days before the first scheduled hearing that it be held by telephone, or the parties agree to another type of hearing session.<sup>47</sup> Thus, the amendments make video conference the default for special proceedings; however, customers or claimants have the option to select a telephonic hearing.

#### **(J) Witness Lists Shall Not Be Combined with Document Lists**

Under the Codes, at least 20 days before the first scheduled hearing, all parties must: (1) provide all other parties—but not the Director or arbitrators—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;<sup>48</sup> and (2) provide each other party—as well as the Director—with the names and business affiliations of all witnesses they intend to present at the hearing.<sup>49</sup> Separately, parties often file a single document with the Director that includes a list of documents and other materials, such as exhibits, they intend to use at the hearing that have not already been produced and their witness list. Because the list of documents and other materials could contain prejudicial or inadmissible material, as a service to forum users, the Director will manually remove this information from the document containing the witness list before forwarding the witness list to the panel. But, at times, the Director may inadvertently disseminate the list of documents and other materials to the arbitrators, which could reveal potentially prejudicial or inadmissible information to the arbitrators before the hearing. The amendments protect against this risk of inadvertent disclosure by expressly providing that if the parties create lists of documents and other materials in their possession or control that they intend to use at the hearing and have not already been produced, the parties may serve the lists on all other parties, but shall not combine the lists with the witness lists filed with the Director.<sup>50</sup>

#### **(K) Hearing Records**

##### **1. Parties' Responsibilities for Distributing the Official Record of a Hearing**

The official record of an arbitration hearing is the Director's tape, digital, or other recording of every arbitration hearing.<sup>51</sup> However, if a party chooses to make a stenographic record of a hearing, a panel may decide in advance of the hearing that the stenographic record will be the official record of the hearing.<sup>52</sup> If the Director's recording is the official record, the panel may order the parties to provide a transcription of the recording and copies of the transcription must be provided to each arbitrator, served on each party, and filed with the Director.<sup>53</sup> If a party's stenographic record is the official record, a copy must be provided to each arbitrator, served on each other party, and filed with the Director.<sup>54</sup> Further, 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.<sup>55</sup> The Codes do not specify, however, which party must provide to each arbitrator, serve on each other party, and file with the Director a copy of the transcription of the official record. The amendments assign that responsibility to the party or parties: (1) ordered to make a transcription of the Director's recording;<sup>56</sup> or (2) that elected to make a stenographic record.<sup>57</sup> In addition, FINRA has updated its guidance on requesting a transcription from a party of the Director's recording.<sup>58</sup>

## 2. Executive Sessions

As noted above, the Director makes a tape, digital, or other recording of every hearing.<sup>59</sup> As a matter of practice, executive sessions are not recorded because they are not part of the official record of the hearing. Rather, executive sessions are discussions among arbitrators outside the presence of the parties and their representatives, witnesses and stenographers and are intended to be private. The amendments codify this practice by expressly providing that executive sessions held by the panel will not be recorded.<sup>60</sup>

### (L) Dismissal of Proceedings for Insufficient Service

Under the Codes, parties, except for *pro se* parties, must serve all pleadings and other documents through the Party Portal, and service is accomplished on the day of submission through the Party Portal.<sup>61</sup> If a party who is served fails to submit an answer, DRS reviews the service history with the panel and asks the panel to decide whether service is complete and sufficient upon the unresponsive party before the case may proceed to hearing.<sup>62</sup> DRS's practice permits the panel to dismiss a claim or arbitration without prejudice if it finds insufficient service. The amendments codify this practice by providing that the panel may dismiss without prejudice a claim or an arbitration for lack of sufficient service upon a respondent.<sup>63</sup>

### (M) Dismissal of Claimant's Claims Requires Issuance of an Award

Under the Codes, an award is a document stating the disposition of a case,<sup>64</sup> is final and is not subject to review or appeal,<sup>65</sup> and shall be made publicly available.<sup>66</sup> The Codes permit a panel to grant a motion to dismiss a party's case at the conclusion of the case in chief.<sup>67</sup> As the dismissal of all a claimant's claims disposes of the case, it is DRS's practice to require the issuance of an award for such dismissals.<sup>68</sup> The amendments codify this practice by requiring that if a panel dismisses all of a claimant's claims at the conclusion of the case in chief, the decision must contain the elements of a written award and must be made publicly available as an award.<sup>69</sup>

## Effective Date

The amendments are effective for arbitration cases filed on or after March 4, 2024.



## Endnotes

- 1 See Christopher W. Gerold, Lowenstein Sandler LLP, The Report of the Independent Review of FINRA's Dispute Resolution Services – Arbitrator Selection Process, <https://www.finra.org/sites/default/files/2022-06/report-independent-review-drs-arbitrator-selection-process.pdf>. In February 2022, the Audit Committee of FINRA's Board of Governors engaged independent counsel Lowenstein Sandler LLP to provide a review and analysis in connection with a Fulton County (Georgia) Superior Court decision vacating an arbitration award in favor of Wells Fargo Clearing Services, LLC. See Order Granting Mot. to Vacate Arb. Award and Den. Cross Mot. to Confirm Arb. Award at 37, *Leggett v. Wells Fargo Clearing Servs., LLC*, No. 2019-CV-328949 (Ga. Super. Ct., January 25, 2022). Since publication of the Report, the Fulton County (Georgia) Superior Court's decision was reversed by the Court of Appeals of Georgia. See *Wells Fargo Clearing Servs. v. Leggett*, No. A22A1149, 2022 Ga. App. (Ct. App. August 2, 2022).
- 2 See Securities Exchange Act Release No. 98317 (September 7, 2023), 88 FR 62835 (September 13, 2023) (Order Approving File No. SR-FINRA-2022-033).
- 3 See Rules 12400, 12402, 12403, 13400 and 13406.
- 4 See Rules 12402(b), 12403(a)(3), 13403(a)(4) and 13403(b)(4).
- 5 The manual review is described on FINRA's website. See FINRA, How Parties Select Arbitrators, <https://www.finra.org/arbitration-mediation/arbitrator-selection>. See also Securities Exchange Act Release No. 40261 (July 24, 1998), 63 FR 40761, 40769 (July 30, 1998) (Notice of Filing of SR-NASD-98-48) (stating that DRS will perform a manual review for conflicts of interests between parties and potential arbitrators); Securities Exchange Act Release No. 40555 (October 21, 1998), 63 FR 56670, 56675 (October 22, 1998) (Order Approving File No. SR-NASD-98-48) (describing the manual review for conflicts of interests between parties and potential arbitrators).
- 6 See Lowenstein Report at 36, *supra* note 1 (recommending that, "to improve transparency, FINRA should amend Rule 12400 to specifically state that prior to sending the arbitrator list to the parties, NM [DRS's Neutral Management Department] shall conduct a manual review for conflicts of interest").
- 7 See Rules 12402(b)(3), 12403(a)(4), 13403(a)(5) and 13403(b)(5). The term "Director" means the Director of DRS. Unless the Codes provide that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority. See Rules 12100(m) and 13100(m).
- 8 Potential conflicts, along with a description of the manual review process, are published on FINRA's website. See FINRA, How Parties Select Arbitrators, <https://www.finra.org/arbitration-mediation/arbitrator-selection>.
- 9 See Lowenstein Report at 37, *supra* note 1.
- 10 See FINRA, Status Report on Lowenstein Sandler LLP Recommendations, <https://www.finra.org/rules-guidance/guidance/reports/report-independent-review-finra-dispute-resolution-services-arbitrator-selection-process>.
- 11 See Rules 12407(c) and 13410(c).
- 12 See FINRA, How Parties Select Arbitrators, <https://www.finra.org/arbitration-mediation/arbitrator-selection>; FINRA, FINRA Dispute Resolution Services Arbitrator's Guide, <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf>.



- 13 See Rules 12407(a) and 13410(a).
- 14 See *id.*
- 15 See Rules 12214(a)(1) and 13214(a)(1).
- 16 See Rules 12100(p) and 13100(p). A “prehearing conference” means any hearing session, including an Initial Prehearing Conference, that takes place before the hearing on the merits begins. See Rules 12100(y) and 13100(w). Further, the term “hearing” means the hearing on the merits of an arbitration under Rules 12600 and 13600. See Rules 12100(o) and 13100(o).
- 17 See *id.*
- 18 See FINRA, FINRA Dispute Resolution Services Arbitrator’s Guide, <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf>; FINRA, Hearing Procedure Script – Single Arbitrator Case, <https://www.finra.org/sites/default/files/hearing-procedure-script-single-arbitrator-case.pdf>; and FINRA, Hearing Procedure Script – Three Member Panel, <https://www.finra.org/sites/default/files/hearing-procedure-script-3-member-panel.pdf>.
- 19 See Rules 12300(d)(1)(A) and 13300(d)(1)(A). See also *Regulatory Notice 14-27* (June 2014) (describing the procedures to redact PCI from documents filed with DRS, which FINRA notes as current procedures and should be read in conjunction with this *Notice*).
- 20 See Rules 12800 and 13800. Simplified arbitrations are arbitrations involving \$50,000 or less and are generally decided by a single arbitrator based on the parties’ written submissions, unless the customer or claimant requests a hearing. Many claimants who initiate claims under the simplified arbitration rules are not represented by counsel and appear *pro se*.
- 21 See Securities Exchange Act Release No. 82693 (February 12, 2018), 83 FR 7086, 7087 (February 16, 2018) (Notice of Filing of File No. SR-FINRA-2018-003).
- 22 See, e.g., *Regulatory Notice 20-13* (May 2020) (reminding firms to be aware of fraud during the COVID-19 pandemic); *Regulatory Notice 20-32* (September 2020) (reminding firms to be aware of fraudulent options trading in connection with potential account takeovers and new account fraud); *Regulatory Notice 21-14* (March 2021) (alerting firms to recent increase in automated clearing house “Instant Funds” abuse); *Regulatory Notice 21-18* (May 2021) (sharing practices firms use to protect customers from online account takeover attempts); and *Regulatory Notice 22-21* (October 2022) (alerting firms to recent trend in fraudulent transfers of accounts through the Automated Customer Account Transfer Service).
- 23 See Rules 12300(d)(1) and 13300(d)(1).
- 24 See FINRA, Protecting Personal Confidential Information, <https://www.finra.org/arbitration-mediation/rules-case-resources/protecting-personal-confidential-information>; FINRA, Resources for Individuals Representing Themselves, <https://www.finra.org/arbitration-mediation/about/pro-se>; and FINRA, FINRA Dispute Resolution Services Party’s Reference Guide, <https://www.finra.org/sites/default/files/Partys-Reference-Guide.pdf>.
- 25 FINRA has also included reference to the guidance in the Party Portal, such that parties will be directed to the guidance when filing initial statements of claim, or filing and serving pleadings and any other documents on the Director or any other party. See Rules 12300(a) and 13300(a). See also FINRA Dispute Resolution Services, DR Portal, <https://www.finra.org/arbitration-mediation/dr-portal>.

- 26 See Rules 12100(dd) and 13100(ee). This document confirms FINRA's jurisdiction over a case and binds parties to the outcome of the case.
- 27 See Rules 12307(a) and 13307(a). The Director will not serve any claim that is deficient.
- 28 See 88 FR 62835, 62839, *supra* note 2.
- 29 See Rules 12303(b) and 13303(b).
- 30 See *id.*
- 31 See *id.*
- 32 See Rules 12309 and 13309. Rules 12309(a)(2) and 13309(a)(2) address the amendment of a pleading to add a party, but they do not address the filing of a third party claim other than in an amended pleading.
- 33 See *id.* In addition, the amendments restructure the rules related to amending pleadings and filing third party claims and add titles to clarify what processes are available based on various milestones in a case, including before and after panel appointment and before and after ranked arbitrator lists are due to the Director.
- The amendments to Rules 12309 and 13309 also clarify that:
- arbitrators are “appointed to” the panel, not placed “on” the panel. See Rules 12309(a) and 13309(a);
  - service by first-class mail or overnight mail service is accomplished on the date of mailing and service by any other means is accomplished on the date of delivery. See Rules 12309(a)(3) and 13309(a)(3);
  - the version of an amended pleading or third party claim that should be included with a motion need not be a hard copy. See Rules 12309(b)(1) and 13309(b);
  - once the ranked arbitrator lists are due to the Director, no party may amend a pleading to add a party or file a third party claim until a panel has been appointed and the panel grants a motion to amend a pleading or file the third party claim. See Rules 12309(c)(1) and 13309(c);
  - the provisions in the Codes relating to responding to amended pleadings are separate from the provisions relating to answering amended claims. See Rules 12309(d) and 13309(d); Rules 12310 and 13310; and
  - before panel appointment, the Director has authority to determine whether any party may file a response to an amended pleading. See Rules 12309(d) and 13309(d).
- 34 See Rules 12309(b)(2) and 12309(c)(2). In addition, the amendments replace “party” with “customer” as it is the customer to the arbitration proceeding who may amend a pleading or file a third party claim if FINRA notifies the customer that a member or associated person has become inactive.
- 35 See Rules 12314 and 13314.
- 36 See *id.*
- 37 See Rules 12314(b) and 13314(b). In addition, the amendments include cross-references to clarify that motions relating to separating and combining claims or arbitrations are decided by the Director before a panel is appointed, or by the panel after the panel is appointed. See Rules 12503(e)(3) and 13503(e)(3) (cross-references to Rules 12312 and 13312, as applicable, relating to multiple claimants and Rules 12313 and 13313, as applicable, relating to multiple respondents); Rules 12503(e)(4) and 13503(e)(4) (cross-references to Rules 12314 and 13314, as applicable).

- 38 See Rules 12503(d) and 13503(d).
- 39 With respect to motions to amend a pleading, the amendments state that such motions must “include” rather than “be accompanied by copies of” the proposed amended pleading to clarify that hard copies are not required. See Rules 12503(a)(4) and 13503(a)(4).
- 40 See *supra* note 38.
- 41 See, e.g., Rules 12500(b) and 13500(b).
- 42 See Rules 12500(b), 12501(c) and 12504(a)(5); see also Rules 13500(b), 13501(c) and 13504(a)(5). If a party prefers to have an in-person prehearing conference, the party may file a motion, which the panel will decide, taking into account, among other things, a party's access to and comfort level with technology.
- 43 See FINRA, Resource Guide for Virtual Hearings, <https://www.finra.org/arbitration-mediation/rules-case-resources/resource-guide-virtual-hearings>; FINRA, FINRA Dispute Resolution Services Party's Reference Guide, <https://www.finra.org/sites/default/files/Partys-Reference-Guide.pdf>.
- 44 See Rules 12600(b) and 13600(b).
- 45 See *supra* note 20.
- 46 See Rules 12800(c)(3)(B) and 13800(c)(3)(B).
- 47 See Rules 12800(c)(3)(B)(i) and 13800(c)(3)(B)(i). The 60-day notification requirement will help ensure that the parties and arbitrator are aware of how the hearing session will be conducted well in advance of the hearing session and can prepare accordingly.
- 48 See Rules 12514(a) and 13514(a).
- 49 See Rules 12514(b) and 13514(b).
- 50 See *supra* note 48.
- 51 See Rules 12606(a)(1) and 13606(a)(1).
- 52 See Rules 12606(b)(1) and 13606(b)(1).
- 53 See Rules 12606(a)(2) and 13606(a)(2).
- 54 See Rules 12606(b)(2) and 13606(b)(2).
- 55 See *id.*
- 56 See *supra* note 53.
- 57 See *supra* note 54.
- 58 See FINRA, FINRA's Arbitration Process, <https://www.finra.org/arbitration-mediation/about/arbitration-process>; FINRA, FINRA Dispute Resolution Services Party's Reference Guide, <https://www.finra.org/sites/default/files/Partys-Reference-Guide.pdf>; and FINRA, FINRA Dispute Resolution Services Arbitrator's Guide, <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf>.
- 59 See *supra* note 51.
- 60 See *supra* note 51.
- 61 See Rules 12300(c) and 13300(c).
- 62 See FINRA, Initial Prehearing Conference Script for Panel Cases, [https://www.finra.org/sites/default/files/2022-08/iphc\\_script\\_panel\\_cases.pdf](https://www.finra.org/sites/default/files/2022-08/iphc_script_panel_cases.pdf).
- 63 See Rules 12700(c) and 13700(c).
- 64 See Rules 12100(c) and 13100(c).
- 65 See Rules 12904(b) and 13904(b).
- 66 See Rules 12904(h) and 13904(h). See also FINRA, Arbitration Awards Online, <https://www.finra.org/arbitration-mediation/arbitration-awards>.
- 67 See Rules 12504(b) and 13504(b).

- 68 See FINRA, FINRA Dispute Resolution Services Arbitrator's Guide, <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf>.
- 69 See *supra* note 67. See also Rules 12904(e) and 13904(e). If the panel grants a motion to dismiss some but not all of the claimant's claims, the hearing will proceed as to the remaining claims and at the conclusion of the hearing, the panel will issue an award that disposes of each claim. See FINRA, FINRA Dispute Resolution Services Arbitrator's Guide, <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf>.